**Supreme Court of Bangladesh**

High Court Division

(Special Original Jurisdiction)

**Writ Petition No. 13989/2016**

Human Rights and Peace for Bangladesh

---- Petitioner.

Versus

Government of Bangladesh and Others

---- Respondents.

Advocate Manzill Murshid with

Advocate Md. Sarwar Ahad Chowdhury

Advocate Ekhlas Uddin Bhuian

Advocate Ripon Baroi

Advocate Sanjay Mondal

---- On behalf of the Petitioner.

Advocate Syed Mafizur Rahman

--- On behalf of Respondent No. 2.

Advocate Md Imam Hasan with

Advocate Md Shahinul Islam

---- On behalf of Respondent No. 3.

Advocate Khandoker Shahriar Shakir

---- On behalf of Respondent No. 4.

Advocate Md Harun-ur-Rashid

---- On behalf of Respondent No. 10.

Advocate Md. Asaduzzaman

----- On behalf of Respondent No. 12.

Advocate A.M. Mahbub Uddin with

Advocate Saqeb Mahbub

---- On behalf of Respondents No. 13 to 21.

Advocate Mohammad Mehedi Hasan Chowdhury

Advocate Sheikh Fazle Noor Taposh

Advocate Apurbo Kumar Biswas

Advocate Josna Parvin

Advocate Upama Biswas

Advocate Swapnil Bhattacharya

---- On behalf of Respondents No. 22, 23.

Advocate Md Ekramul Hoque, Deputy Attorney General with

Advocate Purabi Rani Sharma, Assistant Attorney General

Advocate Purabi Saha, Assistant Attorney General

--- On behalf of Respondent No. 5.

**Present:**

**Justice Moyeenul Islam Chowdhury**

**And**

**Justice Md. Ashraful Kamal**

**Heard on 4 Shraban, Bengali Year 1425, 17 Shraban Bengali Year 1425, 30 Karthik Bengali Year 1425, 26 Poush Bengali Year 1425, 3 Magh Bengali Year 1425, 4 Magh Bengali Year 1425 (English: 19.07.2018, 01.08.2018, 14.11.2018, 09.01.2019, 16.01.2019, 17.01.2019)  
Judgment on 17 Magh, Bengali Year 1425 and 21 Magh, Bengali Year 1425 (English: 30.01.2019, 03.02.2019).**

**Justice Md. Ashraful Kamal:**

The other name of water is life.

*‘…and We made every living being out of water…’-Al-Quran (21:30)*

That means that both water and life are synonymous. Where there is water, there is life. Where there is no water, there is no life. No animals, plants and human being of this world can survive without water. The repository of water i.e. its bearer and carrier are the seas, rivers, lakes, canals, channels, ponds, haor[[1]](#footnote-1) and wetlands.

Bangladesh is called the riverine Bangladesh. Bangladesh and its rivers are inseparably connected. Since time-immemorial, rivers have been the center of formation of societies and states, and have led the way to the progress of mankind. But today, the existence of the rivers of the whole world including Bangladesh is under threat of disappearing.

In such a situation, the report of public importance titled as **‘Time to declare Turag dead**’ by the journalist Tawfique Ali was published in the daily English newspaper ‘The Daily Star’ on 06.11.2016.

An excerpt of the news report is quoted exactly as follows:

*“In the end, nobody would save the Turag River. Left at the mercy of ruthless land grabbers who continue to ravage one of Dhaka’s lifelines, the river is only a shadow of its once mighty self.*

*“We are dismayed by the slow death of the river. It in our childhood, used to be a mighty river and we fondly called it the Kahar Daria,” said Hafizul Islam, an elderly farmer with ancestral homestead in Machhimpur Mouja of Tongi.*

*Today, with unbridled grabbing of the river foreshore by “land claimants,” the river is barely surviving. It has become a lean flow like a drainage ditch, he lamented.*

*Fresh water, fish resource, marine ecology and panoramic waterfront of the river are all gone with encroachments, industrial pollution and random structures, said Shafia Begum who works in an NGO. She commutes regularly to the city from Ashulia along the bank of the Turag.*

*Even three decades ago, the river had all its splendor, vitality, serene beauty and wide navigability, says Shafia, who was born in Savar. “The number of grabbers multiplied only over the last half a decade.”*

*“The river grabbers are powerful and rich and apparently mighty,” she added, “The grabbing has been indiscriminate and appears unstoppable.”*

*Abdur Razzaq, a fish wholesaler and inhabitant of Abdullahpur, said the river has been killed over the past decade, “---- while we have seen feeble attempts in the name of saving it.”*

*During several visits in the past few weeks, this correspondent saw the earth filling of the river’s foreshores, the part of a shore between high and low water marks. Not only ----------but also --------claimants” were busy with their work.*

*The areas grabbed some half a decade age now stand covered with plants, trees and structures. This Daily Star correspondent, since April 2011, has been following the destruction of the river. River laws and repeated High Court orders fell flat, it appears. Half a dozen official custodians are supposed to save the 38km river stretch from Kholamora to Teramukh across Ashulia and Tongi.”*

While reviewing the images of the Turag River from the years of 2013, 2014, 2015 and 2016 provided in the above-mentioned report, it is crystal-clear that the Turag River has been gradually encroached upon by illegal land-grabbers. Based upon the abovementioned news report by ‘The Daily Star’, the petitioner named as the **‘Human Rights and Peace for Bangladesh’ organization** filed this Writ petition in public interest. Thereafter, at the end of the hearing of the writ application on the date of 09.11.2016, this Division issued the Rule in the way as mentioned below:

*“Let a Rule Nisi be issued calling upon the respondents to show cause as to why inaction/failure of the respondents to protect the Turag river from illegal encroachments and earth filling, should not be declared illegal and without lawful authority and why a direction should not be given upon the respondents to stop earth filing and illegal encroachment and construction within the territory of Turag River as reported in Daily Star dated 06.11.2016 and why a direction should not be given upon the respondent to remove all earth filing and structures from the Turag river at the cost of the encroacher and/or such other or further order or orders as to this Court may seem fit and proper*.”

A short description of the facts of the applicant’s case is that, after reviewing the news report published in The Daily Star on the date of 06.11.2016 and the published satellite images from the years 2013, 2014, 2015 and 2016, it becomes clear that the Turag River has been gradually encroached upon by illegal land-grabbers. River pollution and encroachment has resulted in a major shortage of potable water, for which people are constantly facing health risks, being succepptible to diseases and it is being speculated that due to such illegal encroachment, the existence of rivers will be under threat in near future.

Due to the illegal encroachment on the Turag River, there has been an adverse impact upon the environment and immense damage to the livelihood and means of living of the neighborhood of the river has been inflided. Illegal encroachment has led to the illegal construction of factories, houses and buildings on the riverside. Such encroachments are illegal and are against the existing laws of the land. If such encroachment process of the Turag riverside is not halted soon, then the Turag River may soon be turned into a dead river. Considering the abovementioned circumstances, **Human Rights and Peace for Bangladesh** filed this petition pleading for directive to evict the illegal encroachers of river and to halt any construction including earth filling or encroachment in the basin of such river.

In response to the abovementioned petition, this Division has issued a *Rule Nisi* as to why inaction/failure of the respondents to protect the Turag River from illegal encroachments and earth filling should not be declared without lawful authority and why a direction should not be given upon the respondent to remove all earth filing and structures from the Turag River at the cost of the encroacher and to perform their legal duties for such purpose.

On the date of issuing the Rule, which was on 09.11.2016, the Respondents No. 2, 4 and 9 were directed to submit a report evicting the illegal encroachers within 48 hours. Hereafter, when a time petition was submitted on behalf of the Respondent No. 6 to execute the order of this Court on 27.01.2017, this Division, granting the time of 30 days, to evict the illegal encroachers of the Turag River in light of the decision and order of Writ Petition No. 3503/2009. Hereafter, BIWTA, in accordance with the direction of the Court, submitted a report to the Court evicting the illegal encroachers of Turag River whose names were published in the newspaper. At the time of hearing before the Court on the aforementioned report on 05.01.2017, question was raised that even though several structures were removed from the Turag River, there exist numerous illegal structures and illegal encroachment, which needs to be identified by means of an impartial inquiry. On the same date, this Court, through an order, directed the Chief Judicial Magistrate of Gazipur to submit an Inquiry Report before this Division after conducting an inquiry on all structures exists on the riverside.

Thereafter, following the order given in the Writ Petition No. 13989/2016 on 05.01.2017, Md. Aslam Joglul Hossain, the Judicial Inquiry Officer for the identification of the illegal structures on the Turag River and the Chief Judicial Magistrate, Gazipur conducted a detailed inquiry regarding the illegal structures on the Turag River and submitted the inquiry report with recommendations to this Division on 11.10.2017. Thereafter, based upon the above-mentioned Judicial Inquiry Report regarding the eviction of the illegal encroachers, this Division, on 03.12.2017, directed the Chief Judicial Magistrate, Gazipur to evict the illegal encroachers as prescribed in the aforementioned report and directed the Deputy Commissioner of Gazipur, Superintendent of Police of Gazipur, BIWTA and all other related authorities to provide necessary assistance in such eviction drive to the Chief Judicial Magistrate, Gazipur.

Among the illegal encroachers prescribed in the report, the Respondents No. 10 to 23 became as Respondents and filed an affidavit in opposition.

The Respondent No. 10 mentioned in his reply that he bought the land mentioned in the report in between 2012-2013 and mutation has also been executed. He also mentioned that, as per the judgment of Writ Petition No. 3503/2009, pillars have been installed at the riverside and his land is located beyond the pillars, not within the border of the river. He also mentioned that, the Chief Judicial Magistrate has submitted the report without taking his statements during inquiry. However, they were evicted from the territory of the river as per the order of the court.

Advocate Manzill Murshid while presenting argument submitted that his statement in reply to the affidavit in opposition of Respondent No. 10 is that the Respondent No. 10 has also built illegal structure in the Turag River previously. Since the Turag River is usually beyond the purview of the BIWTA or the local authorities, many had made attempts to grab the river and earth filling at different times. Even if the abovementioned land had been purchased by the Respondent No. 10, in reality, as per CS *khatiyan**[[2]](#footnote-2),* such land actually is property of the River, so illegal encroachment has been evicted appropriately.

The Respondent No. 12, Nishad Jute Mills in its reply stated that, the 2.9 acres of land as mentioned in the report was purchased from the Bangladesh Jute Mills Corporation (BJMC) at the price of the tender, which is being run as Nishad Jute Mills under the control of the BJMC and on behalf of the Government, such land was conferred to him. In response to an application to the Deputy Commissioner, Gazipur regarding such purchased land, a report has been submitted after conducting a public survey right on the spot of such land, in which it was stated that the land as mentioned in the report is within his ownership and the land was conferred to him by the Government. The Respondent No. 12 also claimed that the Writ Petition is barred by *Res Judicata* as the petitioner has already filed a petition under Writ Petition No. 3503/2009 on the same matter which has already been decided. During the purchase phase of Nishad Jute Mills, measurement was made on behalf of the Government and the exact amount of land was being handed over. Since they were properly protected from being evicted as per the order of the Court herein before, therefore, there is no scope for a new order being passed.

The Respondent No. 12 also stated that since the denial of the Judicial Inquiry Report by means of a written statement from the Respondent No. 12 has not been challenged by a written objection either by the writ petitioner or any other party, the statement submitted by the Respondent No. 12 shall be deemed to have been recognized completely. Finally, since the Inquiry Report has been prepared without the knowledge of the Respondent No. 12, therefore natural justice of the Respondent has been violated. As a result, no steps can be taken against the Respondent on the basis of such Inquiry Report.

In response to the affidavit in opposition by the Defendant No. 12, Advocate Manzill Murshid stated that, there is no dispute as to the fact that the 2.90 acre land had been purchased from the Government. However, since it was proven as an illegal encroachment through a survey conducted by a Judge, such encroachment of Nishat Jute Mills is able to be evicted. If his land appears to have decreased, in that case, the seller is bound by obligation. It may also be possible that while transferring the whole land, he was handed over the land which was closer to the river, but in reality, the land belongs to him is actually located farther back. He further states that, due to the Writ Petition No. 3503/2003 the current case shall not be barred by *Res Judicata*. Because they have been evicted in between 2010-2011 following the order of the Court, to whom the evidence of illegal encroachment has been found and their names were enlisted through survey in such case. Since the Respondent is the new encroacher now and the subject matter as well as the parties are not same so the issue of *Res Judicata* shall not be applicable here.

It was also claimed on behalf of the Respondent No. 12 that the Court had given the order to evict others while preserving the structures. Since there was no appeal against the preservation order of the structures, the property of Nishat Jute Mills shall not be included in the hearing of this Rule. The statement of the Petitioner against such argument is that the order given on 13.12.2017 has been stayed by the Appellate Division. As a result, the illegally encroached property of the Respondent No. 12 is related to the subject matter of this Writ petition. His statement regarding the Inquiry Report is that in response to the Writ petition No. 3503/2009, the survey, which was completed following CS/RS as per order of the Court, was accepted and praised by the High Court Division. In order to invalidate the survey executed following the order of the Court, the Respondent No. 12 prepared a report from the District Administration, which was incorrect; even it cannot be accepted since the aforementioned report was prepared to nullify the 3503/2009 report.

Respondents No. 13-21 have submitted the argument that they have not built any structures inside the river, rather they have built structures and enjoying possession of their own land which was either inherited or they became owner through purchase from the owners having CS, RS and SA records. Such respondents mentioned that there has been detailed discussion about the identification of the border of the river in the order given on the Writ Petition No. 3503/2009. In particular, the authorities were directed to set up, after determining the border of the river, boundary pillars in the identified boundaries and to make walkway/pavement or to plant trees in ques while following the CS map. It was also directed to remove the structures built inside the river. After completing such survey and setting up boundary pillars, the territory of such river shall be identified in detail.

Depending upon what the authorities deem fit, either walkways/pavements or trees shall be planted serially. The objective shall be to make the authorities and the law enforcement agencies responsible so that the boundary of the river determined by the Deputy Commissioner is not being transferred in any way at all.

In the decision of the aforementioned writ petition, the Honourable High Court Division delivered special directives for the port areas. The Ministry of Land was directed, after mentioning the re-determined boundary of Narayanganj, Dhaka and Tongi ports, to hand over 50 yards of land from the river towards inland in the area within the boundary of the ports to the BIWTA. It is apparent from the directives regarding the decision of the port area that 50 yards from the ‘High Water Mark’ of the river towards inland, was directed to be taken in possession by the BIWTA. However, such area was not considered as the territory of the river. It is also mentionable that, the measurement of 50 yards from the ‘High Water Mark’ was applied for the declared boundary of ports and not for the whole river. The boundary as determined by the CS record was considered as the boundary of the river in other areas of the river except ports.

It is established from abovementioned discussion on Writ Petition No. 3503/2009 that CS line of the river is actually the boundary of river. It is also evident from such discussion and directives that the structures located within the CS line of the river shall be considered as the illegal structures. Such judgement has not left any opportunity to consider any additional area beyond the CS line as the area of the river.

In accordance with the paragraph No. 138 of the inquiry report of the Chief Judicial Magistrate, the pillars installed by the PWD are found to be located on the CS line of the River. This means that these pillars should have been deemed to be the boundary of the River. However, the Chief Judicial Magistrate, without stating any reason, considered the additional length of 50 feet area from the pillars i.e. the CS line as riverbank. The structure built by the Respondent No. 13 on such riverside was mentioned as illegal. It is evident from the statement of the Chief Judicial Magistrate that the aforementioned structure did not cross the CS line of the river. The Respondent No. 13 has attached the Permission Deed, mutation *khatiyan[[3]](#footnote-3),* DCR Receipt and DP *khatiyan[[4]](#footnote-4)* as the Annexure-10 Series in the supplementary affidavit.

Abdul Kuddus Howlader alias Kuddus has argued on behalf of the Respondent No. 14 that, it was claimed in the paragraph No. 143 of the inquiry report of the learned Chief Judicial Magistrate that such respondent has illegal structures, but there was no complain that such structures were built by crossing the CS line or crossing the pillar located on the CS line; rather for unknown reasons, after entitling an additional 25 feet area from the CS line of the river as the riverside, the structures built by the Respondents on such areas were declared illegal.

Since the CS line has been declared as the boundary of the River in the judgement of the Writ Petition No. 3503/2009, the decision that considered an additional 25 feet area crossing the CS line as the territory of the river is contradictory to such judgment.

It is to be noted that it was directed in the judgement of the Writ Petition No. 3503/2009 to remove the structures built inside the territory of river only. It was not stated to remove structures built in the riverside or in any additional place of CS area of the river. The Respondent No. 14 has, in support of his argument, attached the *Saf-kabala deed**[[5]](#footnote-5),* mutation *khatiyan**[[6]](#footnote-6)*, DCR Receipt and DP *khatiyan[[7]](#footnote-7)* as the Annexure-10 Series in the supplementary affidavit.

Ilias Miah, Respondent No. 15, is the son of Kuti Miah as mentioned in paragraph No. 141 of the Inquiry Report. Such Respondent has claimed that he neither constructed the structure crossing the CS line nor constructed it inside the territory of the River, rather, the learned Magistrate had mistakenly declared an area extending 30 feet from CS line as the territory of the River and termed the structure of the Respondent as illegal structure which is completely contrary to the law. Because, it was directed in the judgement of the Writ Petition No. 3503/2009 to remove the structures built inside the territory of river only, it was not stated to remove structures built in the riverside or in any additional place of CS area of the river. He has, in support of his argument, attached the *Saf-kabala deed[[8]](#footnote-8),* mutation *khatiyan[[9]](#footnote-9)*, DCR Receipt and DP *khatiyan[[10]](#footnote-10)* as the Annexure-11 Series in the supplementary affidavit.

The name of A. Hai, the father of Md. Jahidul Islam, the Respondent No. 16, has been mentioned in paragraph No. 142 of the Inquiry Report. Such Respondent argued that there was no complain here that such structures were built inside the river by crossing the CS line, rather after entitling an additional 28 feet area from the CS line of the river as the riverside, the structures built on such areas were declared illegal which is contradictory to the Writ Petition No. 3503/2009.

It is to be noted that it was directed in the judgement of the Writ Petition No. 3503/2009 to remove the structures built inside the territory of river only. It was not stated to remove structures built in the riverside or in any additional place of CS area of the river. The Respondent No. 16 has, in support of his argument, attached the *Saf-kabala deed[[11]](#footnote-11),* mutation *khatiyan[[12]](#footnote-12),* DCR Receipt and DP *khatiyan[[13]](#footnote-13)* as the Annexure-12 Series in the supplementary affidavit.

Respondent No. 17, SMA Sobhan, has been mentioned as Sobhan Sheikh in the paragraph No. 143 of the report. Like other Respondents, this Respondent also claimed that there was no complain that such structures were built by crossing the CS line or crossing the pillar located on the CS line or inside the territory of the river. Rather for unknown reasons, after entitling an additional 25 feet area from the CS line of the river as the riverside, the structures built by the Respondents on such areas were declared illegal.

Since the CS line has been declared as the boundary of the River in the judgement of the Writ Petition No. 3503/2009, the decision that considered an additional 25 feet area crossing the CS line as the territory of the river is contradictory to such judgment.

It is to be noted that it was directed in the judgement of the Writ Petition No. 3503/2009 to remove the structures built inside the territory of river only. It was not stated to remove structures built in the riverside or in any additional place of CS area of the river. The Respondent No. 17 has, in support of his argument, attached the *Saf-kabala deed[[14]](#footnote-14),* mutation *khatiyan[[15]](#footnote-15),* DCR Receipt and DP *khatiyan[[16]](#footnote-16)* as the Annexure-13 Series in the supplementary affidavit.

The name of the Respondent No. 18, Md. Iman Uddin, has been mentioned in paragraph No. 173 of the report. In this paragraph, it has been claimed that the boundary of the riverside is extended up to at least 20 feet upwards from the CS line. The Respondent claimed that, the learned Magistrate has drawn an imaginary boundary whimsically without considering CS line as the boundary of the river, which is evident from his statement alone.Afterwards he said that, if in accordance with reality the riverside was shown to be 20 feet in the map, then the house constructed by Mr Iman Ali, the owner of ‘Binimoy Textiles,’ would have also been deemed as an illegal structure on the riverside. Such a ‘Hypothetical Finding’ is not acceptable in any way; rather it is a clear instance of the inefficiency of the learned Magistrate regarding that survey of the land. The Respondent No. 18 has, in support of his argument, attached the *Saf-kabala deed[[17]](#footnote-17),* mutation *khatiyan[[18]](#footnote-18)*, DCR Receipt and DP *khatiyan[[19]](#footnote-19)* as the Annexure-14 Series in the supplementary affidavit.

The name of the Respondent No. 19, Nurul Islam has been mentioned in paragraph No.141 of the report. Similar to other Respondents, this Respondent also claimed that such structures were not built by crossing the CS line or crossing the pillar located on the CS line or inside the territory of the river. Rather for unknown reasons, after entitling an additional 30 feet area from the CS line of the river as the riverside, the structures built by the Respondents on such areas were declared illegal.

Since the CS line has been declared as the boundary of the River in the judgement of the Writ Petition No. 3503/2009, the decision that considered an additional 30 feet area crossing the CS line as the territory of the river is contradictory to such judgment. It was directed in the judgement of the Writ Petition No. 3503/2009 to remove the structures built inside the territory of river only. It was not stated to remove structures built in the riverside or in any additional place of CS area of the river. The Respondent No. 19 has, in support of his argument, attached the *Saf-kabala deed[[20]](#footnote-20),* mutation *khatiyan[[21]](#footnote-21),* DCR Receipt and DP *khatiyan[[22]](#footnote-22)* as the Annexure-15 Series in the supplementary affidavit.

The name of Moslem Sarkar, the vendor of Abdus Salam and the Respondent No. 21, has been mentioned in paragraph No. 139 of the report. He claimed that, even though the learned Magistrate have stated that the boundary pillar or the walkway is located within the territory of the River, there was no complain that such structures of the Respondent were built inside the territory of the river or by crossing the CS line of the river. Rather for unknown reasons, after entitling an additional 35 feet area from the CS line of the river as the riverside in such report, the structures built by the Respondents on such areas were declared illegal which is contradictory to the Writ Petition No. 3503/2009. The Respondent No. 21 has, in support of his argument, attached the *Saf-kabala deed[[23]](#footnote-23),* mutation *khatiyan[[24]](#footnote-24),* DCR Receipt and DP *khatiyan[[25]](#footnote-25)* as the Annexure-17 Series in the supplementary affidavit.

The Respondents No. 13-21 claimed that even though the Inquiry Report submitted by the learned Chief Judicial Magistrate is termed as a Judicial Inquiry Report, in fact it is not an Inquiry Report. This is because the primary feature of an Inquiry Report is that all relevant parties to the inquiry must be given an opportunity of being heard. In this instance, the learned Magistrate neither gave the Respondents any opportunity of being heard nor did he review their documents, rather, from an unknown source or an unnamed witness he was informed as to the ownership of the structures, which is contrary to the Principle of Natural Justice. Even though it was called a Judicial Inquiry Report, he did not undertake any judicious method in conducting the inquiry. This Inquiry Report could have been termed as a survey at the most, but even in survey there remains obligations to prepare map which the learned Magistrate did not accomplish. Even though the learned Magistrate has undertaken the inquiry, there were no explanations whether he had been accompanied by a land-survey expert. No explanation was given in the report as to how the learned Magistrate acquired an expertise in operating a GPS tracking machine. As a result, the core argument of the Respondents No. 13-21 is that, the Inquiry Report undertaken by the learned Magistrate is full of innumerable errors, it is tainted with various hypothetical findings and finally, it is in direct contravention to the Writ Petition No. 3503/2009.

He also submitted that, the Judgement of the Writ Petition No. 3503/2009 is a *continuing mandamus* on the four rivers including the Turag; meaning that the enforceability of such decision still exists.

While adopting this judgment, many Petitioners in different places and at different times filed applications complaining encroachment of river and those applications have also been disposed of. Whilst the aforementioned writ petition is in function, the writ petition at present is dismissible based on the principle of *res judicata.* He stated that the lawyer of the writ petitioner could not provide any satisfactory reply to this matter when it was raised at the time of hearing.

While filing the affidavit in opposition, Respondents No. 22 and 23 have stated that, the Respondents No. 22 and 23 did not illegally encroach upon the riverside and they constructed a boundary wall which is beyond the riverside pillars built by the BIWTA marking the border of the River and at the outer end of the walkway (outside the walkway).

Paragraph No. 159, page No. 81 of the Judicial Inquiry Report stated that, “While conducting the inquiry on spot, it was seen that the riverside here also is extended at least up to 50 feet upward from the CS line. Therefore, it was preferable that the riverside be exhibited in the map extending at least up to 50 feet upward from the CS line. However, for unknown reasons, the cartographers did not portray the aforementioned riverside in the map. The riverside is the indispensable part of the river. Where there is a river, there must be the riverside. However, if in accordance with reality the riverside was shown to be 30 feet in the map, then the building and the boundary wall of the factory of Anwar Group would have also been identified as an illegal structure on the riverside.”

Respondents No. 22 and 23 further stated that, since the CS line of the River and the boundary of the riverside are actually being located in the same line, the cartographers portrayed, in their prepared map, the CS line of the river and the boundary of the riverside in the same line. This is mentionable here that the concept that there must be a riverside for every river, is not always true and it is not applicable for all rivers. The statement in paragraph No. 159 of the Judicial Inquiry Report is ill-founded, baseless, unrealistic and imaginative. The Respondents claimed that, since the Inquiry Report was prepared on the basis of imaginary facts, it is not expedient to accept that imagination and deny the reality. They also claimed that, the Respondents No. 22 and 23 are enjoying the possession of the land properly having paid the land development tax and rent to the relevant institutions of the Government from the time of purchasing the land.

The officers of the Judicial Inquiry Committee, while undertaking inquiry, prepared a one-sided imaginative report without sending any type of notice to the Respondents, and the report is not prepared on the basis of actual truth.

Both the Respondents are enjoying the possession peacefully having collected all the documents on their own from different persons at different times and having determined the boundary following all the legal procedures in an appropriate way by different expert committees of the Government including the expert committee of the Deputy Commissioner, Gazipur.

It has been stated in paragraph No. 160 of page No. 82 of the Judicial Inquiry Report that, the boundary wall of the Anwar Group and the walkway built by the BIWTA have been illegally constructed within the territory of the River. It is to be noted here that the BIWTA, meaning the “Bangladesh Inland Water Transport Authority” is a body subordinate to the Government whose primary duty is to maintain the navigability of the rivers, to protect, preserve, and observe the rivers, to develop the passage of the rivers and to determine their definite boundary. The statement that the walkway built by BIWTA has been constructed within the territory of the river being mentioned in the paragraph No. 160 of the Judicial Inquiry Report, is totally ill-founded, baseless, unrealistic and imaginative. Both the Respondents claimed that, since the Inquiry Report was prepared on the basis of imaginary facts, the Court might not deny the reality considering such imagination.

Furthermore, since the boundary wall of Anwar Group has been constructed outside the walkway built by the BIWTA, the allegation regarding the illegal construction of structures within the territory of the river by Anwar Group, is totally ill-founded, baseless, unrealistic and imaginative.

The Respondents claimed that, it has been mentioned in paragraph No. 162 of the, page No. 82 of the Judicial Inquiry Report that, the previous unnumbered pillar whose location is fixed to a point within the territory of the river, having been attached to the southern boundary of the CS No. 575 in the *nagar mouza[[26]](#footnote-26)* being 100 feet east from GPS reading Northing 23"53’19.7 and Easting 90"25’18.3. Such point is located to 5 feet under the river from the CS line of the river and beyond the boundary wall being attached with the factory of Anwar Group.

It is to be noted that, since there was no definite interpretation, basis, reason and clear mentioning in any part of the report on what basis the Judicial Inquiry Committee fixed a point within the territory of river being 100 feet East from the previous unnumbered pillar having attached to the southern boundary of the CS No. 575 in the *nagar mouza[[27]](#footnote-27)*, the allegation brought forth is ill founded, baseless, unrealistic and imaginative and the Writ Petition is directly dismissible with costs.

While replying such statements and arguments of the Respondents No. 13-21, the lawyer of the petitioner, Mr Manzill Mushid stated that, the objection raised against the survey report of the Chief Judicial Magistrate is absolutely unacceptable and it is also not true that the survey was conducted following the BIWTA map. It is also not true that there are contradictory statements in the report. Because, he mentioned in the report that he completed the survey as per CS line following the order of the Court and after reviewing the statements of different persons.

Since the survey was conducted digitally through GPRS, there is even no room for doubt or error. The Respondents further claimed that, the structures they built are located beyond the boundary pillars of the riverside and the walkway, and since the Government has built the walkway at the edge of the river, so their property shall not be evicted.

While replying to such claim of the Respondents, the petitioners stated that even though there were directives to build the pillars and walkway according to the order of the Court, the contractor, with the adoption of illegal means, had not installed the pillars in the exact boundary of the river, for which the BIWTA could not properly understand it. On 24.07.2014 in an order to the Writ Petition No. 3503/2009, directives have been given to build the pillars in the exact locations, for which a budget has been allocated that shall be executed in future.

The Respondents also claimed that, they became owner of the property by means of purchase, and that they have also paid their due rent. In this regard, the response of the petitioners was that, as per decision to the Writ Petition No. 3503/2009, it is not possible to create proprietorship by means of purchase in the boundary areas of the river because it is not possible by others to create proprietorship title in such areas. The lawyer the petitioner, Advocate Manzill Murshid further said that, the survey has been conducted by a Judge. He has neither any personal interest nor any personal conflict with anyone here. Therefore, the objection regarding the Judicial Survey by the Respondents is not acceptable in any way.

The Respondent No. 3 while submitting affidavit in opposition on behalf of RAJUK, supported the statement of the petitioner. On behalf of the Respondent No. 5, the Department of Environment, the learned Deputy Attorney General filed an affidavit in opposition and the learned Deputy Attorney General in his statement while agreeing with the statement of the petitioner, also agreed that all illegal structures to be removed according to the Judicial Inquiry Report.

The petition of the petitioner and annexures attached with the petition, the affidavit in opposition of the Respondents along with their all annexures are being reviewed and the detailed statements of the learned advocates from all the parties are being heard.

The core argument by the Respondents No. 10, 11 and 13-21 is that none of them have constructed structures on the territory of the River. Altogether, such Respondents wanted to state strongly that none of them are illegal encroachers.

In order to consider the above-mentioned arguments of such Respondents, there is no room to rely otherwise than taking documentary and oral evidence. In ***A.H. Sikder* Vs. *Bangladesh Bank* [31 DLR (AD) 303]** the Appellate Division has given the opinion that:

*“There is a long line of decisions in favour of the view that the High Court should not enter into disputed question of fact nor decide any question as to title which require investigation into facts and taking of elaborate evidence.”*In ***Shamsunnahar Salam & Ors.* Vs. *Md. Ohidur Rahman* [51 DLR (AD) 1999, 232]** the Appellate Division has given opinion that:

*“A writ Court cannot and should not decide any disputed question of fact which requires evidence to be taken for settlement.”*

While reviewing the above-mentioned decisions, it becomes crystal clear that, where it is not possible to conclude on any matter without taking evidence, the Writ court, through its special jurisdiction, shall not deliver any decision on such matter.

In this case, all the statements by the Respondents No. 10, 11 and 13-21 are dependent on proof of evidence, which can only be done in a Civil Court. As a result, we are unable to consider those statements of the Respondents.

Alternately, the core argument by the Respondent No. 12 is that, having received the allotment legally from the Government, they are holding such land as legal possessors.

**According to Article 18A of the Constitution, the State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens. This means that the Constitution has not given the State ownership of the forests, bio-diversity, wildlife, seas, sea-coasts, rivers, canals, channels, ponds and all other water-bodies. In relation to the aforementioned resources, the State stands in the position of a legal trustee, whose obligatory duty is to protect and develop these resources on behalf of the people.** Since the land being related to schedule of the lease deed given to the Respondent No. 12 is a trust property meaning public property which means that State is not the owner, but merely a deposit recipient of the property as a trustee, so the transfer deed of the Public Trust Property or lease deed given to the Respondent No. 12 by the Government is an illegal deed. This means that the deed was created in a way which is contrary to the public trust doctrine and, also contrary to the Constitution, hence illegal. Consequently, this deed was invalid from its conception, or in other words, *void ab initio*. No remedy can be given to the Respondent No. 12 on the basis of the deed which was invalid from its conception.

**If there are no rivers, there shall be no water. Without water, there shall be no fish. A large portion of our nutrients are derived from fish. Without water, boats and all water vessels would not function. Millions of boatmen, fishermen and water transport workers would become unemployed. How will the farmers irrigate their land without water?**

**Bangladesh being a riverine country, it is also an agriculture-based country. Just like rice, all other field crops are impossible to produce without water. Without water, the cultivation of all types of field crops including paddy will ?remain closed and millions of farmers would simply become unemployed, which is unimaginable. Travelling by waterway is the most affordable mode of transportation. There is no other alternative to waterways for the transportation of goods along with the movement of people. To this date, most of our goods are transported through waterway. Can it even be comprehended as to how these goods would be transported without water?**

In our Great War for Liberation, our rivers, lakes, canals, channels, ponds and all other water-bodies played a pivotal role. Most of the soldiers and officers of the Pakistan Army were from West Pakistan. There were no such rivers, lakes, canals, channels, ponds and other water-bodies like ours in West Pakistan. As a result, the military of West Pakistan was not accustomed to our environment and also to our rivers, lakes, canals, channels, ponds and other water-bodies. On the other side, our freedom fighters who are the sons of this soil were accustomed to our environment. Since the army of Pakistan was not accustomed to rivers, lakes, canals, channels, ponds and other water-bodies and also because of the arrival of monsoon during the middle of the war, it was much easier for us to defeat the Pakistan Army and to win the war.

How efficient has the BIWTA been in the preservation of the rivers? When the rivers were being filled in front of the eyes of BIWTA, we did not notice any prompt action by the BIWTA. Who are they that encroach upon the rivers? We observe that the encroachment of rivers are not being done by any labor, farmer or, day laborer. No ordinary person is doing such encroachment rather we see the encroachers are the wealthy individuals, large companies and corporations.

There are bodies including LGED, Water Development Board, BIWTA, BADC, Planning Commission, Ministry of Shipping and Ministry of Water Resources which are related to the rivers; but despite that the rivers are being continuously encroached upon right in front of all these ministries and departments.

**To this date, our rivers, channels, canals and ponds are continuously being encroached upon and polluted by the river encroachers and polluters, few government officials and employees being their abettors’ members of law enforcement agency and local representatives and such encroachment is still being continued. These encroachers and their abetting government officials and employees must be identified. Had the relevant responsible officials and employees properly carried their duties, then the Turag River would not have been encroached and polluted in this way. It is crystal clear from the image reports of the print and electronic media that they are playing hide and seek with rivers. Merely days after the authorities evicted the river encroachers as per the High Court decisions and orders, the rivers were soon encroached upon again.**

The main reason of river encroachment is that firstly, it is still unclear to the people as to under what authorities the rivers are actually controlled by. Currently, different ministries, directorates and organizations regulate the rivers. There is not even a particular piece of legislation that deems the encroachment and pollution of rivers as a crime. Rivers are being encroached upon right in front of the local administrations, Upazila Nirbahi Officers, Upazila Chairmen, Officers in Charge, Deputy Commissioners, Superintendents of Police, local Members of Parliament, and officers of Union and Pourashava and elected representatives of the concerned area. While imposing blame and shifting the responsibility from one person to another, all of them are actually aiding in the pollution and encroachment of the rivers.

As it is important in this regard, the decisions taken in record of proceedings No. 11(5-8) on the 52nd meeting of the Standing Committee on the Ministry of Shipping of 10th Jatiya Sangsad (Bangladesh Parliament) dated 23.04.2018 by the National River Conservation Commission are quoted in verbatim below:

**Government of the People’s Republic of Bangladesh** National River Conservation Commission

**Subject: Review meeting on the progress of the decisions taken in record of proceedings No. 11(5-8) on the 52nd meeting of the Standing Committee on the Ministry of Shipping of 10th Jatiya Sangsad (National Parliament) presided by the Chairman of the National River Conservation Commission Dr. Muzibur Rahman Howlader.**

Date: April 23, 2018  
Day/Time: Monday/ 11 O’clock in the Morning  
Place of the Meeting: Conference Room

List of the Members present:

1. Mr. Md. Alauddin, Permanent Member, National River Conservation Commission.
2. Mr. Jagannath Das Khokon, Secretary and Director (Administration), National River Conservation Commission.
3. Mr. Iqramul Hoque, Director (Monitoring-1), National River Conservation Commission.
4. Mr. Abdus Samad, Director (Finance and Monitoring-2), National River Conservation Commission.
5. Mr. Md. Saidur Rahman, Deputy Director (Research and Monitoring), National River Conservation Commission.
6. Mr. Md. Lokman Ahmed, Deputy Director (Administration and Finance), National River Conservation Commission.
7. Mr. Md. Sahiduzzaman, Private Secretary to the Chairman, National River Conservation Commission.
8. Mr. Md. Sohel Rana, Assistant Director (Administration and Finance), National River Conservation Commission.

2. At the beginning of the session the Chairman of the Commission Dr. Muzibur Rahman Howlader initiated the proceedings by greeting all the officers including the Permanent Member. Then he read the decisions taken in record of proceedings No. 11(5-8) on the 52nd meeting of the Standing Committee on the Ministry of Shipping formed by 10th Jatiya Sangsad (National Parliament) out loud. Chairman said that the land of the river is recorded properly in the CS form of RoR (Record of Rights).

According to the RS record subsequent to the CS, the ownership of the land of the river is recorded in the name of the District Collector and that is the rule. It is necessary to preserve all the RoR copies for the sake of conservation of the rivers by the National River Conservation Commission. The District Commissioner and Director General of Land Record and Survey Department can play a supportive role in this regard. The District Collector, Survey Department, Land and Land Revenue Courts have been entrusted with the sacred duty of protecting the rivers, banks and foreshores of the rivers through the effective implementation of the powers vested upon them according to the Sections 86, 87, 88, 143, 144(a) as well as 147-151 of the State Acquisition and Tenancy Act, 1950. If the land of a river is mistakenly recorded to a different owner by the Survey Department, it can easily be amended/ corrected as a “bonafide mistake” according to Section 149(4) of the SATA, 1950 by the Collector Bahadur and the Chairman of the Land Appellate Board but this rule is not being followed. If it was followed, the complications regarding demarcation of boundary of the rivers would decrease and quick solutions could be found.

3. Despite this, the illegal encroachment, re-encroachment and pollution of river-water and environment have been rampant. These activities must be stopped and the rivers should be made navigable again for the sake of protection of river without any further delay.

For the actual necessity of performing functions by the National River Conservation Commission as vested upon them according to Section 12 (a)-(m), appropriate amendments should be made to the National River Conservation Commission Act which will play an effective role in establishing practical involvement. Water Development Board, Department of Environment or any other organisation should take permission/approval from the River Commission before undertaking any project or work related to rivers. The Chairman of the National River Conservation Commission shall preside over the coordinating meeting with all the ministries held as per Section 12(a) of the National River Conservation Commission Act. After detailed discussion, the following decisions were taken in unanimity:

A committee has been formed as follows for the purpose of composing the draft of the name of the National River Conservation Commission, definition of river and amendments to the Commission Act and for the formulation of Rules under this Act:-

|  |  |  |
| --- | --- | --- |
|  | Mr. Md. Alauddin, Permanent Member | Convenor |
|  | All the (Honorary)Member(s) | Member |
|  | Secretary | Member |
|  | Director (Administration) | Member |
|  | Director (Monitoring) | Member |
|  | Deputy Director (Administration and Finance) | Member |
|  | Deputy Director (Research and Monitoring) | Member-secretary |

**4. Decision of the Parliamentary Standing Committee 11(5): Some probable names were recommended for the purpose of giving a realistic name to the National River Conservation Commission;**

A name for the National River Conservation Commission and definition of river shall be submitted after proper research. For this purpose, advertisements shall be published online and on websites in order to get feedback from all the concerned Government/Non-Government organisations, civil society and citizens.

**5. Decision of the Parliamentary Standing Committee 11(6): A recommendation was put forth to form a Special Tribunal for resolving complications regarding the cases of the National River Conservation Commission:**

During the discussion, the Chairman mentioned that a decision was taken in the meeting of the Standing Committee to amend the National River Conservation Commission Act 2013 to form a Special Tribunal. There is no alternative to the amendment of the Act if the functions vested upon the Commission according to Section 12(a)-(m) are to be performed effectively and if river encroachment and pollution of water and environment is to be effectively prevented. In light of the claims raised in various meetings, seminars, newspapers and media by environmental organisations including civil society and associations dedicated to the protection of rivers and the demands of the concerned citizens, the amendment of the said Act for the strengthening of the River Conservation Commission in protecting rivers, water and environment has become an inevitable task. Furthermore, the State Acquisition and Tenancy Act 1950, the Survey Act 1875, the Water Act 2013, the Environment Act, 2010, the Ports Act 1908, Marine Courts Act, Penal Code and relevant legislations regarding eviction and illegal encroachment of rivers should be analysed. After detailed discussion, the following decisions have been taken in unanimity:

1. The Committee shall analyse the State Acquisition and Tenancy Act 1950, the Survey Act 1875, the Water Act 2013, the Environment Act, the Ports Act, the Marine Courts Act, the Penal Code and other relevant legislations regarding rivers for the purpose of amending the National River Conservation Commission Act.
2. The following matters should be considered by the committee while preparing a draft Act forming the Special Tribunal for Conservation of rivers.
3. Power to evict and recover land from illegal encroachment and prevent pollution;
4. Provisions of punishment for committing Criminal Offence regarding illegal encroachment, pollution of water and environment of rivers;
5. Quasi-Judicial Power and special powers similar to that of the Land and Land Revenue Courts regarding rivers, ownership of lands on the banks of rivers and RoR, Diara Survey.
6. Supportive amendments (In aid to the eviction responsibilities of Collector and Magistrate) should be introduced so that the powers of the Special Tribunal should not be in conflict with the powers and duties of the Land and Land Revenue Courts or otherwise of the Collector and the Department of Environment;
7. Putting forth recommendations for the establishment of 8 Special Courts and the provision of administrative and financial assistance to the National River Conservation Commission Special Courts. The primacy of the amended Commission Act should be included in the Act.
8. The aforementioned committee shall complete the said functions and undertake measures to submit the draft to the Chairman of the Commission upon composition.

**6. Decision of the Parliamentary Standing Committee 11(7): A recommendation was put forth to create a digital and computerised database of the rivers of Bangladesh:**

The Chairman of the National River Conservation Commission said that a low-cost digital database should be created on priority basis through the Government institution Space Research and Remote Sensing Organisation (SPARRSO); because it is appropriate to make the hydromorphic assessment of the water reservoirs including the rivers, canals, bils, [[28]](#footnote-28) haors and marshes with this database. However, in cases where SPARRSO has limitations, assistance may be taken from other Government/Non-Government, regional and international institutions (for example- CEGIS/IWM/WARPO). SPARRSO should be requested to send a proposal for specific scientific assessment through Integrated Technological Approach, completing within the next two months, for the purpose of collecting specific information on the rivers, canals, bils and wetlands around Dhaka. After that MoU can be made with SPARRS Satellite technology shall be used for the creation of a Digital Database of all rivers, canals, bils, haors,[[29]](#footnote-29) marshes and all moribund wetlands with mappings should be collected through RS/GIS method for determining the number of rivers, canals, bils and wetlands. But in this regard, SPARRSO shall collect information on the rivers around Dhaka and data of rivers, canals, bils, wetlands and reservoirs all over the country and send it to the Commission. Attempts should be made to collect the information from other Government/Non-government organisations/bureaus/offices/research teams/regional associations. Based on these, the commission shall take up short-term, medium and long-term plans. All the divisional and district River Conservation Committees may send requests to SPARRSO by letter for making hydromorphic survey. It is to be mentioned that according to the directions given in the verdict of the writ petition No.-3503/2009, boundaries of the rivers around Dhaka should be demarcated and Walk Ways/Pavements should be built upon those boundaries. BIWTA, Water Development Board and the concerned District Commissioners shall complete the task and notify the Commission. After detailed discussion, the following decisions have been taken in unanimity:

1. Information should be collected from the divisional and district River Conservation Committees to formulate short-term, medium and long-term plans of the commission; letters should be sent to them immediately. The decisions should be made determined and included in the Policies after reviewing the recommendations by the Commission and the meetings, seminars, on-the-spot inspection images and information of all the Divisional River Conservation Committees in the past 4 months.
2. The Planning Commission and LGED, Water Development Board, BIWTA, BADC as well as other organisations shall inform the National River Conservation Commission regarding the formulation of new project on the rivers, canals, bils and wetlands and shall take its opinions as well. The representative of the National River Conservation Commission shall be included in the meetings for reviewing and approving projects related to rivers.
3. While creating the digital database, SPARRSO with the help of satellite, using RS/GIS technologies, shall work collectively in coordination with other organisations to determine the geographical location and collect the information related to biodiversity of (a) Dhaka and the rivers around Dhaka (b) rivers, canals, bils,[[30]](#footnote-30) wetlands and reservoirs all over the country; and shall take steps to sign an MoU with the Commission if necessary.
4. In the greater interest of the public, the provision of receiving a “No-Objection” certificate from the commission by the concerned Ministry/Department/Organisation/Institution before providing and approving any project on the rivers, canals, bil[[31]](#footnote-31)s, and wetlands of the country shall be ensured through amending the Act and finalising the Rules if necessary.

**7. Decision of the Parliamentary Standing Committee 11(8): A recommendation was put forth to advise to give the responsibility to collect information on the rivers of the country to the people of respective localities:**

The Chairman of the National River Conservation Commission, while citing the example of the recently held seminar in Rangpur Division, said that, for the sake of smooth collection and publication of the updated region-wise documentaries of rivers and reservoirs over the country at a low cost, the responsibility should be handed over to the local research teams in a river/district/division-wise manner after listing them all. In the Rangpur divisional seminar, Convenor of Bangladesh Riverine Association and Associate Professor of Department of Bangla in Begum Rokeya University, Dr. Tuhin Wadud unveiled a commendable database of the northern rivers upon exploring the real scenario. More research papers on the real-life scenarios and the distinctive characteristics of the rivers of other regions should be invited immediately from all the divisions of the country. He presented a notable article in Rangpur divisional seminar which was highly praised by the gentlemen present in that seminar. The idea of giving the responsibility upon him can be really considered. Apart from that, there should be a system for collecting data from BAPA and other river related organisations through Divisional and District River Conservation Committees. Moreover, as the Upazila River Conservation Committees are vibrant, it is expedient that the forming of committees in Union levels be continued. He also said that a general database about the rivers, canals, bils and natural reservoirs shall be created immediately.

(a) He also opined that proposals should be invited from all the divisions for the collection of information on the past and present of all the rivers from the interested, qualified and skilled researchers/research teams/organisations and the responsibilities shall be vested on them after proper evaluation. An application for sending a specific research proposal upon forming a committee for the northern divisions of Rajshahi and Rangpur with Dr. Tuhin Wadud as its Convenor can be filed in this fiscal year.

And (b) the formation of River Conservation Committees at Union levels should be in process.

**Implementation: 1. Permanent Member**

**2. Secretary**

**3. Director (Monitoring-1)/ Director (Monitoring-2)**

**4. Deputy Director (Research and Monitoring)**

**Miscellaneous:**

a) The chairman stated that it is necessary to recruit 2 more Permanent Members considering the periphery and scope of the administrative functions of the Commission and the functions under Section 12(a)-(m) of the Act, especially the inspection and monitoring of the rivers. In this regard, the Act can be amended for the sake of creating a system to recruit from the present honorary members. Apart from that, it has become necessary to provide 3 sedan cars/motorcars to the honorary members for the purpose of going to the office, attending meetings, seminars, workshops and other works as well as transportation.

b) It is essential that the posts and privilege of the Chairman and Members of the Commission should be similar to that of the other Constitutional Commissions like- Public Service Commission (PSC), Election Commission, Anti-Corruption Commission. For that reason, the ranks and statuses of all the Members including the Chairman shall be determined in the warrant of precedence.

It is to be mentioned that there are suggestions to increase the functioning power of the Commission regarding various meetings/decisions of the Standing committee.

1. A recommendation to increase 2 more permanent members of the Commission should be put forth.
2. A proposal should be sent to include the Chairman and members of the Commission in the warrant of precedence.
3. A proposal should immediately be sent to provide 3 sedan cars to the 3 honorary members so that they can participate and play an effective role in the functions of the Commission in an extensive and comprehensive manner.

**Implementation: 1. Secretary**

**2. Director (Administration)**

**3. Assistant Director (Administration and Finance).**

As there was no other discussion to be made, the Chairman expressed his gratitude and ended the functions of the meeting.

Signature/-

Dated: 17/05/2018

Dr. Muzibur Rahman Howlader

Chairman

National River Conservation Commission

No. Date 31 Jaishtha 1425

18.20.0000.018.09.001.14- 14 June 2018

**Distribution (for work):**

1. Mr. Md. Alauddin, Permanent Member, National River Conservation Commission.
2. Mr. Jagannath Das Khokon, Secretary and Director (Administration), National River Conservation Commission.
3. Mr. Iqramul Hoque, Director (Monitoring-1), National River Conservation Commission.
4. Mr. Abdus Samad, Director (Finance and Monitoring-2), National River Conservation Commission.
5. Mr. Md. Saidur Rahman, Deputy Director (Research and Monitoring), National River Conservation Commission.
6. Mr. Md. Sahiduzzaman, Private Secretary to the Chairman, National River Conservation Commission.
7. Mr. Md. Sohel Rana, Assistant Director (Administration and Finance), National River Conservation Commission.

**Copy:**

1. Secretary, Ministry of Shipping, Bangladesh Secretariat, Dhaka  
   (Attention: Mr. Md. Abdus Sattar, Deputy Secretary (CPA) and Council Officer).
2. Private Secretary to the Chairman, National River Conservation Commission (for his kind notice),
3. Office copy (for preservation)

Signature/Vague

14/6/2019

Jagannath Das Khokon

Secretary

National River Conservation Commission

Telephone: 58314108

As it is important, the letter sent to the Cabinet Secretary from the National River Conservation Commission dated 09.09.2018 is quoted in verbatim:

Chairman

National River Conservation Commission

Ministry of Shipping

Government of the People’s Republic of Bangladesh

Hossain Tower (12th Floor)

Bir Protik Gazi Golam Dastagir Road

116, Naya Paltan, Dhaka-1000

Dated: 09/09/2018

Government Letter No. 18.20.00.00.018.16.002.14-635

The Honourable Cabinet Secretary,

With respectful Salam and sincere gratitude

*1. You are well informed that in consideration of the national purpose of protecting the rivers and with the graciousness of the Government, the National River Conservation Commission has been formed on 5 August, 2014 according to the provisions of Section 3(1) of the National River Conservation Commission Act, 2013 (Act No. 29). There are 13 points of functions of the Commission according to the sub-sections (a)-(m) of Section 12 of such Commission Act (Copy attached). The Commission has been tirelessly putting in effort to work according to the Act in preventing illegal encroachment of the rivers, evicting and eradicating the illegal constructions on the rivers and banks of rivers, keeping the river water free of pollution, preventing environmental pollution and pollution created by the industrial factories, illegal construction of buildings and various irregularities similar to these and in restoring the natural course of the rivers, and maintaining them, making the waterway navigable and ensuring multidimensional use of rivers in the socio-economic development.*

2. It is especially mentionable that, according to Section 12(a) of the National River Conservation Commission Act 2013, the Commission has been vested with the responsibility of coordinating the functions of all the ministries and departments concerned with rivers and to give recommendations to the Government for this purpose. The concerned ministries or departments, for example- Ministries of Shipping/Water Resources/Land or Environment, Forest and Climate Change are considered as principal stakeholders of the Commission in performing those functions and responsibilities vested by the aforementioned Act. The attachment of this Commission as an administrative department in the Cabinet Division for the purpose of coordination/inspection/supervision of the river-related functions of the aforementioned stakeholder ministries/department as well as all offices/directorates and Divisional/District and Upazila River Conservation Committees in the field administration in an impartial and transparent manner is undeniable and to be considered as a priority.

3. In an on-field inspection by the commission it was seen that there is a trend of gulping the rivers which includes encroachment of rivers and pollution of water and environment. It is not possible to prevent such gulps without the sincere and coordinated assistance of\ the Divisional commissioner, District commissioners, Upazila executive officer under the adhering ministry and at the same time the strict implementation of law. With the permission of the Cabinet Division, the National River Conservation Commission has established divisional/district and Upazila committees in the division/district and Upazila level. In this regard, the Divisional Commissioners, District commissioners and the Upazila executive Officers can play pivotal role. Such field-level administration work is conducted under the administrative purview of the cabinet division. The field-level administration is directly involved with the Commission under the law. And that is why the Anti-Corruption Commission has been permitted to function neutrally under the purview of the Cabinet Division. It is logical and permissible to attach the National River Conservation Commission to the Cabinet Division to ensure that it functions neutrally and accountably, and that is deeply adherent, logical and coherent to section 12(a) of the Act.

4. The administrative ministry of the National River Conservation Commission is not determined under The National River Conservation Commission Act, 2013. The Ministry of Shipping is currently allocating the budget and helping in the administrative functions orally. According to the Section 12(A) of the National River Conservation Commission Act 2013, the Commission has the responsibility to co-ordinate the functions of all the related ministries and divisions. And in such case, the Ministry of Shipping is also a stakeholder like the Ministry of Land/Water Resource/Environment, Forest and Climate Change. For this reason, the Commission should also co-ordinate the river-related functions of the Ministry of Shipping. The instruction/advice of the head of the Government, the honourable prime minister, is that illegal encroachment of the river, canals, pores and natural reservoirs of the country shall not be undertaken/ shall not be tolerated in the name of/on account of development and the commission is firmly avowed to that.

The direction to establish an independent and impartial National River Conservation Commission is clearly evident and reflected in the verdict of the writ petition No.3503/2009 by the honourable High Court Division. , So, while carrying out the activities of the Commission, it is necessary to ensure independence, accountability, and neutrality in the co-ordination of its functions. It is considered by the Commission that it is risky and embarrassing to function independently and transparently from many aspects to protect the river bank, to bring the navigability and to prevent water and environment pollution being remained under the administrative control of any of those stakeholders-Ministry/Division.

5. On a close consideration of the abovementioned matters, in order to make the basis of National River Conservation Commission legally strong, with a desire to efficiently perform the responsibilities of co-ordination, being empowered under the Act, through neutrality, transparency, expertise and uprightness and to co-ordinate the responsibilities of the adhering ministry/department (stakeholders) and to make the such noble purposes effective for the sake of great public interest, we most humbly urge to provide the administrative approval regarding the attachment of this Commission as an administrative department of the Cabinet Division.

In this case, the Commission is deeply expecting the cooperation and advice of the Cabinet Division for the sake of the national interests.

With cordial respect and greetings

Cabinet Secretary

Cabinet Division

Dr. Muzibur Rahman Howlader

Chairman

National River Conservation Commission

Phone: 49349676

We believe that it will be much easier to prevent the pollution and encroachment of the rivers if the decisions and advices described in the aforementioned minutes of the National River Conservation Commission from the date 23.04.2018 and the letter sent to the Cabinet Secretary on the date 09.09.2018 is considered with proper importance.

All the concerned responsible authorities, including BIWTA, must be held accountable to the people as to how the palace-like houses, smaller and bigger commercial industrial factories and illegal structures on the banks of river Turag take that big a size even after the responsibility of preserving the public properties with public funds was taken upon by them? Those structures were not built in a day, it took a long time. At that time, the illegal encroachers have continued the illegal filling and encroachment of the river. But for unknown reason, all the concerned responsible Government officials and public representatives have been silent in this regard. Therefore, it is necessary to present all the persons liable before the people.

It is said that a city is the luckiest when a river flows through it or by the side of it. Not only one or two rivers, but a total of four rivers are flowing around Dhaka city. Dhaka would have become more beautiful than Singapore City a long time ago if the rivers flowing beside the four sides of it could be properly maintained. It is our misfortune that we have been turning our good luck into misfortune by constantly encroaching and polluting those rivers. It is a must to reduce the pressure of increasing population on Dhaka for the sake of the conservation of Dhaka as well as for the conservation of the rivers flowing around it. In that regard, the most efficient decision shall be to shift the capital of Bangladesh from Dhaka to somewhere far and suitable. For example, the capital of the United States was firstly in Philadelphia, which was later shifted to New York and after that to Washington DC for latter necessities. Like that, Malaysia also moved its capital to Putrajaya from Kuala Lumpur.

We may find answers of many of the known and unknown questions that arise in our minds about rivers in the book named **“Rivers of Bangladesh: Present Streams (*Bangladesher Nod-nodi: Bortoman gotiprokriti)*** written by Manik Mohammad Razzak and published by Jasim Uddin of “*Kotha Prokash[[32]](#footnote-32)”* Some important parts from that book are exactly copied in the following:

**Introduction**

Bangladesh is called a river-basin country. Now a large coastal area has also been connected with these rivers. For this reason, we have become the claimants of vast water resources consisting of rivers and sea. This alluvion that is created with alluvium carried on with river-stream is considered one of the largest deltas in the world. A vast amount of water (1.2 trillion cubic meters) with more than a billion tons of alluvium sediment is carried through these lands from the catchments outside of the country through the main rivers like Ganga-Padma, Brahmaputra-Yamuna, Surma-Kushiyara etc. As an indirect result, the lands in the riverbanks become very fertile and also the bottoms of the rivers are, being filled in, creating deadlock. As a direct result, many natural disasters and terrible instances like floods and river erosion is happening. Consequently, it is halting the economic prosperity as well.

These rivers are very much connected to our lives. On one hand, rivers are being attached with navigation, dams of a village defences, flood controlling measures, water drainage, water conservation, and on other hand our economy, livelihood and related literature have also been enriched with the support of those rivers. For these various reasons, the interest to learn about rivers is present inside almost everyone. But sadly, we have been in the dark regarding the true number of rivers in the country. There has been no end to doubts and dubitation about what the number of rivers in this river-based delta is. Some still call this country “A country of thirteen hundred rivers”. Some have determined the number of rivers to 700 or to 300. The Water Development Board has taken a commendable step in this regard and has numbered the rivers and assigned an identification number to each of the rivers. As a result of this good work, the doubts regarding the real number of rivers is mostly eradicated. As per their statistics, the number of rivers in this country is 405. Water Development Board has divided them according to their location and classified them into South-western rivers, North-western rivers, North-eastern rivers, North-central rivers, East-hill river and South-eastern rivers.

The rivers have been divided according to their nature of stream and geographical features as the following. 1. Main Rivers: the main rivers flowing through Bangladesh, i.e- Ganga (Padma), Brahmaputra-Yamuna and Surma-Kushiyara. 2. Tributary rivers: the rivers that flow into (receive water) a main river or another river is called a Tributary river of main river or another river, i.e.- Teesta, Dharala and Dudhkumar are tributary rivers of Brahmaputra-Yamuna river. 3. Distributary Rivers: the rivers that branch from a main river or another river (receive water) is called a distributary river of that main river or another river. These rivers help drain the stream of the connected main river and reduce the outbreak of flood, i.e. Arial Kha river is a distributary river of Padma river. 4. Inter-distributary River: these rivers branch out from a main river or another river and flow into the same river, i.e. Gulimakhali River in the south-west is an inter-distributary river of Burishwar-Payra River. 5. Free-Flowing Rivers: the speciality of these rivers is that they have river basins of their own and they flow straight into the sea without connecting with any other river in their path. Karnaphuli, Matamuhuri, Sangu, Bakkhali are rivers of this kind. 6. Confluence Rivers: the meeting place of a river and a sea is called confluence. This confluence area has more tidal flow, breadth and salinity than the upstream course of the river, i.e. Raymangal, Malancha, Shibsa-Pashur, Baleshwar etc. The coastal area of Bangladesh is spread along roughly 1000 kilometres.

**Origins of the Rivers of Bangladesh:**

Just as the creation of a terrain takes a long geological process, the creation of a river also takes a very lengthy process. Our rivers have also originated through such lengthy process of geological transformation. Rivers of different regions went through different processes for their creation and finally flowed through the lands of this delta. Syed Mazharul Haque wrote about the ancient rivers of Bangladesh, delta formation process of the ideal rivers, earthquakes and rivers of North Bengal, rivers of Chottogram and birth of the rivers of Chottogram Hill Tracts. I consider his informative writings in the book “Rivers of Bangladesh” (Bangladesher Nodi) as a very relevant element in the river-related discussions. For this reason, an essential part on that regard shall be presented here.

**Origin of Rivers**

Before discussing the origin of the rivers of Bangladesh, we must discuss the genesis of rivers and the geo-natural and geological relation with it. Generally, river means such stream of water which generates from a mountain or lake and goes on to create a river basin and create a course to flow upon surface and finally end in a sea or another lake. A river creates its course in such a way that it can very easily accumulate pebbles, sand, silt etc. from its place of origin and discharge it into the sea. Sometimes the river needs to resort to erosion or sedimentation process for creating this course. Rivers are continuously eroding the surface of the earth in this process. This process only ends for a river when all the river-basin transforms almost or totally into a plain land through erosion. There is another way to express this process of a river, i.e. - to carry the land to the sea. A river can be compared to the human life. As the human life can be divided into three main parts- youth, maturity and senility, the life of a river can be divided like the same. With that we also have to mention the landforms taken in different conditions of a river. The process of a river starts immediately after a terrain emerges from the sea-bottom and it goes on as long as it is not completely eroded. The time a river takes to complete this process is called the usual cycle of erosion of a river. The different landforms that are created during this normal cycle of erosion are named into Youth, Maturity and Senility.

**Youth of a River:**

In this state, the main function of a river is to erode and to carry. Generally, the youth of a river is in the hilly conditions. At that time, a river carries larger stones. The friction of those stones causes the bottom of the river to erode and creates big holes. Canyons and waterfalls are created as a result of river erosion in the hill tracts.

**Maturity of a River:**

The gradient level decreases in this state of a river. As a result, the celerity and power of a river to carry loads decrease. Generally, the condition of locating in a valley is considered to be related with the maturity of a river. At this state, canyons, strong current, waterfalls etc. are not seen in the passage of the river. The height of mountains and the watershed in its midst also decreases than before.

**Senility of a River:**

It can be said that a river does not have the power to erode in this state at all. Generally, the condition of being located in plain land is considered to be related with this state. The landform turns into a flat sloping terrain in this state. But some highlands are seen in some places as the residue of erosion. At the senile state, the celerity level of a river decreases so much that it changes its course if it faces a slight interruption. At this state, a river flows in an awry way and creates some horseshoe lakes in its course. In this state, the main function of a river is sedimentation. In this time, often in the monsoon seasons, it flows all around it by flooding its normal banks. As a result, sands and slits are conserved, which in turn create a floodplain. As every human being has its youth, maturity and senility, the rivers also go through those states. But one thing must be remembered that in the case of a human being, all three states of youth, maturity and senility cannot exist at the same time. But that is applicable in the case of a river.

**Present Rivers of Bangladesh:**

All the rivers that flow across Bangladesh are international. Their origin is outside of Bangladesh, but all of them flows across Bangladesh and finally flow into the Bay of Bengal. The rivers of Bangladesh can be divided into two major divisions, which are- A. Himalayan Rivers, B. Non-Himalayan Rivers.

**Himalayan Rivers:**

**Yamuna (Brahmaputra) System:**

Yamuna is the part of main river Brahmaputra which flows into Bangladesh. Brahmaputra originates from Chemayungdung glacier near the Manasarobar Lake located in the Tibetan plateau. Then, it flows for almost a thousand miles over the 12 thousand feet high plateau named Tsangpo, and suddenly at 442 feet above turns south towards Assam near Sadiya and flows westward for about 450 miles in the Assam valley, firstly in the name Dihang and later in the name Brahmaputra, and then abruptly turns towards the south in Garo mountains and enters Bangladesh through the border of Kurigram District. After that, it flows for 150 miles towards the south in the name Yamuna and makes a confluence with Padma near Goalanda. This confluence stream first meets with Meghna in the name Padma near Chandpur and later that tri-point confluence river ends in the Bay of Bengal with the name Padma. A distributary of Yamuna flows over Mymensingh in the name of Old Brahmaputra and then meets with Meghna near Bhairab Bazar.

The length of Brahmaputra from its place of origin to its confluence is almost 1800 miles. Some of its tributary rivers like Teesta, Dharala, Karatoya, Atrai and Subansiri are especially mentionable. Dhaleshwari can be mentioned as its Distributary River and Buriganga and Shitalakshya as its sub-distributary rivers. The basin of Yamuna is formed with a large part of Dhaka, Mymensingh, Bogra, Dinajpur and Rangpur. As the sources of all of its tributary rivers are located outside of Bangladesh, the term ‘system’ has been added with its name for the wideness of its extension formed with its tributary rivers and distributary rivers.

The place of origin to Sodiya consists the brimming youth of Brahmaputra. From Sodiya to the gateway of Bangladesh in Kurigram District consists of its mid-motion or valley state. It can be called the mid-state of the youth and maturity of Brahmaputra. From about a bit south of Rangpur District to Goalanda is the low-motion or plain-lands state of Yamuna. This part is called the senile state of the river.

**Padma (Ganga) System:** Ganga River is originated from the Gangotri glacier of the Himalayas situated 12800 feet above nearby the Gomukh Point located in Himachal Pradesh of India. First the river Ganga flows out of the Gangotri glacier in two streams, one is Bhagirathi, another is Alakananda. It is mentioned in the Ramayana that, at first nobody had the courage to bring Ganga River to the land of mortals from the heaven, as it was an impossible task to carry the flow of Ganga. At last, King Bhagiratha, with the assistance of Shiva, showed the courage to bring Ganga to the earth and bore it in the chignon on the head of Shiva and slowly transmitted it upon earth in seven streams. That is why one name of Ganga is Bhagirathi and it is also called Alakananda since it originates from heaven. The Hindu community deems Ganga as a holy river. They also call the Gangaas Jahnavi.

The mixed stream of Bhagirathi and Alakananda flows towards the south with the name Ganga and then goes down on plain lands near Haridwar. Then it is divided into two parts namely- Bhagirathi and Padma near Murshidabad after flowing through Uttar Pradesh, Bihar and West Bengal. Bhagirathi flows through West Bengal and afterwards goes down into the Bay of Bengal near the southern part of Kolkata with the name Hugli. On the other side, the main part of Ganga enters into Bangladesh through the western borders of Rajshahi District. After that, it flows towards the south-east and firstly joins with Yamuna near Goalanda, and then meets with Meghna near Chandpur and flows into the Bay of Bengal with the name of Meghna.

Ganga is an international river. The length of the whole Ganga River from source to confluence is 1557 miles. Yamuna, Kali, Karnali, Dharmara, Gandak and Koshi are the main tributary rivers of Ganga that are originated from the Himalayas. Chambal, Betwa and Shone are some of its notable tributary rivers originated from the southern highlands. The tributary rivers meet with Ganga at the plain-lands of North India. Among the tributary rivers, Padma, Mahananda and Purnabhaba are flowing over Bangladesh and West Bengal. Bhairab, Mathabhanga, Kumar Gorai, Arial Khan among the Distributary Rivers and Madhumati, Pasur and Kopotakkho among the sub-distributary rivers of Padma are especially mentionable.

The high-motion or hilly state of Ganga is from its source to Haridwar. That is the youth of Ganga River. From Haridwar to Rajmahal in India consists of its mid-motion state. That part can be considered as its maturity state. Rajmahal to Chandpur consists of the low-motion of Ganga (Padma) River. Its actual senility starts from where it gets divided into two parts named Padma and Bhagirathi. Then Padma flowed towards the south-east and one by one Bhairab, Mathabhanga, Kumar, Gorai and Arial Khan emerges. Through them, the water of Padma is taken to the sea and as a result, the river gradually loses its intense flow and reaches its senile state. Ganga is a large river. Ganga and its numerous tributary rivers and distributaries created a gigantic basin consisting of Himachal, Uttar Pradesh, Bihar, West Bengal of India and the south-eastern part of Bangladesh. For this reason, the addition of the term “System” to its name has been truly successful.

**Non-Himalayan Rivers:** Among the rivers flowing over Bangladesh which are not originated from the Himalayan Mountains, Meghna, Karnaphuli, Sangu and Matamuhuri are mentionable ones.

**Meghna River:** After originating from the hill tracts of Assam, Barak River divided into two streams named Surma and Kushiyara near Badarpur of Assam and flows over Sylhet District. They meet near Markuli and the confluence flows a bit ahead in the name Kalni which connects with Old Brahmaputra near Bhairab Bazar and gets the name Meghna. Then it makes a confluence with Padma near Chandpur and flows into the Bay of Bengal in the name Meghna. The length of Meghna including Surma is about 650 miles. Someshwari, Kansa and Gomati are especially mentionable among the tributary rivers of Meghna. Manu is a tributary river of Kushiyara. Titas and Dakatia can be named among the distributaries of Meghna. From the source to the place near Markuli where Surma and Kushiyara made a confluence is marked as the high-motion or hilly state of Meghna. Then from there till the part where it makes another confluence with Old Brahmaputra with the name Kalni consists of its mid-motion or mature state. Meghna is one of those rivers in Bangladesh whose tide is still not declined.

The normal cycle of erosion created with the tributary rivers and distributaries of Meghna River that consists of Assam of India and eastern part of Mymensingh, Bangladesh along with parts of Sylhet, Cumilla and Noakhali districts is called the Meghna river-basin.

**Karnaphuli River:** It originates from the Lushai Hills of Assam. It flows in a parallel way towards the south-east over Assam before entering into Chittagong Hill Tracts through a bit north of Barkal. Then it changes its direction towards the north-west and flows over Chittagong Hill Tracts and Chittagong District while creating a ravine in a diagonal path with the mountain range and finally flows into the Bay of Bengal near Chittagong. Kasalong, Maini, Chingri and Rankhyang are especially mentionable among its tributary rivers. Karnaphuli is about 200 miles long. Assam and all parts of it in Chittagong Hill Tracts consist of its high-motion or hilly state. That part is the youth of Karnaphuli. The plain part of Chittagong can be called as its low-motion or plain-land state.

**Sangu River:** This River originates from the Burma-Bangladesh border in the mountains of Arakan. Then it flows quite far parallel to the mountain range in Chittagong Hill Tracts towards the north-west before changing its direction near Bandarban and flowing towards the south-west. Afterwards it flows over Chittagong District before falling into the Bay of Bengal south to the estuary of Karnaphuli River. It is about 100 miles long. of the whole part of Sangu River before falling into the lowlands of Chittagong is its hilly or mid-motion state. That is its youth. The part near its estuary can be called as the low-motion or plain-lands state.

**Matamuhuri River:** This River also originates from the borderlands of Burma and Chittagong. It flows towards the north-west as parallel to the mountain range before changing its direction in a place called Lama in Chittagong and flowing towards the west. Afterwards, it gets down into the plains of Chittagong and declines into the Bay of Bengal near Chiringa after flowing a bit further. It is about 60 miles long. All parts of it except some in the plains of Chittagong is its hilly or high-motion state and that is the youth of Matamuhuri River.

**Ancient Rivers of Bangladesh:** One has to resort to history to get a better understanding on the genesis and location of different rivers in different geographical ages. This is as relevant to the justification of the historical advancement of civilisation as to the rivers. There is enough curiosity among the geologists and geographers regarding the rivers of Bangladesh in the past. But saying anything about the past rivers of Bangladesh is very difficult. It calls for deeper knowledge regarding ancient archaeology. But one can undoubtedly talk about the Brahmaputra River. It is a pre-landform river. It was existent long before the emergence of the Himalayan Mountains. So, we have to see how the relationship between Brahmaputra River and the Himalayas was.

The emergence of the Himalayan Mountains can be called as a result of 5 or more major geo-movements. The first major movement took place in the last parts of the Cretaceous geologic period (135 million years ago). The second one took place towards the end of Eocene epoch (60 million years ago). The biggest Himalayan Orogeny took place in the Middle Miocene period (25 million years ago). Himalayan Mountains took its own structure at that time. And the Tethys Ocean was erased from the maps of this sub-continent forever. The fourth movement took place towards the end of the Pliocene period (11 million years ago) and the fifth one during the start of the ice age in Pleistocene period (a million years ago). Most probably, humans originated before the occurrence of the fifth geo-movement. The existence of human being in Patwar of Pakistan and Kashmir and Narmada valleys of India at that time has already been proved.

So, we can see that, Brahmaputra River was existent in this subcontinent 135 million years ago as the result of the first Himalayan Orogeny in the Cretaceous period. In addition, to the east of current Bay of Bengal, in Burma and Assam, there were two shallow bays i.e. Bay of Burma and Bay of Assam and plateau in their middle. Estuary of the *Brahmaputra* was near to the Bay of Assam and Estuary of the *Irabati* River was near to the Bay of Burma. These natural phenomena existed until the end of Eocene epoch. Later, almost all the land of current Bangladesh went into the oceanic grasp. Many believe, at that time, there was an upland, now termed as Rangpur Slope. Except that particular area the rest of the Bangladesh was included within the womb of the sea. To support this argument, geologists present limestones found in Lalghat[[33]](#footnote-33), Takerghat and Bagalibazar of Sylhet. Also, limestone from Miocene epoch has been found 1685 (sixteen hundred and eighty-five) feet under the ground of Bogra and Joypurhat region. Based on these discoveries, it is firmly believed that during Eocene epoch, some tiny creatures called *Foraminifera* were lived in the shallow sea of such two areas. After death, the shells of such creatures, being accumulated, formed as limestones. But except for these places, limestone formed by Foraminifera has not been found in anywhere else. So, instead of saying that the whole Bangladesh was under ocean during Eocene epoch, it is more precise to say that there were two bays in that period, i.e.- the Bay of Sylhet and the Bay of Bogra.

The rivers which carried sediment to those bays from nearby source have been far extinct for long. But there is no doubt that *Himalayan* river *Brahmaputra* and its tributaries and distributaries existed in Sylhet region.

Again, the geo-movement that occurred during Oligocene epoch (40 million years ago) in Assam and its nearby area created Borail Hill in Assam. Because of this occurrence, the water body retreated south to its current position from its previous position in Assam and Sylhet region.

The landscape was again swallowed by the ocean in Miocene epoch (25 million years ago). Except that particular Rangpur slope, the rest of Bangladesh came within the womb of such sea. During this time, the western part of Bengal basin became a continental shelf and south-east region of this Bengal basin turned into a shallow ocean. As a result, oceanic residue started to accumulate in such duo regions. Among this residue, sand, sediment and sludge are noteworthy.

Till mid-Miocene epoch, there were numerous rivers to supply sediment to this ocean. But almost none of them exist now. But the *Brahmaputra* and the Irabati River did exist in that period, there is no doubt about that. The *Brahmaputra* River eroded Shillong plateau while the Irabati River flowed over the plateau of Shaan in Burma. These two riven then carried the eroded residue to the shallow ocean. Later these residues turned into Hard-rock. This hard rock is often linked with Surma Rocks of Assam. After that, during the geo-movement of Miocene epoch, the sediments which were being accumulated at the bottom of the shallow ocean in south-east formed the mountain ranges in Chittagong and hill tracts of Chittagong. The ocean retreated further south.

**The Formation of an Ideal Delta:**

Bangladesh is called one of the largest deltas in the world. Many consider this land to a confederation of deltas. Again, many geologists regard this land as a complex delta. According to the general belief, the *Padma (Ganga),* the *Yamuna (Brahmaputra)* and the *Meghna* carried countless pebbles and sediments from such terrain where they streamed starting from the source of those rivers to the border of Bangladesh. These pebbles and sediments are amassed in the estuaries. Generally, eroded substances are carried by the rivers in three ways-

1. If the stream is strong, then the sediments which are heavier than water are carried over the riverbed by the sheer force of stream. They accumulate in estuaries.
2. If the sediments are lighter than water, they float and fall in the ocean.
3. Some components come in estuaries after being dissolved in the water. i.e. salt solutions like Sodium, Potassium etc. In a word, these three types of elements formulate the sediment.

Not all rivers can form deltas in their estuaries. The estuaries, which do not get high tide and low ebbs or in which sediments do not get carried away completely after being carried to the estuary by the stream of that river, can form deltas in their opening. Besides, oceanic salt water helps in formation of the delta. The elements which fall in the sea as water solution contribute delta formation through chemical reaction. In this way, sediments which are carried by the river accumulate as many layers on the continental shelf. Later, the layers of sediments create submerged blocks. These blocks guide the river to flow in the form of distributaries and sub distributaries around this newly formed acreage. Thus, deltas are created. The first instance the delta was discussed were those of the Nile. Where the Nile met ocean, there were a newly formed acreage between the two distributaries of the Nile, i.e.- the Roseta and the Dimieta. That newly formed acreage looked like Greek Capital Letter Delta (Δ). Thus, it was named delta. In Bengali regions, Bengalis termed it as delta or bo-dip) since it looks like Bengali letter “ব” (Bo). But the outlook of deltas may look different. For example- the delta of the Mississippi river looks like a bird’s foot. Hence it is called the “Bird’s Foot Delta”. Deltas consist of three different layers. They are-

1. the bottomset beds, consisting of the finest grain sizes and formed over rock layer
2. the frontset beds, the diagonal layer consisting of sand or sediment
3. the topset beds, a thin layer formed over the diagonal layer

**Geo-movements and the rivers of North-Bengal:**

The severity of the geo-movements has decreased across the world. Hence, human beings are still surviving. But it has not stopped completely. Faint geo-movements are happening in Fold Mountains like the Himalaya, the Andes, the Rocky, the Atlas and their nearby areas as well as around the world. We perceive them as earthquakes. These fait geo –movements alter the earth crust and riverbed in such a way that normally no one notices the changes. But geologists and geographers can spot such change easily. Now we should look into the question- how much the rivers of Bangladesh are affected due to such geo-movements.

Major James Rennell made a map of united Bengal during the year of 1763 to 1773. The map was published in 1781. The rivers drawn in that map has many differences if we compare those to recent maps. Especially the *Brahmaputra* and the *Meghna* River have changed significantly. These rivers have changed their past course and are now flowing in a different path. Although geo-movements are held responsible for such change of course, there are contradictions of opinion on such issue. To support their argument, geographers have developed many theories. The *Jenai* River was shown as a distributary of the Brahmaputra in the map of 1770 by Rennel. The Brahmaputra flowed with full force over the Mymensingh district and the changed course of rivers can be seen if the map of Renell and recent map of North Bengal[[34]](#footnote-34) are compared. Nowadays, the *Teesta,* the *Karatoa*, the Atrai, are the main tributaries of the *Yamuna* while the *Mahananda* and the *Punarvaba* are the main distributaries of the *Padma (Ganga).* But the map of Renell had a different depiction. It is mentionable that, these rivers originated outside of Bangladesh. If the map of Renell is dichotomized, it can be seen that approximately, 300 (three hundred) years ago, the *Nagor* river was connected with the *Karatoa* river and it flowed over the Barind Tract towards south-west direction. But later, due to geo-movement in that area, the Nagor River got separated from the Karatoa and became a local stream losing its previous glory.

It can be seen from Renells map of 1770 that the Teesta was divided into some distributaries near Jalpaiguri. They were-

1. A stream towards west over Chepa-Punarvaba watercourse.
2. A steam towards south over the *Atrai* River.
3. The *Yamuna* which went towards south-east direction.

All of these three rivers used to meet the *Ganga* that means those rivers were the tributaries of the *Ganga.* During the beginning of 18th century the *Atrai* had the most importance due to its usefulness and then was the *Punarvaba* and the *Yamuna* was the least important river among them. According to La-toche, the geo-movement which happened after sudden rise of the rise of Barind tract changed the course of rivers of that region. In fact, the change of the *Brahmaputra* was the most significant. So, it can be said undoubtedly that once *Madhupur* tract and *Barind* tract were one undivided block. During that time, main watercourse of the Brahmaputra flowed over current old *Brahmaputra.* Then, the *Meghna* was a tributary of the *Brahmaputra* and the *Jenai* was a mere small stream. The *Teesta, the Atrai, the Karatoa*, the *mahananda*, the *Punarvaba*- all of these rivers were major rivers. They carried water from outside of Bangladesh and kept the *Ganga* puffed-up by supplying the water after amalgamation. But due to the geo-movements occurred in the *Himalayans* and nearby Shilong plateau, the *Brahmaputra* I.e. a *Himalayan* river gained his previous force, changed its previous course and flowed near the west of Madhupur by the name ‘*Jenai’.* Thus, the small *Jenai* River became the mighty *Yamuna* over the time. As a result of this change, *the Teesta, the Atrai, the Karatoa* also changed their direction. The revived *Yamuna* (old *Brahmaputra*) took water from previously mentioned *Teesta, Atrai, Karatoa* which helped her (*Yamuna*) to increase her extent. Thus, those three rivers got detached from the *Padma* and became tributaries of the *Yamuna.*

**Rivers of Chottogram District and Chottogram Hill Tracts:**

The rivers of Chottogram and Chottogram hill tracts are rather younger than other rivers of Bangladesh. In fact, they originated after the rise of Chottogram and Chottogram hill tracts. The hills of these regions are stretched from north- north-west and south-south east direction. They fell in the category of Fold Mountains. These folds include some upper-folds and down-folds. In the primary stage of geo-natural cycle, upper-folds form mountains and down-folds create river-canyons. The rivers of Chottogram and Chottogram hill tracts have advanced parallel to the mountains using these down-folds. High slopes of these hills functioned as a water divider between two watercourses. But where rivers take sharp turns, they corrode these high slopes and transform them into canyons. As for example- the *Karnaphuli* created three deep canyons in *Seeta hill, Chilardaak* and *Borkol* where it took three sharp turns.

Similarly, the *Sangu* and his tributary *Rumachara* eroded *Laphajhang* slope and *Chimbuk* Slope and then heads towards south-west. The *Matamuhuri* River flows through the Manivin Tuang slope near Lama Bazar and heads west. Many may assume that these rivers are pre-acreage river. But it is unfortunate that, the canyons created by those rivers are not deep enough. Moreover, no such stones rock has been found in there which may undoubtedly prove that those rivers used to flow before Chittagong hill tracts formed.

In fact, primarily the *Karnaphuli,* the *Sangu*, the *Matamuhuri* came down from the hills in the form of shallow stream. Then those streams merged into a river and started to flow parallel to the hills. Later, rapids originated from those rivers eroded water divider as they flowed towards high slopes. This process only sped up the fourth and fifth Himalayan Orogeny which occurred respectively during Pliocene and Pleistocene epoch.

As a result, the *Karnaphuli,* the *Sangu,* the *Matamuhuri* regained their youth. Those revitalized rivers corroded high slopes and transformed them into canyons. They also carried off the water resources from other streams and stretched their extent. It is normal to reach the wrong assumption that these natural events are action of rivers in pre-acreage period.

**Gender of the Rivers (*Nod and Nodi*[[35]](#footnote-35))**

We have categorized watercourses into two different kinds. They are Female River *(Nodi)* and Male River *(Nod).* Other continents, including the Western world and many other countries do not have this tendency. They do not label rivers on the basis of gender. Rather they call them rivers. Again, there are many differences between those rivers and ours on the basis of size. There are many rivers in western region which we usually call as canals. The river which is flowing through the Bolton abbey of west Yorkshire in Britain or the river flowing by the side of Bradford town are not wider than the Nanda khal (canal) which is flowing by the east of Dhaka but still they are classified as rivers. In this case, Malaysia is even more overzealous. They give the tiny canal-like stream through the centre of Kuala-Lumpur a status of river, but the stream is very similar to the miniscule canal of Fakirapul in Dhaka which is now at the brink of disappearance. People in that country call the water-stream with the width of two or three feet as river which is located in the area of Utara University. In Bangladesh, we call them drains. After discussing on this matter with Professor Hamza from Utara University, it is revealed that, any stream which is originated from nature is considered as rivers in Malaysia. If we consider this perception, then it can be said undoubtedly that the rivers may exceed millions in number in Bangladesh. These are additional matters to be discussed.

Now, the following discussion is about the introduction of gender of the rivers. Why are some streams called *‘Nodi’* (Female River) and some called ‘*Nod’* (Male River)? We must go back in history to resolve this matter. Many components of social living are related with this notion.

In his study- ‘*Jharnadhara theke Sristidhara’* (From stream to system) Mr. Kalim Khan has shed light on this topic.

He wrote: *Eurocentric river vs Oriental river: In the West, river means any water body which flows over the earth. Scholars are very specific on this issue. Since they have successfully completed the industrial revolution, they are able to reach final phase of linearity. They possess the qualification to explain a topic or answer a question exactly to the point without keeping any doubt. That is why they are able to call spade a spade. (specialization)*

Not only that, they can provide a detailed report on how each of the rivers affect the nature, the inanimate objects, the economy and culture and also the role they play on these subjects. Thus, their conclusion of thought over river is as accurate as their knowledge over other issues.

So, this colliding concept of west brings the hardship when we try to understand the oriental river perfectly. Because, firstly, oriental rivers are not only of feminine gender but also have some counterparts and secondly, some of them belong to their families. Everyone knows about Bhisma, the son of river goddess Ganga.

Moreover, (according to religious belief) one of these rivers flows over the sky *(Akashganga)* when others flow over the earth *(Bhagabati).* One of them acts as savior of the fallen and another dissolves the sin (*Bipasha).* Many of these rivers are worshipped as Goddesses. One is born out of tears while another originated because of melting after listening to music. These mystical rivers cannot be confined into the strict river-thoughts of the West.

However, in most of the cases, anyone who seeks to comprehend the idea revolving around these oriental rivers grasps the western sense of river into their head. Thus, it creates confusion. They suggest renouncing either of the gender. i.e-. *Nod* or *Nodi.* They say, both of them can not fit into this system as Eurocentric view of rivers does not hold such gender-based classification about rivers. Besides, how can river have marriages and families? Leave these ideas, renounce them. Remember, river only flows over the earth not over the sky. Furthermore, rivers do not possess sacred or unholy nature rather they are mere water streams. So, they cannot rinse off sins or save any sinner. So, forsake them.

The inquisitives often submit to this Eurocentric notion about river. As they want to measure the oriental rivers in the scales of western ideas, they are often compelled to decide that the oriental Nod and Nodi does not have what the western rivers do not usually possess. For the purpose of balancing the ideas with the western world, they do not only renounce the Nod, they also forsake every other features and characteristics of the *Nod* and *Nodi* that are not in accordance with the characteristics of Rivers. And they start to use the word Nodi as a synonym to the word River. As a result, the underlying meaning behind the word Nodi also gets forsaken. The soul of River starts to possess the body of Nodi. As an end result of this, people understand River by uttering the word Nodi. In the midst of all this, not only the genders of the Oriental *Nod* and *Nodi,* but also the whole body of all of them get deserted. Ultimately, the Oriental *Nod* and *Nodi* transform into Oriental Rivers.

Then, are oriental *Nod/Nodi* and western river completely different things? Is there no stream of water in the Oriental *Nod-Nodi’s*? Do they do not have sources of origins, river-basins, tributaries and distributaries and things like that? Or in other words, do the Oriental *Nod-Nodi’*s not possess the features and characteristics that the rivers do? It has been seen after collecting information on *Ganga, Yamuna* and *Brahmaputra* that they do have those features of rivers, and they also possess some other different features as well. But the problem is that those different features that they also possess are the major ones in their case, and the features of rivers are of minor importance. And difficulty arose with those extra features. The Eurocentric idea of rivers is unable to accommodate those extra features. For that reason, the discussion on oriental *Nod-Nodi* is always censored before even beginning. The *Nod-Nodi’s* are cut and trimmed to make them equals to rivers that flow over the surface. Then the discussions and researches start and the results come in that shape too. The outcome turns to an equal shape- good to see, good to hear also.

But what if it was the opposite? What if the river-inquisitives set the oriental idea of *Nod-Nodi* in their minds before gaining knowledge and understanding about rivers? In that case, the first question that shall arise is that whether the orient has a structured idea at all? The answer is obviously yes. Every country must have its own structure of thought. A unique kind of structure grows up with its own achievements as a nation. It comprehends the world, its rivers, mountains and forests through that structure. Otherwise how would the orient know about a river that has father, mother, marriage, children and it makes, keeps and even forsakes its promises to sacrifice its children into its own streams? Which structure of thought recognizes that a river can bear a daughter and the name of that daughter is wealth or Lakshmi; where all water streams are considered as “*Sindhu”* and they always drip honey? What kind of thought structure can normally allow the existence of a sin-cleansing river where all the people of the Indian Sub-continent clean their sins by its water which flows throughout the three universes (Trilok) That thought structure should first be known and understood well, so that the rivers with features that are recognized by it can be viewed in a normal sense. Only then we might go on to know those polymorphous rivers of the orient.

**Eurocentric Outlook versus Oriental Outlook:**

When we hear the words flying, walking, moving, killing, grabbing- we ask the question- “Who?” Then the person we get through the answer gets all the glory of performing those acts. That is to say that the deed or act does not really seem apparent if the performer of the act is not present with the deed. That means the light can only be seen if it falls on something; the acts can only be seen through the deeds of the performer of the action. We see travelling through the deeds of the traveller. Travelling cannot be seen by separating it from the traveller. An action cannot be seen without its performer and a performer cannot be seen without his actions; that is the universal rule. That is because in an actual sense, the action and the performer are but one common soul. One does not have its existence without the other. The most inactive thing is also performer of an action- existing. Hence everything in the universe is a dual entity; everyone is a performer of actions. The question is that which side of that entity should be seen at first- the side of the action or the side of the performer? If you consider the side of the action, the name of your outlook shall be called substance-based outlook. If you look at the universe from the side of that action, you will grow an action-based structure of thought regarding the universe. And if you look at the universe from the side of the performer of actions, you will grow a substance-based structure of thought regarding the universe.

The scholars explain this affair in another way. In their opinion, the world has mainly two forms. One is the form of its outside, which is called nature in the ancient Indian terms. The other is its form or content of its inside; which is called male in the ancient Indian terms. Body and male/subject are also considered as soul in that nature. In the scripture, this male/subject is called the action (Kriya) and its reservoir is called nature. The look that is used to perceive the outside of the universe is called Out Look or Physical Outlook and the look which allows to perceive the inside of the universe is called Spiritual Outlook. In that sense, actually the Physical Outlook, Substance-based Outlook or Out Look is the same thing and to the opposite the Spiritual Outlook and the Action-based Outlook is also the same thing. The first kind of outlook is called Eurocentric Outlook. They are very efficient and skilled in looking at the universe through that outlook. The latter kind of outlook is usually called the Oriental Outlook. According to the scholars, the various physical forms can be seen in the physic-based universe and it helps to make a mortal form of the universe. And, we can see the internal forms of the universe through the spiritual outlook, so the internal state of the universe can be seen through this outlook. Our two mortal eyes are enough to comprehend the mortal form. But the heart of the universe must be looked at to see the internal state of the universe. And for that we must keep our two mortal eyes shut and use the third eye. In that case, the words of the poet are actually true- what cannot be seen with eyes can be seen with eyes closed. In a total sense, the outside of the universe should be seen with the eyes open and the internal state of the universe should be seen with the eyes closed. The glory of Europe is looking with the eyes wide open, and the glory of the orient is in looking at the universe with the eyes completely closed. It should be kept in mind that looking at the internal state is actually looking at the heavens. Experts said that the Western people are deft and habituated to looking at the universe from the physical/substantive/natural/reservoir perspective; so, they are fond of the mortal form of the universe. And the oriental people are generally adept and habituated to seeing the universe from the spiritual/action-based/male /content perspective; hence they are travellers of the internal state of the universe. For that reason, the outcomes of looking at the universe in the orient and in the west are not the same, rather they are quite different. The west learns the news of the body (reservoir) of universe, which is very much perceivable. And the orient learns the news of the soul (mind), which is unfathomable. Looking at the universe is only complete when those too are joined together. Therefore, both the western and oriental perceptions should be connected even when we look at the rivers, otherwise it will never be complete. Hence, now that we have gone out to look at the rivers, we have to decide whether we should be fond of the mortal universe or the spiritual one, or if we want them both. In the first instance, those who are deft at the western physical outlook towards the universe can facilitate us; in fact, they have helped very much already. But travelling through the internal spiritual universe has a lot of obstacles. All the perceptions we have gained through the practice of the spiritual outlook towards the universe are buried under the gradual reformations throughout the course of time and under the rubble of the devastated Bangla language by the invasion of English. There is only one way, to restore those perceptions by running a bulldozer through those rubbles and to try to travel through the spiritual universe. In that regard, a ray of hope is that recently the bulldozer named action-based word-meaning rules have come to our possession. So, we can go forward with this. We can try to remove the debris, restore the perceptions of looking at the universe gained through the spiritual outlook, and try to travel the spiritual universe with their assistance.

**Rivers of the Three Universe:** **(Universal Flux of events and processes)** According to the action-based word-meaning rules, the uninterrupted, incessant mobility or uncut cascade of a thing is called a stream. There exist many streams in this universe. Some of those streams can and should be seen with the eyes open; as - water stream, rain stream, tears stream, stream of incidents, stream of goods, stream of electricity, stream of air, news stream, cultural stream, blood stream, butter stream (stream of essence etc. Some of those streams must be seen with the eyes closed, as - stream of thoughts, stream of compassion, stream of lineage, stream of happiness, stream of motion, stream of races, stream of creation, stream of custom, stream of power, magnetic stream etc. All of those streams or flow are the happy form of one single stream of creation. Rabindranath said, the stream of happiness is flowing in the world He said, the stream of conformation is flowing endlessly from the heart of the amorphous and is never ceasing to stop. And again, he became amazed with the fascinating image of those streams and mentioned them as- the streams of happy wine.” Our living world is surrounded by those innumerable, immeasurable, visible and non-visible streams.

According to their characteristics, these streams are divided into two classes- male stream and nature stream. The male streams are all na-givers (we shall come to explain what the meaning of na-giver is later).[[36]](#footnote-36) That is why they are called Nod (male river). And the nature streams are all nurturers and caretakers of the givers of Na, they are called the reservoirs of na-givers, or in other words Nodi (female river). The whole universe is nothing but a web of those Nod-Nodi’s (male and female rivers). According to the language of the scientists of this age, of the universal flux of events and processes, ancient India recognized the Process (P-R-S-S) as male and Event (Eve/Adam-Eve) as nature Inspired by that oriental structure of thought, Rabindranath told us regarding those male and nature that, motion-based streams are called male and static streams are called nature. The scientists of this age also tell us that a class of those streams mentioned above is the stream of varian, hence, classified as Nod (male river); the other class is the stream of relatively invariant, hence classified as Nodi (female river).

There are three parts of the universe in the spiritual outlook of the universe. World of the Mortals, Paradise and Plutonic universe. These parts are together called the earth. The abovementioned rivers are present in all three phases of the universe; rivers that can be seen with mortal eyes are flowing in the mortal lands, and the rivers that can only be seen by looking into the internal state are flowing in the heavens and the streams of estimates that are flowing in paper are present in the plutonic universe. All of these streams comprise of the rivers of the earth. Henceforth, we must go forward in that direction.

**Rivers of the Orient: Stream of Knowledge and Stream of Goods Stream of thought and Stream of actions (**Ancient India did not know all that, nor was it worthy of the knowledge, neither did it need to know. Its problem was the historical evolution of the society. It could see before its eyes how the society is getting entangled in the problems of its own creation and gradually losing dynamism. But ancient India had the spiritual outlook in its hands, by which it was observing; and to express the perceptions that it got from the observations it had the action-based language, by which it was speaking. All the credits and the charisma are of that outlook. And whether that speaker had really seen or not, he could always describe those rivers of all the universes that are relevant with those rivers.

That means, you are looking at a thing of the mortal world with the spiritual outlook and describing that thing in action-based language. Actually, you did not see the thing you described or your description at all; neither do you know anything about those matters. Now, if a listener, after listening to your description goes on to inquire will amazingly find that your words are true to all. He will have the notion that you had actually studied all the universes before saying all that- he will deem you as a very wise person. But in reality, you never studied all the universes. In reality you just squeezed one grain of rice and described how it is inside in action-based language; and you could never realise that you had said all the information about all the rice with that description. That is the reason, why the West still got a sense of respect for the orient.

We shall enter into the discussion of the rivers of the Orient directly after giving an example. The primitive plants were flowerless. The flowerless plants that were originated at the end of the Silurian Period (440 million years ago) later evolved vastly during the beginning of the Devonian Period (410 million years ago) and the lands were full of those flowerless plants. All the trees that are the source of all the layers of coals in both the supercontinents of Angaraland (Laurasia) and Gondwanaland were flowerless. Those forests of flowerless trees spread all across the countries took an everlasting form as layers of coals under the surface.

The scientists of this age could come to the aforementioned decision after long drawn efforts of many years. In the evolution of earth chapter of the laws of manu (scripture of Hinduism)Indian mythology, in the Jagatsrishti chapter of the Manu-saṁhitā. The description of the origination of flowerless plants in the ancient time is found in the evolution of earth chapter of the laws of manu (scripture of Hinduism) of Indian mythology. How could they possibly write that? The laws of manu was not certainly written after the 19th century, so that the drafter of the laws of manu could possibly embezzle the findings of the archeologists.

No matter how much argument there is over the writing period of Manu-saṁhitā, everyone agrees that the book must have been written before 1000 BC. Did the Sanskrit scholars of India have the archaeological knowledge about coal in 1000 BC? Coal was not even discovered at that time. Then how did the Scholars of India come to know about the tree without bloom? Certainly, it is not like when a man saw the primitive origin of the tree without flowers 440 million years ago went on and murmured the information to his Indian descendants. Then how did the drafters of the laws of Manu know about the tree without bloom?

In fact, the Sanskrit experts started to tell the description of the social organizations. How these were in their time, how these were before and so on. Therefore, they saw the ancient social production organizations of those days as profitless. That means those organizations did not produce anything for trade. Their production used to be distributed in societies through special rules. At present, there are also some government organizations whose products are not for sale in the market. For example, in India, a bird made of porcelain is planted on top of the telephone line, that bird-producer organization. In a self-contained spiritual perspective, how we see a tree which is blossoming and its scent is spreading all around, in the same way the handloom Association office sees the spreading news (odor) of selling Dhaniakhali Saree. In verbal term, such association is known as a flowering tree. And the news of production of organizations that do not spread in the air in such a way, those organizations are known as trees without bloom. In ancient times, such social production organizations were emerged first. Mythologist observed those organizations and wrote about the emergence of the flowering trees. They did not have any archaeological knowledge about the trees without bloom. But on account of self-contained spiritual perspective and verbal terms, the mythologists subconsciously told the words of the archaeologists accurately. In order to know the reason why product is called flower, one has to learn words like blue lotus, floral, floret, peduncle etc. Lengthy explanation of those is irrelevant at this moment. The same thing happened in their statement concerning “Water was created first” 12 etc. Practically, by describing the development of social events they stated the development of material world, the plant world and animal world as well. We read them and wondered what they meant to us.

The same applies for rivers. The experts of Sanskrit[[37]](#footnote-37) of the early age saw the wisdom, actions and thoughts of human beings gradually drifting apart, evolving, dividing into several branches, flowing from one stream to two. In their previous manifestations they expressed those thoughts (consciousness, knowledge and experience) with the use of the word river (male) and expressed the action, manufacturing, commodity with the help of the word river (female). Both of these are considered delightful by the superior thinkers. In reality, they see the image of these thoughts in the surface of the river. The inferior thinkers hold that information only in the sense of the word river. Now the thing is, we need to know how the Ganga-Brahmaputra of the superior thinkers looks like. Our social life is formed on the basis of agitation being arisen in our thought process while dividing rivers (male and female).

Because of this, we feel more comfortable considering the river as women. As a result, our biasness towards river (male) is much less. According to oriental characteristics, although the Kopotakkho and Brahmaputra are regarded as river (male), in social life we ​​refer to them as river (female). Even in our literature, literary works are composed connecting river with women. In an article on river and women, Nur Kamrun Nahar presented a detailed description. She wrote:

The women here are like the rivers

Rivers also speak like the women

What is the relation between women and the river? Is the river like a woman or the woman like a river? Is there any direct answer of this question? What is the resemblance of women with the river? Why are river and women pronounced together? Somewhere in the landscapes and paintings, the river and the women are merged into one. Somewhere there is a great alikeness between the river and the woman. The river as a woman and the woman as a river shakes us in an indescribable beauty of mystery. Even the poet discovers the rivers among the women and women among the rivers -

I have not seen the river

I saw your face at the shore of the river

This is why I visit the river again and again

To get you

The river is a simile of women and the women is a simile of river. The way the poet Kalidasa described the form and features of the river in the Meghadūta are all analogous to women. Bride of the forest, Bride of the village, Florist, the wife of another man, Strumpet, Ballerina, Miser, Celestial nymph all these words have come up in the description of Kalidasa. The poet Buddhadeb Bosu unimpeachably interpreted the river to a woman.

The flow of a river is like the posture of a beautiful woman

A river showing its navel in swirl

Some are in distress; some have the touch as flattering as the lustful lover

Some have the touch that brings aroma of the aquatic sports of young women.

People bathe in the river and forget their tiredness, exhaustion, heat, irritation; similarly by immersing inside the beloved women, men find gratification. The depravity, mourning, and sadness of this life fall apart during the intercourse. Through this copulation, man discovers a river inside the woman. He finds contentment bathing in that river. And there are stream, undercurrent, waywardness and waves hidden in the body of women. Women are like a contented river. The river is for bathing as well as for discovering. Bathing in that beloved sacred river purifies and fulfills the underlying mystery of human life.

Submerging in the water of river is not as great as

The tide in your body

Bone marrow plays intravenously on the skin

And your body is a river of fear

Sometimes becomes Intemperate

Inside the burn of the bosom, or the reddish lust.

Thinkers have found many similarities between river and women. The underlying logic of the complement is explained in various ways. River and women have served as the inspiration for creation in many ways.

Various creations based on rivers and women have flowed like an undercurrent of any feeling. Rivers and women acted as a kind of art or artistry. Over time, numerous poems, sayings, songs have been created about river and women. Rivers and women have also influenced the people in various ways in creating different proverbs. Rivers and women are one of the main sources of folklore as well as folk music. The river or watercourse is the main conductor of life, and the woman is the birth giver. Ancient cities or civilization were built around fertile areas of the rivers because of food supply and water sources. And fertile women have played a major role in nurturing and disseminating that civilization. Women have made the seed fertile that were spread by men around life and the province. The woman transforms the embryo that grows inside her and in her blood into human being and sings to the world the song of birth and life. It is as if the river unites with the women in the occurrence of joy and pain of creation. The river sweeps its banks and waters the land. It makes the soil fertile. It makes the earth green and verdant. It is inebriated with the pleasure of creating and pleasure of generating. Just like the echo of the philosophy we hear in the voice of Asgar in the timeless novel ‘River and Women’(Nodi O Nari) by Humayun Kabir.

“The flow of the river will always change. One bank will be eroded other will be accreted. It will leave the old channel and look for a new one - This is the principle of the river. Nevertheless, it does not forget the old channel- repeatedly returns to the old one. (Nodi O Nari, Humayun Kabir)

The stream of the river and erosion and accretion of the banks are in an inseparable harmony with human life. Human life is also a game of disruption and reconciliation, a tale of a long turnaround. And these ups and downs are more accurate in the lives of women. The joy of women in creating and making is the same. It is truer for the life of a Bengali woman. She leaves her past world and goes to the new world. Yet, she often returns to the old roots with deep compassion. All of this creates different levels of connection between women and river as well as river and women.

This resemblance of women with the river is not only found in creation of poetry and literature. Also in many places of mythology, rivers and women were united. The Tyro is a well-known Greek mythology river. Tyro was the daughter of Salmoneus of the Kingdom of Thessaly. She used to love the river god Enipeus. She used to sit by the river every day to see Enipeus. Meanwhile, God of the sea Poseidon fell in love with Tyro. One day Poseidon disguised himself as the river-god Enipeus and took Tyro to the estuary of the river Alpheus and Enipeus. There, Poseidon changed his disguise, and turned himself into waveform. Tyro was lost in that waveform. This is how the Tyro River was created.

The Alpheus River is considered to be a combined image of the river and women. Alpheus is the name of a large river in Greece. Originating from Arcadia, the river flows through the Aulis. The famous Olympia city is situated on the bank of this river. Arethusa was the companion of the beautiful goddess Artemis. One day while Arethusa was bathing, Alpheus saw her. Alpheus requested Arethusa to stay with him forever. Arethusa did not want that. So, she sought shelter from Artemis to protect herself. Artemis turned Arethusa into a fountain so that Alpheus can never touch her again, but the mad lover ran off to the fountain.

Then their loves began. Arethusa became intimately involved with the river Alpheus.

Again, the daughter of Inachus, Io flowed in the form of distributary. King Zeus of heaven was captivated by her beauty. Disguising himself into clouds, Zeus made love to Io. Her water became as delicious as dairy cow’s milk.

As the name of the goddess of heaven, Io was changed to Acis. Another exceptional river of Greek mythology is the Daphne. At one point, she became the image of a woman, at another point she became an evergreen tree. This is an outstanding comparison of life with the river.

In Indian mythology, in many places rivers and women were almost equally imagined. Uparichara Vasu of Puru Dynasty, was the king of the Chedi Kingdom. There was a river called Suktimati near his capital. Once, a mountain named Kolahala blocked the path of Suktimati and forcibly married her. The helpless Suktimati sought protection from the king. The king crushed the head of Kolahala with his foot. The king let the Suktimati float through the middle of the ruptured mountain Kolahala. Suktimati then gave birth to a boy and a girl like a human being. Suktimati handed over the children to the king. King married the girl and made the boy the commander of his armies.

In the mythology, the river Yamuna is also depicted as a human. The name of the father of Yamuna is Surya and her mother’s name is Sanjna. Born in the hills of Kalinda, Yamuna flows swimmingly over various Indian cities. As the elegance of Yamuna illuminates all around, Balaram sends her a marriage proposal. But Yamuna rejects the proposal by Balaram. Balaram had a weapon called 'Hall' or “Plow”. Being rejected, Balaram then tried to force Yamuna to move towards himself by digging the ground with a plow. Yamuna got scared. In the end, Yamuna, holding a statue of a woman, begged forgiveness to Balaram and was able to make him understand that someone is waiting for her. Balaram then let Yamuna go as she wishes. Therefore, in mythology sometimes the river has been transformed into a woman and sometimes the women into a river.

The river has been repeatedly compared to the female youth. As inundation comes to the river flooding its shores, in the same way youth comes to the body of a woman. Inundation comes to every curvature of the body. This is why poets, artists and literature lovers have found similarities with the curve of the river and the body of women. Many poetry, songs and fiction have been composed about inundation of womanhood, and the men who floated above the flood. The sweetness and beauty of the young woman that filled her youth is similar to the swerving coast of Padma to the poet.

There is no troubled coastline in the inundation of Padma

Some women are like topsy-turvy River

Some men come to know of the prayer of the women

(Fazal Shahabuddin, People, Men, Women)

Tried to find you in the youth of river, your curves, did not find the estuary of the river

Not only the poets and the litterateur were overwhelmed by the body of women reflecting in curve of the river and river reflecting in the curve of women body, not only they wrote about the body of women and curve of a river, many of the painters have also blessed this woman and the wonderful body gestures of rivers as well as their curvy lines. They too, in astonishment of fascination, unleash this undeniably beautiful creation with their paintbrush, by means of unique aesthetics. Patua Kamrul Hasan said of that wonderful curve and aesthetics-

Bengali girls are considered to be elegant universally. Each of their postures is unique. A girl is returning home with a pitcher on her shoulder through the banana field. The right portion of her body is leaning on one side of the body. It created a complete line of heels on the side of the girl or on the tied banana leaves which may seem like an ark of a river.

The poet sees the women in the flooded banks of the river, just as he sees a woman who is past her prime in the decayed river, in its dying tides, in the lost river.

The Dhaleshwari was young once

Now she is like a woman in distress, who past her prime

The aquatic sport of the mermaids at the wings of the wave has been stopped

Thus, the river is not just a young woman or an old woman, but the river is a reflection of the women of different ages. There are similarities between women and river in every layer. The resemblance is of different ages, different types. There are similarities with her anklet, with her smile, with her awakened wave of love. That is why river is sometimes like a woman in her youth or a playful adolescent or a lover.

Standing at the shore of the Padma, Nazumia looked around. The great river flows in front of him. The light strikes this morning, a glimpse of laughter in the heart of the river. The river is like a restless girl. But the restlessness is full of happiness. There is spontaneity, there is radiance, but whatever the emotion, there is no hint of destructive force.

The river is just like your own woman. In that sense, river is youthful like a newly-married bride. Sometimes she is like the beloved lady of compassion, companion of ups and downs, to whom our emotion and love can find shelter. With her we play the game of pride and prejudice, as well as ride the journey of love. To her the brightness of happiness can be shown, and at the same time to her we can breathe a sigh of sorrow.

Looking at the overflowing Padma, the mind of Nazumia was filled as well. The intense flows of monsoon Padma are calm today. There are still loads of water at the end of the Ashwin but the acuteness has decreased. Looking back, Nazumia thought Padma is like his housewife. How many evenings have they spent together, how many highs and lows they have faced and now their hair is turning grey.

Not just the young, the old, and the sparkling adolescents. Rivers and women have similarities in the stage of motherhood. The modern poet sees the river as a woman in her motherhood, a mother who hugs you, provides water, gives affection, and shows kindness. He sees a river as a woman in her womanhood, motherhood, maternity.

When a girl becomes a mother, I call her the River. Not only did the river become a symbol of women, or the poets and writers only see the shadow of different appearances of women in the river, they also used ornaments of women to describe the form, shape and nature of the river. The river is therefore an analogy of the ornaments of women - No one seems to know from where it has originated. They just know that it is a river. The mouth of the river meets the estuary of Meghna after flowing a long way. There is a little gap between the two sides of the bangles of village women, in the same way there is a gap between the two faces of Titas- also it is orbicular in shape like the bangles.

We hear the name of the Nod (Male River) along with Nodi (Female River). Often, we say Nod-Nodi. This distinction of Nod and Nodi is made on the basis of masculine words and feminine words. In Bengali, Hindi, Persian, etc., masculine words end in the letter “o” and the feminine words end in the letter “a”. So, the name of the river which is masculine, which ends in “o” are Nod (male river) and the name of the river which is feminine, which means in “a” is Nodi (female river. However, many have distinguished between Nod and Nodi by flow briskness.

One is flowing in an east-to-west direction and the other one is always flowing in a north-to-south direction. According to some, there are no branches and distributary of Nod (Male River). According to Wikipedia, a watercourse which is originated from basins like mountains, lake, fountain etc. and flows over different cities and falls into any other basin is called a river (Nodi). And when no branch is created from a river, it is called a Nod.

However, grammatically, the role of myths, religious and folk beliefs and proverbs play the vital role in dividing Nodi and Nod into female and male respectively in the culture of our subcontinent. And so, despite having a branch, the son of Brahma, Brahmaputra, has no chance of being considered as a female. Likewise, Himalayan daughter Ganga, she can be nothing but a woman. The interesting thing is Nod or Nodi whatsoever, they have been compared to women. Michael Madhusudan, therefore, finds the milk of mother in the stream of the Kopotakkho River

Always, O River, you peep in my mind.

Always I think you in this loneliness.

--------------------------------------------

Many a river I have seen on earth;

But who can quench my thirst the way you do?

You’re the flow of milk in my homeland’s breasts.

Again, river is compared to the youth of a woman. The poet as well used lonesome woman as an analogy of a monsoon river (Nod) -

Lonesome woman has strong affinity with the mirror

Looks again and again with pleasant surprises

Looks at the familiar face of river awakened in the cherished wave.

The loveable river has many similarities with the lovable women. As the river wave calls affectionately, drags the people close to her, spreads the love, pulls closer with mystery and turns the bend again. The woman, too, may be deeply entangled in the deepest mysteries of her own.

The woman is like a river, she comes close and blowouts

The bubbles of affection are silent far way, freely

Hidden in the bottomless mystery

The modern poet mixes up his beloved women with river such as women and rivers can no longer be distinguished. The desire for the beloved woman, the thirst for the beloved river ties him to bring the river and women in the same straight line.

I have come to know from calling to the estuary

Nobody knows your news; and the wave of Karatoya

Is calling me; But I have forgotten words how am I supposed to read

And thirstful scriptures are written in water! And oh the river of destruction! I have no claims;

I also forgot the language of the grievance; just give me back my droughty season.

Sometimes a lover prays that his beloved lady may become a river. Flooded him away like a river with blustery emotion and reckless love, and let him fall-

You are also holding the simple nature of a barbarian

Love the river and become like her; sing like the bird

River you flow with reckless emotion;

Floating on the two sides, destroying the cities

(Sohrab Hossain, Ekti Obangalir Premer Kobita, One poem of love by non-Bengali)

Again, the woman becomes the scene and the river.

I have reached the golden peak when I saw the scenario between you and the river. Then you have become the landscape and the river. In mythology, in poetry, in literature, in art, in mind and in intuitive of men, this is how the river and the woman stay together.

Thus, rivers and women bond in beauty, aesthetics, existence and physical presence. Rivers and women have become symbols of each other. The river is analogous to the curvature, elegance, beauty, as if women are just like a river full of affection, compassion, adoration, lust, love, youth and mystery. To understand the marvelous aesthetics, infinite beauty and the darkest mysteries of river turning into woman and woman turning into river, we have to take harbor in poetry again, while the poet looks through the beauty and serenity of Titas river and finds another Titas in her –

Have I never seen you bathing in the Titas?

Remember? Water falling down the stairs of the crematorium

Lotus on the pond. School of fish coming around

To nibble the fingers, there’s madness within the river

It’s like a warm river bathing inside another river

Titas turned up to rinse herself in her crystal-clear water

(River within Rivers (Nodir Bhetor Nodi, Al Mahmud)

**Different kinds of rivers**

Like many other fields, there is a classification of rivers in topographic aspect. Some rivers flow into a particular area, and some rivers cross the country and flow into a wide range of international courtyards. Again, some rivers only flow all around the country. The river is classified cconsidering all these. Tributaries and distributaries are also included. Here are the highlights.

**River and classification of river**

The word river is very familiar in our country. There are some rivers or branches of river per kilometer in Bangladesh. Some, in a continuous stream of years, has made the city scattered and vacant. Again, some rivers are stream-less watercourses. Most of these rivers are known as dead rivers.

The definition of river is, a natural stream of water of fairly large size flowing in a definite course or channel or series of diverging and converging channels. - Unabridged Dictionary, Random House,

According to Draft Bangladesh Water Policy, 2008, the definition of watercourse is such: “Water course" means a river or spring, a natural or manmade channel in which water flows regularly or intermittently, a wetland, lake or dam into which or from which water flows.

There are different types of river worldwide. Geographically, the river can be divided into three types. They are main stem, tributaries and distributaries. Where a river falls over another river, it is known as the tributaries. As such, all the trans-boundary rivers of Bangladesh fall within the category of tributary. Mahananda, Punarbhaba, Yamuna, Baral, Karatoya as well as Brahmaputra River are considered as tributaries. Gomti, Khowai, Monu, Juri, Longla etc. rivers fall into other rivers that is why they are considered to be tributaries. Furthermore, when a river is divided into two or more branches, they are called distributaries. According to this, Surma and Kushiyara are the distributaries of Barak River. But both of these rivers decline into the Meghna River and become its tributaries.

Under international law, the river is generally classified as National River, Trans-boundary River and Multinational River. Multinational rivers can be divided again in three ways such as Trans-boundary River, Regional River, and International River. Descriptions of different types of rivers are given below.

**National River** -The River that originates in a country and flows only over that country is called National River. The state enjoys exclusive sovereignty and authority only over the National Rivers. The Thames River of England is a glaring example of a National River.

**Trans-boundary River**: Rivers which flow through multiple states are known as multinational rivers or trans-boundary rivers. There is a total of 56 trans-boundary rivers in Bangladesh. These include the Ganges, *the Brahmaputra, the Gomti, the Teesta, the Surma, the Kushiyara, the Naf*, etc. The definition of trans-boundary river given at the Helsinki Conservation is, in short, that any underground and above ground watercourse that flows across the borders of two or more states. ("Trans-boundary waters" means any surface or ground waters which mark, cross or are located on boundaries between two or more States; wherever trans-boundary waters flow directly into the sea, these trans-boundary waters end at a straight line across their respective mouths between points on the low-water line of their banks).

**Common River:** Rivers that are owned or shared by more than one state are also known as common rivers. As such, trans-boundary rivers, borderrivers, and international rivers are also known as common rivers.

**Border River**: The river that runs between the borders of two states is the Border River. The border river is known as the border of two states. For example, the Naf river is situated on the border of Bangladesh and Myanmar. Similarly, the Rhine is considered to be the border between Germany and Switzerland, the Detroit River between the United States and Canada, and the Amur River between China and Russia.

**Regional River:** Rivers that have no connection to the sea but flow over multiple states are called Regional River, e.g. the La Plata basin of South America.

**International River**: The rivers that flow through multiple states and fall into the sea are International rivers. For example, the *Ganges,* the Nile, the Amazon, the Danube river, etc. And about 216 (Two hundred and sixteen) rivers in the world have been considered as international rivers. International rivers are also known as trans-boundary Rivers.

Trans-boundary Rivers: Bangladesh is a riverine country. There are about 300 big rivers in Bangladesh which, divided into more than 400 tributaries-distributaries, impact the geographical, economic, social, and cultural life of the country. As mentioned earlier, 57 of the rivers of Bangladesh originate from neighboring India and Myanmar. Among these trans-boundary rivers, *the Ganges or the Padma, the Jamuna, the Meghna, the Karnaphuli, the Feni, the Khowai, the Gomti, the Monu, the Teesta,* etc. are notable. The amount of water carried by these rivers is the third highest in the world: Bangladesh ranks right after the Amazon and Congo rivers.

Every year about 2 billion tons of silt flows into Bangladesh through the 57 trans-boundary rivers from India and Myanmar. At present 75% of the water-borne sediments are stored in rivers, 15% in the estuaries, 5% in the floodplains, and the remaining 5% in the seas. Before the partition of India, rivers, tributaries, and distributaries had a deeper and wider capacity, so the velocity of river stream was higher. That is why water-borne silt could not settle in the river. 95% of the huge amount of sediments would spread into the sea and the remaining 5 percent would fall in the floodplains. According to experts, based on an annual rainfall of 10 lakh cubic meters per square kilometer, Bangladesh gets more than one lakh 55 thousand crores cubic meters of water per year. One trillion cubic meters of water is available between June and October, and 50,000 crores cubic meters of water is available in the remaining months. As one-fourth of the country is lowland, 98 percent of this water goes to the sea.

Trans-boundary Rivers of Bangladesh: Bangladesh has 57 trans-boundary rivers common with India and Myanmar. Among them, 54 rivers are connected with India, and 3 rivers with Myanmar. The names of the Trans-boundary Rivers and the districts through the streams flow are mentioned below:

1. *Raimangal Satkhira District*
2. *Ichamati/ Kalindi Satkhira District*
3. *Betna/ Kodalia Jessore District*
4. *Bhairab /Kobadak Chuadanga, Jessore, Khulna District*
5. *Mathabhanga Kushtia, Meherpur, Chuadanga District*
6. *Padma Chapainawabganj, Rajshahi, Natore and Pabna District*
7. *Pagla Chapainawabganj District*
8. *Atrai lower Nagaon, Pabna District*
9. *Punarbhaba Dinajpur, Chapainawabganj District*
10. *Tetulia (Tulai) Dinajpur District*
11. *Tangon Panchagarh, Thakurgaon and Dianjpur District*
12. *Kulik Thakurgaon District*
13. *Nagar upper Panchagarh, Thakurgaon District*
14. *Mahananda upper Panchagarh. Mahananda lower – Chapainawabganj, Rajshahi District*
15. *Dahuk Panchagarh District*
16. *Karatoya Panchagarh and Dinajpur District*
17. *Talma Panchagarh District*
18. *Ghoramara Panchagarh District*
19. *Deonai-Charalkata-Jamuneswari Nilphamari, Dinajpur, Rangpur District*
20. *Buri Teesta Nilphamari District*
21. *Teesta Nilphamari, Lalmonirhat, Rangpur, Kurigram, Gaibandha District*
22. *Dharla Lalmonirhat, Kurigram District*
23. *Dudhkumar Kurigram District*
24. *Brahmaputra Kurigram, Gaibandha and Jamalpur District*
25. *Jinjiram Kurigram District*
26. *Chitalkhali Sherpur District*
27. *Vogai Kangsha Sherpur, Mymensingh, Netrokona, Sunamganj District*
28. *Nitai Mymensingh, Netrokona District*
29. *Someshwari Netrokona, Sunamganj District*
30. *Jadukata Rokti Sunamganj District*
31. *Jadukhali Dhamalia Sunamganj District*
32. *Noyagang (Khasiyamara) Sunamganj District*
33. *Umium (Shila ) Sunamganj District*
34. *Dhala Sylhet District*
35. *Piyain Sylhet District*
36. *Shari-Goyain Sylhet District*
37. *Surma Sylhet, Sunamganj, Habiganj and Kishoreganj District*
38. *Kushiyara Sylhet, Sunamganj, Habiganj and Kishoreganj District*
39. *Sonai Bordol Sylhet District*
40. *Juri Moulvibazar and Sylhet District*
41. *Manu Moulvibazar District*
42. *Dhalai Moulvibazar District*
43. *Gopal Langra Moulvibazar District*
44. *Khowai Habiganj District*
45. *Sutang Habiganj District*
46. *Sonai Habiganj District*
47. *Haora Brahmanbaria District*
48. *Bijni Brahmanbaria District*
49. *Salda Cumilla and Brahmanbaria District*
50. *Gomti Cumilla District*
51. *Kankra Dakatia Cumilla District*
52. *Selonia Feni District*
53. *Muhuri Feni District*
54. *Feni Khagrachhari and Feni District*
55. *Sangu Bandarban and Chattogram District*
56. *Matamuhuri Bandarban and Cox's Bazar District*
57. *Naf Bandarban and Cox's Bazar District*

**Thoughts on water**: “There are more than 260 international rivers in the world. These rivers fulfill 60 percent of the demand for potable water or freshwater. So, a total of 145 countries are largely dependent on the water of these trans-boundary rivers. About 40 percent of the world's population lives in areas with international rivers. As a result, the international rivers are of immense importance for the mutual relations of the sharing states, peace and reconciliation, development and environment protection, and above all for the way of life of the people of these areas. The need for freshwater for agricultural development, improvement of communication system, industrial development, power generation, urbanization, etc. of a country or a region is now extensive in the economy.

The use of freshwater is continuously increasing in geometric progression. The increased demand for fresh water is creating pressure on the use of the most convenient source of freshwater, rivers. As the flow of water is natural, its supply is limited. Apprehending a severe water crisis in the future, many countries have adopted various plans to adapt their water management to meet future needs. In many parts of the subcontinent, tension is already rising due to lack of water. Many people say that freshwater will replace petrol in case of future demand and water resources will play a vital role in politics and the economy. Moreover, many countries in the world will be involved in water conflicts with their neighboring countries. In this contest, American jurist, Professor Bryan S. Word has expressed his concern, “It is becoming acknowledge water is likely to be the most pressing environmental concern of the next century.” Due to its multifaceted demands, water will be the ‘liquid dollar’ in the coming days. As the desperation for water increases, the world’s political and economic security may be under military threat.

‘Water occupies 75 percent of the world's surface. A lot of discontent is occurring these days over water resources. Many countries are even smuggling water for their narrow self-interest. Like other issues of global importance, the United Nations, considering the importance of water, lavishly celebrates Water Year. In that context, the year 2003 was declared as the “International Year of Freshwater” by the United Nations. There is no aspect of lives which does not have a use for water. Why simply talk about human beings when no living organism can survive without water? Can one imagine an earth without water? An analysis of the water use fields at this stage shows that 69 percent of the used water is being utilized in agriculture, 23 percent in industry, and only 8 percent for domestic use. As water resources are limited compare to other resources, severe water crises are now spotted in many parts of the world.

According to a research conducted in 1990, about 370 million people in 28 countries did not have access to the water they needed for livelihood. The world's population is growing gradually. But there are no possibilities of increasing the sources of water. So, water crisis is rising, and will rise, day by day. In light of the current situation, it has been estimated that by 2025, about 3 billion people from 46-52 countries will not have access to the water they need for living. If such a large number of people are deprived of water, the situation will undoubtedly take a dreadful turn. Ismail Serageldin, the former vice president of the World Bank, may have apprehended such a possibility when he said, in a 1995 report, that “most wars of the current century have been over oil; in the next century there will be wars over water”. Some indications that his fears were not groundless have already started to appear. Many countries in the world, including the subcontinent, are dedicatedly trying to establish dominance over international rivers in violation of international norms. 2.5-3 thousand years ago, people could not conquer nature as they do now; they had not achieved technological excellence then. As a result, certain communities had to be destroyed in the face of natural adversity. Today, when the earth is very advanced, as people are busy developing housing on Mars and we live amid the extreme excellence of science, about 10 thousand children under the age of 3 of the underdeveloped countries die every day due to lack of drinkable water. Even after creating such an affluent world, we cannot prevent the extinction of human beings. We cannot ensure the right to drinking water for all, as well as a poverty-free world. Moreover, in some cases, this society has proceeded in the opposite direction and has polluted the water sources, pushing the world to the edge of destruction.

Since childhood we have known that the other name of water is life. Under no circumstance is it possible to live without water. Not just to humans or animals, this is equally applicable to the trees. In fact, without water, the earth might not have been created. Just as we have not been able to overcome our dependence on nature despite the unprecedented and uncountable advances of science, we have not been able to find alternatives to water. Water is not only essential to all elements of our daily lives; it is also intricately necessary for all productive mechanisms and industrial activities. The boat of human civilization is still floating around this water: in a broader sense, water has kept the earth functional. The contribution and presence of water is not limited to food and production systems. The importance and significance of waterways for transportation are also immense since time immemorial. Water-based routes formed the basis of the development of the primitive societies into civilizations. Large-scale habitats and provinces were formed on the banks of the river to facilitate water supply in the agricultural production system; similarly, for the expediency of communication, cities and trade centers were developed on river banks as well. Sociologists have termed these ancient civilizations along the river as riverine civilizations. In this process, the world's most ancient civilized societies were formed in the valleys of the Nile, Huan, Euphrates, and *Ganges.* The ancient cities of our country were developed in the same manner. *Paharipur, Mainamati, Pundravardhana*, and the recently-discovered *Wari-Bateshwar* were also developed due to the communication accessibility of waterways. Even presently, the livelihood and economy of the riverine Bangladesh are entirely dependent on its waterbodies. Our rivers, canals, ponds, marshlands, and seas have been making significant contribution to the production system as well as to the transportation system.

If we look at the source of water in the global context, it can be seen that the current amount of water in the world is 344 million cubic miles. Of this, 315 million cubic miles, or 93% is seawater. 9 million cubic miles or 2.50% is groundwater. 7 million cubic miles or 2% of water is frozen or stored in the form of ice. 53,000 cubic miles of water exist in the surface level rivers, lakes, ponds and watercourses. 4,000 cubic miles of water exist in the humidity of air and 3400 cubic miles of water exists in all living things, including the human body.

As mentioned before, more than 69 percent of the world's water resources are now used in the agricultural field for harvesting. 23% is used in industrial undertakings and only 8% is used as drinking purpose and in the daily household. Furthermore, hydropower plants generate about 35% of the world's electricity. Even in this aspect, the practical worth of water is enormous.

According to estimates, the world needs to produce 200 kg of food per capita every year; for the production of this food we have to depend largely on water. The production of waterless food or grain is like an illusory imagination. Here is an overview of how much water is needed to grow some crops. The average water requirement is 1900-6000 liters per kg for rice and 900-2000 liters per kg for wheat, 1100-2000 liters per kg for corn, and 500-1500 liters per kg for potatoes.

In order to assess the importance or necessity of water, I am shedding light on the production of some local food grains. In the fiscal year 2009-2010, the total production of food grains in the country was 341.13 lakh metric tons. Of this, the production of Aush[[38]](#footnote-38) rice was 17.09 lakh tons, the production of Amon[[39]](#footnote-39) rice was 122.07 lakh tons, the production of Boro[[40]](#footnote-40) rice was 183.41 lakh tons, the production of Wheat was 9.69 lakh tons, and production of corn was 8.8 lakh. Try multiplying the number of crops produced by the required amount of water to see how much water is needed each year for food production. There was a time when we were completely dependent on natural means for agriculture but we are no longer in that position owing to scientific methods of cultivation. Now almost all the agricultural production of this country is dependent on irrigation. In the 2010-11 fiscal year, surface water has been used for irrigation in 21 lakh 98 thousand hectares of land. 39 lakh hectares of land has been irrigated through deep and shallow tube wells. In order to provide water from underground reservoirs, not only are we heading towards environmental catastrophe, but we also have to tackle the issue of arsenic. Right now, no district in Bangladesh is free from the effects of arsenic. Eighty-five million people in 270 Upazilas of 61 districts of the country are now exposed to arsenic contamination. In some areas, it has spread in the form of epidemics. It is now identified as catastrophe for our environment as well. Due to arsenic poisoning, the people of our village are suffering from 23 types of deadly diseases. We have to constantly look for a way out of this and are having to spend a lot of money on it. Needless to say, this catastrophic situation has arisen through the circulation of groundwater. If we could have increased our dependence on surface water or if we could have collected water from rivers, ponds, canals to fulfill our needs, we would have been saved from this disaster. We would not have fallen into the rage of arsenic. But it is a matter of regret that we have not yet walked onto that path and have instead taken a shortcut to draw water from the ground, leaving a terrible fate for future generations. Just as we are leaning more and more towards groundwater in agricultural, we are also depending more and more on it in our daily life. In this regard, some light may be shed on the water supply in the Dhaka metropolitan area. In 2010, Dhaka WASA has supplied a total of 2087.50 million liters of water per day. Of this, 1831.20 million liters were supplied from underground sources and only 256.30 million liters were supplied from the surface. The water level is constantly decreasing due to the excessive extraction of water from the bottom of the soil. In the last 7 years, this level has come down to 20 meters. The water level has dropped by an average of 2.81 meters every year. If the current trend continues, it is expected that by 2050, the groundwater level of Dhaka city will fall by 120 meters. What will happen then? That is indeed a heavyweight question.

Unplanned extraction of ground-water is causing the water level to go down day by day. A report on this has been published in “The Daily Prothom Alo” on 23.05.13. The report, titled "Water Level Goes Unplanned”, says that “unplanned lifting of water year after year has caused the groundwater level to plummet. In some places the water has receded 170 feet below sea-level. The saltwater of the south is gradually moving towards the north. Already 17 percent of the area is under threat.

Last Wednesday in a seminar organized by the capital’s Institution of Engineers, Bangladesh (IEB), agriculture, water, and environment engineer Iftekhar Alam portrayed the horrifying image. While making recommendations, he said, “What we have to do now is return the water we have extracted from the ground this year to the ground next year". Md.Mesh-Ke-Alam, Chairman, Department of Agricultural Engineering, IEB, presided over the seminar on “Impact of Climate Change on Agriculture and Environment through Unplanned Groundwater Extraction.

The keynote speaker at the seminar held in the seminar room of IEB said that after 14 years of research, he has collected horrifying information about groundwater. He said: "Shallow tube wells in this country had started to fail after the water level had gone down. Earlier, water used to go down by one meter of water in 10 years. Now, two to three meters of water goes down every year. Ainun Nishat, water expert and vice-chancellor of BRAC University, said at the seminar that water is excessively salty now, and the main culprits are countries in the European Union, China, and India etc. However, a lot of work is being done in this country on eco and climate methods. This activity is enviable to many countries. Speaking as the chief guest, IEB President Shamim Z. Bosunia mentioned the importance of mass awareness regarding the increase of saltwater in clearwater sources.”

Today there is no end to the worries of scientists about the global water situation. Scholars are constantly struggling to figure out where this horror will end up in the future. In this regard, a report published in the Daily Prothom Alo on 27.05.2013 titled "By 2050, half of the world's population will be in a crisis of clean water: Collective Declaration of Top 500 Scientists", quoting The Independent, stated that "the world's population could reach 9 billion by 2050. Half of which might face a severe water crisis. Failure of governments in facilitating international efforts to protect and preserve this vital element of life could result in such a situation.

The first signs of a future water crisis in the world will be that people will move from water-scarce areas in large numbers to the areas where they will get water. Because of this, political tension may arise. The world's top 500 scientists in the field of water research have mentioned these possibilities in the collective declaration. The declaration was presented at a meeting titled "Global Water System Project" in the German city of Bonn. Scientists say that the mismanagement and misuse of water resources, which are becoming increasingly scarce, are pushing the world to the edge of a water crisis. They also said that human activities (such as landslides, pollution, river dredging, etc.) have caused major obstruction in the supply of clean water. In addition to rivers, groundwater is also being polluted by anthropogenic causes. As a result, by 2050, more than 2 billion people worldwide will be in dire need of clean water.

In the next one or two generations, most of the world's 9 billion people will have to live with a severe shortage of clean water, scientists have warned in that collective declaration. Scientists have found that water is going to be a critical issue that could hinder global human development in the 21st century. Scientists working on the Global Water Resources Project have concluded that the rate at which global water use has increased and the rate at which existing water sources are permanently decreasing is close to an extreme catastrophe that could reach global edges soon. However, they also warned that it is not possible to estimate how dreadful this level could be in the global context with the existing scientific knowledge.” In the face of these warnings and realistic problems, we have also become alert. Realizing the dreads of the future, we are taking effective action and have become cautious about using surface water. Even in the midst of all the negative news, sometimes a couple of positive news catch our attention. In a similar news report, the Daily Prothom Alo of 07-06-2013 wrote, "22% of the water supplied by Dhaka WASA is coming from surface sources. Four years ago, the amount was 9 percent. The target of supplying 70 percent water from surface sources by 2021 will be met earlier. Last Thursday, Taksim A Khan, the managing director of the company in charge of water and sewerage maintenance of the city, said this in a keynote speech at a seminar on "Environmental-friendly Water Management: Achievements of Dhaka WASA". He said at the seminar held at CIRDAP auditorium, jointly organized by Dhaka WASA and Bangladesh Environmental Movement (BAPA) that, "Over-reliance on groundwater has destroyed the environmental balance in Dhaka city. The risk of landslides in the city has multiplied. There is no alternative to increasing dependency on surface sources to overcome this situation.

According to the article, the daily water demand in the WASA supply areas is now 213 to 214 liters. But for the first time, WASA is producing more water than the demand. WASA's production capacity is now 242 liters”.

In this regard, all the water sources including surface-water supply has to be made effective. If necessary, new reservoirs have to be built as per the demand. We need to find ways to retain seasonal rainwater. At the same time, measures should be taken to keep the reservoir water clean and to prevent water wastage. If we do not ensure the mandatory supply of water through these measures, it will be difficult for us to prevent the disaster.

**Our rivers**

53 rivers flow from India to Bangladesh, one river flows from Bangladesh to India and 3 rivers flows from Myanmar to Bangladesh- these 57 rivers are acknowledged or recognized as the international rivers of Bangladesh. Including these, the number of rivers in the country at present is 710. Although it was previously considered to be the land of 1300 rivers, the situation is not the same anymore. Now our discussion and research revolve around 309 rivers. Once the *Padma* River was our pride. It is well known from historical evidence that states developed in this area centered on the *Padma* or the Gangetic valley. The agricultural system of the delta region developed and prospered because of easy access to water. Over time, the *Padma* has almost been abandoned. The river lost its youth in the turmoil of Farakka and now it is running like a broken old lady. Even 40 years ago, the sound of the rhythmic waves of the river could be heard from two to three kilometers away. Now it has no rhythm. Only silence is visible, only the sound of snivelling is heard. It is hard to believe that big steamers used to once pass this river flowing by the side of Rajshahi city. Due to the impact of non-environmentally friendly Farakka, large areas of Bangladesh are already facing a water crisis. Darkness has descended upon the irrigation system and fishery. Hundreds of species of fish including hilsa are on the path to extinction. Waterways filled with the lyricism of boatmen have begun to disappear. Rivers like *the Kumar, the Kali, the Mathabhanga, the Bhairab, the Jalangi, the Nabaganga, the Dakua, the Hisna, the Bhaimara, the Morka*, and the *Chandana* which were once full-grown rivers in their youths, are now dying under the stress of early senility. With time, maybe one day these rivers will only exist in textbooks. The tale of the watercourses will not be sung by the voice of any Baul[[41]](#footnote-41). On the other hand, the *Brahmaputra* is still flowing in its way with limitless sand beds. Although the old Brahmaputra stream somehow survives in the form of a thin stream. Like the Padma, darkness has not yet descended on the original *Brahmaputra*. However, there are ample reasons to worry about how long the Brahmaputra will be able to sustain its existence due to the ongoing tussle over rivers on a global scale. Because the rising Chinese community have already cast an evil eye on this river. Tsangpo Dam is being constructed at the origin of this river. The Chinese are building the world's largest dam there. This is a wonderful installation in terms of engineering. The dam is being built at the mouth of the source of the river Tsangpo. Currently, about 70% of the *Brahmaputra* flows through this river. On the eve of the implementation of the Tsangpo project, a limited range of atomic explosion will be generated and about 16 km of tunnels will be created to divert the existing waterways and with the help of that tunnel, 70% of the water flow will be diverted into China. They will generate 40,000 MW of electricity through the implementation of this project. And the power plant will be used to irrigate the Xinjiang and Gansu deserts.

Through this great procedure, water will be supplied to the desert areas around 400 miles away. Although the project may seem like a lucrative project to the Chinese, experts believe that its geological consequences will be devastating. Through this, 100 species of orchids and 400 species of different plants will disappear forever. NASA further thinks that any disaster in this risky project could lead to the destruction of the whole of China. Still, the suicidal dam-building project has not stopped. 70% of the water will be drawn inside China and the remaining 30% will flow towards the Brahmaputra. This will reduce the existing flow of the Brahmaputra from 70 to 30 percent. As a result, a large portion of the population of Bangladesh and extensive areas of India, will have to face a catastrophic water crisis. Moreover, the fear of the desertification cannot be completely dispelled. In addition to these future fears, the negative effects of the problem we are currently facing further exacerbate the danger. The rivers in our cities are already polluted to a terrible extent. The Buriganga, the Turag, the Shitalakshya, the Karnaphuli are severely polluted due to human misdeeds. Due to the unrestricted disposal of industrial waste, these rivers have lost their natural features. The water of the Buriganga is no longer in the condition to be purified. Due to this pollution, on one hand, the fishery is on the verge of extinction and on the other hand, industrial or agricultural production is not possible with this huge basin. Wetlands are shrinking day by day due to unplanned urbanization and overpopulation.

We have not yet built any heavy industries here. Although the industrial sector still accounts for only 29 percent of the national income, we are nevertheless paying a heavy price for this. The rivers are getting polluted. The watercourses are shrinking day by day due to negligence. We are failing to preserve the rainwater and the flow of the rivers in rainy seasons. As a result, the dependence on groundwater is increasing day by day. Effective steps should be taken mandatorily to re-establish the identity of the riverine society and prevent the disruption of public life. The more we make delay in this regard, the more we will fall behind. From time immemorial, we have emphasized the need for water management in the subcontinent. 2.5 thousand years ago, even at the time of *Kautilya,* there was a method of water management and an irrigation system. Water was of paramount importance. Sociologist Wittfogel named our society as the Hydraulic society. His research has shown that since time immemorial, water management has been a major part of governmental work for the kings of the region. As the field becomes more and more significant in the present context, there is no scope for leniency in this regard.

In this regard, we have to activate and purify our water sources taking into consideration the effects of *Farakka, Tsangpo, Tipaimukh,* the future of international rivers, and the ill-effects of groundwater water. Any compromise in this regard means a welcome invitation to destruction. We have to come forward so that we do not get lost in the abyss like *Harappa* because of the fury of carelessness. We have to think profoundly about the water issue. We have to remember that the other name of water is life.

Our cities have already started to cry of distress over lack of water. In many areas of Dhaka and Chittagong city, the water crisis sometimes becomes severe.

The situation is becoming more alarming as the water level of many areas along with the Barind area is going down. Right now, 75% of the water we use for irrigation comes from the underground water and the rest from rivers, marshes, canals, and other reservoirs. Already the underground water layer has decreased at an alarming rate. We do not know where this situation will lead us in the near future. The supply of surface-water is also at a vulnerable stage. On an analysis of the surface-water situation, we see that 51% of the water comes from the Brahmaputra whereas 28% comes from the Padma river; 14% comes from the Meghna and only 7% comes from rainwater.

The condition of the rivers is not promising either. Almost all the rivers are at stake less or more. The *Buriganga* suffered an untimely death due to the waste emanated from 151 tannery factories situated near it. Sulfuric acid, Chromium, ammonium sulfate, Calcium oxide have been dumped unrestrictedly and has completely contaminated the water flow. The pollution has reached such a level that it cannot even be refined anymore. The Buriganga could have been an easy and affordable source of water for the people of Dhaka. But it is our bad luck that it has become unhygienic to even walk along that river. The same situation is applicable in the case of the *Shitalakshya, the* *Turag,* and the *Karnaphuli.* Because of the uncontrolled flow of industrial waste, these rivers have lost their inherent features and pride. Now, even with binoculars, no fish can be traced in these rivers. The water of these rivers cannot be used in domestic chores let alone other activities. Additionally, the rivers emanate a rotten odor. Thus, industrial waste, chemical pesticides, narrow mindsets, and mass unawareness is not only destroying the natural balance but also creating a dark and uncertain future.

During childhood, we knew our country as a riverine country. Rivers were intricately connected to our lives like a web. Tales and images of rivers were an inevitable aspect of literary works. Earlier, if one started for Chattogram from Dinajpur, they had to cross several rivers on ferries. Now, ferries are no longer necessity due to the evolution of time and the results of development.

Moreover, rivers also do not have waves like before. What once used to be the land of 1300 rivers now has only 710 rivers. 57 of them are trans-boundary rivers. And 54 out of those 57 are connected with India and rest threes are with Myanmar. There are endless contentions with regard to water of these international rivers. Besides, 200 crore tons of silt used to come from the upstream before, whereas now, we get only 100 crore tons. Because of the accumulated silt, the river bed is getting filled day by day. Thus, the rivers are losing navigability and water-containing ability at the same time. Against such a backdrop, the barrages made by the adhering countries have added further blows by obstructing the normal flow of the river. Because of the Farakkha barrage alone, at least 30 rivers in the Padma river basin have died by losing their navigability. The Gorai river which Rabindranath Tagore once used for river cruise is now so dead that it can be passed without even pulling your clothes over the knees. Apart from these external factors, a negative mindset towards the river has also accompanied the ruining. Even after taking birth in a riverine country, we have less, and in some cases, no affection for the rivers. Why we have such a negative mentality towards reservoirs is a matter of research now. The rivers that dominated the courses of our lives are now on the verge of extinction. The river called the ‘Mora Sati’ (dead widow) in which we used to swim in our childhood s has been replaced with a series of multi-storeyed buildings. The canal situated at Dholaikhal has been subjected to such mistreatment that it is almost lost from the map of Dhaka city. It has now become the Dholaikhal road instead of canal. Thus, the sources of water are narrowing down at such a rate that in the near future, there will no longer remain any reason to identify Bangladesh as a riverine country. Once it was unimaginable to conduct business, commerce, and travels without waterway; the southern part of the country would be filled in monsoon with the boats of boatmen. Now, the navigability is only 6 thousand kilometers during monsoon and during other times it decreases to 3 thousand and 8 hundred kilometers. But even 50 years ago, this riverine delta had waterways that covered about 60 thousand kilometers. With the advancement of development, roads are expanding in geometric progression. With the expansion of roads, waterways have decreased and has lost navigability at the same rate. At the same time, the ability to contain water has also decreased. Even then, the tendency of encroaching rivers has not decreased. We frequently see reports on newspapers regarding these illegal encroachments. The report published on 22nd March 2012 in The Daily Bangladesh Pratidin titled “*Shitalakshya Dokholer Mohotshob Cholchei”* (The occupation of the *Shitalakshya* is still on) clearly indicates that soon there will be no existence of that river. The encroachers have such audacity that they sometimes attempt to occupy the *Meghna* river as well.

With the emergence of the modern era and urbanization, rivers have been subjected to utmost aggression. This scene has been witnessed in many places of Europe and Asia. Nowadays, we are amazed to see the Seine river of Paris or the Thames river of England. These rivers are now great sources of entertainment. Once, rivers were also polluted with industrial waste and had become undrinkable. The people who lived on the river brinks felt like dying due to the intolerable odor of the polluted water.

In such a case, the Arrayriver located at Bradford city in Britain can be used as an example. The drinkable water of the river had once helped build an industrialized city near it. More than 200 industries were established there. With the evolution of these industries and the dumping of wastes, the water of that river had become poisonous and undrinkable. The factories emitted large amounts of pollutants including sulfur and the air pollution had become deadly. The pollution reached such a level that Bradford soon became the most polluted city in Britain. Diseases like cholera, typhoid took over and made the life of people stagnant. Research shows that at that time only 30% of the children of the laborers could live up to the age of fifteen. The rest of the children used to die before that. The average longevity of the laborers of that city was only 18 years, whereas nowadays the average life expectancy of the people is 78-80 years. The pollution level of water and the environment reached such a level that the city became unfit to live in. Now, the city is no longer in that state. The river is now flowing in its own path. With the passage of time, Britain has overcome those dark days and is now living with unobstructed water flow. They are now a hundred percent conscious about the environment and rivers. The emerging industrialized country South Korea as well as Singapore once faced serious pollution in the Han and the Singapore river respectively. The water of the rivers had become undrinkable and the river banks had become impossible to walk by. It was difficult to breathe near the river due to the intolerable smell of polluted water. However, the scenario is now different; those rivers are widely contribute to the tourism of these countries but are also considered as sources of drinkable pure water. The governments no longer allow pollution in these rivers and take strict measures to reserve the water flow of the river. But what are we doing?

**River and waterways communication**

As the human civilization progressed from animal-rearing and horticultural production to agricultural societies, the need for surplus produces were felt and accordingly, people had to travel from one place to another to barter these goods. Since those time, waterways began to expand and develop. The path of history afterwards is more or less familiar to us all. The merchants began to travel from one port to another. Because of the easy communication system through waterways, ports, as well as administrative establishments of the then ruler, were established on the river banks. The scope of communication through waterways was rich in this valley. Even 50 years ago, the southern part of the country depended on the waterways communication system.

The first blow to the waterways communication system in our land took place in 1862. In 1862, the first railway system was built from Darshana to Jagati. Gradually, the railway system t expanded and the waterways narrowed down. Later, in the 60s of last century, roads of the district board were established. In the post-independence era, the road-transport system was further expanded. Nowadays almost every sub-district road is connected with the capital. According to a research in 2012, the length of roads in the national highways is 3570 kilometers, regional highways are 4323 kilometers, district roads are 13678 kilometers (Bangladesh economic review 192). Presently, more than 80% of the goods in the countryside and more than 88% of the passengers are transported through roads. With such expansion of the road transport system, roads have been made through reservoirs like *Chalan Beel* on one hand and the waterways communication system through the *Atrai* river and the adhering areas have stopped on another. Once, Poet Rabindranath Tagore used to come from Shilaidaha and Shahjadpur through waterways and would catch the train for Kolkata: that history is all but lost. Rizia Rahman’s memories of Goalunda ghat and steamers going to Narayanganj have also been forgotten. Uncountable waterways now merely exist in the pages of history.

But, even during the 18th-century waterways were the essential transport systems of this part of the world. Alexandar Dao wrote – Here there is a canal for every village, a river for every parganah(district), the Ganges has kept opened many doors of exportation for the whole country by flowing in different streams and lastly falling into the ocean. Apart from one or two areas, waterways communication used to be active everywhere even during the summer. Usually, rivers could be found within 15 kilometers. Food and salt for 1 crore people have transported annually. Almost 3 lacs people use to earn their livelihood in this profession. The people of this country used to find a river port within every 15 kilometers just as the French people today can find underground railway station within every 400 meters. If we look at the history, we see that the Chinese ambassador Ma Huan came to Bengal from China in 1432 and traveled to Pandua from Chittagong through Sonargaon. Ma Huan said that travelers used to travel with small boats from Chittagong. During the 15th century, Nicola Conte came to Saranovete which is now called Sonargaon. He described that it was a big and affluent city and the rivers were so wide that one bank could not be seen from the other bank. In some places, it was 15 miles in width. There were houses, gardens, and other establishments on both sides of the rivers where many types of fruits used to be grown. From there he went to the Bufetania or Chattogram and later went to Arakan.

In 1586, English traveler Ralph Fitch came to Sonargaon from Sreepur. He mentioned Chand Roy, the Zamindar of *Sreepur*. *Sreepur* was like an island near *Rajbari* at the confluence of the *Padma* and the *Meghna.* Later, the two rivers came too close, and *Sreepur* got washed away. Sreepur was 18 miles far from, *Sonargaon,* which Fitch called a city. In *Sonargaon*, Fabrics were made from handlooms and there were factories of handloomed fabrics. Isha khan was the ruler of *Sonargaon.* Fitch also mentioned the fact that Isha Khan was the leader of the Zamindars and an ally of Christians.

Nowadays in various researches of this type, the great story of the waterways of Bengal is written. Information is being collected on this matter by analyzing different elements of the history. If the texts along with other elements found in the Bengali literature if analyzed properly, it can be found that all types of affluent cities-ports, establishments, and commercial centers were established beside these rivers. Thus political and economic activities flourished all over the country. But because of the sudden change in the courses of the rivers, many of those commercial centers, cities, and ports were destroyed from time to time, economies collapsed and dynasties went extinct. From the copperplates of King *Devpala,* it was found that the *Pala* kings had a good economic relationship with the *Shailendra* kings of far-east. Most probably these commercial activities were carried on in the *Tamluk,* Chattogram port of Bangladesh. From the history of the *Chandra* dynasty of south-east Bengal, it is assumed that commercial relationship between them and the West had existed. From those writings, it was also found that during the eleventh century, Chola king Rajendra Chola of the south attacked Govindachandra mainly because of economic, rather than political affairs. In the Tirumalai plate of *Rajendrachola,* Bangladesh was mentioned as ‘*Bongaladesham’.* Experts opine that this type of collision took place most probably to establish domination over river ports of east Bengal.

A rich naval industry was established in this area Because of the development of a river-based communication system. This naval industry had a very special place in the history of the economics of Bangladesh. This industry used to make docks that are used in rivers and seas. Additionally, the literature of Chattogram or the middle age contains its proof. Also, ancient inscriptions of Bengali land Sanskrit literature contained such shreds of evidence. In The *Harha* inscription of *Maukari* King *Ishanvarma* (6th century), the inhabitants of *Gauradevash* were named as *Shamudrashayana.* Poet *Kalidasa* in his epic *Raghuvansham* described the Bengalis as *Naushadhanoudhwatana* in the context of victory of Raghu. Apart from those words, *Naubata,* *Naubitana* were found in the inscriptions of the *Pala* and the *Sena* dynasty. So, from those, we can assume that, in the far past, the military power of other dynasties also depended on the navy. The *Kamaouli* copperplate of *Baiddadeba* also has descriptions of naval war. It must be mentioned that in most of the cases the water vehicles were essential for the transportation and business of the riverine, canal-prone Bengali nation. Poet *Kankana Mukundrama* in his poetry book ‘*Chandimanga’* wrote that the boats were often 300 meters in length and 200 meters in width. Dij Bongshidash in his epic *‘Manasamangal’* wrote that those boats used to be 100 meters long. But this information is considered to be exaggerated. But the heroes, such as *Chand shawdagar, Dhanapati Shawdagar* of *Manasamangal* used to sail for commercial purposes with these boats. The *Gunaighara* copperplate of *Benwagupti* (507-8 A.C) also contained data about naval communication or river ports or harbors.

At different times, many travelers made multidimensional descriptions of Bengal’s waterway communication system in their writings. In ancient times, the major path of commercial communication was conducted through the countless rivers, canals, pores, and other waterways. But this is also true that there were many roads and land-based transportation ways. Famous travelers like Faxian and Xuanzung described these scenarios in their writings. The copperplate of Damodardev of 1165 clearly mentions these types of roads. In 200 B.C or before that, Bangladesh had commercial relationship with China and Assam through the territory of Assam Brahmadesh. Bangladesh even conducted trade with Nepal, Bhutan and Tibet through the impregnable routes of the Himalayas.

The fact that Bangladesh had a commercial relationship with foreign countries has some evidence. The reason being that most of the goods from Northern India used to be exported through the ports Bangladesh, especially through the ports on the estuary of the Ganges. Famous Greek novelist and Geographer Strabo in his book ‘Geography’ stated that “ascent of vessels from the sea by the Ganges to Palibothra”. It seems as though Strabo collected this from the description of India by Megasthenes. Many horoscopes suggest that in ancient periods, merchants used to travel through Varanasi or lower ‘Champa’ (present Sri Lanka) or navigated through the Bay of Bengal to the ‘Suvarnabhumi’ (Thailand) in far away. During this journey, they could not see any land for a long time. From the book ‘Periplus of the Erythraean sea’, it can be known that during the 1st century Bengal had a very good commercial relation with SouthIndia and Sri Lanka. According to the writer, the exported goods were malabathrum, Gangetic spikenard, Pearl, finest Muslin cloth etc. These goods were lifted to the ship from the Gango port (Probably ancient Tamralipta). These ships were referred to as Kolondia in the book Periplus. Famous Buddhist scripture ‘Questions of Milinda’ stated that businesses used to be conducted in Bangladesh with the other countries by the ships that operated in the seas.

The port of *Tamralipta* was the main port in ancient Bangladesh. Ancient *Tamralipta* or present *Tamluk* is situated near the northern bank of the *Rupnarayan* river. It has been mentioned earlier that all the rivers of Bangladesh have been changing their courses from the early past. From this, it can be understood that *Tamralipta* was also established in the banks of the Saraswati, a distributary of the *Ganges.* The name *Gangaridai* and *Tamralipta* were mentioned by Faxuan, Xiuanzang, and Xingzing in their description. from the book ‘*Dashakumaracharita’* written by Dandin and it can be known that, the seafaring ships used to go to Sri Lanka in the south-west and east, to the Javanese in the west with the exporting goods. The main products of those were betel leaf, betel nut, coconuts, salt, any kind of diamonds, pearls, gold, different types of fabrics, bay leaves, and other spices. In *Somadeva*’s book *‘Kathasharitasagara’* by, it was stated that merchants with their boats used to travel towards the Kataha of Malay Peninsula. The name of *Tamralipta* port has been stated in Mahabharata and Brihat-Samhita. The Abhidhana Chintamani by *Hemachandra* contained many synonyms of these places. The fact that this port existed even in 200 B.C is evident from the book of Geography by Ptolemy. There is a story of ‘Dashakumaracharita’ that some prince of the *Tamralipta* used to commit piracy in watercourses and had once attacked a Greek ship with their armada of small and large ships. It may be mentioned that similar instances of piracy are known about other ports of India as well.

It is said that when the Aryans came to Punjab from middle Asia, Bengal was already established as a civilized country. Though this is debatable, the fact that once this country was very affluent and rich cannot be denied. The Arthashasthra of Kautilya accurately mentions that silk and handloom fabrics were exported to Magadha to Bengal in the BC era. Apart from that, there is no doubt that affluent and rich naval ports were established there. The existence of one such port named Tamralipta is well-documented in history. If we take a look at history, we see that during the Mauryan empire Chinese fabrics were imported to *Magadha.* It is evident that these products were imported through Tamralipta port. The book Mahavamsa that was related to the history of Sinhala also mentioned such evidence. That book also says that the ambassador of Sinhala returned through that port while returning with the gift given by emperor Ashoka. A closer look at the history of Sinhala also provides that a prince named Vijay Sinha established a colony in Sinhala during the 6th century before Christ. The book ‘The Discovery Of India’ by learned Nehru reveals that the colonists of India during the 1st century before Christ went to the southern and eastern direction and landed on Sinhala, Brahma, Malaya, Java, Sumatra, Borneo, Shyama, Cambodia, China. It is to be noted that at that time there were religious prohibitions on traveling to Anga, Vanga, Kalinga, Saurashtra, and Magadha. Any kind of travel to those places except for the purpose of the pilgrimage was considered as immoral and thus required atonement. In that situation, it was impossible to travel to those places through Bangladesh, in such circumstances, it can be proved that those migrations were initiated from Bengal. While analyzing the history of the conquest of the Bengali nation it is found that boats were their main vehicle. They used to navigate the raged sea with mammoth boats and reached different parts of the world. An old structure of such a boat was found in 45-foot depth under the ground of Mehedipur village. At that time the adventures of the Bengalis through the waterways were well-known to everyone. And thus, one day they spread in eastern Asia. They did not only keep their presence limited within the commercial and religious activities only but also established enriched administration and instituted integrated kingdom in Champa (Middle Vietnam), Kamboj (Kampuchea), Shyama Desha (Thailand), Javadeep (Java) and Brahmadesh

(Razzak in ‘*Desher Nam Vietnam’* (Vietnam-the name of a country) pages 177-178.)

Even after having such a glorious history, we have lost the invaluable communication system based on rivers. And we have ignored the rivers for too long. Now as we have no other option left, we are realizing the importance of rivers. The government has started to think about this again newly. In this context, the Chairperson of BIWTA has said that the government has now taken a mega plan to dig 53 rivers throughout the country. If this one gets implemented, a new revolution regarding the waterways will start. He also said that 80% of the goods and 60% of the people shall be transported through waterways. Last Sunday, in the office of BIWTA Dr. Md. Shamsuddoha said that if the mega-plan of digging 53 rivers is implemented then the twelve thousand kilometers of waterways would be recovered. As a result, there will be no lack of water for agricultural, domestic, and industrial purposes. The river will be free of pollution and occupancy. The condition of irrigation, fisheries, and the environment will develop. The country will be relieved from catastrophic floods. Maritime trade economy shall be accelerated, domestic food production shall increase and Bangladesh shall be considered as an export-based country. Mr. Shamsuddoha also said that if the plan is implemented, the fourteen thousand square-kilometers of land beside the river banks shall be recovered which will result in establishing environment-friendly industries and the flourishing of the tourism industry. Forestation will be expanded and the production of flora and fauna shall incerase. Bangladesh will be the largest source of drinkable water. Once the waterway starts flowing properly, salty water from the southern part will not be able to enter. As a result, salinity will be diminished, erosion of rivers will stop and the number of displaced persons will decrease to zero percent. Dr. Shamssuddoha said that if the mega plan is implemented, 50 thousand people will have employment Ten thousand workers will be required to keep the river banks free of pollution and encroachment. The surface area of waterway will expand to go twenty thousand kilometers from four thousand kilometers. The parched waterways shall become useful again, the number of river ports and stations shall increase to five thousand from five hundred. 20 thousand boat captains shall be needed to navigate the large size boats. Five thousand employees will be needed for capital dredging and maintenance. Five thousand more will be employed to carry out administrative functions at regional offices. The number of big boats or ships will increase from 0.2 million to 0.4 million. In the case of transporting the large ships, collecting the captain’s fees and conservancy fees for using the river shall increase the amount of revenue.

**The rivers of Bangladesh and literature**

‘Life is like a river’: the life is deep and flowing like a river. Life becomes beautiful with its different ancillaries. Its beauty and depth flourish holding the surrounding nature. With the touch of art, literature, and culture, life becomes glorious. Culture is the causation of every step of life. This means the development of culture includes every step and level of the creation of conscience, wit, science, social norms, consciousness, and way of life. Civilization is also developed in the same way. Life is like a dynamic river. It is also not constant. Therefore, since the ancient times, life has been made meaningful with the touch of culture.

Moreover, the Bengali life is nourished and evolved by the rivers surrounding it. Even the development of culture can be assumed to have taken place alongside the rivers. The two complement each other. Rivers are our souls, a part of our basic feelings. The art, literature, and culture of Bengal without rivers is unimaginable. It’s as if the two are tied together.

Numerous rivers have surrounded the Bengali life just like a spider web. The flow of rivers touches the soul of an artist; rivers enrich their creation. These rivers are our life, the flow of our life.

**Development of human civilization surrounding rivers**

The origin, development, and expansion of our ancient civilization occurred around the rivers. Human Life is motionless without rivers. Our civilization has revolved around the Padma, the Meghna, and the Jamuna; through this, our relationship with the earth was established although the origin of rivers is way older than that of humans. The age of the earth is approximately 4.5 or 4.6 billion years whereas the age of the ocean is 3 billion years. The human race originated in the Pleistocene ice age which happened only one million years ago. Human civilization developed with the flow of water. Human beings established their first settlement by the side of the river and that is normal. More than three thousand years ago the civilization of Indus thrived in *Mohenjo-Daro* and *Harappa* on the bank of the Indus. The Egyptian civilization developed centering the Nile and the Chinese civilization flourished around the Yangtze. The Mesopotamian civilization developed alongside the Euphrates and the Tigris. The Burmese established their civilization surrounding the Irrawaddy River and the Thai civilization prospered around the Salween River. The Aryans came to the bank of Indus from central Asia. The Muslim civilization started its triumphant journey from the bank of the Indus River. Thousands of examples like this can be given. Thus, rivers are frequently mentioned in the discussion of civilization and culture.

But one condition of establishing ports, cities and human civilization around rivers is that the flow of the river should be continuous and the river must be permanent. The flow of the water should be like the rhythm of life. We shall find this by analyzing the development of civilization and culture. The civilization of Bangladesh also developed surrounding rivers. Bangladesh is encircled by lots of rivers. The number is more than 225. These rivers have their tributary and distributaries. Our literature, songs, paintings, dance, festivals, cultural functions, fairs are all based on rivers. The artists and the litterateurs are mesmerized by the rivers. Our daily lives, civilization, markets, commerce, business, industries, ports, agriculture all circulate rivers.

The poems of the poets the brushes of the artists have portrayed rivers as the glittering light. Mystic songs have been composed about their flows, the sailors have raised their sails and sung their Bhatiali[[42]](#footnote-42) tunes on the rivers.

The *Padma (Ganges),* the Meghna, the *Jamuna (Brahmaputra):* these three rivers are centered at the development of our art and literature. The *Madhumati,* the *Kumar*, the *Kopotakkho* river, the *Dhansinri* river, the *Bishkhali,* the *Chitra,* the *Chandana,* the *Sugandha*, and the tributaries of Meghna are some distributaries of the Padma. On the other side, some notable distributaries of the Jamuna are the *karatoya* river, the *Atrai*, the *Jamuneshwari,* the *Dudhkumar*, and many others whose names sound like poetries.

**Rivers in ancient Bengali literature**

*Charyapada* is the ancient form of Bengali literature. The poets of *Charyapada* often brought the river as an accessory although sometimes it was used as a metaphor. ‘Riding the boat, ‘Crossing the river by boat’ are used as metaphors of meditation but it bears the descriptions of daily lives and rivers.

*Kambalambara Pada,* one of the poets of Charyapada composed their music on the tune of *Raaga "Devakry"-*

*"The boat of mercy has become full of gold.*

*Where is the place to keep the silver old?*

*Kamali, go away in the realm of the sky.*

*Will anyone return after the death of shy?"*

*Domvi Pada* contains a verse composed another song on the tune of "*Dhaanshi"-*

*"The boat crosses the Jamuna and the Ganges,*

*Matayangini helps the devotee to cross these rivers.*

*As it’s getting late, O-Domni please, row fast.*

*With the grace of the lord, again I'll stand on land."*

The literary value of *Charyapada* is immense. Poets could not leave out the context of the river as the land is surrounded by rivers. On the other hand, it should be noted that the use of river and boat in Charyapada have come as metaphors for Nirvana. "Patni (Boat Man)" was the custom at that time and Doms (an indigenous caste) worked as "Patni". Their life was devoted to the river. There are references to various boats and various tools of the boat in Charyapada. Again, many of the Doms used to sing and dance. Some of them lived through prostitution. There is a description of all this in Charya which has been captured as an element of literature.

There is a verse of *Kanhapada-*

“*Kannu praises gorgeous chandali.*

*As her flirt is incomparable in the world of worthy. "*

These verses reflect an image of the society where there is a description of the ancient form of literature. However, theory-based literature is life-oriented. Sometimes the river has been captured in a metaphorical sense. Wonderful imagery has been created such as “The boat crosses *Yamuna Ganges".* It has a spiritual meaning. For peaceful enjoyment, the boat has to be sailed towards the tranquil cycle. Dombi is "*Nairatma".* Here, crossing the river has been used as a metaphor for Nirvana. Chandidas, Badu Chandidas, and other poets imported the river in their verses. In Srikrishnakirtan, we find mentions of the Kalindi river. Medieval Bengali poets have repeatedly resorted to rivers in their work. The river is an ingredient of livelihood in the folk songs and poetry. The river is a powerful medium to the melody of the Baul songs and Bhatiali tunes. Moreover, the waves of rivers have influenced the flow of Bengali literature from age to age.

There is a Baul[[43]](#footnote-43) song -

*“Alas! How can I cross the Bhavasagar (ocean of illusion)?*

*I cry day to night on the bank of the river.*

*Oh, my mind! I've come to the world*

*with full of emotions.”*

The literary value of Baul[[44]](#footnote-44) songs is not negligible.

**Rabindranath's Padma and other rivers:**

The tributaries of *Padma* are the *Mahananda,* the *Punarbhava,* the *Kumar,* the *Arial Kha*, the *Madhumati,* and the *Kopotakkha.* These have appeared in Bengali literature in the form of wonderful imagery. We will now try to discuss how the rivers and their tributaries of Bangladesh have attracted the poets and authors. The *Padma* can be discussed here. The great poet Rabindranath Tagore had an intimate relationship with the *Padma.* The flow of the *Padma* occupies a special place in Rabindra literature.

In this context, Shilaidaha and Shahjadpur should be mentioned. The Poet fell in love with the *Padma* when he came to supervise the estate. The river Padmais situated in the north of Shilaidaha and the river Gorai is situated to the east. To the north is Rabindranath's homestead which is called Kuthibari. The poet used to look at the river throughout the window. Sometimes he would go and sit in the boat and watch as boats sailed away. The poet would be amazed to see the wild geese in the air. Sometimes he used to sing heartily. Sitting in a boat on the Padma, the poet created an immense amount of immortal literary work. Let us see what he has written in *‘Chhinnapatra’.* " I reached Shilaidaha yesterday afternoon. Today I'm going to Pabna again. What rage the river has! It’s like tail wagging, hair flapping vigorous wild horse. The level of the water is rising and seems like the river is moving along the shore. We are floating on this furious river. There is a boundless ecstasy in it. What else can I say about the murmur of this full river? As if nothing can calm these waves down. Moreover, this is only the *Gorai* river, we have to go ahead and fall into the *Padma* again and I can’t fathom what will happen then."

Once, both the *Gorai* and the *Padma* rivers could be seen from *Kuthibari.* Truly, the richness and velocity the poet witnessed as he sat in the heart of the Padma has enriched the literature, and we have been able to experience a unique beauty of Bengal. Nature and man have appeared in his creation repeatedly. That's why the river has made countless appearance in his poems, songs, and short stories. The torment of the storm, navigation, the zeal of the sea, ferry boat has merged into one in his literature. *Noukadubi* (one of his novels) has revolved around the *Padma.* In it, we see a new image of Padma. Ramesh loses his newly married wife due to boat sinking in *Padma.* Again, he miraculously finds her on the banks of Padma. A surprising complexity and contention arise in the lives of the protagonists of this story surrounding Padma.

The lively entity of Padma is depicted mostly in his short stories. In these short premises, they hold their specialty and uniqueness. Images of the Padma and its tributaries have appeared repeatedly in the short stories. It is a unique form. In the story ‘Postmaster’, we also perceive the description of the form of rain on the Padma. In the story of ‘The Return of *Khokababu*’(the adorable boy), we can see a more vivid and wild form of the Padma. A harsh reality of life is portrayed here. Raicharan, a housekeeper, loses his master's son in Padma's waves. A tragic form of life has emerged here. Now let us see how the form of Padma came here. "The rainy season has come. The voracious grasp of Padma has swallowed the crop fields, gardens, and villages. The fields of ‘kash’[[45]](#footnote-45) and ‘jhau’[[46]](#footnote-46) on the sandy banks have drowned. The incessant sound of river erosion and the howling of the waves have surrounded all directions and the fast moving foam showed the intense flow of the river.

In another part of the story, we find, “the raging water is repeatedly calling the children to their playroom. Suddenly a sound of jumping is heard but during the rainy season such a sound is not uncommon. The Padma keeps on running as if she knows anything and does not have time to pay attention to the mundane matters of the world. "

The life stories around the shores of the Padma's tributaries are better reflected in the stories *‘Chhuti’* (The Vacation) and *Subha.* In the difficult and real city life, Fatik constantly reminisced his village .The gigantic field where he flew huge kite which makes a booming sound, the river banks where he sang his self-composed songs, the narrow stream of the river where he jumped in during any time of the day, his friends, his mischief, his independence, and mostly his cruel, unfair mother constantly attracted his thoughts and spirit.

In another short story- *‘Shubha’,* a mute girl who lives amidst the realm of nature. After she had known that she would move to the towns, the sound of waves from the river and mooing of the cows from the barn kept reverberating through her heart like cries.

She bids farewell to her childhood friend in the barn and then fell over the shore of the ever-familiar river. “Do not let me go, mother, reach for me and hold me tight as I have reached for you too”. This ardor touches our very souls. Again in the short story ‘*Atithi’*(Guest), Rabindranath gave a very wonderful description of the river with the eyes of Tarapada. "Outsides, the river, filled to its brim in the showers of monsoon, filled mother nature with worry by its self-absorbed, reckless, and restless characteristics. Under the cloudless sun, the field of ‘kash’ on the river bank was half-submerged and the sap was dense on the top of it. The lines of sugarcane fields and the blue colored forest kissing the distant horizon beneath bloomed before the enchanted gaze of the blue skies just like a youth touched with the gold wand of a fairytale.

This scene is a unique personification of Bengal surrounding the river. An emotion has erupted in the heart of the poet about the rivers of Bangladesh. Apart from the Padma, the Ichamati has found a place in the writings of poets when he resided in Shilaidaha. The poet goes on to describe this river-I wish to write a letter in the dense rainy coalescence over the narrow river. A letter, similar to talking in a soft voice in a secluded room in cloudy twilight”. The poet writes at the end of the *Chinnapatra* (Shredded leaves)-“In fact, I love the *Padma*”. Now the water of the Padma has decreased a lot. It has become quite transparent and slender, like a girl whose soft saree is raping her body. She is walking away in beautiful curves, and the sari is bending on the trail she leaves behind.

This is a poem written about the river Ichamati:

*“When I will be no more, neither this song will be,*

*Still transmitting life to the earth,*

*Your paean will be played every year*

*In Bengal O’ Parvati, Ichhamati”*

On the other hand, the river Gomti has also attracted Rabindranath. His novel ‘Rajarshi’ is relevant in this context. Bhubaneswari temple is situated on the banks of the river. The story has evolved from there. Again, the Gomti is seen in the drama ‘Bisarjan’ (Sacrifice), where the conflict of non-violent love with violent posture is depicted. Insanity and violence have erupted in the form of the *Gomti.* During winter, she evolves into a calm and quiet statue, her slow current resembles the melody of an absent-minded Baul. The *Gomti* has got a wonderful form in the hands of Rabindranath. The Gomti is also a mountain river that originated from the Tripura hills. Along its way there are more rivers like- the Kawra, the *Kapni,* the *Sonaimuri,* and the *Jangalia.* The *Gomti* is the longest among them. Its trajectory is spiral and changing.

The poet has also brought the Dhaleshwari in poetry. His poem ‘Bashi’ contains its story. *Haripada* is the protagonist of the poem. He was to be married in a village on the banks of the river Dhaleshwari. His aunt's house is situated there. He is supposed to be married to a girl from his aunt's in-law’s family. On the day of marriage, *Haripada* flees to Calcutta but he could not forget that teenage girl. So on a rainy day, he hears the sound of the flute and runs away. His heart is on the bank of the *Dhaleshwari.* The girl is probably waiting for him:

*Through that village*

*The Dhaleshwari flows*

*Shadow of mottled ebony on the shore*

*In the yard,*

*She is waiting, wearing-*

*her Dhakai Saree, sindoor on her forehead-*

The rivers in Bangladesh are tied to each other like knots- from them, sub- distributaries and streams have merged, influencing the literature. The tributary of *Dhaleshwari* is the *Buriganga,* which is about twenty-six miles in length. The *Shitalakshya* is the name of a part in the course of the Brahmaputra. This *Shitalakshya* crossed the *Brahmaputr*a and traveled south to the Dhaleshwari. The direction has changed over and over again; the names have been different and its combined stream has fascinated poets for ages.

To find the source of the *Brahmaputra,* we have to reach the shores of Manas Sarovar on the other side of the Himalayas. The *Brahmaputra has* traveled miles and miles, taking new names in various turns. And at one point even the vast Himalayas could not hold him. The river came to this subcontinent with a huge diversion in the Himalayas. His name has become Dihong. He even shattered the rocks of the mountain with his great speed. Like Rabindranath did and brought the river in his poem-

*“I will break the stone*

*I will sing and flood the world*

*With Ardent wild flow!”*

In this way, the river kept running. In East Bengal, its name has become the Brahmaputra. In this way we also get *Teesta.* The Teesta merges with the Brahmaputra. It has taken its place in literature and culture. Another name for it is Trisrota (three streams) or Trishna (thirst). What a beauty!

We know that the *Brahmaputra* has changed its name repeatedly, there is some history regarding that. It is said that about two hundred years ago the course of the Brahmaputra was completely different. This river is the main watercourse of Bangladesh. It merges with other rivers. It has many tributaries-the Subansiri, the Manas, the Gadadhar, the Sankosh, the Teesta, the Dihing, the Disang, etc. Poets, writers, and artists have created works of art on the Brahmaputra. The Brahmaputra has been cited in ‘Mymensingh Geetika’s story of Malua. The Brahmaputra is a diverse river. Its length from the origin to the estuary is about 1800 (eighteen hundred) miles, but its system has passed thousands of miles in different directions.

Jamuna is another major river in Bangladesh which is a part of the Brahmaputra flowing in this country. The Jamuna flows along the western boundary of Dhaka and Mymensingh districts. The Jamuna is a river of valor. Many poetries and songs have been composed of its riverbank. There is also a Jamuna in India which was born in the Himalayas and came to Allahabad then merged with the Ganges. On its shores in Agra stands the immortal monument of love – ‘Taj Mahal’. Rabindranath is there too. The Jamuna has also appeared in the film. The Shitalakshya is the name of a region in the course of the Brahmaputra, said to have originated from the Brahmaputra.

About the *Shitalakshya* river, Achintyakumar Sengupta said -

Shitalakshya, a calm river

That flows like a song-

**River *Padma* in the literature of Manik Bandopadhyay**

The discussion about the literary work on *Padma* remains incomplete without mentioning storyteller Manik Bandopadhyay. Alike Rabindranath, Manik too forms his artistry by relying on the life surrounding the Padma. He too went beside this river, met with the boatmen of *Padma,* gathered the harsh realities of their livers, and thus created his magnum opus –“Boatmen of Padma”. The tale of Ketupur, a biography of the fishing village. The *Padma* became a greater truth through the writing of Manik. This novel is the greatest example of how a river can become such a monumental subject of literature. The lower-class, difficult human lives of the villagers have been overshadowed by artistic imagery. The life stories of Kuber the boatman, Kapila are as clamorous as the Padma. The laughter of Kapila floats away with the flow of Padma, hence the Padma herself is one mysterious lady. Under the darkness of dawn, she reaches out for her lover. The waves of the Padma, the sound of the wind, the deep cry and innermost feelings all get mingled. A forbidden love melts into the ever-flowing Padma and the life and tragedy of Kuber, the heart- touching cry of Kapila echoes over the river. She asks Kuber while swimming “Forget me, boatman, sail your boat and go far away and forget me”. Later, she asks “Will you take me as your partner?”

Boatman sets his sail on the *Padma.* Manik could only portray the harshness of life because of the Padma. The *Padma* came into Bengali literature in many ways. Famous scientist Acharya Jagadish Chandra Bose also loved the Padma. Rabindranath elaborated this love in his autobiographical book ‘*Jiban-Smriti”(*Memory of life). While writing the memory of *Shilaidaha* Rabindranath mentioned – Bose used to come to *Shilaidaha* with his father regularly. I met his father for the first time in 1897. This acquaintance later turned into a friendship. Jagadish Chandra Bose liked the river banks of Padma very much. During winter, the Padma used to shrink and sandy banks would rise alongside the shore. As soon as those banks dried up, we would leave our Kuthibari[[47]](#footnote-47) and go there for camping.

Bose loved to reside on the bank of the Padma. He traveled around the world, far and wide. But he repeatedly said- There is no such healthy place like the banks of Padma. Before the bath, Bose would ask Rabindranath to make holes in the sand and instructed everyone to get inside those sand holes. After plunging the whole body up to the neck they would gain immense heat. Then Bose along with others would jump in the cold water of the Padma. He preached this practice as greatly beneficial for health.

**The *Meghna*: The River of *Jasimuddin***

The Meghna, another major river of our country, attracted poet *Jasimuddin*. He created poetry about the riverbanks of Meghna. The Meghna originated in the Khasiya Hill and then divided into two-stream, i.e. the Surma and the Kushiyara. They meet the Brahmaputra near Bhairab and then take the name Meghna. The Meghna again meets the Padma near Chandpur and falls into the Bay of Bengal as Meghna. The main tributaries of this river are the Someshwari, the Kangsha, and the Gomti. The Meghna erodes the land relentlessly. Boatmen row their boats from one end to another.

The poet wrote-

*“anchor your boat*

*Tie it by the shore*

*Let me recognize the merchant, anchor your boat*

*I rowed the boat towards the wharf but could not find the end*

*Let me recognize the merchant, anchor your boat’’*

He again wrote-

“*Collect water o’ beautiful lady, make waves over water*

*Smile and talk to me, no one is accompanying with me’’*

While describing the beauty of the Meghna, poet Jasimuddin says- Still, I love this cursed river.

The place a little ahead of Chandpur, where the Meghna meets the Padma resembles the famous confluence of the *Ganges* with the *Jamuna* as depicted in “*Raghuvansham”* by great poet Kalidasa. The *Padma* came wearing her saffron-colored cloak which represents the open water. On the other hand, the Meghna wore her blue garb which symbolizes her blue crystal clear water. It seems two girls with their respective gloomy and bright nature began dancing hand-in-hand.

We have a spiritual connection with the Meghna. It adopts a different persona in each season. The Meghna is neither as rough as the *Padma* nor very calm. In a sense, this river neither has a beginning nor an end. It flows eternally. Besides *Meghna,* other rivers are also mentioned in his writing. Jasimuddin wrote a famous drama “The village by the *Padma”.* In this drama, there is a pleasant description of the *Padma-* “The waves of the mighty *Padma* are roaring. Far on the horizon, the sun has started to shine its golden beams. Some small Batasios and Ruddy shelduck are making intermittent sounds. A faint sound of a baby’s cry flies in from a near-by village. Boats are moored while the boatmen are sleeping peacefully. The *Padma* is singing them the lullaby”.

The poet wrote poems and songs about this river such as-

*“Fisherman goes to the river to catch fish*

*To the upstream of the Padma, In his small boat*

*The stream is too strong, shines like blades*

*Boat cuts through this sharp waters up and down*

*Algae and flowers float over the water*

*Fisherman’s boat also smiles brightly as the algae and flower”*

The poet also wrote one poem about the banks of the river Gorai-

*“The river banks in the Gorai*

*Where fresh paddy floats over the water*

*Where one jade dream and one roaming cloud*

*Revealed from the sky to the earth and lost its speed*

*Riverbank shines in the blistering heat of sun*

*A sudden wind flows away silts and the sand*

*The river bank which sleeps in the heart of the night*

*Fireflies caress hearts and shed their dreamy light”*

Thus the river, its sandy banks, and shiny waves amused the mind and soul of poets. The river made its way in poetry, songs, and drama through its scenic beauty.

**Rivers in the Poetry of Nazrul**

Poet Kazi Nazrul described the Gomti river in his poem “*Chaity Hawa”* (winds of spring)

*The careless midday has long gone, now afternoon is leaving too*

*Sleep decorates the feet of the Gomti like Ghungros*

*Sound of Conch floats away from the temple*

*The dawn engulfs a green forest*

*Who has soaked tamarisk with darkness!*

Poet Nazrul mentioned riversis many poems in the famous anthology ‘Chayanata’. He also wrote about the ‘*Karnaphuli’.*

*O’ Karnaphuli*

*Who has lost her nose pendant in your water?*

*Which girl rowed her boat against your stream?*

*Searching for her cherished lover?*

*Karnaphuli* is located in Chattogram, the sanctuary of natural beauty. This river has beautified hills, fields, cascades, lakes and canyons. There has been much literature based on the Karnaphuli and the mountainous life of Chittagong. This river is different from every other river in Bangladesh. It appeared from the middle of the Sita hill. The numerous folklores created regarding the Karnaphuli River have great literary value. But *Daulat Qazi* and *Syed Alaol* have portrayed this river better than all. The *Karnaphuli* is one of two major rivers of Chittagong. The other one is the Shangkha. They have some distributaries. The indigenous people call it the Sang-ghu. The Chandkhali and the Kumari rivers are two tributaries of Sangkha. The Kasalang and the Ranthiang are the tributaries of the Karnaphuli. Fiction writer Abul Fazal depicted the *Shangkha* River in his novel- maybe our life is similar to the Shangkha river. Who knows in which impregnable mountain it originated? There are ups and downs along its path. Devouring many households and locality, decorating many vicinity and lands with green life, the *Shangkha* is flowing in its way.

Thus, *Shangkha* and the *Karnaphuli* have become a part of literature. Moreover, the Naf River is more diverse and flowing –which can be seen in Cox’s Bazar. The magnificence of the Naf resembles the ocean. Boats and Sampans roam over the huge waves of the Naf. The Naf River marks the border of Chattogram of Bangladesh and Burma. There is a kind of romanticism in the Naf River, which has been reflected in our novels and poetry. In a way, the Naf made our literature more diverse.

**A River Called *Titash***

Another river earned its place in Bengali literature. This river is the *Titash.* The major river of Brahmanbaria flows aside this district. Titash is a Sanskrit word. It may have been derived from ‘Trishna’ (thirst). *Titash* originates from the *Meghna*, but legend has its origin in Lalmai- Mainamati area. Currently, it has a length of 201 (two hundred and one) kilometers. The Titash has some distributaries. Numerous stories, poetries, and novels have been composed on the *Titash.* Adwaita Mallabarman wrote his famous novel- *‘Titash Ekti Nadir Naam’* (A River Called Titash), later a film with the same title was made by Ritwik Ghatak. The Titash received a magical splendor by the work of Adwaita Mallabarman in the same way the Padma gained her glory by Manik Bandopadhyay and Rabindranath Tagore.

Adwaita Mallabarman described the *Titash* as follows-

“Mother dives underwater with her healthy kid, reappears only a few moments later. Boats pass nearby. One after another, some of them have a roof, some have not. Sometimes brides can be seen inside roofed boats”-The novel contains many such beautiful portrayals of the Titash.

**River *Kopotakkho* in Bengali literature**

The Kopotakkho is another euphonic river of Bangladesh. This gentle and calm river enchanted Michael Madhusudan Dutta, the father of modern Bengali poetry. The beauty of *Kopotakkho* cannot be discussed without mentioning him.

This river flows through Sagardari from north to south. Once upon a time, this river was the core means of transport in this region. To this day, the *Kopotakkho* river flows and reminds us of the sad reminiscence accompanied by it. Michael Madhusudan Dutta came to see his mother after he had converted himself to Christianity from Hinduism, but he failed to meet her and left the shore of the *Kopotakkho* with a heavy heart. This is a real tragedy. The *Kopotakkho* river inspired the poet, the poet wrote his poetry on this river. A famous poem called ‘Kopotakkho River’ is engraved in that wharf. It is a sonnet.

*Always, o river, you peep in my mind.*

*Always I think you in this loneliness.*

*Always I soothe my ears with the murmur*

*Of your waters in illusion, the way*

*Men hear songs of illusion in a dream.*

*Many a river I have seen on earth;*

*But which can quench my thirst the way you do?*

*You’re the flow of milk in my homeland’s breasts.*

*Will I meet you ever? As long as you*

*Go to kinglike ocean to pay the tax*

*Of water, I beg to you, sing my name*

*Into the ears of people of Bengal,*

*Sing his name, o dear, who in this far land*

*Sings your name in all his songs for Bengal.*

This river was the first inspiration behind his poetry. Nobody knows who gave this river such a sweet name. The river of this water is compared to the bill of pigeon. Such calm waves! It is known that the *Kopotakkho* derived from the east turn of the *Mathabhanga* river in Nadia district. But now the *Kopotakkho* has no connection with that river anymore. The geographical identity of the *Kopotakkho* is quite diverse. But this river still has some of its original flow. The *Kopotakkho* has been made immortal by the poetry of Michael Madhusudan Dutta and Sagardari has become the shrine of the poet.

**By the shore of *Dhanshiri* River**

Jibonanda Das is called ‘*Rupashi Banglar Kobi’* (poet of glamourous Bengal). Barisal is his favorite city. There are some beautifully named rivers around Barisal. The *Dhansiri* river came as legends and imagery. These rivers and their tributaries have made Barisal a lovely region. The incredible beauty of nature have been reflected in the poet’s work in many forms. There is a separate poem of Jibonanda Das called ‘*Nodia’* (*Nodia* river). Many poems of ‘Rupashi Bangla’ contain mention of rivers. Such as- the Jalshiri, the Jaljhiri, the Gangur, the Kalidaha, the Keertinasha, the Shangkha, the Gangasagar, the Dhaleshwari, the Padma, the Jalangi. These rivers gave his poetry a shade of reverie. Bengal’s rivers and its natural beauty cannot be separated from the literary work of Jibananda Das.

The poet expresses his desires-

*“When I lie as dead in the darkness*

*Beneath this sky full of stars*

*Under the shade of old jack fruit tree*

*By the side of the Chilai or the Dhaleshwari”*

**The Rivers of the Sundarbans**

The Sundarbans is the largest mangrove forest in the world and the rivers that have weaved through the forest form one of its distinctive characteristics. These rivers have been mentioned in myths, legends, literature, stories, and poetries since the earliest times. Although the Royal Bengal Tiger and *Sundari* trees are famous all over the earth, the rivers of Sundarbans are also connected to our roots. These rivers have gradually taken their place in literature, culture, art, and paintings. The sediments of the *Ganges,* the *Brahmaputra,* and the *Meghna* have played a major role in forming Sundarbans. The rivers of Sundarbans have inspired poets and writers since decades. They also have very interesting names such as- *Pasur, Sipsa, Raimangal,* *Baleshwar,* and many more. Before entering Sundarbans, the *Sipsa* river merged the *Pasur* river through the *Bhadra* river. The *Malancha* river is called ‘river of lime’ outside Sundarbans. The Malancha joined the Ichamati river before it entered Sundarbans through Kadamtali. The Kalindi river marked the border between the Indian part of Sundarbans and its Bangladeshi part. The Kalindi has been mentioned in myths and literature countless times.

Another river is used in our literature as an exemplary figure of speech –that is the Phuljor. The Phuljor, a distributary of the Karatoa has splendid fiction. Additionally, Hindu mythical fiction has been created surrounding Karatoa as well. Thus, rivers have enriched our literature again and again.

**Rivers in Hindu Mythology**

Poets and writers have given life to mythology, eventually many literary elements have been added to these myths. On the other hand, rivers have enriched mythology. Myths are ancient tales, a matter of faith. It began in ancient times on the base of idolatry. Greek and Hindu mythology have become very popular literature. Orthodox Hinduism is also related to this discussion. But we shall not go in that direction, rather we will discuss how these myths survived in the form of popular literature through the rivers. Rivers are very vital in mythology.

Sometimes these rivers come from the heavens and sometimes from the land of mortals, also from beneath the ground. In Greco-Roman and Hindu mythology they are mentioned inevitably. Greco-Roman myths mention the Ieo, the Nile, the Tiber, the Pineios, etc. rivers. Hindu mythology states the following rivers- the Ganges, the Jamuna, the Saryu, the Vipasha, the Oghabati, the Satadru, the Chandrabhaga, the Godavari, the Gomti, the Birja, the Brahmaputra, the Kalindi, etc. These names have been used following the thread of the stories. Sometimes, they were mentioned the form of women, sometimes in the form of Gods. They appear as ordinary men, trees, etc. All myths have portrayed rivers as identical to women. Greco-Roman mythology is considered as great literature. In these myths, there are Greek Gods. Gods and Goddesses have appeared in these fascinating tales. In Hindu mythology, the tale of the *Oghabati* river carries much importance. The tale of how this river flowed over the earth because of its sorrows and sufferingshas been described in the myths in vivid details. The *Jamuna* is shown as women and the enchanting events of *Radha-Krishna* have been depicted in the tale of the Birja river. In this way, rivers have taken the form of man, woman, or Goddess.

Hindu mythology has given the Saraswati and the Ganges the veneration of Goddess. Hindus worship them. Myths are formed surrounding them. It is said that the Aryan established their first settlement at Brahmavarta on the shore and Aryavarta beside the Ganges in the north. At Prayag, a holy place for Hindus; the Ganges and the Jamuna are joined together and according to the mythical belief, the Saraswati also met them there.

The Saraswati has many other names as mentioned in myths, such as- Subhadra, Kanchanakkhi, Vishala, Surenu, etc. Ramayana and Mahabharata are two great epics- and are obviously excellent works of literature. Mahabharata contains mention of rivers such as the Saaraswati, the Ganges, the *Gomti.* The Ganges alone has many origin stories. Ramayana has references about the Godavari river beside which there was a Panchavati forest where under the shade of banyan, sacred fig, bael, ashoka, and amla, Ram (mythical God) built his hut. The Tamsa is another river mentioned in Ramayana, beside which Valmiki, the writer of Ramayana lived. Moreover, the Saryu is another river mentioned in Ramayana, by the side of which ‘Ayodhya,’ the capital of Ramachandra, was situated. This river has been mentioned in the Ramayana often.

The *Malini* river is connected to the tale of Shakuntala. Therefore, numerous rivers have become a significant part of mythology and has flourished them with literary values. Bangladeshi rivers such as the Buriganga, the Nabaganga, the Kaliganga are all connected with the Ganges and they too have their unique legends. Gangur- one of the Bangladeshi rivers has been linked with ‘Manasamangala’ has thus become an element of literature. Lakkhindar, the son of Chand Saodagar and his wife Behula are the two main characters of this tragic myth. The tears of Behula and the waves of the Gangur have merged in creating this folklore treasure. When people find their rivers allied with the myths, then the stories become more vivid and lively.

The number of our rivers is countless! Although there are disagreements about this, the number is not less than two hundred and fifty. Also, there are hundreds of rivers, distributaries, and tributaries. That means life itself is associated with the flow of the river. And the names of rivers and tributaries are also wonderful! Like a verse in a poem, they can be paired to the lyrics of that poem. Arranging the names of the rivers in a row will sound like a captivating poem rich in feeling!

The topic of the river has also come up in various ways in the works of modern poets and writers of Bengali literature. The river has been used as a significant element in the writings of our liberation war. Because the river has played an important role in the liberation war. The role of the rivers cannot be denied. The centers of the three ancient civilizations of Bangladesh- *Paharpur, Mahasthangarh,* and *Lalmai-Mainamati* were established around the banks of the rivers two and a half thousand years ago. The rivers have changed speed. Next to the Kushi was Paharpur Buddhist Monastery and on the banks of the *Karatoa* was *Pundravardhana* or *Mahasthangarh.* The *Brahmaputra* is also mentioned here. Culture is associated with civilization. And in this way, rivers have achieved greatness as an element of literature. The history of rivers is the history of Bengal and its literature. No aspect of this country can be complete without its rivers. In poetry, epics, legends, fables, art, movies, paintings, rivers are connected inevitably. This terrain is formed by rivers. The vigor of life lies with the rivers. The history of Bengal, its geology, economy, dynamics are all surrounded by rivers. Rivers are our blessing and sometimes they are a curse.

*"Sweetheart who drowned in the sea*

*He has not received all the news*

*The Ganges on the top of the mountain*

*Broken, underwater*

*Dive, dive for once*

*When I dive, I get Ashore*

*When I get up, I float away*

*Strange waves are always flowing." - Lalon.*

**Rivers and the Courts of Bangladesh**

The first case filed in our courts regarding river conservation is ***“Human Rights and Peace for Bangladesh and others Vs*** [***Government of Bangladesh (Writ Petition No. 3503/2009) (14 BLC (HC)***](http://www.clcbd.org/judgment/8134.html?q=share+market+business) ***759).*** In the aforementioned judgement, Mr. Justice A. B. M. Khairul Hoque (Later Chief Justice of Bangladesh) gave the following directions:

*“ (A) To complete the boundary survey of concerning rivers according to CS and RS map within 30.11.2009*

*(B) To declare these rivers as (Ecologically Critical Area) within 30.11.2009 and make necessary guidelines to protect these rivers within the next 6 months.*

*(C) To construct boundary pillars and build walkway/pavement or plant trees on the boundary of the rivers within 30.11.2010*

*(D) To remove all the establishment from the rivers within 30.11.2010*

*(E) To establish a National River Conservation Commission within the next 3 (Three) months.*

*(F) To excavate 4 (Four) rivers surrounding the capital and remove all waste and sediments including Polythene bags.*

*(G) Concerned authorities shall make necessary arrangements for the disposal of environment-related suits in the concerned courts without any delay*

*(H) To evict all shops and establishments from all government-owned river-side lands including Buckland Bund of Dhaka within the next 2 (Two) years*

*(I) To excavate Jamuna-Dhaleshwari, Dhaleshwari-Buriganga, old Brahmaputra-Bangshi, Bangshi-Turag, Jamuna-Pungla Canal, Turang and Tongi Canal within the next 5 (Five) years.*

Thereafter, the High Court Division gave the current order in writ petition No. 3503/2009 mentioned on 08.10.2009, 03.11.2009, 24.01.2010, and 21.03.2010. Then after filing civil petition for leave to appeal No. 761 (7ADC (AD) 860), 767-769, 772-773 (62 DLR (AD) 428) and 781/2010 against that order and judgement, the Appellate Division entertained such civil petition for leave to appeals and held that,

*“It appears that the High Court Division while rejecting the petitioners’ application considered the judgment and order dated 24th and 25th June, 2009 passed in writ petition No. 2503/2009 and correctly considered the facts and circumstances of the cases for removal of all structures on the rivers in question and therefore committed no illegality in rejecting the applications.*

*From the notice annexure-F series to the writ petition it appears that the authority found the petitioners to have constructed structures on the river illegally which was ascertained in the survey of the rivers as held as per direction of the High Court Division given in Writ Petition No. 3503/2009 vide order dated 21.03.2010.*

*It is true that mandamus can not be issued against law but fact remains that Act XXXVI of 2000 has provided for non-obstante clause in section 12(2) providing that notwithstanding any provision in any other law for the time being in force the provisions of Act XXXVI of 2000 shall prevail and since rivers are “Joladhar” (waterbodies) within the meaning of the Ain, the law relating to act XXXVI of 2000 must prevail over all other laws and the High Court Division rightly issued the directions in order to the save the rivers from encroachments and pollution.*

*We also find that the public interest lies in protecting the rivers from encroachments and pollution by all means. The maxim ‘Salus Papuli Suprema lex’ should be put in the imperative i.e. ‘Salus, Papuli Suprema lex esto’ i.e. let the safety of the people be the Supreme law.”*

Later, on 24.07.2014 in writ petition No. 3503/2009, Justice Mirza Hussain Haider ordered that,

*“So far the other application as to removal of the temporary and permanent structures and encroacher from the rivers we direct the respondents No. 2, 9, 11, 12 and 15 to take immediate steps to stop and remove their earth filled up from the river and remove/demolish all the temporary and permanent structures within the territory of river Turag as reported in the Daily Star dated 12.07.2014 and thereby take legal steps against the person who are liable to such act within 7(seven) days from the date of receipt of this order.”*

Later, on 11.09.2014 in writ petition No. 3503/2009, Justice Mirza Hussain Haider ordered that,

*“Having heard the learned advocate and considering the statements made in the application. We direct the Chairman, BIWTA (respondents No.9), Director General, Land Records and Survey Directorates (respondent No. 10) Director General, Department of Environment, (respondent No.11), Deputy Commissioner Gazipur (respondent No. 14) to submit a report outlining the demarcated boundary of the river Turag as demarcated by order of this Court in the instant continuous mandamous writ petition and clearly state whether M/S Lamisa Spinning Mills Ltd. Has encroached upon any portion of the Turag River and/or the said mills or any other person has have constructed any structure upon encroaching within the area finally demarcated as portion of Turag river surveyed by the authority pursuant to the direction of the High Court Division in the instant writ petition without making any deviation to the final survey report submitted before this Court on 06.12.2009, which has been perused by us, within 04(four) weeks from date.”*

In *Human Rights and Peace for Bangladesh and others* *Vs* [*Government of Bangladesh* (Writ Petition No.3503/2009) (Reported in 62 DLR (AD) 435 and 29 BLD (HCD) 479 )](http://www.clcbd.org/judgment/8134.html?q=share+market+business) Justice Zinat Ara opined that,

*“Considering the facts and circumstances of the aforesaid cases reported in 62 DLR (AD) 435 and 29 BLD (HCD) 479, we are of the view that the principles settled in those cases are squarely applicable in the facts and circumstances of this case.*

*Before parting with the judgment, we would like to add a few words on water, lives and natural resources of water.*

*Water is the sole essence of life. Without drinking water/ sweet water, homo sapience i.e. human being cannot survive. Water is also an integral part of human life for agriculture, farming, cleaning, bathing, etc. River is the principal natural source of sweet water. So, from time immemorial, all the civilizations of the world grew up on the banks of various rivers.*

*Similarly, the main cities of our country are also situated on the banks of different rivers i.e. Dhaka is situated on the bank of the River Buriganga, Chittagong on the bank of the River Karnaphooli, Rajshahi on the bank of the River Padma, Khulna on the bank of the River Rupsha, Sylhet on the bank of the River Surma and Barisal on the bank of the River Kirtankhola. Sandha/ Krisnakathi, river is also situated within Barishal.*

*Right to life means right to water, clean air, food, etc. Therefore, to save human life for the present and also for the future generation, the principal source of natural water i.e. the rivers must be protected at all costs. Otherwise, the environment would be destroyed. Where water flow of the river was obstructed or/ and diverted by making embankment upon a river, it resulted in transforming a vast area as a desert causing endless/ immense suffering to the people of such area.*

*In our country, perhaps, the rivers Buriganga, Turag, Shitalakkhya and some other rivers would have been non existent unless judgments were passed by both the Divisions of the Supreme Court to protect all the rivers of the country as discussed hereinbefore.*

*Therefore, it is not only the duty of the Deputy Commissioner of a district, the Department of Environment and other concerned authorities but of all the citizens of the country to protect and preserve the natural source of water like river, etc. from any encroachment upon the rivers as well as prevent pollution of water of the rivers.*

*In the instant case, from the documents produced by the petitioner and the DC (respondent No.5) specially, the CS and RS maps, it is evident that Kajlahar Project is being implemented by encroaching upon a part of Sandhya/ Krishnakati River. Therefore, directions should be given upon the respondents in the light of the judgments discussed hereinbefore.*

*However, we are of the view that the Government must implement the project for rehabilitation of the landless people to some other Government land outside the boundary of the river as shown in the original CS and RS maps.*

*In such view of the matter, we find merit and force in the submissions of Mr. Manzill Murshid and we find no merit in the submission of Ms. Israt Jahan.*

*In view of the discussions made in the foregoing paragraphs, vis-à-vis the law, directions*

*need to be given upon the respondents to remove the obstacles created by the Government functionaries and also to take necessary steps for preservation and protection of the river Sandhya/ Krishnakati in the following manner:-*

*i) To conduct and complete survey over Sandah/ Krishnakati River of Barisal*

*district and identify the boundary of the river as per CS and RS maps within*

*31.05.2018*

*ii) To construct/ install pillars on the boundaries of the river upon demarcating*

*and identifying the same.*

*iii) To prepare a list of persons/institutions who are in occupation of any land*

*within the boundaries of the river within 31.06.2018.*

*iv) To remove the earth filled by the DC from Kajlahar Project within*

*31.06.2018.*

*v) Respondent No.5 to rehabilitate the poor and landless people for whom the*

*project was initiated to any other suitable land of the Government situated*

*within Barisal district.*

*vi) To remove all structures/constructions/ filled earth from the area of*

*Sandhya/Krishnakati River as per survey in accordance with CS and RS*

*maps within four months from date.*

*vii) To take legal steps as per section 7 of the Act, 1995 and sections 5 and 8 of*

natural Water Reservoir Conservation Act, 2000 *against the persons liable for earth filling within the area of Sandha/Krishnakati River of Barisal district.*

*viii) To form a monitoring committee consisting of five members, one renowned*

*water resource expart, one from the professors of Water Resource Department of BUET, one from the office of the Deputy Commissioner, Barisal, one from the Department of Environment and one from the Land Record & Survey Department to look after Sandha/Krishnakati River of Barisal district so that no one can encroach upon the aforesaid river or its boundary areas as per original CS and RS maps.*

*ix) Respondent No.5 to take all necessary and effective steps to protect/save the*

*original territory of all rivers/canals situated within the area of Barisal district with the assistance of Law Enforcing Agencies and the Department of Environment.*

*x) Jatiyo Nodi Rakkhya Commission is to ensure protection of Sandhya/Krishnakati River.”*

*All the respondents are directed to take necessary steps immediately upon receiving copy of the Judgment.*

*The rule is made absolute with the above directions.*

*This writ petition shall continue as a continuous Mandamus.*

*Communicate copies of the judgment to the respondents and the Chairman of Jatiyo Nodi Rakkhya Commission as well as the Ministry of Land.*

In *Human Rights and Peace for Bangladesh (HRPB) and others* *vs* [*Government of Bangladesh* (Writ Petition No. 4027/2010) (from the book titled “Judgment on Public Interest Litigation” edited by Advocate Monzill Murshid and published by Human Rights and Peace for Bangladesh (HRPB) page no-124)](http://www.clcbd.org/judgment/8134.html?q=share+market+business) Justice AHM Shamsuddin Chowdhury and Justice and Sheikh Md. Zakir Hossain opined that,

*12. The only question that deserves our adjudication is whether the BIWTA’s*

*(respondent No. 2) action was in concord with the prevailing law.*

*13. Respondent No. 2 is a statutory emanation which thrives on taxpayers’ money. It’s primary responsibility is to regulate water-based communication system in an orderly manner. It’s statutory duty implies some role over the rivers. Indeed one of it’s primordial duties is also to protect the rivers from encroachers.*

*14. Yet, quite incredibly, the authority has itself emerged as a grabber by itself. The media photographs leave little room to entertain any qualm as to this allegation. Indeed, in the absence of the said respondent’s denial, the allegations as contained in the petition, are to be taken as true.*

*We are flabbergasted, to say the least, at the bizarre action of the respondents, reckoning that the supposed protector has turned predator.*

*15. There is no way that the BIWTA’s action can be appeased. Truly, we have no language to rebuke those in the helm of the BIWTA’s affairs, except saying that they must be severely reprimanded for their audacity.*

*16. For the reasons stated above and with the castigating observations recorded above, against the respondents, the Rule is made absolute without any order as to cost.*

*17. The respondent Nos. 2 and 4 are directed to demolish, dismantle and remove the structure erected on the river Buriganga, as evident from Annexure-A at page 23 within 30 days from the date of receipt of this judgment. They must remain constrained from erecting any such structure on the river at any future point of time.*

*They must intimate us, through affidavit, by 20th February 2011, confirming compliance with this order.*

*There is no order on cost.*

In *Md. Golam Haider V. The Secretary, Ministry of Environment & Forest, Bangladesh Secretariat, Dhaka, B The Secretary, Ministry of Environment & Forest, Bangladesh Secretariat, Dhaka, Bangladesh and others*.(writ petition No. 945/2011) (From the book titled “Judgment on Public Interest Litigation” edited by Advocate Manzill Murshid and published by Human Rights and Peace for Bangladesh (HRPB) page no-192) AHM Shamsuddin Chowdhury and Justice and Justice Mr. Jahangir Hossain held that,

*15. As the Rule ripened for disposal Mr. Manzil Murshid, advanced elaborately the petitioner’s assertion as figured in his pleading.*

*16. M/S. Akhter Imam, A.Q.M. Safiullah and Shah Md. Sirajul Hoque, representing various respondents, were all in consensus in orchestrating the view that impediment on the encroachment is a must and illegal constructions are to be halted.*

*17. This consensuality has made our job rather easy. When the petitioner’s view is subscribed to by the respondents, we find no reason not to endorse the petitioners claim. The question, as it transpires, is who will be the cat.*

*18. The Rule is accordingly made absolute.*

*19. All the respondents RAJUK and the Police in particular, are directed to take infallible steps to stop immediately, all kinds of encroachment upon and around the lake area, and to stop all illegal constructions, land grabbing in the area and to dismantle, remove all illegally erected structures there from without delay.*

In *Human Rights and Peace for Bangladesh (HRPB) Vs Secretary, Ministry of Shipping, Bangladesh Secretariat, Dhaka Bangladesh and others.*(writ petition No. 3676/2010) ( From the book titled “Judgment on Public Interest Litigation” edited by Advocate Manzill Murshid and published by Human Rights and Peace for Bangladesh (HRPB) page no-212 ) AHM Shamsuddin Chowdhury and Justice and Justice Mr. Gobinda Chandra Tagore held that,

*11. Issues raised in the petition are really of distraught nature. The picture as projected, which we can judicial notice of, is gruesomely gloomy indeed.*

*12. Pitiable though, reality has it that ecology of the Republic as a whole is on the verge of total annihilation, some unscrupulous people being bent to throttle the same to nihility.*

*13. What amazes us more than anything else is that nobody, save a few, seems to be bothered on such a desperate issue that may plunge us to inhabitability during our life span.*

*14. In our view factors that are attributable to these ominous riddle, are myriad.*

*15. No doubt, some greedy, grubby, bilious, bewitched people are in the race to pull their socks, yet it is also beyond qualm that nonfeasance of the relevant functionaries are in no way beyond reproach. Clearly industrial waste and other lethal substances are being poured onto the Buriganga because the authorities have disdainfully failed to devise appropriate, ecofriendly waste dumping arrangement. So this as about time that they ravel the net with a stentorian determination to keep our beloved land habitable, to retrieve the lost glory of the Buriganga, to regain for it’s water the same transparency prevailed during the olden days, so that it can be turned into a source of palatable water, a source of unpolluted air, a safe habitat for sweet water fishes.*

*16. Be it as may, time now is to act rather than to apportion the blame.*

*17. Given that Buriganga basin has virtually been stripped of the character which s associated with* ***riverine*** *water and, does now look like a reservoir of diluted coal tar, rather than a water body, if we keep ourselves concealed under the sand, in the manner the ostriches do, we may find ourselves in the cavity of the pernicious Halloween before long. The sooner the alarm bell wakes us up to face this quandary, the better. It must be done by the entire populace as a conglomerate, they must rise to the occasion for their own survival.*

*18. We reckon a committee must be animated to device ways and means to achieve the above stated goals, we most dearly cherish. Hence, the Cabinet Secretary is directed to set up a body to do the needful. We reckon, discretion as to the composition of the team should be left with him, believing that he is best placed to know who posses the expertise to advise on this intricate and, as we understand, technical question, to prevent pouring and throwing hellacious substances in the river.*

*19. We do, nevertheless, contemplate that presence of personnel from the BIWTA, BIWTC, WASA, Dhaka City Corporation, Dhaka Metropolitan Police, Academics on such subjects as civil, chemical, hydrological engineering are indispensable.*

*20. The Committee should be formed straightaway and should transmit its dossier to us by 30th November 2012.*

*21. During the intervening period, the respondents must resort to the following actions without delay;*

*(1) respondents 5, 7 and 9-13 shall take immediate, effective measures to stop dumping waste in the river Buriganga. Respondent No. 4 shall file affidavit elaborating the progress every 3 months.*

*(2) The respondent No. 3 and 13 shall seal the sewerage line and industrial waste discharge line that ends on the river Buriganga within 6 months. They shall file progress report every 6 months.*

*(3) The respondent No. 14 will organize awareness programmes every month on the need to keep the Buriganga insulated from infestation. It shall also remove waste from the bank of Buriganga through a Special team and shall set up sign posters on the bank of the river so that the people can be made aware of the frantic scenario that shall loom if freestyle carnage on the river continues. This respondent shall file compliance report every 3 months.*

*22. With above directions the Rule is made absolute, which shall live on as a continuous mandamus. The matter shall be taken up on 1st December 2012 again for review and further orders.*

*23. Before parting we would direct the office to treat this as a Writ Petition involving public interest by exempting the petitioner from the filing cost.*

*24. We do so by taking account of the petitioner’s averments that his organization, Human rights And Peace For Bangladesh (HRPB), is working on different issues and have filed many cases in this Division with success on public interest matters, the organization bears the cost of the cases by its own fund which is raised from the donation of the members, it receives no fund from abroad or from any citizen of the country except the lawyer members, and that due to present high volume of cases, it is not possible on their part to bear the cost of the cases filed as public interest litigation.*

The argument made by Mahbubey Alam, the learned Attorney General. for *Bangladesh Faridul Alam vs Bangladesh and others* reported in 30 BLD (HCD) 2010 page-500] is important and relevant parts of Mr. Mahbubey Alam’s argument from that judgement are given below:

*440. Mr. Mahbubey Alam, the learned Attorney General appearing for the respondent No. 1 has submitted that he is aware of the submissions and also about the citations to have been referred by the petitioners and submits that he will not dispute as to the submissions made by the learned Advocates and the decisions referred to meet the exigencies.*

*441. He further submits that the decisions placed before this Court of both the Divisions (High Court Division and Appellate Division) containing the principles laid down by apex court on different subjects, context and times are binding for all.*

*442. He submits that we have to change our mind set as to the natural resources. The lease hold land is situated at the Cox’s Bazar Sea Beach. Bangladesh has claimed that the Cox’s Bazar beach is the longest Beach of the world and contesting for the*

*declaration that the Cox’s Bazar contains its unique beauty different from the other beaches of the world and Bangladesh is also contesting to have declaration that the Cox’s Bazar beach is the longest beach of the world having its heritage. He submits that*

*Channel-I a Private Television of our country has taken vow and is holding various types of seminar, symposium, concert and congregation of Tribal people to attract the attention of the people of the world as to its uniqueness, in respect of scenic beauty. He submits that the resources like air, sea, seashore, water and the forests have such a great importance to the people and the said resources being a gift of nature, they should be made freely available to every one irrespective of the status in life and thus, the*

*government is under obligation to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership and or commercial purposes.*

*443. He submits further that having regard to the latest ecological aspect and the change of time the issue we have presented in this case may be taken a new issues and dimension, but we have to see the rights of the people are being protected and he urged that the*

*notion that the public has a right to expect certain lands and natural areas to retain their natural characteristics is finding its way into the law of the land. The issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity an those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands considered inviolate to change.*

*444. He submits that to address the classic struggle between the members of the public and the private citizens, the legislature brought legislation in 1995 and accordingly, enacted the “Bangladesh Environment Conservation Act 1995.” The government having noticed that the natural resources are being destroyed and in such situation to protect the echo system came up with further legislation which was published in Bangladesh Gazette*

*in April 19, 1999, which is reproduced bellow:*

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*445. Subsequently, the notification dated 19.04.1999 was amended by another notification dated 3.5.1995 excluding certain areas from the earlier notification which is reproduced below:*

*----------*

*446. Mr. Mahbubey Alam, the learned Attorney General next submits that in order to protect the environment which is the crying need of the society, by the aforesaid legislation the government came up to solve the problem of environmental Pollution in as much as the problem of pollution is an outcome of urbanization and Industrialization and submits that in the mean time the people of our country have witnessed with bitter experience that rivers of Dhaka such as Buriganga, Shitalakha, Bali and Turag etc have*

*become severely polluted and to combat the pollution, the High Court Division of the Supreme Court in the meantime had issued rule which was made absolute with certain directions and held the Rule be treated as a continuing mandamus in order to save rivers.*

*447. He next submits that before giving lease the government at the relevant time during 2001-2006 without taking into notice of the existence of Notification dated 19.04.1999 declaring the Cox’s Bazar Sea Beach as Ecologically Critical Area under Section 5 of*

*the Act, 1995 had leased out the land of the Beach having total disregard to the need of the people though the state is the Trustee ofall natural resources which are by nature meant for public use and enjoyment. He further contends that public at large are the*

*beneficiary of the sea, seashore, beach running waters, airs, forests and ecologically fragile lands and that the state as a trustee is under a legal duty to protect the natural resources but the government had favoured some fortunate gray hair persons in giving lease of the Beach which is in the heart of Cox’s Bazar Beach disregarding the rights of the 14 crore people. He submits*

*further that the rights of 14 crores people should prevail upon the alleged rights of the 59 lessees who have allegedly acquired right by lease.*

*448. The learned Attorney General has urged fervently urged that the environment and the running waters do not have any Border and when Bangladesh faces catastrophe like Cyclone, and Flood and other neighbouring countries specially Myanmer, Chaina,*

*Nepal, Bhutan and India so the ecology and ecological hazard touches the interest of Bangladesh along with the other neighbouring countries and consequently, the world as a whole expresses concern. He submits any disturbance of the basic environment elements namely air, water and soil which are necessary for ‘life’ would be hazardous to “life” within the meaning of Article 32 of the Constitution.*

*449. He further submits that the government being the Executive wing of the State is also under an obligation to obey law, protect law and act in accordance with law made by the legislature and in no way the Government can violate the law and referring to the decision reported in Supreme Court Cases 2001, in the case of M.C. Mehata Vs. Kamal Nath he submits that Indian Supreme Court taking into consideration of the case of different states of United States of America and also of their own cases, on the subject has adopted a legal theory known as “Doctrine of the Public Trust” that is the state is Trustee of all natural resources and being a Trustee is under a legal to protect the natural resources and draw our attention to paragraph No. 23, 24, 25, 33 and 34 and submits that the time has come that we should adopt the same Doctrine as a part of our jurisprudence, the crucial passage of the above mentioned paragraphs are reproduced below:*

*------------*

*450. The learned Attorney General finally, submits that the government admittedly granted lease of land to the petitioners and others on acceptance of some consideration and the government can not over look such aspect of the case and if the government in future give lease of land for Hotel and Motel and in that case the priority could be given to those persons and the petitioners also can reinvest to develop the tourism. He lastly, submits that Government is also not unmindful to the interest of the petitioners as they are citizens of the country.*

*451. He contends that if Bangladesh is desirous to invite he attention of the tourists to the soil of Cox’s Bazar in that case the Cox’s Bazar Beach should be kept free from any disturbance of the basic environment elements namely, air, water and soil which are necessities for enjoyment of life and as such, the area cannot be degraded from present condition with some Bricks and sands which will definitely obstruct the free movement, free life and free air.*

In *Faridul Alam vs Bangladesh and others* reported in 30 BLD (HCD) 2010 page- 500] Justice Mr. Mr. Justice Md. Momtazuddin Ahmed held that,

*458. We have examined the above notifications regarding the declaration of Ecologically Critical Area along with submissions of the learned Advocates for the petitioners and the learned Attorney General for respondent No. 1 (Government).*

*459. There is no dispute as to the declaration made by the 1st notification dated 19.04.1999. Mr. Rafiq-ul-Huq, the learned Advocate for the petitioner submitted that the Cox’s Bazar Sea Beach had been excluded by the subsequent notification dated 03.05.1999 and the lease was granted free from all encumbrances and having taken into consideration such submission we have very meticulously examined the notification dated 03.05.1999 by which certain areas were excluded from the declaration and found that*

*“কক্সবাজার জেলার কক্সবাজার-টেকনাফ সমুদ্র সৈকত ও সোনাদিয়া দ্বীপ এর সংশ্লিষ্ট রিজার্ভ ফরেস্ট এলাকাসমূহ, বর্ণিত প্রজ্ঞাপন উল্লেখিত বিধি নিষেধের আওতা বহির্ভূত করা হলো”*

*This means* ***“Reserved Forest Area”*** *of the Cox’s Bazar Sea Beach has been excluded from the Ecologically Critical Area but not the Cox’s Bazar Sea Beach from the declaration of Ecologically Critical Area. We have no hesitation to accept the interpretation advanced by the learned Attorney General and in such circumstances, we hold that the lease was granted to the petitioners violating the declaration made by notification dated 19.04.1999.*

*Therefore, we find no merit in the Rules.*

*460. However, we direct as under:-*

*A. The Director General of Environment, Bangladesh is directed to appoint a Director having its office at Cox’s Bazar to protect the area which have declared Ecologically Critical Area relating to Cox’s Bazar Sea Beach by notification dated 19.04.1999 and is further directed to demarcate the Ecologically Critical Area putting pillar within 6 months from date of receipt of the order.*

*B. The Director General is further directed to display Sign Boards depicting the area which have been declared by the aforementioned notification dated 19.04.1999 Ecologically Critical Area of the Cox’s Bazar Sea Beach for public information and is further directed to take appropriate step to maintain basic environment of the said declared area.*

*C. The Deputy Commissioner Cox’s Bazar is directed to appoint a Commission consisting of not less than two Civil Engineers to ascertain the land to have been allotted to the petitioners along with the Construction cost to have been allegedly made in the land which have been leased out to the petitioners after receipt of the order.*

*D. The petitioners are directed to cooperate with the Commission in the process without creating hindrance and obstacle.*

*E. The respondent No. 1 is directed to return the consideration money to the lessee if they approach, the Secretary, Ministry of Land.*

*F. The respondent No. 1 is further directed to consider the application from the present lessees, if any allotment is given in future for construction of the Motel and Hotel in Cox’s Bazar.*

In *Human Rights and Peace for Bangladesh (HRPB) & others vs. Bangladesh* [(Writ Petition No. 6306 of 2010)(22 BLC-48)] better known as Karnaphuli rivers case, in 2016 Justice Justice Md Rezaul Hasan in his judgement held-

*24. Alongside, we find that the views expressed by the Supreme Court of India, in the case reported in (1997) 1 Supreme Court Cases 388; M.C. Mehta Vs. Kamalnath, is of great persuasive value and is an extended dimension of the environmental jurisprudence. It was held in that case that, “The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Though the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing, the American Courts in recent cases expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations therein to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. There is no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources. Our legal system based on English common law includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus the Public Trust doctrine is a part of the law of the land. (underlines supplied).*

*25. The facts that have led to initiation of the case of M.C. Mehta Vs. Kamal Nath, (1997) 1 SCC, 388, in brief are that, a news item appeared in Indian Express stating that a private company Span Motels Pvt. Ltd., in which the family of Kamal Nath (a former Minister for Environment and Forests) had direct link, had built a club at the bank of River Beas by encroaching land including substantial forest land which was later regularized and leased out to the company when Kamal Nath was the Minister. It was stated that the Motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the Motel was to create a new channel by diverting the river-flow. According to the news item three private companies were engaged to reclaim huge tracts of land around the Motel. The main allegation in the news item was that the course of the river was being diverted to save the Motel from future flood. The Supreme Court took notice of the news item because the facts disclosed therein, if ture, were be a serious act of environmental-degradation on the part of the Motel. (underlines supplied).*

*26. Before parting of, we do place on record our appreciation for doing this Herculean task by the office of the Deputy Commissioner, Chittagong, by preparing two sets of ‘survey reports’ along with the map (river profile), submitted in compliance of direction of this court. The Map and these 2(two) sets of survey report shall be treated as appendices to this judgment and be kept with record accordingly.*

*In view of the foregoing deliberations and the decisions cited above, we find merit in this rule and, in our considered opinion, the rule should be made absolute with appropriate directions upon the respondents.*

***Order***

*In the result, the Rule is made absolute.*

*With reference to the provisions of Article 112 and Article 111 of the Constitution of the People’s Republic of Bangladesh, we do hereby issue the following directions, namely-*

1. *The Deputy Commissioner, Chittagong, D.G., DOI, the Chief Executive* *Officer of the Chittagong City Corporation (CCC), the Secretary of the Chittagong Development Authority (CDA0 and the Chairman BIWTA are hereby directed to publish notices, with reference to the directions given in this judgment and order in two vernacular local daily news papers requiring all illegal occupants to remove their installations, buildings and constructed establishments from the banks of river Karnofuli, within 90 days from the date of publishing the notice. The notice shall refer to the concerned Moujas alongwith the Police Station and concerned khatian number and shall be published by all respondents within 7 days of the receiving this judgment and orders. The notices shall be published on the same day, upon consultation among themselves.*
2. *The Deputy Commissioner, Chittagong, the Director General, Department of Environment, the CEO, CCC and the Chairman CDA are hereby directed to evict illegal occupants, as per the survey report based on R.S. survey, in a joint effort to be taken under the action plan of Deputy Commissioner, Chittagong, within the next 90 days to the counted from the date of expiry of the above mentioned notice period.*
3. *The Police Commissioner, Chittagong, including other law enforcing agencies, shall render all assistances to the action to be taken by the respondents towards implementation of the directions given hereinabove. They should act in aid of the action plan.*
4. *All the respondents are directed to render such cooperation as may be required by the Respondent No. 12, Director General, DOE as may be required of them as per provision of section 4(L) of Bangladesh Environment Conservation Act, 1995.*
5. *The Deputy Commissioner, Chittagong, Respondent No. 13 is hereby directed to furnish authenticated copies of the survey reports (2 sets) showing the illegal occupants as per R.S. record to the CEO, Chittagong City Corporation, the Chairman, Chittagong Development authority, the Chairman CPA, Chairman BIWTA and to the Director General, DOE, within 3 working days of receiving copies of this judgment and order.*
6. *All concerned respondents are directed to submit affidavit-in-compliance, accordingly, after expiry of the above mentioned time frame, to the Registrar of the High Court Division, subject to such other or further order or orders as to this court may seem fit and proper.*
7. *All the respondents are directed to ensure enforcement of section 5 and section 8 of All open playgrounds , parks and natural water reservoir of all municipal area including all municipality of every district, Divisional city and megacity conservation Act, 2000 as well as the provisions of section 6L read with section 15 of Bangladesh Environment Conservation Act, 1995 and of other laws that may impose upon the respondents similar obligations.*
8. *The authorities in charge of or concerned with 1) BN RR Canteen (Navy canteen 8 RRB Bangladesh Navy (area of land occupied 1.30 acres) 2) Bangladesh Air Force (Part of Runway of the Airport) (area of land occupied 10.00, 3) Navy Boat club (area of occupied land 1.80 acres), situated under R.S. Khatian No. 1, Mouza-East Patenga, District- Chittagong and 4) Jetty and tower built by Chittagong port authority (CCT berth office, new mooring jetty, NCT-security level-01, jetty No. 4 (According to RS floating Pontoon, jetty and establishment over the Karnaphuli river and the flowing river itself)(occupied area 2.20 acres) 5) Capital dredging and bank protection managing agent pacific marine service under the control of Chittagong port authority, Chittagong and house building finance corporation building, Agrabad, Chittagong (Mouza Madarbadi) (occupied area 1.80 acres) and 6) Monohorkhali Abhaymitra Ghat capital dredging and bank protection and platform (Mouza: Monohorkhali and Firingi Bazar) (area occupied 07.00 acres) are hereby exempted from the eviction operation, since these constructions are apparently made in the public interest. However, these authorities are directed to obtain clearance from the Office of the Director General, DOE, as required under the proviso to section 6P of BEC Act, 1995, unless they have obtained the same in the meantime. The Director General, DOE shall consider their request if these constructions are done in the indispensable national interest. (of essential nature)*
9. *The Deputy Commissioner, Chittagong, the DG, DOE, the CEO of CCC, the Chairman CDA, the Chairman CPA and the Chairman BIWTA shall take or cause to taken all such steps as may be required of them under the provisions of law imposing statutory duty on them to protect the river Karnaphully in accordance with the ‘river profile’.*
10. *The respondents shall continue to perform their duties and shall implement the directions given herein above until the court directs otherwise.*
11. *We further record that these directions shall be treated as continuous mandamus and this court may, sou motu or otherwise, pass such order as may be considered just and proper*.

*28. Let copies of this judgment and order be sent immediately to the Respondent and persons named in clause (ix) above for their information and compliance.*

In *Human Rights and Peace for Bangladesh (HRPB) & others Vs Bangladesh [(Writ Petition No. 9801 of 2012)* (22 BLC-48)] ( From the book titled “Judgment on Public Interest Litigation” edited by Advocate Manzill Murshid and published by Human Rights and Peace for Bangladesh (HRPB) page no-442 ) better known as Munshipukur, Chowkbazar, Pachlaish, Chittagong case, in 2016 Justice Justice Md Rezaul Hasan in his judgement held-

*21. Having consulted the aforesaid two decisions reported in 62 DLR(AD) (2010) 428, (City Sugar Industries Ltd. And others Vs. Human Rights and Peace for Bangladesh & others) and the decisions reported in 17 BLT (HCD) 455 (Human Rights and Peace for Bangladesh vs. Bangladesh and others), we find that in 62 DLR (AD) 428, the judgment reported in 17 BLT 455, has been upheld, in view of the provisions of Act 36 of 2000 and of Act No. 1 of 1995.*

*22. In view of the facts and circumstances of the case and the decisions cited above, we find clear merit in this rule and in our considered opinion, the rule should be made absolute with appropriate directions upon the respondents*.

***Order:***

*In the result, the Rule is made absolute.*

*With reference to Article 112 and 111 of the Constitution of the People’s Republic of Bangladesh, we do hereby issue the following directions, namely-*

1. *The Respondent No. 2 and 3 being the Mayor, Chittagong City Corporation (CCC) and the Chairman, Chittagong Development Authority (CDA), are hereby directed to take immediate steps to prevent all illegal encroachment by earth filling or by dumping garbage into the pond “Munshipukur”, located in Chowkbazer area, within the territory of the CCC and the CDA as well as to stop causing any change in the nature and character of the ‘Munshipukur’ and to comply with the aforesaid provisions of law immediately, not exceeding 30 (thirty) days from receiving copy of this judgment and order.*
2. *The Respondent No. 5 The Director, Department of Environment, Zakir Hossain Shorok, Police Station- Khulshi, Chittagong is directed to take immediate step, as the DOE is legally bound to do, to implement the provisions of ‘6 Uma’ and 15, in exercise of the powers vested in then under section 4A and 7 of the Act No. 1*
3. *The respondents are directed to remove all unlawful encroachments from the said pond and evict all illegal occupants within 30 days from the date of receiving the copy of this judgment and order.*
4. *The respondent No. 5 is also directed to identify the violators and to prosecute them.*
5. *The Police Commissioner, Metropolitan Police, Chittagong, as well the Officer-in-charge of Pachlaish Police Station, Chittagong Metropolitan and such other authorities as may be required by the Respondent No. 5, are directed to render all necessary assistance for taking step, as per law, and if so required by sending and deploying Police force to stop the illegal encroachment, earth filling or dumping of garbage into ‘Munshipukur’.*
6. *The respondents shall continue to perform their duties and the directions given herein above until the court directs otherwise.*

*We further record that these directions shall be treated as continuous mandamus and that this court may, suo motu or otherwise, pass any order as may be required.*

*Let copy of the judgment and order be sent to the aforesaid Respondent Nos. 2, 3, 4, 5 and 6.*

*Let another copy of this judgment and order be sent to the Director General, Director of Environment, Sher-E Bangla Nagar, Dhaka for ensuring compliance by him without further delay.*

*All the respondents Nos. 2, 3 and 5 are directed to submit or to cause submitting a compliance report within 60 (sixty) days of receiving this judgment and order to the Registrar of the High Court Division of the Supreme Court of Bangladesh.*

*No order as to cost.*

If our High Court Division and Appellate Division had not issued directions necessary for the protection of the rivers through the abovementioned landmark judgments, many high-rise commercial buildings on the Buriganga River or many housing projects on the Turag River constructed by illegal land grabbers would be seen.

It is not just the Turag River or the Buriganga that are affected. A total of about 405 rivers are flowing through Bangladesh, including the three large rivers originating from the Himalayas named the Ganges, Brahmaputra and Meghna. 57 of these are trans-boundary rivers, of which 3 are common rivers between Bangladesh and India and one is common between Bangladesh and Myanmar. All of these rivers are more or less affected in the same way as the Turag or Buriganga River. Since time immemorial, the lives and livelihood of the millions of people in Bangladesh have revolved around these rivers. Now the question is, will Human Rights and Peace for Bangladesh file 405 different cases against river-grabbing in each of these 405 rivers? Because it is well known to all of us that almost every river has gone under the control of illegal occupiers and the banks of the rivers are gradually shrinking due to the construction of illegal establishments.

**The Public Trust Doctrine:**

Now we will talk about the most important topic of this case which is the public trust doctrine. Since ancient times, the King and the state governors have been using this doctrine to protect the rivers, sea beaches, forests, and air, especially for the public. At this point, we shall discuss what public trust property is and how to define it. A brief history of how the public trust doctrine is being used for the conservation, preservation, and development of the public trust property has been portrayed below.

Property that is entrusted to the state for the benefit of the people is called Public Trust Property. The environment, natural resources, biodiversity, uncovered wetlands, seas, rivers, canals, marshes, haors, lakes, sea beaches, riverbanks, hills and mountains, forest and air are included in Public Trust Property. These properties belong, not to a single person or group or organization, but to all citizens. However, no specific definition can be given to the Public Trust Property as many more subjects will be included in its ambit in the future. Many new objects are continuously being included within the definition of public trust property.

The environment, natural resources, biodiversity, wetlands, oceans, rivers, canals, marshes, haors, lakes, sea beaches, riverbanks, hills and mountains, forest and air are the gifts and blessings of nature. They must be fit for the unrestricted use of all. These properties belong to all, or none.

The state shall preserve and manage the environment, natural resources, biodiversity, uncovered wetlands, oceans, rivers, canals, marshes, haors, lakes, sea beaches, riverbanks, hills and mountains, forest and air for the fetterless and seamless enjoyment of the general public. Here, the State shall operate as the custodian or fiduciary or trustee of the environment, natural resources, biodiversity, all the uncovered wetlands, oceans, rivers, canals, marshes, haors, lakes, sea beaches, riverbanks, hills and mountains, and wild animals and shall ensure the maintenance, preservation, and development of these public trust properties as the legally bound protector and manager.

**Roman Law and Public Trust Doctrine**

The legal theory of the public trust property was first invented, developed and explained in details in Roman Law.

The organized definitions and interpretations of the Roman Law by the Byzantine Emperor Justinian (from 529 to 565 ce) (real name Petrus Sabbatius) for the administrative reformation of the Imperial Government is known as the Justinian Code (Codex Justinianus in Latin). The Justinian Code was implemented 1500 years ago. It had changed the Roman Empire entirely. It turned into the sole authority of the Justinian time by bringing all the laws and codes in one place. The modern name of the aforementioned Code of Justinian or Codex Justinianus (in Latin). That is, the collection of the base or basic works of scientific law is Corpus Juris Civilis (Body of civil law). Later on, it was regarded as the basic structure of all the laws promulgated in the Western European states.

According to the Roman Law, the rivers, sea beaches, forests, and air belongs to all or to none.

Afterwards, King John of England promulgated and executed one of the world’s finest documents named Magna Carta, which means “The Great Charter”, for the people of the United Kingdom on June 15, 1215 AD. In that document, the public trust doctrine was included, and was attached with great significance. As it is important for the reference, Chapter 16 and 33 of the Magna Carta is exactly quoted below:

*“Magna Carta Chapter 16:*

*“No riverbanks shall be placed in defense from henceforth except such as were so placed in the time of King Henry, our grandfather, by the same places and the same bounds as they were wont to be in his time.*

*Magna Carta Chapter 33:*

*“All kydells [weirs] for the future shall be removed altogether from Thames and Medway, and throughout all England, except upon the seashore.” (This seemingly narrow provision was subsequently held in English courts to provide protection from obstruction of all navigable rivers, celearing the streams for the free passage of both people and fish).”*

**English Common Law and Public Trust Doctrine**

“English Common Law” refers to those laws which are not enacted by the parliament but are legally recognized by the Courts of England in the form of decisions or judgments following the customs and precedents of that country. The public trust doctrine is accepted and recognized by the English Courts. This means that Public Trust Doctrine is a part of the English Common Law jurisdiction. On the other hand, the basis of our legal system is English Common Law.

Despite having originated from the English Courts of Law or the English Common Law system and achieving widespread recognition in America in the past two centuries, it is not yet properly found in the decisions given by the English Courts of Law. On the contrary, the Indian courts have well accepted the public trust doctrine and have maintained its widespread development for the past half-century. First of all, we will be discussing the judgments and decisions given by the Courts of England on the Public Trust Doctrine.

The important decisions of the courts in England, i.e. the United Kingdom are cited below:

The Court of England opined in the case of Gann v Free Fishers of Whitstable, (House of Lords, 3 March 1865, 11 E.R. 1305 (1865) 11 H.L. Cas. 192.) that,

*“Holding that the bed of all navigable rivers where the tide flows, and all estuaries or arms of the sea, is by law vested in the crown only for the benefit of the subjects.”*

The Court of England (Lord O’ Hagan) opined in the case of Kinloch v Secretary of State for India [(1882) 7 App Cas 619, 625-26, 630] that,

*“There is such a thing as a Public Interest Trust: “the term ‘trust’ is one which may properly be used to describe not only relationships which are enforceable by the courts in their equitable jurisdiction but also other relationships such as the discharge under the direction of the Crown of the duties or functions belonging to the prerogative and the authority of the Crown. Trusts of the former kind are described …. as being ‘trusts in the lower sense’ trusts of the latter king … ‘trusts in the higher sense’.”*

The Court of England opined in the case of Tito v Waddell (No 2) (Megarry V-C) reported in All England Law Reports [1977] 3 All ER page- 216, that,

*I propose to turn at once to the position of the Crown as trustee, leaving on one side any question of what is meant by the Crown for this purpose; and I must also consider what is meant by ‘trust’. The word is in common use in the English language, and whatever may be the position in this court, it must be recognized that the word is often used in a sense different from that of an equitable obligation enforceable as such by the courts. Many a man may be in a position of trust without being a trustee in the equitable sense; and terms such as ‘brains trust’, ‘anti-trust’, and ‘trust territories’, though commonly used, are not understood as relating to a trust as enforced in a court of equity. At the same time, it can hardly be disputed that a trust may be created without using the word ‘trust’. In every case one has to look to see whether in the circumstances of the case, and on the true construction of what was said and written, a sufficient intention to create a true trust has been manifested.*

*When it is alleged that the Crown is a trustee, an element which is of special importance consists of the governmental powers and obligations of the Crown; for these readily provide an explanation which is an alternative to a trust. If money or other property is vested in the Crown and is used for the benefit of others, one explanation can be that the Crown holds on a true trust for those others. Another explanation can be that, without holding the property on a true trust, the Crown is nevertheless administering that property in the exercise of the Crown’s governmental functions. This latter possible explanation, which does not exist in the case of an ordinary individual, makes necessary to scrutinize with greater care the words and circumstances which are alleged to impose a trust.*

**Important decisions of Indian Supreme Court on Public Trust Doctrine are given hereinafter:**

In (*Shri Sachidanand Pandey and another v. The State of West Bengal and others*) [AIR 1987 Supreme Court 1109 (Calcutta)] Justice Chinnappa Reddy held that,

*“2. A hundred and thirty-two years ago, in 1854, the* ***wise Indian Chief of Seattle*** *replied to the offer of the great White Chief in Washington to buy their land. The reply is profound. It is beautiful. It is timeless. It contains the wisdom of the ages. It is the first ever and the most understanding statement on environment. It is worth quoting. To abridge it or to quote extracts from it is to destroy its beauty. You cannot scratch a painting and not diminish its beauty. We will quote the whole of it:*

*How can you buy or sell the sky, the warmth of the land? The idea is strange to us.*

*If we do not own the freshness of the air and the sparkle of the water, how can you buy them?*

*Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in the memory and experience of my people. The sap which courses through the trees carries the memories of the red man.*

*The white man’s dead forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters: the horse, the great eagle, these are our brothers. The rocky crests the juices in the meadows, the body heat of the pony and man-all belong to the same family.*

*So, when the Great Chief in Washington sends word and he wishes to buy our land, he asks much of us. The Great Chief sends word he will reserve us a place so that we can live comfortably to ourselves. He will be our father and we will be his children. So we will consider your offer to buy our land.*

*But it will not be easy. For this land is sacred to us.*

*This shining water moves in the streams and rivers is not just water but the blood of our ancestors. If we sell you land, you must remember that it is sacred, and you must teach your children that it is sacred and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water’s murmur is the voice of my father’s father.*

*The rivers are our brothers, they quench our thirst. The rivers carry our canoes and feed our children. If we sell you our land you must remember and teach your children that the rivers are our brothers, and yours and you must henceforth give the kindness you would give any brother.*

*We know that the white man does not understand our ways. One portion of land is the same to him as the next for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother but his enemy and when he has conquered it, he moves on. He leaves his fathers’ graves behind and he does not care.*

*He kidnaps the earth from his children. His father’s grave and his children’s birth-right are forgotten. He treats his mother the earth and his brother the sky as things to be bought plundered sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.*

*I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand.*

*There is no quiet place in the white man’s cities. No place to hear the unfurling of leaves in spring or the rustle of an insect’s wings. But perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there in life if a man cannot hear the lonely cry of the whippoorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the fact of a pond and the smell of the wind itself cleansed by a mid-day rain or scented with the pinon pine.*

*The air is precious to the red man for all things share the same breath-the beast the tree the man they all share the same breath. The white man does not seem to notice the air he breathes. Like a man lying for many days he is numb to the stench. But if we sell you our land you must remember that the air is precious to us that the air shares its spirit with all the life it supports.*

*The wind that gave our grandfather his first breath also receives the last sigh. And if we sell you our land you must keep it apart and sacred as a place where even the white man can go to taste the wind that is sweetened by the meadow’s flowers.*

*So we will consider your offer to buy our land. If we decide to accept. I will make one condition. The white man must treat the beasts of this land as his brothers.*

*I am a savage and I do not understand any other way. I have seen a thousand rooting buffaloes on the prairie left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive.*

*What is man without the beasts? If all the beasts were gone man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected.*

*You must teach your children that the ground beneath their feet is the ashes of our grandfathers. So that they will respect the land. Tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children that the earth is our mother. Whatever befalls the earth befalls the sons of the earth. If man spit upon the ground they spit upon themselves.*

*This we know: The earth does not belong to man; man belongs to the earth. This we know: All things are connected like the blood which unites one family. All things are connected.*

*Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life: he is merely a strand in it. Whatever he does to the web he does to himself.*

*Even the white man, whose God walks and talks with him as friend to friend cannot be exempt from the common destiny. We may be brothers after all.*

*We shall see. One thing we know which the white man may one day discover-our God is the same God. You may thing now that you own Him as you wish to own our land; but you cannot. He is the God of man and His compassion is equal for the red man and the white. This earth is precious to Him and to harm the earth is to heap contempt on its Creator. The white too shall pass: perhaps sooner than all other tribes. Contaminate your bed and you will one night suffocate in your own waste.*

*But in your perishing you will shine brightly fired by the strength of the God who brought you this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us for we do not understand when the wild buffalo are all slaughtered the wild horses are tamed the secret corners of the forest heavy with scent of many men and the view of the ripe hills blotted by talking wires. Where is the thicket? Gone. Where is the eagle? Gone. The end of living and the beinging of survival.”*

***3. Today society’s interaction with nature is so extensive*** *that the environmental question has assumed proportions affecting all humanity. Industrialisation, unrbanisation, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oases, he is also leaving behind deserts in the place of oases. In the last century, a great German materialist philosopher warned mankind: “ Let us not, however, ‘flatter ourselves over much on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different.*

*Unforeseen effects which only too often cancel the first.” Ecologists are of the opinion that the most important ecological and social problem is the wide-spread disappearance all over the world of certain species of living organisms. Biologists forecast the extinction of animal and plant species on a scale that is incomparably greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2,000 years did so after 1900. The International Association for the Protection of Nature and Natural Resources Calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1000 bird and animal species are facing extinction at present.*

*So it is that the environmental question has become urgent and it has to be properly understood and squarely met by man. Nature and history, it has been said, are two component parts of the environment in which we live,*

*move and prove ourselves.*

***4. In India****, as elsewhere in the world, uncontrolled growth and the consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with this problem. The once Imperial City of Calcutta is no exception. The question raised in the present case is whether the Government of West Bengal has shown such lack of awareness of the problem of environment in making an allotment of land for the construction of a Five Star Hotel at the expense of the zoological garden that it warrants interference by this Court. Obviously, if the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for this Court to interfere in the absence of mala fides. On the other hand if relevant considerations are not borne in mind and irrelevant considerations influence the decision the Court may interfere in order to prevent a likelihood of prejudice to the public. Whenever a problem of ecology is brought before the Court the Court is bound to bear in mind Art. 48-A of the Constitution, Directive Principle which enjoins that “The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country” and Art. 51 A(g) which proclaims it to be the fundamental duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. When the Court is called upon to give effect to the Directive Principle and the fundamental duty the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases the Court may go further but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority. We may now proceed to examine the fact of the present case.*

In *M.C. Mehta v. Kamal Nath* (reported in (1997) 1 SCC-page-388 para-22-39) Kuldip Singh, J held that,

*22. The forest lands which have been given on lease to the Motel by the State Government are situated at the bank of River Beas. Beas is a young and dynamic river. It runs through Kullu Valley between the mountain ranges of the Dhauladhar in the right bank and the Chandrakheni in the left. The river is fast-flowing, carrying large boulders, at the times of flood. When water velocity is not sufficient to carry the boulders, those are deposited in the channel often blocking the flow of water. Under such circumstances the river stream changes its course, remaining within the valley but swinging from one bank to the other. The right bank of River Beas where the Motel is located mostly comes under forest, the left bank consists of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains. `23. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled An ecological perspective on property : A call for judicial protection of the public’s interest in environmentally critical resources published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words: “Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.*

*‘[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment’s limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service…….growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.’*

*Professor Barbara Ward has written of this ecological imperative in particularly vivid language:*

*‘We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that “we choose death” .*

*There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.*

*Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability and certain types of ecologically important resources-for example, wetlands and riparian forests- can no longer be destroyed without enormous long-term effects on environmental and therefore social stability.*

*To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.*

*In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the natural world. An understanding of the laws of nature must therefore inform all of our social institutions.”*

*24. The ancient Roman Empire developed a legal theory known as the “Doctrine of the Public Trust”. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about “the environment” bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullious) or by everyone in common (res communious). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan-proponent of the Modern Public Trust Doctrine-in an erudite article “Public Trust Doctrine in natural Resource Law : Effective Judicial Intervention”, Michigan law Review, Vol.68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:*

*“The source of modern public trust law is found in a concept that received much attention in Roman and English law-the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable*

*attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties such as the seashore, highways, and running water-‘perpetual use was dedicated to the public’, it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.”*

*25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life.*

*The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.* ***According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:***

*“Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.”*

*26. The American law on the subject is primarily based on the decision of the United States Supreme Court in Illinois Central Railroad Co. v. People of the State of Illinois. In the year 1869 the Illinois Legislature made a substantial grant of submerged lands-a mile strip along the shores of Lake Michigan extending one mile out from the shoreline-to the Illinois Central Railroad. In 1873, the Legislature changed its mind and repealed the 1869 grant. The State of Illinois sued to quit title. The Court while accepting the stand of the State of Illinois held that the title of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. It was different from the title which the United States held in public lands which were open to pre-emption and sale. It was a title held in trust-for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The abdication of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public. According to Professor Sax the Court in Illinois Central “articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties.”*

*27.* ***In Gould v. Greylock*** *Reservation Commission The Supreme Judicial Court of Massachusetts took the first major step in developing the doctrine applicable to changes in the use of lands dedicated to the public interest. In 1886 a group of citizens interested in preserving Mount Greylock as an unspoiled natural forest, promoted the creation of an association for the purpose of laying out a public part on it. The State ultimately acquired about 9000 acres, and the legislature enacted a statute creating the Greylock Reservation Commission. In the year 1953, the legislature enacted a statute creating an authority to construct and operate on Mount Greylock an Aerial Tramway and certain other facilities and it authorized the Commission to lease to the Authority any portion of the Mount Greylock Reservation. Before the project commenced, five citizens brought an action against both the Greylock Reservation Commission and the Tramway Authority. The plaintiffs brought the suit as beneficiaries of the public trust. The Court held both the lease and the management agreement invalid on the ground that they were in excess of the statutory grant of the authority. The crucial passage in the judgment of the Court is as under:*

*“ The profit-sharing feature and some aspects of the project itself strongly suggest a commercial enterprise. In addition to the absence of any clear or express statutory authorization of as broad a delegation of responsibility by the Authority as is given by the management agreement, we find no express grant to the Authority or power to permit use of public lands and of the Authority’s borrowed funds for what seems, in part at least, a commercial venture for private profit. ”*

*Professor Sax’s comments on the above-quoted paragraph from the Gould decision are as under:*

*“ It hardly seems surprising, then, that the court questioned why a State should subordinate a public park, serving a useful purpose as relatively undeveloped land, to the demands of private investors for building such a commercial facility. The court, faced with such a situation, could hardly have been expected to have treated the case as if it involved nothing but formal legal issues concerning the State’s authority to change the use of a certain tract of land----- Gould, like Illinois Central, was concerned with the most overt sort of imposition on the public interest: commercial interests had obtained advantages which infringed directly on public uses and promoted private profits. But the Massachusetts court has also confronted a more pervasive, if more subtle, problem-that concerning projects which clearly*

*have some public justification. Such cases arise when, for example, a highway department seeks to take a piece of parkland or to fill a wetland.”*

*28. In Sacco v. Development of Public Works, the Massachusetts Court restrained the Department of Public Works from filling a great pond as part of its plan to relocate part of State Highway. The Department purported to act under the legislative authority. The court found the statutory power inadequate and held as under:*

*“ the improvement of public lands contemplated by this section does not include the widening of a State highway. It seems rather that the improvement of public lands which the legislature provided for …..is to preserve such lands so that they may be enjoyed by the people for recreational purposes.”*

*29. In Robbins v. Dept. Of Public Works, the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, “wetlands of considerable natural beauty ……..often used for nature study and recreation” for highway use. 30. Professor Sax in the article (Michigan Law Review) refers to Priewev v. Wisconsin State Land and Improvement Co., Crawford Country Lever and Drainage Dist. No.1, City of Milwaukee v. State, State v. Public Service Commission and opines that “the Supreme Court of Wisconsin has probably made a more conscientious effort to rise above rhetoric and to work out a reasonable meaning for the public trust doctrine than have the courts of any other State.”*

*31. Professor Sax stated the scope of the public trust doctrine in the following words:*

*“ If any of the analysis in this Article makes sense, it is clear that the judicial techniques developed in public trust cases need not be limited either to these few conventional interests or to questions of disposition of public properties. Public trust problems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which diffused public interests need protection against tightly organized groups with clear and immediate goals. Thus, it seems that the delicate mixture of procedural and substantive protections which the courts have applied in conventional public trust cases would be equally applicable and equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of way for utilities, and strip mining of wetland filling on private lands in a State where governmental permits are required.”*

*32. We may at this stage refer to the judgment of the Supreme Court of California in National Audubon Society v. Superior Court of Alpine Country. The case is popularly known as “the mono Lake case”. Mono Lake is the second largest lake in California. The lake is saline. It contains no fish but supports a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gulls, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tura (sic) on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the City of Los Angeles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls were abandoning the lake and the scenic beauty and the ecological values of Mono Lake were imperiled. The plaintiffs environmentalist-using the public trust doctrine- filed a law suit against Los Angeles Water Diversions. The case eventually came to the California Supreme Court, on a Federal Trial Judge’s request for clarification of the State’s public trust doctrine. The Court explained the concept of public trust doctrine in the following words:*

*“ ‘By the law of nature these things are common to mankind-the air, running water, the sea and consequently the shores of the sea.’ (Institutes of Justinian 2.1.1) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns ‘all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people.’” The Court explained the purpose of the public trust as under:*

*“The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in Marks v. Whinney, [p]ublic trust easements (were) traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the State, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to hold that the traditional triad of uses-navigation, commerce and fishing-did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that [t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the Sate is not burdened with an outmoded classification favoring one mode of utilization over another. There is a growing public recognition that one of the important public uses of the tidelands- a use encompassed within the tidelands trust-is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.’*

*Mono Lake is a navigable waterway. It supports a small local industry which harvests brine shrimp for sale as fish food, which endeavor probably qualifies the lake as a ‘fishery’ under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological –the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds. Under Marks v. Whitney, it is clear that protection of these values is among the purposes of the public trust. ”*

*The Court summed up the powers of the State as trustee in the following words:*

*“ Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust……”*

*The Supreme Court of California, inter alia, reached the following conclusion:*

*“ The State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this State shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interest. (See Johnson, 14 U.C. Davis L. Rev. 233, 256-57/; Robie, Some Reflections on Environmental Considerations in Water Rights Administration, 2 Ecology L.Q. 695, 710-711 (1972); Comment, 33 Hastings L.J. 653, 654) As a matter of practical necessity the State may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the State must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see United Plainsmen v. N.D State Water Cons. Comm’n at pp. 462-463, and to preserve, so far as consistent with the public interest, the uses protected by the trust.”*

*The Court finally came to the conclusion that the plaintiffs could rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono basin.*

*33. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in Mono Lake case to the effect that the protection of ecological values is among the*

*purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and water. In Phillips Petroleum Co. v. Mississippi the United States Supreme Court upheld Mississippi’s extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. Phillips Petroleum case assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources.*

*34. Our legal system-based on English common law-includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, aris, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.*

*35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.*

*36. Coming to the facts of the present case, large area of the bank of River Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. We have no hesitation in holding that the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. Both the lease transactions are in patent breach of the trust held by the State Government. The second lease granted in the year 1994 was virtually of the land which is a part of the riverbed. Even the board in its report has recommended de-leasing of the said area.*

*37. This Court in Vellore Citizens’ Welfare Forum v. Union of India explained the “Precautionary Principle” and “Polluters Pays Principle” as under; (SCC pp. 658-59, paras 11-13)*

*“ Some of the salient principles of ‘Sustainable Development’. As culled out from Brundtland Report and other international documents, are Inter- Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that ‘the precautionary Principle’ and ‘the Polluter Pays Principle’ are essential features of ‘Sustainable Development’. The ‘Precautionary Principle –in the context of the municipal law ---menas:*

*(i) Environmental measures- by the State Government and the statutory authorities –must anticipate, prevent and attack the cause of environmental degradation.*

*(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

*(iii) The ‘onus of proof’ is on the actor or the developer/industrialist to show That his action is environmentally benign. ‘The Polluter Pays Principle’ has been held to be a sound principle by this Court in Indian Council for Enviro-Legal Action v. Union of India. The Court observed: (SCC p. 246, para 65)*

*‘……….we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.’*

*The Court ruled that: (SCc p. 246, para 65)*

*‘…Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on.’*

*Consequently the polluting industries are ‘absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas’.*

*The ‘Polluter Pays Principle, as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of ‘Sustainable Development’ and as such polluter is*

*liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.*

*The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land.”*

*38. It is thus settled by this Court that one who pollutes the environment must pay to reverse the damage caused by his acts.*

*39. We, therefore, order and direct as under:*

*1. The public trust doctrine, as discussed by us in this judgment is a part of the law of the land.*

**In [ *K.M. Chinnappa versus Union of India and others* reported in AIR 2003 (B.N. KIRPAL (CJI), Y.K. SABHARWAL AND ARIJIT PASAYAT, JJ)] Indian Supreme court held that,**

*15. It would be hard to find out such dawn to earth description of nature. “ Nature hates monopolies and knows no exception. It has always some levelling agency that puts the overbearing, the strong, the rich, the fortunate substantially on the same ground with all others” and Zarathustra. Environment is polycentric and multi-facet problem affecting the human existence. The Stockholm Declaration of United Nations on Human Environment, 1972, reads its Principle No. 3, inter alia, thus:*

*“Man has the fundamental right to freedom, equality, and adequate conditions of life. In an environment of equality that permits a life of dignity and well being and bears a solemn responsibility to protect and improve the environment for present and future generations.”*

*16. The declaration, therefore, says that in the developing countries, most of the environmental problems are caused by underdevelopments. The Declaration suggests to safe actions with prudent care for ecological balance. It is necessary to avoid massive and irreversible harm to the earthly environment and strife for achieving present generation and the posterity a better life in an environment more in keeping with the needs and hopes. In this context immediately comes to mind the words of Pythogarus who said: For so long as man continues to be the ruthless destroyer of lower living beings, the will never know health or peace. For so long as men massacre animals, they will kill each other. Indeed, they who sow the seeds of murder and pain cannot reap joy and love.*

*17. Article 48- A in part IV (Directive principles) of the constitution of India. 1950 brought by the constitution (42nd Amendment) Act, 1976, enjoins that*

*“State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country”. Article 47 further imposes the duty on the state to improve public health as its primary duty. Art. 51-A(g) imposes “a fundamental duty” on every citizen of India to protect and improve the natural “environment” including forests, lakes rivers and wild life and to have compassion for living creatures. 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. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit. The protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions, would cause environmental pollution. Therefore, hygienic environment is an integral fact of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environment protection, therefore, has now become a matter of grave concern for human existence, promoting environmental protection implies maintenance of the environment as a whole comprising the man made and the natural environment. Therefore, there is constitutional imperative on the central Government. State Governments and bodies like Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measure to promote, protect and improve the environment-man made and natural environment.*

*18. Industrializations, urbanization, explosion of population, over exploitation of resources, depletion of traditional sources of energy and raw materials, and the search for new sources of energy and raw materials , the disruption of natural ecological balances, the restriction of multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature, If man is able to transform deserts into oasis, he is also leaving behind deserts in the place of oasis. In the last century, a great German materialist philosopher warned mankind: Let us not, however, flater ourselves over much on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different; unforeseen effects which only to often cancel the first. Ecologists are of the opinion that the most important ecological and social problem is the wide spread disappearance all over the world of certain species of living organisms. Ecologists forecast the extinction of animal and plant species on a scale that is incompatibly greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2000 years did so after 1900. The International Association for the Protection of Nature and Natural Resources calculates that now, on average, one species or sub-species is lost every year. It is said that approximately 1000 birds and animal species are facing extinction at present. It is for this that the environmental questions have become urgent and they have to be properly understood and squarely met by man. Nature and history are two components of the environment in which we live, move and prove ourselves. This Court in Sachindanand Pandey and (AIR 1987 SC 1109) and Varner Gaur V. State of Haryana (1995 AIR SCW 306) has highlighted these aspects.*

*19. Environmental law is an instrument to protect and improve the environment and control or prevent any act or omission polluting or likely to pollute the environment. In view of the enormous challenges thrown by the industrial revolution, the legislatures throughout the world are busy in this exercise. Many have enacted laws long back and they are busy in remodelling the environmental law. The others have moved their law making machineries in this direction except the under developed States who have yet to come in this wave length. India was one of these few countries which paid attention right from the ancient time down to the present age and till date, the tailoring of the existing law to suit the challenging conditions is going on. The problem of law making and amending is a difficult task in this area. There are a variety of colours of this problem. For example, the industrial revolution and the evolution of certain cultural and moral values of the humanity and the rural and urban developments in agricultural technology, waste, barren or industrial belts, developed, developing and under developed parts of the lands, the rich and poor Indians; the population explosion and the industrial implosion: the people’s increasing awareness and the decreasing State Exchequer, the promises in the political manifestos and the State’s development action. In this whole gamut of the problems the Tiwari Committee came out with the data that we have in India “ nearly five hundred environmental laws” and the Committee pointed out that no systematic study had been undertaken to evaluate those legislative developments. Some legal controls and techniques have been adopted by the legislatures in the field of Indian Environmental Laws. Different legislative controls right from the ancient time, down to the modern period make interesting reading. Attention has to be paid to identify the areas of great concern to the legislature, the techniques adopted to solve those problems; the pollutants which required continuous exercises, the role of legislature and people’s participation outside. These are some of many areas which attract the attention in the study of history of the Indian Environmental Law.*

***20.*** *Since time immemorial, natural objects like rivers enjoyed a high position in the life of the society. They were considered as Goddesses having not only the purifying capacity but also self purifying ability. Fouling of the water of a river was considered a sin and it attracted punishments of different grades which included, penance, outcasting, fine, etc. The earth or soil also equally had the same importance, and the ancient literature provided the means to purify the polluted soil. The above are some of the many illustrations to support the view that environmental. Pollution was controlled rigidly in the ancient time. It was not an affair limited to an individual or individuals but the society as a whole accepted its duty to protect the environment. The dharma of environment was to sustain and ensure progress and welfare of all. The inner urge of the individuals to follow the set norms of the society, motivated them to allow the natural objects to remain in the natural state. Apart from this motivation, there was the fear of punishment. There were efforts not just to punish the culprit but to balance the eco-systems. The noteworthy development in this period was that each individual knew his duty to protect the environment and he tried to act accordingly. Those aspects have been highlighted by a learned author C.M. Jariwala in his article “ Changing Dimensions of the Indian Environmental Law” in the book “Law and Environment” by P. Leelakrishnan.*

*21. The Economic and Special Council of the United Nations passed a resolution on 30th July, 1968 on the question of convening an International Conference on problems of human environment. In the United Nations Conference on Human Environment at Stockholm from 6th to 16th June, 1972, proclamation was made on United Nations on Human Environment. It was stated in the proclamation in those profound words:*

*“Man is both creature and moulder of his environment which gires his physical sustenance and affords him the opportunity for intellectual, moral social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of men’s environment the natural and the man made, are essential to his well being and to the enjoyment of basic human rights even the right to life itself.*

*The protection and improvement of the human environment is a major issue which affects the well being of people and economic development throughout the world, it is the urgent desire of the peoples of the whole world and the duty of all Governments. ”*

***22.*** *When the necessity to promote the environment turned grave, doubt was expressed by some commentators whether the issue of environment would last. They have been proved wrong, since it is clearly one of the big issues, perhaps the biggest issue of the 1990s. It is a big issue in political terms since protection of the environmental is high one most people’s priorities for the 1990s. As a result political parties and Governments are falling over each other in their eagerness to appear green, even if as yet their actions rarely match their rhetoric. It is big in terms of the size of the problem faced and the solutions required, global warning the destruction of the ozone layer, acid rain deforestation overpopulation and toxic waste are all global issue which require an appropriately global response. It is big in terms of the range of problems and issues – air pollution water pollution noise pollution waste disposal radioactivity, pestictides country side protection conservation of wild life the list is virtually endless. As observed by Simon Bell and Stuart Bell in Environmental Law:*

*“.........In the words of the White Paper on the Environment. This Common Inheritance (cm. 1200, 1990) the issues range from the street corner to the stratosphere. Finally, it is big in terms of the knowledge and skills required to understand a particular issue. Law is only one element in what is a major cross disciplinary topic. Lawyers need some understanding of the scientific, political and economic process involved in environmental degradation. Equally all those whose activities and interests relate to the environment need to acquire an understanding of the structure and content of environmental law, since it has a large and increasing role to play in environmental protection.*

*30. Progress and pollution go together. As this Court observed in M.C. Mehta and another v. Union of India and others (AIR 1987 SC 965), when science and technology are increasingly employed in producing goods and services calculated to improve the quality of life, there is certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. We can only hope to reduce the element of hazard or risk to the community by taking all necessary steps for locating such industries in a manner which would pose least risk of danger to the community and maximizing safety requirements.*

*As observed in the United Nations Conference held at Stockholm in June, 1972 economic and social development was essential for ensuring a favorable living and working environment for man and for creating condition on earth that were necessary for the improvement of the quality of life.*

*31. The tragedy of the predicament of the civilized man is that Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he cannot repair and cannot foresee. There is increase in awareness of the compelling need to restore the serious ecological imbalances introduced by the depredations inflicted on nature by man. The state to which the ecological imbalance and the consequent environmental damage have reached is so alarming that unless immediate determined and effective steps were taken the damage might become*

*irreversible. In his foreward to International Wild Life Law, M.R.M. Prince Philip the Duke of Edinburgh said :*

*“ Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that........... .................As usual with all legal systems the crucial requirement is for the terms of the conversions to be widely accepted and rapidly implemented..........*

*Regretfully progress in this direction is proving disastrously slow” (See International Wild Life law by Simon Lyster, Cambridge, Grotius Publications Ltd. 1985 Edn.)*

*32. The United National General Assembly adopted on October 29, 1985 the World Charter for nature. The chapter declares the awareness that:*

*“(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.*

*(b) Civilization is rooted in nature which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of the creatively and for rest and recreation.”*

*33. Towards the end of his reign, King Asoka in the third century B.C. issued a decree that it has a particularly contemporary ring in the matter of preservation of wild life and environment. He had written:*

*“Twenty six years after my coronation. I declare that the following animals were not to be killed, parrots, mynas, the aruna, ruddy geese, wild geese, the nandimukha, cranes, bats, queen, ants, terrapins, bonelss fish, rhinoceroses ..........and all quadrupeds which are not useful or edible ............Forest must not be burned.”*

*34. To protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The world is under an impenetrable cloud. In view of enormous challenges thrown by the industrial revolution the legislatures throughout the world are busy in their exercise to find out means to protect the world. Every individual in the society has a duty to protect the nature. People worship the objects of nature. The trees, water, land and animals had gained important positions in the ancient times. As Manu VIII, page 282 says different punishments were prescribed for causing injuries to plants. Kautilya went a step further and fixed the punishment on the basis of importance of the part of the tree. (See Kautilya III, XIX, 197).*

***35****. As observed by this Court in Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh (AIR 1987 SC 359), natural resources have got to be tapped for the purpose of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care so that ecology and environment may not be affected in any serious way; these may not be any depletion of water resources and long term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of mankind and are not intended to be exhausted in one generation.*

*36. The Academy Law Review at pages 137-138 says that a recent survey reveals that every day millions of gallons of trade wastes and effluents are discharged into the river, streams, lake and sea etc. Indiscriminate water pollution is a problem all over the world but is now acute in densely populated industrial cities. Our country is no exception to this. Air pollution has further added to the intensity and extent of the problem. Every year millions of tons of gaseous and particulate pollutants are injected into the atmosphere, both through natural processes and as a direct result of human*

*activity. Scientists have pointed out that earth’s atmosphere cannot absorb such unlimited amount of pollutant materials without undergoing changes which may be of an adverse nature with respect to human welfare. Man in order to survive in his planetary home will have to strike the harmonious balance with nature. There may be boundless progress scientifically which may ultimate lead to destruction of man’s valued position in life. The Constitution has laid the foundation of Arts. 48-A and 51A for a jurisprudence of environmental protection. Today, the State and the citizen are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures.*

*37. A learned Jurist has said, the Rig Veda praises the beauty of the dawn (usha) and worships nature in all its glory. And yet today a bath in the Yamuna and Ganga is a sin against bodily health, not a salvation for the soul-so polluted and noxious are these ‘Holy’ waters now. “One hospital bed out of four in the world is occupied by a patient who is ill because of polluted water..................*

*...........Provision of a safe and convenient water supply is the most important activity that could be undertaken to improve the health of people living in rural areas of the developing world.” (W.H.O.) “ Nature never did betray. That heart that loved her.” (Wordsworth). The anxiety to save the environment manifested in the Constitution (Forty-Second Amendment) Act, 1976 by the introduction of a specific provision for the first time to “protect and improve” the environment. Man is nature’s best promise and worst enemy. If industry is necessity, pollution inevitable. Since progress and pollution go together, there can be no end of progress and consequently, no escape from pollution. If industry is necessary evil, pollution. Surest sufferance. Several enactments have been made to combat pollution.*

*“Pollution” is noun derived from the transitive verb “pollute” which means to make foul or unclean, dirty, to make impure or morally unclean. In Halsbury’s Laws of England (Fourth Edition, Volume 38, para 66) “pollution” means the direct or indirect discharge by man of substances or energy into the aquatic environment resulting in hazard to human health, harm to living resources and aquatic ecosystems, damage to amenities on interference with other legitimate use of water.*

*38. In Divisional forest Officer and others v. S. Nageswaramma (1996(6)SCC 442) it was observed that the renewal of lease is not a vested right of the lessee. There is a total prohibition against the grant of mining lease in a forest area without concurrence of the Central Government. As was observed by this Court in M.C. Mehta v. Kamal Nath and others (1997(1) SCC 388), our legal system based on English Common Law includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature mean for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.*

*39. The aesthetic use and the pristine glory cannot be permitted to be eroded for private, commercial or any other use unless the Courts find it necessary, in good faith, for public good and in public interest to encroach upon the said resources.*

*40. It cannot be disputed that no development is possibly without some adverse effect on the ecology and environment and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. The balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be by-passed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship.*

*41. In this background, the Environment Impact Assessment reports are of great importance. The Council on European Economic Committee in their directive to the member States highlighted objectives of such assessments as follows:*

*“The effect of a project on the environment must be assessed in order to take action of the concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource of life.”*

*42. A few decisions taken at the Convention on Biological Diversity dated 5th June, 1992 would be relevant.*

*43. The Preamble, inter alia, contains the following:*

*“Concerned that biological diversity is being significantly reduced by certain human activities. Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures. Noting that it is vital to anticipate, prevent and attack the causes of significant reduction or loss of biological diversity at source. Noting further that the fundamental requirement for the conservation of biological diversity is the in-situ conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings.”*

*44. Articles 1, 6, 7 and 14(a) are also important.*

*Article 1: Objectives- The objectives of this Convention to be pursued in accordance with its relevant provisions are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.*

*Article 6: General measures for conservation and sustainable use-*

*Each contracting party shall, in accordance with its particular conditions and capabilities:*

1. *develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adopt for this purpose existing strategies, plans or programmes which shall reflect, inter alia, the measures set out in this Convention relevant to the contracting party concerned; and*
2. *integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or crosssectoral plans, programmes and policies. Article 7: Identification and Monitoring Each contracting party shall, as far as possible and as appropriate, in particular for the purposes of Arts. 8 to 10:*
3. *identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annexure 1:*
4. *Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to sub-paragraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use.*
5. *identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and*
6. *maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above.*

*Article 14(a): Impact Assessment and Minimizing Adverse Impacts-*

*Each contracting party, as far as possible and as appropriate, shall:*

1. *Introduce appropriate procedures requiring environment impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures.*

*45. Sustainable development is essentially a policy and strategy for continued economic and social development without detriment to the environment and natural resources on the quality of which continued activity and further development depend. Therefore, while thinking of the developmental measures the needs of the present and the ability of the future to meet its own needs and requirements have to be kept in view. While thinking of the present, the future should not be forgotten. We owe a duty to future generations and for a bright today, bleak tomorrow cannot be countenanced. We must learn from our experiences of past to make both the present and the future brighter. We learn from our experiences, mistakes from the past, so that they can be rectified for a better present and the future. It cannot be lost sight of that while today is yesterday’s tomorrow, it is tomorrow’s yesterday.*

*46. The greenery of India should not be allowed to be perished, to be replaced by deserts. Euthopia which at a point of time was considered to be one of the greenest countries, is virtually a vast desert today.*

*47. The Union Government framed National Forest Policy in 1988. Though the basic objectives are very laudable, it is sad to note that it has virtually been confined in papers containing it, and not much has been done to translate them into reality.*

*Nevertheless, it reflects anxiety of the Union Government to protect and preserve natural forests with vast variety of flora and fauna, representing biological diversity and genetic resources of the country.*

*48. Duty is cast upon the Government under Art. 21 of the Constitution of India to protect the environment and the two salutary principles which govern the law of environment are: (i) the principles of sustainable development and (ii) the precautionary principle. It needs to be highlighted that the Convention on Biological Diversity has been acceded to by our country and therefore, it has to implement the same. As was observed by this Court in Vishaka and others v. State of Rajasthan and others (1997 (6) SCC 241), in the absence of any inconsistency between the domestic law and the international conventions, the rule of judicial construction is that regard must be had to international convention and norms even in construing the domestic law. It is, therefore, necessary for the Government to keep in view the international obligations while exercising discretionary powers under the Conservation Act unless there are compelling reasons to depart therefrom.*

*49. The United Nations Conference on Human Environment held in Stockholm during June, 1972 brought into focus several alarming situations and highlighted the immediate need to take steps to control menace of pollution to the mother earth air and of space failing which, the Conference cautioned the mankind, it should be ready to face the disastrous consequences. The suggestions noted in this Conference were reaffirmed in successive Conference followed by Earth Summit held at Rio-de Janeiro (Brazil) in 1992.*

**In (*T.N. Godavarman Thirumulpad v. Union of India* reported in AIR 2005 (S.C) page 4258) it was held that,**

*87. The importance of conserving and managing existing natural forest and forest soils, which are very large stores of carbon, has been emphasized as it will significantly reduce greenhouse gas emissions. To develop and protect forest, a scientific management is necessary so as to enhance productivity, density and health. Forestry projects have to lay emphasis on management and rejuvenation of natural forests. The fragile eco-systems should be properly managed in order to safeguard the livelihood of millions of people.*

*88. The national development agenda must recognize the necessity of protecting the long-term ecological security. The problem area is the growing population, high degree of mechanism and steep rise in energy use which has led to activities that directly or indirectly affect the sustainability of the environment.*

*89. It is recognized that the sustainable use of bio-diversity is fundamental to ecological sustainable. The loss of bio-diversity stems from destruction of the habitat, extension of agriculture, filling up of wet lands, conversion of rich bio-diversity sites for human settlement and industrial development, destruction of coastal areas and uncontrolled commercial exploitation. It is thus evident that the preservation of eco-systems, bio-diversity and environment whether examined on common law principle or statutory principle or constitutional principle eying from any angle it is clearly a national issue to be tackled at the national level. All initiatives are required to seriously pursue.*

*90. Dealing with inter-generational justice, it has been rightly observed that posterity shall not be treated like dirt. In an article published in 2003 Columbia Journal of Environmental Law (28 Colum. J.Envtl. L. 185), the author says that the way in which a society cares or does not care for its dirt- its land- reflects the degree to which it cares or does not care for its own long-term future.*

*91. We may also briefly refer to Public Trust doctrine and its applicability to the matters under consideration. The Public Trust Doctrine looks beyond the need of the present generation and also suggests that certain resources are invested with a special nature. It would be instructive to make a note of a story given in by Timothy Patrick Brady in Boston College Environmental Affairs Law Review, Spring 1990 under the title ‘But most of it belongs to those yet to be born’. The story relates to digging of well at the time of drought. When a Frenchman told villagers of a prudent African solution of digging well, many villagers agreed but others argued that it will bring people from other villages and they would bring their cattle and that would increase the pressure on the already precious water. The Frenchman told the villagers that why not explain to them that the will is only for your own village and they can dig their own. It was then said that ‘water is not only ours, but is gift of nature from God and must be shared.’ Ultimately, they concluded that it was wiser not to dig the well at all. The moral of the story is that we are trustees of natural resources which belong to all including future generation as well. The public trust doctrine has to be used to protect the right of this as also future generation. 92. Having regard to the above, amounts under CAMPA have to be used for regeneration of eco-system and the same cannot be handed over to any State Government on the premise that ecology is not property of any State but belongs to all being a gift of nature for entire nation. The object of the FC Act and EP Act is protection of environments. These Acts do not deal with any propriety rights of anymore.*

**In (*Intellectuals Forum, Tirupathi v.State of A.P.)* [(AIR 2006) page-1350] it was held that,**

*65. The responsibility of the state to protect the environment is now a well accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of “state responsibility” for pollution emanating within one’s own territories [Corfu Channel Case, ICJ Reports (1949) 4]. This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which India was a party. The relevant Clause of this Declaration in the present context is Paragraph 2, which states:*

*“The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.”*

*Thus, there is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area. Sustainable Development.*

*The respondents, however, have taken the plea that the actions taken by the Government were in pursuance of urgent needs of development. The debate between the developmental and economic needs and that of the environment is an enduring one, since if environment is destroyed for any purpose without a compelling developmental cause, it will most probably run foul of the executive and judicial safeguards. However, this court has often faced situations where the needs of environmental protection have been pitched against the demands of economic development. In response to this difficulty, policy makers and judicial bodies across the world have produced the concept of “sustainable development.” This concept, as defined in the 1987 Report of the World Commission on Environment and Development (Brundtland Report) defines it as “ Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.” Returning to the Stockholm Convention, a support of such a notion can be found in paragraph 13, which states:*

*“In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.”*

*Subsequently the Rio Declaration on Environment and Development, passed during the Earth Summit of 1992 to which also India is a party, adopts the notion of sustainable development. Principle 4 of the declaration states:*

*“ In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”*

*66. This court in the of Essar Oil v. Halar Utkarash Samiti, [2004 (2) SCC 392, para 27] was pleased to expound on this. Their Lordships held:*

*“ This, therefore, is the sole aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in population together with the consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, filling up of lakes and the pollution of water resources and the very air that we breathe. However, there need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other.”*

*A similar view was taken by this Court in Indian Council for Enviro-Legal Action v. Union of India, (1996 (5) SCC 281, Para 31) where their Lordships said:*

*“ While economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment should go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of the environment.”*

*The concept of sustainable development also finds support in the decisions of this Court in the cases—M.C. Mehta v. Union of India (Taj Trapezium case), (1997) 2 SCC 653; State of Himachal Pradesh v. Ganesh Wood Products, (1995) 3 SCC 363 and Narmada Bachao Andolan v. Union of India, (2002) 10 SCC 664.*

*67. In light of the above discussions, it seems fit to hold that merely asserting an intention for development will not be enough to sanction the destruction of local ecological resources. What this Court should follow is a principle of sustainable development and find a balance between the developmental needs which the respondents assert, and the environmental degradation, that the appellants allege.*

*Public Trust Doctrine*

*Another legal doctrine that is relevant to this matter is the Doctrine of Public Trust. This doctrine, though in existence from Roman times, was enunciated in its modern form by the US Supreme Court in Illinois Central Railroad Company v. People of the State of Illinois (146 US 537 (1892) where the Court held:*

*The bed or soil of navigable waters is held by the people of the State in their character as sovereign, in trust for public uses for which they are adapted. (…..) the State holds the title to the bed of navigable waters upon a public trust, and no alienation or disposition of such property by the State, which does not recognize and is not in execution of this trust is permissible.*

*What this doctrine says, therefore, is that natural resources, which includes lakes, are held by the State as a “trustee” of the public, and can be disposed of only in a manner that is consistent with the nature of such a trust. Though this doctrine existed in the Roman and English Law, it related to specific types of resources. The US Courts have expanded and given the doctrine its contemporary shape whereby it encompasses the entire spectrum of the environment.*

*68. The doctrine, in its present form, was incorporated as a part of Indian law by this Court in the case of M.C. Mehta v. Kamal Nath (Supra) and also in M.I. Builders v. Radhey Shyam Sahu, (1999) 6 SCC 464. In M.C. Mehta, Kuldip Singh J., writing for the majority held; (our legal system) includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. (…) The State as a trustee is under the legal duty to protect the natural resources. (Para 22)*

*The Supreme Court of California, in the case National Audubon Society v. Superior Court of Alpine Country, 33 Cal 419, also known as the Mono Lake case summed up the substance of the doctrine. The Court said:*

*Thus the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people’s common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust. This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a nugatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny upon any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such action of the Government, the Courts must make a distinction between the Government’s general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources, (Joseph L. Sax “The public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention.” Michigan Law Review, Vol. 68 No.3 (Jan. 1970) PP 471-566)). According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on Governmental authority are often thought to be imposed by the public trust doctrine (ibid):*

1. *the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;*
2. *the property may not be sold, even for fair cash equivalent;*
3. *the property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources. In the instant case, it seems, that the Government Orders, as they stand now, are violative of principles 1 and 3, even if we overlook principle 2 on the basis of the fact that the Government is itself developing it rather than transferring it to a third party for value.*

*69. Therefore, our order should try to rectify these defects along with following the principle of sustainable development as discussed above.*

*70. Further the principle of “Inter Generational Equity” has also been adopted while determining cases involving environmental issues. This Court in the case of A.P. pollution Control Borad v. Prof. M.V. Nayudu and others, (1999) 2SCC 718, in paragraph 53 held as under:*

*“ The principle of inter-generational equity is of recent origin. The 1972 Stockholm Declaration refers to it in parinciples 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and further generations.*

*Principle 1-Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations……………..*

*Principle 2-The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.”*

*71. Several international conventions and treaties have recognized the above principles and, in fact, several imaginative proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present (proposals of Sands and Brown Weiss referred to by Dr. Sreenivas Rao Permmaraju. Special Rapporteur, paras 97 and 98 of this report).*

*72. The principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country.*

*73. Art. 48-A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment to safeguard the forests and wild life of the country. Art. 51A of the Constitution of India, enjoins that it shall be the duty of every citizen of India, inter alia, to protect and improve national environment including forests, lakes, rivers, wild life and to have compassion for living creatures. These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of the fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 of the Constitution of India and also the various laws enacted by the Parliament and the State Legislature.*

*74. On the other hand, we cannot also shut our eyes that shelter is one of the basic human needs just next to food and clothing. Need for a National Housing and Habitat Policy emerges from the growing requirements of shelter and related infrastructures. These requirements are growing in the context of rapid pace of urbanization, increasing migration from rural to urban centres in search of livelihood, mis-match between demand and supply of sites and services at affordable cost and inability of most new and poorer urban settlers to access formal land markets in urban areas due to high costs and their own lower incomes, leading to a non-sustainable situation. This policy intends to promote sustainable development of habitat in the country, with a view to ensure equitable supply of land, shelter and services at affordable prices.*

*75. The World has reached a level of growth in the 21st Century as never before envisaged. While the crisis of economic growth is still on the key question which often arises and the Courts are asked to adjudicate upon is whether economic growth can supersede the concern for environmental protection and whether sustainable development which can be achieved only by way of protecting the environment and conserving the natural resources for the benefit of the humanity and future generations could be ignored in the garb of economic growth or compelling human necessity. The growth and development process are terms without any content, without an inkling as to the substance of their end results, this inevitably leaves us to the conception of growth and development which sustains from one generation to the next in order to secure our common future. In pursuit of development, focus has to be on sustainability of development and policies towards that end have to be earnestly formulated and sincerely observed. As Prof.Weiss puts it, “conservation, however, always takes a back seat in times of economic stress.” It is now an accepted social principle that all human beings have a fundamental right to a healthy environment, commensurate with their well being, coupled with a corresponding to of ensuring that resources are conserved and preserved in such a way that present as well as the future generations are aware of them equally.*

*76. The Parliament has considerably responded to the call of the Nations for conservation of environment and natural resources and enacted suitable laws.*

*77. The Judicial Wing of the country, more particularly, this Court has laid down a plethora of decisions asserting the need for environmental protection and conservation of natural resources. The environmental protection and conservation of natural resources has been given a status of a fundamental right and brought under Art. 21 of the Constitution of India. This apart, the Directive Principles of State Policy as also the fundamental duties enshrined in Part IV and Part IVA of the Constitution of India respectively also stresses the need to protect and improve the natural environment including the forests, lakes, rivers and wild life and to have compassion for living creatures.*

*78. This Court in Dahanu Taluka Environmental Protection Group and others v. Bombay Suburban Electricity Supply Co. Ltd. And others (1991) 2SCC 539 held that the concerned Government should “consider the importance of public projects for the betterment of the conditions of living people on one hand and the necessity for preservation of social and ecological balance and avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a balance between the two conflicting objectives.”*

*79. However, some of the environmental activists, as noted in the “The Environmental Activities Hand Book” authored by Gayatri Singh, Kerban Ankleswaria and Colins Gonsalves, that the Judges are carried away by the money spent on projects and that mega projects, that harm the environment are not condemned. However, this criticism seems to be baseless since in Virender Gaur and other v. State of Haryana and other.; (1995) 2 SCC 577, this Court insisted on the demolition of structure which have been constructed on the lands reserved for common purposes and that this Court did not allow its decision to be frustrated by the actions of a party. This Court followed the said decision in several cases issuing directions and ensuring its enforcement by nothing short of demolition or restoration of status quo ante the fact that crores of rupees was spent already on development projects did not convince this Court while being in a zeal to jealously safeguarding the environment and in preventing the abuse of the environment by a group of humans or the authorities under the State for the matter.*

*80. The set of facts in the present case relates to the preservation of and restoration of status quo ante of two tanks, historical in nature being in existence since the time of Srikrishmadevaraya. The Great, 1500 A.D. where the cry of socially spirited citizens calling for judicial remedy was not considered in the right perspective by the Division Bench of the High Court of Andhra Pradesh despite there being overwhelming evidence of the tanks being in existence and were being put to use not only for irrigation purpose but also as lakes which were furthering percolation to improve the ground water table, thus serving the needs of the people in and around these tanks. The Division Bench of the High Court, in the impugned order, has given precedence to the economic growth by completely ignoring the importance and primacy attached to the protection of environment and protection of valuable and most cherished fresh water resources.*

**In [*Association for Environment Protection v. State of Kerala and others* reported in (2013) 7 SCC page-226] G.S. SINGHVI, J. held that,**

*Leave granted. Since time immemorial, people across the world have always made efforts to preserve and protect the natural resources like air, water, plants, flora and fauna. Ancient scriptures of different countries are full of stories of man’s Zeal to protect the environment and ecology. Our sages and saints always preached and also taught the people to worship earth, sky, rivers, sea, plants, tress and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells, etc. because it is believed that they belong to all living creatures.*

*2. The ancient Roman Empire developed a legal theory known as the “doctrine of the public trust”. It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of a few.*

*3. Although the Constitution of India, which was enforced on 26.01.1950 did not contain any express provision for protection of environment and ecology, the people continued to treat it as their social duty to respect the nature, natural resources and protect environment and ecology. After 26 years, Article 48-A was inserted in Part IV of the Constitution and the State was burdened with the responsibility of making an endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. By the same amendment, fundamental duties of the citizens were enumerated in the form of Article 51-A (Part IV-A). These include the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures [(Article 51-A(g)].*

*4. The courts in different jurisdictions have, time and again, invoked the public trust doctrine for giving judicial protection to environment, ecology and natural resources. This Court also recognized the importance of the public trust doctrine and applied the same in several cases for protecting natural resources which have been treated as public properties and are held by the government as trustee of the people.*

*5. The judgment in M.C. Mehta v. Kamal Nath is an important milestone in the development of new jurisprudence by the courts in this country for the protection of environment. In that judgment, the Court considered the question whether a private company running tourists resort in Kullu-Manali Valley could block the flow of Beas River and create a new channel to divert the river to at least one kilometer downstream. After adverting to the theoretical and philosophical basis of the public trust doctrine and the judgments in Illinois central Railroad Co. v. Illinois, Gould v. Greylock Reservation Commission, Sacco v. Deptt. Of Public Works, Robbins v. Deptt. Of Public Works and national Audubon Society v. Superior Court, this Court observed: (M.C. Mehta case, SCC p. 413, paras 34-35)*

*“34. Our legal system—based on English common law—includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.*

*35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extend upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law make by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest ot encroach upon the said resources.”*

*6. In M.I. Builders (P) Ltd. V. Radhey Shyam Sahu, the Court applied the public trust doctrine for upholding the order of the Allahabad High Court which had quashed the decision of Lucknow Nagar Mahapalika permitting appellant M.I. Builders (P) Ltd. To construct an underground shopping complex in Jhandewala Part, Aminabad Market, Lucknow, and directed demolition of the construction made on the park land. The High Court had noted that Lucknow Nagar Mahapalika had entered into an agreement with the appellant for construction of shopping complex and given it full freedom to lease out the shops and also to sign agreement on its behalf and held that this was impermissible. On appeal by the builders, this Court held that the terms of agreement were unreasonable, unfair and atrocious. The Court then invoked the public trust doctrine and held that being a trustee of the park on behalf of the public, the Nagar Mahapalika could not have transferred the same to the private builder and thereby deprived the residents of the area of the quality of life to which they were entitled under the Constitution and municipal laws.*

*7. In Intellectuals Forum v. State of A.P., this Court again invoked the public trust doctrine in a matter involving the challenge to the systematic destruction of percolation, irrigation and drinking water tanks in Tirupati Town, referred to some judicial precedents including M.C. Mehta v. Kamal Nath, M.I. Builders (P) Ltd., National Audubon Society and observed: (Intellectuals Forum case, SCC p. 575, para 76.*

*“76. …….This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a nugatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinize such actions of the Government, the courts must make a distinction between the Government’s general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources…….”*

*8. In Fomento Resorts and Hotels Ltd. V. Minguel Martins, this Court was called upon to consider whether the appellant was entitled to block the passage to the beach by erecting a fence in the garb of protecting its property. After noticing the judgments to which reference has been made hereinabove, the Court held: (SCC pp. 614-15 & 619, paras 53-55 & 65)*

*53. The public trust doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.*

*54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a special*

*interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Josph L. Sax in his classic article, ‘The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention’ (1970), indicates that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.*

*55. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people’s rights and the people’s long-term interest in that property or resource, including downslope lands, waters and resources.*

*65. We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State connot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.”*

*9. We have prefaced disposal of this appeal by discussing the public trust doctrine and its applicability in different situations because the Division Bench of the Kerala High Court, which dealt with the writ petition filed by the appellant for restraining the respondents from constructing a building (hotel/restaurant) on the banks of River Periyar within the area of Aluva Municipality skirted the real issue and casually dismissed the writ petition only on the ground that while the appellant had questioned the construction of a hotel, the respondents were actually constructing a restaurant as part of the project for renovation and beautification of Manalpuram Park.*

*10. The people of the State of Kerala, which is also known world over as the “God’s Own Country” are very much conscious of the imperative of protecting environment and ecology in general and the water bodies i.e. the rivers and the lakes in particular, which are integral part of their culture, heritage and an important source of livelihood. This appeal is illustrative of the continuing endeavour of the people of the State to ensure that their rivers are protected from all kinds of man-made pollutions and/or other devastations.*

**In [*STATE (NCT OF DELHI) v. SANJAY* reported in [(2014) 9 SCC, page 772] it was held that,**

*“33. The mining of aggregates in rivers has led to severe damage to rivers, including pollution and changes in levels of pH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal of more than 12 million tonnes of sand a year from Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 cm a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.*

*34. The Report also dealt with the astonishing impact of sand mining on the economy. It states that tourism may be affected through beach erosion. Fishing, both traditional and commercial, can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.*

*35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors – beaches themselves. Mining from, within or near a reverbed has a direct impact on the stream’s physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on instream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow paths.*

*36. In M. Palanisamy v. State of T.N. the amended provisions of the Tamil Nadu Mines and Minerals Concession Rules, 1959 was challenged on the ground that the said Rules for the purpose of preventing and restricting illegal mining, transportation and storage of minerals are ultra vires constitutional provisions and the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. Upholding the vires of the Rules, the Division Bench (one of us, Eqbal, J. As he then was) of the Madras High Court, elaborately discussed the object of restriction put in the illegal mining, transportation and storage of minerals including sand and after considering various reports observed this: (CTC pp. 24-25, paras 21 & 23- 24)*

*“21. In order to appreciate the issue involved in these writ petitions, we may have to look at the larger picture- the impact of indiscriminate, uninterrupted sand quarrying on the already brittle ecological set-up of ours. According to expert reports, for thousands of years, sand and gravel have been used in the construction of roads and buildings. Today, demand for sand and gravel continues to increase. Mining operators, instead of working in conjunction with cognizant resource agencies to ensure that sand mining is conducted in a responsible manner, are engaged in full-time profiteering. Excessive in-stream sand and gravel mining from riverbeds and like resources causes the degradation of rivers. In-stream mining lowers the stream bottom, which leads to bank erosion. Depletion of sand in the stream-bed and along coastal areas causes the deepening of rivers and estuaries and enlargement of river mouths and coastal inlets. It also leads to saline water intrusion from the nearby sea. The effect of mining is compounded by the effect of sea level rise. Any volume of sand exported from stream-beds and coastal areas is a loss to the system. Excessive in-stream sand mining is a threat to bridges, river banks and nearby structures. Sand mining also affects the adjoining groundwater system and the uses that local people make of the river. Further, according to researches, in –stream sand mining results in the destruction of aquatic and riparian habitat through wholesale changes in the channel morphology. The ill effects include bed degradation, bed coarsening, lowered water tables near the stream-bed and channel instability. These physical impacts cause degradation of riparian and aquatic biota and may lead to the undermining of bridges and other structures. Continued extraction of sand from riverbeds may also cause the entire stream-bed to degrade to the depth of excavation.*

*23. The most important effects of in-stream sand mining on aquatic habitats are bed degradation and sedimentation, which can have substantial negative effects on aquatic life. The stability of sand-bed and gravel-bed streams depends on a delicate balance between stream flow, the sediments supplied from the watershed and the channel form disrupt the channel and the habitat development processes. Furthermore, movement of unstable substrates results in downstream sedimentation of habitats. The affected distance depends on the intensity of mining, particle sizes, stream flows, and channel morphology.*

*24. Apart from threatening bridges, sand mining transforms the riverbeds into large and deep pits; as a result, the groundwater table drops leaving the drinking water wells on the embankments of these rivers dry. Bed degradation from in-stream mining lowers the elevation of stream flow and the floodplain water table, which in turn, can eliminate water table – dependent woody vegetation in riparian areas and decrease wetted periods in riparian wetlands. So far as locations close to the sea are concerned, saline water may intrude into the fresh waterbody.”*

*37. In Centre for Public Interest Litigation v. Union of India, this Court, while observing that the natural resources are the public property and national assets, held as under: (SCC P. 53, para 75)*

*“75. The State is empowered to distribute natural resources. However, as they constitute public property / national asset, while distributing natural resources the State is bound to act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest. Like any other State action, constitutionalism must be reflected at every stage of the distribution of natural resources. In Article 39(b) of the Constitution it has been provided that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good, but no comprehensive legislation has been enacted to generally define natural resources and a framework for their protection. Of course, environment laws enacted by Parliament and State Legislatures deal with specific natural resources i.e. forest, air, water coastal zones, etc.*

*38. In M.C. Mehta v. Kamal Nath, this Court while considering the doctrine of public trust which extends to natural resources observed as under (SCC pp. 407-08 & 413, paras 24-25 & 34)*

*24. The ancient Roman Empire developed a legal theory known as the ‘Doctrine of the Public Trust’. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about ‘the environment’ bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (res nullius) or by everyone in common (res communious). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan –proponent of the Modern Public Trust Doctrine – in an erudite article ‘Public Trust Doctrine in Natural Resource Law: Effective Judicial intervention’, Michigan Law Review, Vol. 68 part 1, p. 473, has given the historical background of the Public Trust Doctrine as under:*

*‘’The source of modern public trust law is found in a concept that received much attention in Roman and English law- the nature of property rights in rivers, the sea, and he seashore. That history has been given considerable attention in the legal literature and need not be repeated in detail here. But two points should be* emphasized*. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties such as the seashore, highways and running water- “perpetual use was dedicated to the public”, it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.*

*25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority: ‘Three types of restrictions on government authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of used. ’*

*34. Our legal system-based on English common law- includes the Public Trust Doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.”*

*39. In Intellectuals Forum v. State of A.P., this Court while balancing the conservation of natural resources vis-a-vis urban development observed as under: (SCC p. 572, para 67)*

*“67. The responsibility of the State to protect the environment is now a well Accepted notion in all countries. It is this notion that, in international law, gave rise to the principle of ‘State responsibility’ for pollution emanating within one’s own territories (Corfu Channel case). This responsibility is clearly enunciated in the United Nations Conference on the Human Environment, Stockholm 1972 (Stockholm Convention), to which India was a party. The relevant clause of this declaration in the present context is para 2, which states:*

*‘The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystem, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.’*

*Thus, there is no doubt about the fact that there is responsibility bestowed upon the Government to protect and preserve the tanks, which are an important part of the environment of the area.”*

In [*MUNICIPAL CORPN. Of MUMBAI v. KOHINOOR CTNL INFRASTRUCTURE CO. (P) LTD* reported in [(2014) 4 SCC, page 538] Indian Supreme Court held that,

*30. Besides, as pointed out by Mr Divan, the requirement of having trees and open land around them is necessary from an environmental point of view, since there is already excessive concretization, and a very serious reduction in open spaces at the ground level. It must be noted that the right to a clean and healthy environment is within the ambit of Article 21, as has been noted in Amarnath Shrine, In re in the following words: (SCC p. 258, para 12)*

*“12. The scheme under the Indian Constitution unambiguously enshrines in itself the right of a citizen to life under Article 21 of the Constitution. The right to life is a right to live with dignity, safety and in a clean environment. ”*

*The right to a clean and pollution free environment, is also a right under our common law jurisprudence, as has been held by this Court in Vellore Citizens’Welfare Forum v. Union of India where this Court held: (SCC p. 660, para 16)*

*“16. The constitutional and statutory provisions protect a person’s right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. ”*

*31. In the same judgment the Court emphasized the importance of sustainable development, and the need for a balance between development and ecological considerations, in the following words: (Vellore Citizens’ Welfare forum case, SCC pp. 657-58, para 10)*

*“10. The traditional concept that development and ecology are opposed to each other is no longer acceptable. ‘Sustainable Development’ is the answer --- ‘Sustainable Development’ as defined by the Brundtland Report means ‘development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.’ We have no hesitation in holding that ‘Sustainable Development’ as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists. ”*

*32. Therefore, after reflecting upon the legal position, we are clearly of the opinion that having 15%, 20% or 25% of the area (depending upon the size of the layout) as the recreational/ amenity area at the ground level is a minimum requirement, and it will have to be read as such. We therefore, answer Issue (i) by holding that it is not permissible to reduce the minimum recreational area provided under DCR 23 by relying upon DCR 38(34). However, if the developers wish to provide recreational area on the podium, over and above the minimum area mandated by DCR 23 at the ground level, they can certainly provide such additional recreational area.*

Important decisions of Canadian Supreme Court on (Public Trust Doctrine) is given hereinafter:

*Canadian Forest Products Limited V. her Majesty the Queen in Right of the Province of British Columbia* [2004] 2 S.C.R. [2004] SCC38(CanLll)

*70. In Attorney General for Ontario v. Fatehi, [1984] 2 S.C.R. 536, the Province sought damages in relation to the cost of cleaning up a public highway following an accident. This Court held that Ontario was entitled to claim damages for harm to its property, like any other private property owner, and needed no statutory authority to bring such an action. Moreover, Estey J., writing for the Court, went on to cite at p. 547, the following passage of Lord Dunedin, in Glassgow Corp. v. Barclay, & Co. (1923), 93 L.J. P.C. 1, with apparent approval:*

*That a person, who, by his action, did something which made the highway impassable, and so destroyed the use of that highway by others, could be interdicted at the instance of a road authority I do not doubt ----and although suits for damages in respect of such action may be sought for in vain in the books, I do not doubt that they would lie. [Emphasis added]*

*71. The British Columbia Law Reform Commission in its report on Civil Litigation in the Public Interest, Supra, suggested that the reluctance of the courts to award damages against those who commit a public nuisance should be relaxed somewhat to provide an effective remedy (pp. 70-71). Sec also Ontario Law Reform Commission, Report on Damages for Environmental Harm (1990) (“OLRC Report”), at pp. 11-13.*

*72. In my view, Canfor takes too narrow a view of the entitlement of the Crown, represented by the Attorney General, to pursue compensation for environmental damage in a proper case.*

*73. Canadian courts have suggested that even municipalities have a role to play in defence of public rights. In Scarborought v. R.E.F. Homes Ltd. (1979), 9 M.P.L.R. 255 (Ont. C.A.), Lacourciere J.A., in an oral decision, said at p. 257 that:*

*In our judgment, the municipality is, in a broad general sense, a trustee of the environment for the benefit of the residents in the area of the road allowance and, indeed, for the citizens of the community at large. [Emphasis added.]*

*This expression was refrred to, without claboration, by L’Heureux-Dube J. in 114957 Canada, Supra, at para. 27.*

*74. The notion that there are public rights in the environment that reside in the Crown has deep roots in the common law: see, e.g., J.C. Maguire,*

*“Fashioning an Equitable Vision for Public Resource Protection and Development in Canada: The Public Trust Doctrine Revisited and Reconceptualized” (1997), 7 J.E.L.P. 1. Indeed the notion of “public rights” existed in Roman law:*

*By the law of nature these things are common to mankind-the air, running water, the sea--------*

*(T. C. Sandars, The Institutes of Justinian ((1876), Book II, Title I, at p. 158)*

*75. A similar notion persisted in European legal systems. According to the French Civil Code, art, 538, there was common property in navigable rivers and streams, beaches, ports, and harbours. A similar set of ideas was put forward by H. de Bracton in his treatise on English law in the mid-13th century (Bracton on the Laws and Customs of England (1968), vol. 2, at pp. 39-40):*

*By natural law these are common to all: running water, air, the sea and the shores of the sea ….. No one therefore is forbidden access to the seashore……*

*All rivers and ports are public, so that the right to fish therein is common to all persons. The use of river banks, as of the river itself, is also public by the jus gentiam -----*

*76. By legal convention, ownership of such public rights was vested in the Crown, as too did authority to enforce public rights of use. According to de Bracton, Supra, at pp. 166-67: (It is the lord king) himself who has ordinary jurisdiction and power over all who are within his realm…… He also has, in preference to all others in his realm, privileges by virtue of the jus gentium. (By the jus gentium) things are his …… which by natural law ought to be common to all ……. Those concerned with jurisdiction and the peace …………belong to no one save the crown alone and the royal dignity, nor can they be separated from the crown, since they constitute the crown.*

*Since the time of de Bracton it has been the case that public rights and jurisdiction over these cannot be separated from the Crown. This notion of the Crown as holder of inalienable “public rights” in the environment and certain common resources was accompanied by the procedural right of the Attorney General to sue for their protection representing the Crown as parens patriae. This is an important jurisdiction that should not be attenuated by a narrow judicial construction.*

*77. As stated, in the United States the CERCLA statute provides legislative authority for government actions in relation to the “public interest”, including environmental damage, but this is not the only basis upon which claims in relation to the environment can be advanced by governments at the state and federal levels.*

*78. Under the common law in that country, it has long been accepted that the state has a common law parens patriae jurisdiction to represent the collective interest of the public. This jurisdiction has historically been successfully exercised in relation to environmental claims involving injunctive relief against interstate public nuisances: see, e.g., North Dakta v. Minnesota, 263 U.S. 365 (1923), at p. 374; Missouri v. Illinois, 180 U.S. 208(1901); Kansas v. Colorado, 206 U.S. 46 (1907); Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907); and New York v. New Jersey, 256 U.S. 296 (1921). In Tennessee Copper, Holmes J. held for the Supreme Court of the United States, at p. 237, that, “the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain” (emphasis added).*

*79. The American law has also developed the notion that the states hold a “public trust”. Thus in Illinois Central Railroad Co. v. Illinois, 146 U.S. 387 1892), the Supreme Court of the United States upheld Illinois’ claim to have a land grant declared invalid. The State had granted to the railroad in fee simple all land extending out one mile from Lake Michigan’s shoreline, including one mile of shoreline through Chicago’s central business district. It was held that this land was impressed with a public trust. The State’s title to this land was different in character from that which the State holds in lands intended for sale…….. It is a title held in trust for the people of the State that they may enjoy the navigation of the water, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties. p. 452]*

*The deed to the railway was therefore set aside.*

*80. The parens patriae and “public trust” doctrines have led in the United States to successful claims for monetary compensation. Thus in New Jersey, Department of Environmental Protection v. Jersey Central Power and Light Co. 336 A. 2d 750 (N.J. Super. Ct. App. Div.1975), the State sued a power plant operator for a fish kill in tidal waters caused by negligent pumping that caused a temperature variation in the fish habitat. The State sought compensatory damages for the harm to public resources. The court concluded that the State had the “right and the fiduciary duty to seek damages for the destruction of wildlife which are part of the public trust” in “compensation for any diminution in that [public] trust corpus” (p. 759), noting that:*

*It seems to us that absent some special interest in some private citizen, it is questionable whether anyone but the State can be considered the proper party to sue for recovery of damages to the environment. See also State of Washington, Department of Fisheries v. Gillette, 621 P. 2d 764 (Wash. Ct. App. 1980). And State of California, Department of Fish and Game v. S.S. Bournemouth, 307 F. Supp. 922 (C.D. Cal. 1969). The potential availability of damages in parens patriae and “public trust” environmental actions has also been affirmed in State of Maine v. M/V Tamano, 357 F. Supp. 1097 (D. Me. 1973), and State of Maryland, Department of Natural Resources v. Amerada Hess Corp., 350 F. Supp. 1060 (D. Md. 1972). These were all cases decided under the common law, not CERCLA.*

**Important decisions of American Supreme Court on (Public Trust Doctrine) is given hereinafter:**

**In [*Arnold v Mundy*, 6 N.J.L. 1 (1821) 10 Am. Dec. 356, 1 Halst.1] American Supreme Court held that,**

Abating a little want of courteousness towards the memory of some of the greatest luminaries of the **\*9** English law, and indeed I may say, some of the greatest men that ever lived. I have been much gratified by the arguments presented by the counsel in this cause. They have investigated the subject with great care, and great ability, and they have certainly thrown much new light upon the view in which it had before exhibited itself to my mind.

The principal question, however, which it presents, and which is now to be determined, is a new question; it has never before come up before the courts of justice in this shape, and in this direct manner, since the first settlement of the province. It is a question of great importance; it involves immense interests; it lies at the foundation of all the rights of fishery hitherto claimed or exercised in the state of New Jersey.

That such a question cannot be ultimately decided or even beneficially discussed, in hastily rendering an opinion upon a motion for a nonsuit at a circuit court, must be manifest to all; and yet, at the same time, what might be said upon it might prove to be exceedingly injurious, by exciting false hopes or false fears, by encouraging those who claim a common right to make unlawful aggressions, or those who claim several rights to make unlawful defences, and in their conflict for superiority, for awhile, not only to disturb the peace of society but also to destroy the very subject matter of controversy.

**\*\*8** If it were possible, therefore, to avoid the expression of an opinion at present, and to take a verdict for the damages only, subject to the opinion of the court at bar upon the title, and that too, with leave to either party to put the case in such form as that it might be carried up to the court of appeals, as is sometimes done, it would be exceedingly agreeable to me. This, however, I know can be done only by the consent and agreement of the parties, and it is with that view I propose it, and with that view would beg leave to submit it to their consideration.

[The defendant declined the proposition, and called for the opinion of the court, when I proceeded.] Constrained, as I am, to render an opinion in this hasty manner, I shall merely state my present views of the right which the plaintiff has exhibited, as concisely as I am able, and that without recurring either to books or arguments to support them.

The action is for a trespass in entering upon the plaintiff’s oyster bed, and taking and carrying away his oysters. To support \*10 this action, the plaintiff must shew a title in himself. This title, in ordinary cases, may be either a fee simple, or a possession accompanied by right, without a fee simple or an actual and exclusive possession, without either the fee simple or the right, for such possession is good against all the world, till a better rights is shewn. To make out this title, the plaintiff has attempted to shew---1. In the first place, an actual and exclusive possession. 2. In the second place, a possession accompanied by right. 3. In the third place, a fee simple under the proprietors of New Jersey.

As to the first and second of these, they are no other way proved than by showing the conveyance for, and the possession of, certain lands upon the shore opposite to this bed, extending, to make the most of it, to low water mark only; and by shewing further, the staking off the said bed, the planting of oysters upon it, and sometimes fishing there, as other people, also, sometimes did.

Upon this I observe, that a grant of land to a subject or citizen, bounded upon a fresh water stream or river, where the tide neither ebbs nor flows, extends to the middle of the channel of such river; but that a grant bounded upon a navigable river, or other water, where the tide does ebb or flow, extends to the edge of the water only, that is to say, to high water mark, when the tide is high, and to low water mark, when the tide is low, but it extends no farther.

The intermediate space, however, between the high water and low water mark, may be exclusively appropriated by the owner of the adjacent land, by building thereon docks, wharves, storehouses, salt-pans, or other structures which exclude the reflow of the water.

All pretence of claim, therefore, to this bed, founded upon the possession of the adjacent land, must fail. And if the plaintiff would set up a possession founded upon another right, that is upon his staking off the bed, planting oysters upon it, and sometimes fishing there, even if it were a subject matter which could be taken possession of in that way, that possession has not been proved to be either so continued or so exclusive as to establish his right against those having equal claim with himself. He sets up no prescription; he shews no grant to support such possession. He places himself in the situation of a fisherman, who because he has fished in certain waters for many years, should claim the exclusive possession and the exclusive right.

**\*\*9 \*11** Then, as to the title derived from the proprietors. And first of the form of their conveyance; and then of their right to convey.

1.The proprietors of New Jersey are tenants in common of the soil; their mode of severing this common right is, by issuing warrants, from time to time, to the respective proprietors, according to their respective and several rights, authorizing them to survey and appropriate in severalty the quantities therein contained. Such warrant does not convey a title to the proprietor; he had that before. It only authorized him to sever so much from the common stock, and operates as a release to testify such severance. This is manifestly the case, when the proprietor locates for himself. When, instead of locating for himself, he sells his warrant to another, that other becomes a tenant in common with all the proprietors pro tanto, and in the same manner he proceeds to convert his common, into a several right. Regularly there is a deed of conveyance upon the transfer of this warrant, and that deed of conveyance is the foundation of the title of the transferee.

It is true, that the survey made in pursuance of this warrant must be inspected by the surveyor general, approved by the board, and registered in their books; but all this is for the sake of security, order, and regularity only, and is by no means the passing of the title. It proves the title has passed, but it is not the means of passing it. It may be likened to the acknowledgment of a deed by a married woman. Her deed cannot prevail against her unless such acknowledgment be regularly made and recorded; yet such acknowledgment does not pass the title, the deed has already done that, and it operates from the day of its date. Upon this exception to the plaintiff’s title, therefore, I think the defendant must fail. In this case, the warrant and the survey were before the trespass charged, but the recording of it was said to be after. The date of the recording was not mentioned on the record. 2.Then as to the right of the proprietors to convey. And upon this I am of opinion, that by the law of nature, which is the only true foundation of all the social rights, that by the civil law, which formerly governed almost all the civilized world, and which is still the foundation of the polity of almost every nation in Europe; that by the common law of England, of which our **\*12** ancestors boasted, and to which it were well if ourselves paid a more sacred regard; I say I am of opinion, that, by all these, the navigable rivers, where the tide ebbs and flows, the ports, the bays, the coasts of the sea, including both the water and the land under the water, for the purposes of passing and repassing, navigation, fishing, fowling, sustenance, and all the other uses of the water and its products (a few things which belonged to the king in his private right, and for his own use only excepted) are common to all the people, and that each has a right to use them according to his pleasure, subject only to the laws which regulate that use; that the property indeed vests in the sovereign, but it vests in him for the sake of order and protection, and not for his own use, but for the use of the citizen; in the same sense in which he holds all the public property and the domains of the crown, that the proceeds thereof may be collected into the public treasury, and applied to the public benefit and the public defence, and that he may have the direct, immediate, uncontrolled enjoyment of them.

**\*\*10** I am of opinion, that this great principle of common law, in process of time, was gradually encroached upon and broken down; that the powerful barons, in some instances, appropriated to themselves those common rights; that the kings also in some instances during the same period, granted them out to their courtiers and favourites; and that these seizures and these royal favours are the ground of all the *several fisheries* in England**,** now claimed either by prescription or grant; that the great charter, as it is commonly called, which was nothing but a restoration of common law rights, though it did not annul what had been thus tortuously done, yet restored again the principles of the common law in this, as well as in many other respects; and that since that time no king of England has had the power of granting away those common rights, and thereby depriving the people of the enjoyment of them.

I am of opinion, that when Charles II. Took possession of this country, by his right of discovery he took possession of it in his sovereign capacity; that he had the same right in it, and the same power over it, as he had in and over his other dominions, and no more; that this right consisted in granting the soil to private persons, for the purposes of settlement and colonization, of establishing a government, of supporting a governor, of conveying **\*13** to him all those things appurtenant to the sovereignty, commonly called royalties, for the benefit of the colonists, who came over here clothed with all the essential rights and privileges secured to the subject by the British constitution; but that he could not, nor never did, so grant them as to convert them into private property; that those royalties, therefore, of which those rivers, ports, bays, and coasts were part, by the grant of king Charles, passed to the duke of York, as the governor of the province, exercising the royal authority, for the public benefit, and not as the proprietor of the soil, and for his own use; that they passed from the duke of York to his grantees, and upon the surrender of the government, and as appurtenant thereto, and inseparable therefrom, reverted to the crown of England.

And I am of opinion further, that, upon the Revolution, all those royal rights vested in the people of New Jersey, as the sovereign of the country, and are now in their hands; and that they, having themselves both the legal estate and the usufruct, may make such disposition of them, and such regulation concerning them as they may think fit; that this power of disposition and regulation can be exercised only by the legislative body, who are the representatives of the people for this purpose; that in the exercise thereof they may lawfully bank off the water of those rivers, ports, and bays, and reclaim the land upon the shores; they may build dams, locks, and bridges for the improvement of the navigation and the ease of passage; they may clear out and improve fishing places to increase the product of the fishery; they may create, improve, and enlarge oyster beds, by planting oysters thereon, in order to procure a more ample supply; they may do all this themselves at the public expense, or they may authorize others to do it by their own labour, and at their own cost, giving them reasonable tolls, rents, profits, or exclusive enjoyments; but that they cannot make a direct and absolute grant, divesting all the citizens of their common right; such a grant, or a law authorizing such a grant, would be contrary to the great principles of our constitution, and never could be borne by a free people. These principles I take to be capable of the clearest demonstration. The proprietors, except in a few instances, made probably for the sake of experiment only, have, in their practice, recognized those principles, and the people have uniformly and uninterruptedly enjoyed the corresponding **\*14** rights, from the first settlement of the colony down to this day, subject only to such regulation and such restraint as the legislature has thought just and right.

**\*11** From this short statement, it is seen that, in my opinion, the proprietors, as such, never had, since the surrender of the government, any right to, interest in, or power over, those waters, or the land covered by them; and that, therefore, the grant in question is void, and cannot prevail for the benefit of the plaintiff. And, upon this view of the subject, I am constrained to say.

The plaintiff must be called.

Upon the coming in of the *postea,* the plaintiff’s counsel obtained a rule to shew cause why the nonsuit should not be set aside and a new trial granted. This motion was argued in May term, 1821.

*Wall,* in support of the motion. This action is brought for a trespass for entering on the plaintiff’s soil, and taking and carrying away a quantity of oysters claimed to be his.

It appears, by the evidence, that the plaintiff claims title under –1. A grant from the proprietors, dated 20th January, 1685, to one Sonmans, bounding him on the Rariton river; and the subsequent grants under Sonmans, bounding on low water mark.

2.Under a grant from the proprietors, dated 10th April, 1818; including, by metes and bounds, the very place on which the trespass was proved to have been committed. 3. From the act of planting the oysters in question by his own care and industry. At the trial of this cause before the Middlesex circuit, in December, 1819, the plaintiff was nonsuited by order of his honour the Chief Justice, and the object of the present application is to set aside the nonsuit and obtain a new trial.

In the discussion of this application. I do not consider it necessary to spend any time in directing the attention of the court to the language of the grants under which the plaintiff claims, nor to the effect, or diversity, between the two grants, the one bounding on the river, and the other *Ex termini,* including the very *locus* in question.

Assuming what appears to me altogether incapable of being denied, that if *soil* covered with water is capable of grant them that the plaintiff in this case, under one or both of his titles, may well claim the *locus.*

**\*15.** Passing by, then for the present, all examination of the evidence, respecting which there is little or no dispute, I shall contend, that the nonsuit in this case ought to be set aside, and a new trial awarded.

1.Because the plaintiff had a right of several fishery in this oyster, either for –1. Floating fish, or general, exclusive, and several fishery. 2. Or a right to a local fishery.

2. Because, by purchasing or gathering the oysters, depositing them on the premises, and staking them out, he acquired such a right to them as would entitle him to an action against any person who should take them without his leave.

1. In endeavoring to establish the first proposition, it will be necessary to investigate—1. The right of property to the soil of navigable rivers at common law, and to inquire, whether it was the subject of grant. 2. The right of property to the soil of navigable rivers in New Jersey, and whether it is the subject of grant. 3. Whether by the grant of the soil of navigable rivers the right of several fishery passes, as inseparable.

**\*\*12** 1. The great principle of the common law of England is, to assign an owner to every thing capable of ownership, and whatever hath no other owner is vested by law in the king. 1 Black, 298-9. 2 Black. 15 261-2. By the English law, or constitution, all land is supposed to have been the property of the king, at some time, and to be held mediately or immediately of him. 6 *Com. Dig.* 60(D 63). This is said to be derived from the feudal *system. 1 Balck. 264.* The common law has also assigned the ownership of navigable rivers, of arms of the sea, and even of the *mare clausum*, to the king. The king hath the sole interest in the soil of navigable rivers, and in the fisheries thereof. *Davies* 155. The king has the property *tam aqua, quam soli,* and all profits in the sea, and all navigable rivers, 5 *Com. Dig.* 102(A.B). The king is the owner of the sea and soil. Har. L. T. 10,11,14,17,18 5 Cake, Constable’s case 107. 7 Coke 18. 2 Black 261. The sea is the proper inheritance of the king. Davies 152. This doctrine of the common law is in perfect accordance with the law of nature and of nations. Every nation, by the law, of nature and of nations, is the proprietor of the rivers, as well as soil, within its territorial limits. 1 Rutherf. 91, sec. 111. Vattel 120, sec, 266. By the same law, the sea itself, to a certain \*16 extent and for certain purposes, may be appropriated and become exclusive property, as well as the land. Vattel 127, sec, 287. Ib. 125, sec. 278. Whether the soil and rivers thus belonging to a nation, or any and what part of it shall be enjoyed in common by all her citizens, or whether it shall be appropriated to the excusive use of individuals? And if so appropriated, by whom such appropriation shall be made? Are questions which depend on the will of the nation herself, as declared in her constitution and laws. The nation being the sole mistress of the property in her possession, may dispose of it as she thinks proper. Vattel 116, sec. 257. She may dispose of what is common to all the citizens. Ib. 116, sec. 258. Or she may confer the right on the sovereign. Ib. 117, sec. 261. In that case, he becomes the organ of the nation. Ib. 118, sec. 262. By the English law, or constitution, the right of disposing of the public domains is vested exclusively in the king; and he had, until long after the reign of Charles II. the right of alienating them for ever. 1 Black, 286, 3 Cruise 14, sec. 5 Ib, 565, sec, 16. He may also grant the soil of navigable rivers; and he may grant a free fishery without the soil. Har. L, T. 15, 17, 18, 19, 21, 22, 32, 33, 34, 56, 6 com. Dig. 60 (D 611). 4 Bur. 2163. Davies 150. These authorities also prove that a subject may prescribe for a free or several fishery in navigable rivers and arms of the sea. A prescription cannot be for what may not be granted. 2 Black 265. 7 Coke 18.

\*\*13. From these authorities, it abundantly appears, that, by the principles of the common law, a subject may have a right of soil, and also a right of fishery, in navigable rivers and arms of the sea by grant or prescription. No case of pure unmixed common law origin can be produced against these positions. The case in Bracton is evidently borrowed from the civil law, and he quotes the very language of the Justinian Code. In Davies 150, it is expressly denied to be the doctrine of the common law. This case, in Davies, is also recognized as good authority by Justice Yates, in 4 Bur, 2165, and by Chief Justice Kent, in 3 Caines 318. And Lord Hale’s treatise, in Har. L. T. who lays down the law in accordance with Davies, is cited with approbation, and recognized as sound law by Chief Justice Spencer. 17 John. 209. Indeed, nothing can be more variant than the civil and common law on the subject of aquatic and riparian rights. By \*17 the civil law, every citizen has the right to use the land of another, on the banks of navigable rivers, for towing. The common law denies that right. 3 Term Rep. 253. 17 John. 209. The grant from king Charles II. to William Penn, of our sister state of Pennsylvania, grants the soil and rivers, and fisheries within its limits. Chief Justice Tilghman, (2 Bin, 476) expressly holds, that by this grant he became entitled to the fisheries. And a similar principle is recognized. (4 Mass. 140; 17 John. 203) as to the right of the people to grant, by express words. Even in England, then, it may be fairly concluded, from a careful examination of the cases cited, that the king could lawfully grant the soil of navigable rivers and arms of the sea to a subject, and that it might be held either by grant or prescription, which always presupposes a grant.

2.Could the king grant the right of soil to the navigable rivers in New Jersey, and did he grant it? This opens a singular discussion, at this day, in New Jersey, when it is a fact, proved in the deduction of all the titles in New Jersey, that he did grant the lands; and that every foot of land now held by a freeman in New Jersey is traced up to the grant of the king. What had become mere fiction in England is an undisputed fact here. All lands in New Jersey were held immediately of the king. He granted this, as well as all the other colonies, as whim, caprice, favour, or avarice dictated. They were considered as his private domains, and were held and granted as such. This doctrine is not varied by proving, that the king became entitled to the lands and rivers in this, then howling wilderness, in virtue of his prerogative; that he held them *jura corona.* If so, still, b the law of England, he was the organ of the nation to alienate them; and admitting, (what is altogether denied) that by the conquest, or discovery, of this country, the people of England became entitled to a common right of fishery in the navigable rivers, arms of the sea, and seas of this extensive territory, yet it has been already proved, that, by the common law of England, as well as the law of nature and nations, the king, as the organ of the nation, might grant them in propriety to an individual, and thus destroy the right of the people; and that his grant would be binding on the people. It is of no importance, as to the validity or effect of the grant he did make, whether he derived his title to this country from discovery or conquest. In either case. \*18 it vested in him in absolute propriety, and, by the laws and constitution of England, he was authorized to alienate it, as he saw proper, without reference to the good of the people, or the will of parliament. He would have had this right on the

general principles of national law. Vat. 101, sec. 210. His grants, even of the common rights of his subjects, would be binding on them; and, if so, how much more binding will it be on those who come in under the very grant, and have recognized it. It is to be remembered, that this is not a question between the people of England, claiming that their agent or organ had exceeded his powers, but it is a question raised by those who derive their right to the soil, and, of course, to the participation of the rights founded on it under the very grant which is now sought to be circumscribed or destroyed or destroyed.

\*\*14 It is a matter not clearly settled, how the king acquired his right to this country. Blackstone, 1 Com. 108, supposes that he obtained it by treaties, or the right of conquest. Smith, in his Hist. of N.J. 8, insists that it was acquired by the right of discovery. The right, however derived, was strengthened by the purchase of the Indian title, which was made by the proprietors. The king of England very early exercised the right of granting this country. In 1606, king James I. granted this province, together with Virginia &c. by patent, to Sir Thomas Gates and others. Smith’s Hist. N.J. 17. This patent was repealed in 1623. It remained in the crown until March 12, 1664, when king Charles II. granted it to his brother, the duke of York granted it to Sir George Carteret and Lord Berkley. At the date of this grant, the eastern part of New Jersey was in possession of the Dutch, who had made considerable settlements in Bergen, Essex, Middlesex, Monmouth, and Somerset. In August, 1664, before the last mentioned grants were known here, Colonel Nicholls, the royal governor of New York, conquered it, together with the fort on the Delaware, at Newcastle, from the Dutch. Smith, in his Hist. H. York 29, 30, 31, says, it was re-conquered by the Dutch, in 1673, and given up by the peace of 1674. This is somewhat doubtful. Captain Philip Carteret, the first proprietary governor, with the first settlers under Carteret and Berkley, arrived in New Jersey in the summer of 1665, and, by the treaty of Breda, in the 1667, New Jersey was formally \***19** ceded, by the Dutch, to the king of England. This gave rise to the subsequent grant, made on the 29th July, 1674, by the king to the duke of York, and by the duke to Berkley and Carteret. Leaming & Spicer 41 to 50. Smith’s Hist. N. York 32. This grant is to receive a liberal construction in favor of the grantees. It contains the words “certain knowledge, “mere motion,” and special grace,” and it purports to be made for a valuable consideration. 3 Cruise 567, sec. 11, 12. The words of the grant, also, are very broad and comprehensive—“All the lands, islands, soils, rivers, harbours, waters, fishings, & c.” Leaming & Spicer 4. These words are technically apt to pass, as well the soil of the rivers as the fisheries. 2 Black, 18. Har. L.T. 18, 33. Dav. 150. 5 com. Dig. (D 290). It is abundantly manifest from the contemporaneous history of England, that this grant and charter, as well as all other grants and charters of the American provinces, were framed with great deliberation; were submitted to the law officers of the crown, and every word well weighed and understood. By looking at other grants, it will appear, that when the king meant to reserve the right of fishery he did it by express words. It is so in the grant of Maryland to Lord Baltimore. 1 Har & M’ Hen. 564. These charters and grants are great state papers; and considering them as such, and referring to the situation of England at the time, this idea is strengthened. The policy of the crown, as well as that of the English nation at that time, was to people America as rapidly as possible. It is obvious, that these grants of immense territories were designed not merely for the benefit of favourites. But to foster, promote, and encourage the settlement of the country. Hence the king not only granted the territory in the most ample and comprehensive terms, so as not only to divest himself and the people of England of all propriety in the soil and rivers, but also the right of sovereignty and of self-government, unrestricted in all particulars, so that they be not contrary to the laws of England, but, as near as may be, conformable thereto.

\*\*15. At this time it was well known that much discontent prevailed in England among those who considered themselves persecuted for their religious opinions; and the spirit of liberty, which had destroyed the sceptre of Charles I. and brought him to the block, was not wholly extinguished by the restoration of his son. There were still many gallant and patriotic Englishmen who cherished \*20 the sacred flame of liberty, and who viewed the prerogative of the crown, in the hands of the Stuart dynasty, as dangerous to the rights of the people; and who detested the licentious and tyrannical conduct of one brother, and dreaded the religious bigotry of the other. Admonished by the fate of their father, these royal brothers might wish to avoid it, and instead of repressing the spirit of emigration which had then seized those who were remarkable for boldness, enterprise, and attachment to civil and religious liberty, they might have had the wisdom to hold out inducements to the Hampdens and Cromwells, if any still remained, to seek their fortunes in the wilds of America, and there create new theatres for action.

The grant to the duke of York (Leaming & Spicer) not only contains the most ample cession of the domain and sovereignty of the country, but gives him the right of interdicting any persons from settling that he may see proper. The grant from the duke to Berkley and Carteret is as full and ample as the grant to him, except as to territorial limits. There can be no question, that, at the period, no one in England seriously supposed that this grant violated the rights of the subject, or transcended the prerogative of the king. It was not supposed, that a subject of England, as such, could claim a right in New Jersey, hostile to the grant made by the king. Could he have set up the pretences of the adverse counsel, that the king held the colony merely as trustee for the people, and that a grant made to an individual without consideration, and for favouritism, was void? Could he have set up the common right of fishery, as an unalienable right, vested in the king for great public purposes> and, as one of the people of England, made good his claim to the waters of this wilderness. The very laws upon which his claim must be based had already sanctioned the cession and grant of this country to individuals. It was no longer the property of the nation; their lawful agent had alienated it.

It is manifest that our ancestors, who, I may venture to assert, felt as ardent a love of liberty, and understood their rights as Englishmen, as well, at least, as many who prate about the rights of the people, and common right, and other imposing terms, had no such opinion. These men, whose love of civil and religious liberty, led them to abandon the delights of civilized life, the tombs of their ancestors, and all those endearing ties which bind \*21 man to the place of his birth to encounter the privations, hard ships, and dangers of settling a wilderness, peopled only by savages, knew well the rights, the powers, and privileges of the proprietors, under these grants. Before crossing the Atlantic, they ascertain the terms upon which they will be permitted to settle under the proprietors. The grants and concessions, dated 10th February, 1664, is the Magna Carta of New Jersey, and therein the settlers stipulate for a representative government, a free passage to or through any seas; lands for wharves, keys,

harbours, &c. and that they shall not be liable for trespass on waste lands Smith’s Hist. N.J. 163 Leaming & Spicer 20, 25, sees, 3.6,8. In 1682, the colonial legislature resolved, that the government and laws of New Jersey were purchased together. Smith’s Hist. N.J. 16. In 1683, they published their fundamental rights; (Ib 153) and, in 1698, they re-published them, containing a proviso, that nothing therein contained should infringe any grant or charter already granted. The first settlers made their own terms, and when we find them treating for the right of navigation, and of harbours, &c., which are part of the jus publican, upon the principles of all laws, and securing them by contract, and silent as to the right of fishery it furnishes a strong argument in favour of our position, the more especially, as their brethren of West Jersey, deriving under the same grant, actually stipulate for the right of common fishery, Leaming & Spicer 390.

\*\*16 In 1676, Lord Berkley sold his moiety of New Jersey; and in 1682 the executors of Sir George Carteret sold his moiety. In 1685, the duke of York, to whom the grant had been made, became king. At that time, the province, having passed out of the possession of the courtiers and favorites, and increased very rapidly in population and wealth, became an object of jealousy to the government at home, and many pretexts were used to resume the government. Smith’s Hist. N. J. 65. It is to be remarked, however, that even then it was never suggested, by those who were fertile in devices to avoid charters and patents, that the king had transcended his prerogative in making the grant. It was then pretended by the adherents of the crown, as our adversaries now argue, (and indeed it is the main pillar of their argument) that the right of government, although lawfully conveyed to the duke of York, could not be alienated by him \*22 or his aliences. Smith’s Hist. N.J. 570. Then that doctrine was supposed to partake of the arbitrary nature of the Stuart prerogative, and to be hostile to the interests of the people. Hence it was resisted by the people then inhabiting here, and gave rise to the resolutions of 1682, 1683, and 1698, already quoted, in which the rights of the proprietors are distinctly asserted. It is a singular position, that our ancestors coming here under an express recognition of the rights of the proprietors under the grant to the duke of York, and purchasing part of the very lands passed thereby, could destroy or circumscribe the rights of those under whom they held. It would be analogous to a tenant denying the right of his landlord.

3. Having established, as is submitted, that on the principal of the common law the king could grant the soils, rivers, lands, and fisheries within New Jersey, and that, by express words, he did grant them to those under whom the proprietors claim title, it remains to shew, that as owners of the rivers and soils, independent of the grant of the fishings, the proprietors became entitled to several fisheries.

Fresh waters belong, in propriety, to the owners of the soil on each side. *Har. L. T.* 5, 7. 2 *Black.* 261. *Dav.* 152. 4 *Bur.* 2162. This doctrine is recognized by Chief Justice Kent, in 3 *Caines* 319, and by Chief Justice Spencer, in *17 John.* 209. In these rivers, the right of fishing is annexed to the soil, and passes by a grant of it, and is recovered by the description of land covered with water. *Har. L. T.* 5, 7. The distinction in the books between salt water rivers, navigable rivers, and rivers in which the tide ebbs and flows, and fresh water rivers not navigable rivers, and rivers in which the tide does not ebb and flow, for they'are different expressions for the same thing, is local, and arises altogether from the nature of the rivers in England. There all their rivers, so far as the tide ebbs and flows, are salt, and so far navigable; and those in which the tide does not ebb and flow are fresh, and not navigable. 2 *Con. Rep. 4.* 2 *Bin.* 476. That is not so here. The Delaware, Susquehanna, Schuylkill, &c. and in fact all our great rivers, are navigable beyond the influence of the tide and the salt waters. The doctrine there was founded on the nature, extent, and situation of their rivers, and adapted to it; and the grant of lands on salt water rivers, bounding on the river, carried only to low water mark. In fresh water rivers, the same words \*23 in a grant would carry to *the filum aqua'.* This was the rule of construction. But even in salt water rivers, the grant by the king, of the soil &c. conveyed also the right of fishery as an incident. In this sense is to be understood *Har. L. T 11,* 15; 4 *Bur.* 2163; 3 *Jac. L. D.* 82. If the distinction in the English books on this subject is local, it may be questioned whether it applies here. Our ancestors, on emigrating, did not bring with them the whole body of the common law, as well that establishing general principles applicable to a new country, as that founded on the peculiar state of the country from which they came. They brought the common law purified from its local dross. Everything of a mere local origin was left on the other side of the ocean, and we have gradually substituted in its place a local common law of our own. Our ancestors brought the folk law merely, as contradistinguished from the *jus corona* and the local common law of England. Besides they settled this country under royal charters defining their rights, or under grants made to individuals, which, in many respects varied from the principles of the common law, as in this very grant of New Jersey the king parted with many of his prerogative rights as to harbours, ports, rivers, &c.

\*\*17 By the grant of the soil of a navigable river, on the admitted principles of the common law, a right of several fishery passes *Har. L. T 5,* 7, 15, 33, 34. 2 *Black.* 39. 4 *Bur.* 2163. *5 Corn Dig. Pischary.* A right of several fishery is in concomitance with, and founded on, the right of soil, and is co-extensive with it; and whoever has the right of soil in a navigable water has, also, the right of several fishery. Under the grant from the proprietors, offered in evidence, the plaintiff acquired a right of several fishery generally, and without limitation, co-extensive with his right of soil.

2. But if he did not acquire a right of several fishery for floating fish, he acquired a right to erect a local fishery, or an oystery, within the limits of his grant, and was entitled to recover for an infringement of that right. *Har. L. T.* 18 to 23. 4 *Mass.* 527. This doctrine is supported by decisions in our sister states. *1 Swift.* 341-2. 4 *Mass.* 527. 10 *Mass.* 210. 2 *Bin.* 475.

The right of several fishery exists in New Jersey, in the Delaware and other navigable streams, and this right has been sanctioned by a decision of Chief Justice Kinsey, at the Gloucester' circuit. It is recognized and protected by various acts of the \*24 legislature. The fisheries are taxed as private property, distinct from the land, and above a hundred are now enjoyed on the Delaware. It also exists in Pennsylvania, on the shores of Staten Island, in Virginia, Maryland, &c. This proves that there is a general local common law on this subject, pervading all the states where the waters afford sufficient inducements for the owners of the banks to erect fisheries.

Whenever the soil of a river is granted by express terms, or even constructively, it becomes, so far as regards the right of fishery, a private river, and the principles of the common law, as to private or fresh water rivers, attach. Whenever the soil of a river passes, by grant or otherwise, out of the hands of the sovereign of the country, it becomes, *ipso facto,* a private river and the subject of a several fishery. How can rights, which are merely accessary, exist in the hands of the sovereign after he has parted with the principal! Several fishery is an incident to the soil; while it remains the property of the people the common law r ight of free and common fishery continues; but when the soil is sold or conveyed, the incident also passes. 1 *Rutherf* 92. This doctrine is expressly asserted by the commissioners appointed by this state to treat with New York respecting our eastern boundary. They were appointed by the legislature; reported their proceedings to the legislature; and the legislature, by publishing their report at the public expense, and without comment, have adopted their reasoning: and it becomes, as well from that circumstance as from the great Learming and talents of the commissioners themselves, entitled to very great weight in our tribunals. It fully supports this proposition. *Report of Commissioners* 15. The proprietors, also, from a very early period down to the present time, have been in the practice of granting the soil of navigable rivers. On the trial, many such grants were shewn, and they, at least, prove a cotemporaneous construction of the grant under which they held. While the rivers remain in the hands of the sovereignty of the country, the right of fishery therein is public and common; when it is granted to an individual, it becomes a several fishery. This is consistent with the doctrine of the natural law, as laid down in *Rutherf.* 91.

**\*\*l8** The *jus publicum* in all rivers is the same. The *jus publicum* is the right of navigation; the right of making laws for the conservation of fish and their fry; and to regulate the mode and **\*25** right of taking them. *Har. L. T.* 22, 23, 36. Lord Hale nowhere considers the right of fishery as a part of the *jus publicum,* properly so called. This doctrine perfectly harmonizes private rights with public rights. It will here be necessary to anticipate some of the arguments of the counsel of the defendant, that they may be apprized of the answers that will be relied on.

1*.* It has been contended, and no doubt will be again, that the right of fishery is a royal franchise which the king holds for great public purposes, in trust for the benefit of the people, and cannot, from its very nature, be conveyed.

The fallacy of this position consists in not distinguishing between the different kinds of fisheries. Fisheries are--1. Several. 2. Free. And 3. Common. 2 *Black.* 39. 1.The right of several fishery, as already shewn, is founded on, and annexed to, the soil, and is by reason of, and in concomitance with, the ownership of the soil. When the soil of a navigable river is granted the right of several fishery therein begins. 2. A free fishery is altogether different; it is a royal franchise, distinct from the land and founded on grant or prescription. By the grant of a free fishery, the right of fishery only passes, the right of soil remains in the king. 2 *Cruise* 297, *sec.* 70. 5 *Corn. Dig.* 290. A free fishery separate from the soil, appropriating not the land but the fishery, might, on sound principles of policy, be prohibited in every well regulated government. If permitted, every part of the British channel might have been parcelled out among courtiers and favourites, and thus the ocean itself made tributary to the avarice of man. The right of several fishery, however, springing from, and connected with, the possession of the soil, stood on wholly different grounds. It gave an incentive to industry, and would benefit the public. The sound rational principle on which the distinction between the ownership of rivers navigable and not navigable rests, is, that, as to the latter, a subject must be the owner of it, and may be of the former, but *prima .facie* it is in the king, and, until granted, he holds it as the agent of the people and for their benefit; and it is public and subject to- -3. The right of common of fishery. But this right of common of fishery continues only while the soil remains in the public. But there are not wanting authorities, among those already cited, to prove that the king may grant a free fishery. But the position now \*26 contended for is, that the authorities which deny the right of the king to grant a fishery in navigable waters, when properly understood, apply only to *free fisheries,* which is a royal franchise, and not to *several fisheries.* This distinction reconciles all the seeming contradictions in the books.

**\*\*19** 2. That the King was prohibited by *Magna Carta* from granting a fishery.

The 16th and 23d ch. of *Magna Carta* are relied on to support this position. Ch. 17th is expressly stated by the *Mirror* to be obsolete. 3 *Cruise* 297. 1 *Cok. Inst.* 30, 37. 5 *Jac. L. D.* 4. This section is considered by Lord Hale *(Har. L. T* 7, 8, 9) as designed to take away the right of the king in *private* rivers, an interest of pleasure or recreation, which he enjoyed by the *writ de defensione riparice,* that is, to put the rivers in *defenso,* to bar fishing or fowling till the king had taken his pleasure. And that the 23d ch. applies to weirs, kidells, and obstructions. *Har. L. T.* 9, 22.

This exposition agrees much better with the character of *Magna Carta* than Blackstone's. *Magna Carta* proceeded from a struggle between the barons, bold, turbulent , rapacious, and oppressive, and kings, weak, timid, and tyrannical. Let us not be the slaves of mere words. Whatever benefit has accrued to the liberties of the world from *Magna Carta,* has arisen more from chance than design. The barons armed themselves not to support the rights of the people, but to protect their own usurpations upon the rights of both monarch and people, and, in the collision between the two oppressors, some principles of liberty were struck out. It was a mere streamlet issuing, as if by a miracle, from the rock of tyranny, struck not by the arm of inspired patriotism, but by a casual blow of the sword of the mailed baron, in the attempt to deck himself in the robes of royalty. But these chapters of *Magna Carta* are mere statutes, and it is held in Westminster-Hall, that none of the statutes of England, as such, applied to the colonies. 1 *Salk.* 666. 2 *Ld. Ray.* 1274.

We hold not our liberties in this state by the provisions of *Magna Carta.* Every freeman, wherever his lot may be cast, will turn to that instrument with pride and satisfaction, as a noble but rude and incomplete monument of the liberties of man. It is the corner-stone of the liberties of Englishmen, and the first land-mark in tracing out the liberties of the subject after the Norman usurpation.

**\*27** But the history of liberty in this state is happily not lost in the recess of time. It is to be found in the grant from the king to the duke of York, and the grants and concessions between the proprietors and the settlers, and the bill of fundamental rights. Our ancestors stipulated for their own rights, and built up a great system of republican liberty, based on the natural rights of man and protected by representative government, in which they have interwoven all the essential principles of civil and religious liberty; I turn to it with pride and pleasure. *Learming & Spicer* 162-3, *secs.* 16, 19. Beside it, the much boasted *Magna Carta* of England dwindles to a twinkling star in the galaxy of freedom. It embodies everything worthy of preservation in *Magna Carta,* and was the most perfect system of civil and religious liberty existing in the world at that period. It is the foundation of our present republican system, lopped of the overshadowing branches of royalty, but the trunk remains entire and vigorous. On it has been engrafted, the sovereignty of the people, equal laws and equal rights, and, to this day, the graft is nurtured by the sap and life-blood of the parent stock. These form the *Magna Carta* of New Jersey. To trace *our liberties* to *Magna Carta* may indeed gratify a feeling akin to that of pride of ancestry, but it is wholly deceptive. In all the struggles between the people and the proprietors, on the one side, and the court party, on the other, during the proprietary government, and after the surrender, between the people and the royal governors, it will be found that the patriots of the day constantly refer to the grants and concessions, and the fundamentals, as the basis of their rights. *Learming & Spicer, passim.* Indeed, the collection of the original documents, so often referred to, made by *Learming & Spicer,* was occasioned by the desire of the legislature to rescue from oblivion documents so essential to their Just rights and liberties Besides, these chapters of Magma Charm are, on the face of them, local and confined to England, and cannot, 1n fair reasoning, be extended to the rivers in America With the same propriety it might be insisted, that the provisions contained in Magna Charla respecting game, forests, &c were applicable The legislature of New Jersey, at a very early period. enacted Similar laws respecting the obstruction of nav1gable waters Paterson 15.

**\*\*20** 3. That, by the surrender made by the proprietors to queen \*28 Anne, on April 15, 1702, the right of fishery in the navigable waters of New Jersey, which, it passed to the proprietors at all passed as an incident to sovereignty, became re- annexed to the crown. If the former propositions contended for are supported, there is no force in this argument; because, if the king had a right to grant soil covered with water, and fisheries, and did grant them, they became severed from the sovereignty and could not be re-annexed but by terms as broad and comprehensive as those by which they were granted. In the grant, the water, soil, and fisheries are passed in express terms, and not constructively or as incident to the sovereignty, and it cannot be gravely pretended that it varies it, because they were conveyed by the same instrument. This argument is a *petition principii*, it assumes the very point in debate, and which is denied by us. A reference to the memorial of the proprietors, which preceded the surrender, and the surrender itself completely dispels this idea. In the memorial, the proprietors expressly separate the idea of government and property. Leaming & *Spicer* 607. They surrender merely the powers of government. lb. 6l3-4. It was accepted as such. Ib 617. By their memorial, the proprietors, previous to the surrender, stipulate for the soils and lands of the provinces and the quit rents, (*lb. 589, sec 1*) which is granted *lb*. 594. That the twenty-four proprietors may be lords of the soil &c. (*lb*. 590, *sec.* 9) which is granted. *lb.* 594. That all lands, goods, and chattels of traitors, felons, deodands, fugitives, and persons outlawed, waifs, estrays, treasure-trove, mines and minerals, royal mines, wrecks, royal fish that shall be found or taken Within East Jersey, or by the inhabitants thereof Within the seas adjacent, to remain to the proprietors, with all the other privileges and advantages, as amply as in the grant and confirmation of March 14. 1682 *lb.* 590, *sec.* 13. The lords of the council of trade and foreign plantations, who had the assistance of all the great law officers of the crown, in answer say, that this may be reasonable, except as to the goods and chattels of traitors, which are matters of state; nor can right accruing to the proprietors from the seas adjacent be well circumscribed &c. *lb.* 596. This memorial, and the answer and surrender, are to be considered as a treaty between the proprietors and the queen, and are to be taken in pari *materia*. The proprietors knew that they held the right to treasure-trove, royal fish, &c. as incident to the grant of sovereignty, **\*29** (1 Black 299) and, unless provided for by express stipulation, it would again vest in the crown on the surrender of the sovereignty. The lords, to whom the memorial was addressed, admit that the right of the proprietors to the seas adjacent could not be well circumscribed, so far as they passed by the king's grant, "westward of Long Island, bounded on the east by the main sea, and hath on the west Delaware bay or river, and extending southward to the main ocean, as far as Cape May, at the mouth of Delaware bay " *Leaming & Spicer* 10. So far, then, as these limits extended the proprietors remained lords of the soil, and their rights could not be well circumscribed is the strong language of the lords of the council of trade and foreign plantations, and may be considered as the opinion of the great law officers of the crown, as they were constantly applied to by the board of trade in all important matters.

**\*\*21** But the proprietors, as sovereigns, by the law of nations and of England, were proprietors of the sea to the extent of three leagues from the shore, and, as such, lords of the soil covered with water. But this right they held as sovereigns, not as lords of the soil, and when they surrendered the sovereignty it passed to the crown. By the declaration of independence, this right vested in the people of New Jersey, previous to the surrender, the right of granting a tree fishery Within this three leagues was in the proprietors, after the surrender, and until the declaration of independence, in the crown; and since, in the people of New Jersey. No grant of a free fishery has ever been made within these waters, and none can now be made, but by the legislature of New Jersey. That they have the right so to do, upon the principles of the common law, I think has been already shewn. The right of the proprietors, as to the soil, and everything else that passes by the grant to the duke of York untouched by the surrender, was not affected by the Revolution. That glorious event found them lords of the soil, and it left them such. It was not intended to take away, but to secure, rights.

2. But even if the court should be of opinion, that the soil of the rivers below low water mark and the right of several fishery were not capable of being granted, yet we contend, that the plaintiff, by gathering, or purchasing, and planting the oysters upon land which he claimed, and bestowing his own labour upon them, and staking them off, thereby shewing that he did not **\*30** throw them into the water to abandon them, acquired a right therein which is protected by law, and will enable him to maintain an action against anyone who disturbed him in the enjoyment thereof. He acquired such right upon the principles of the natural law; (1 *Rutherf* 91) upon the principles of the civil law; *(Vattel* 114, *secs.* 250-1; *Domat.* 475, *secs.* 3, 4, 7, 9; 280, *secs.* 24, 27, 28, 29) upon the principles of the common law; (2 *Black.* 8, 9, 391, 392, 402; 3 *Chitty's C. L.* 359; 5 *Esp. R.* 62; 1 *Camp.* 309) and by the law of New Jersey, I *Pennington* 397. The oysters belonged to him before they were planted; and placing them in navigable water congenial to their growth and sustenance, accompanied with every *indicia* of ownership, cannot be considered as divesting him of any rights previously vested. The oyster is a fixture, and will not remove from the place where it is deposited. If a whale is captured and left within the tide waters no man has a right to take possession of it. So, if floating fish are caught and placed in a car. So, also, of a piece of timber secured from being drifted off by the tide; the right of the original owner remains. Every man may deposit his goods in the highway. He may thereby subject himself to an action or indictment for a nuisance, but he does not lose his right of property. In no case does a man lose a right of property vested in him by the principles of law, by placing it in a public highway or a navigable water subject to the *jus publicum.*

\*\*22 Upon these principles, it is respectfully submitted, that the nonsuit ought to be set aside, and a new trial awarded. Wood, in answer.-- the main question in the present case is, whether the proprietors have a right to grant several fisheries in a navigable river, to the exclusion of the right of common fishery in the citizens generally? The right of the citizens has always been used, and the court must see their way clear before they will attempt to deprive them of it. We contend, that the right of the soil in navigable rivers, and the sea at the distance of three leagues from the shore, and the right of jurisdiction therein, with the exclusive right to what are called royal fish, are vested in the state, the sovereign power, as a part of the prerogative of the sovereign power; and that the citizens have a common vested right of fishery therein; and, secondly, that if the above rights, ascribed to the state, be in the **\*31** proprietors, they hold them subject to the common right of fishery of the citizens at large, of which they cannot deprive them.

In establishing these propositions, it will be necessary to consider, what are the rights of the king of England, in relation to these subjects. By virtue of his prerogative, he has the allodium of the soil in navigable rivers and the sea, as above mentioned, with an exclusive right to royal fish. His subjects have a common of piscary therein, which is a vested legal right, and may be pleaded. These rights of the king are part of the public domains, vested in him for public purposes. The king cannot transfer them to a private individual for a private purpose, much less, by attempting to do so, can he destroy the common right of fishery, the vested interest of the subject. This doctrine is not peculiar to the common law. It is the doctrine of the civil law, which is the basis of the codes of modern Europe, and which goes much farther. Coop. Justin. 67, 68, lib. 2, tit. 1, secs. 1, 2, 3. Positions supporting this doctrine are frequently to be met with in treatises on national law. Vattel 11, book 1, chap. 3, sec. 34; 117, book 1, chap. 21, secs. 260, 261.

These doctrines apply with more force to England. Their government is a limited monarchy; their king is only a branch, and the executive branch, of the sovereign power. Such a power in the king, as is contended for on the part of the plaintiff, which is in its nature legislative, is altogether heterogeneous and destructive of the harmony and order of the British constitution. Their parliament, alone, can have the right of transferring the public domains of the nation. The king may grant his private property, his ordinary revenue, lands vested in him upon feudal principles, but not the public property. Magna Carta, with Lord Coke's commentary upon it. I Reeves' Hist. 234. Chitty on Fisheries. 1 Esp. Dig. part 2, 270. 2 Black. Com. 39. Bac. Abr. tit. Prerogative, book 3. 3 Cru. 297. Willes 268. *Warren v. Matthews*, 6 Mod. 73. The king could not grant the temporalities of the church, which are in him, before the 18th Edward III. I Black. Corn. 282. The authorities cited by the plaintiff’s counsel to prove, that, upon the principles of national law, the public waters may be appropriated, only prove that they may be appropriated by a nation, to the exclusion of others. They do not touch the question, whether a king may appropriate them to the exclusion of his subjects? It is true the Norman **\*32** kings usurped this power of transferring the public waters to private individuals, their favourites; but this power was restrained by Magna Carta, the great object of which was to restore Saxon liberty. Black. Tracts, Introduction to Magna Carta 289. The reason of allowing such grants of Magna Carta to prevail, as were made prior to the reign of John and in the reign of Henry II, was no doubt because such rights were vested in the hands of innocent alienees, and the barons of those days were moderate in the work of reformation. Those grants made prior to Magna Carta, and allowed by it, are no doubt the foundation of all the several fisheries and exclusive ownerships of navigable waters in England, which are now claimed by prescription and proved by immemorial usage, which presupposes such original grant. Instances of abuse may have occurred since, which are now supported in that way. The case in Dav. Rep. is a mere dictum of the judges, as to the law in Ireland, and in the worst times of English jurisprudence. The other authorities cited by the plaintiff’s counsel furnish cases of prescription only.

**\*\*23** But we are told the king holds the public waters, not as a part of his prerogative, and unalienable, but as having the allodium of the soil of England on feudal principles. It is clear, however, that he holds by virtue of his prerogative. 2 Black. Com. 39. 6 Com. Dig. tit. Prerogative 55, (D) 80. The queen of England is entitled to dower upon the demise of the king, and though an alien. 1 Black. Com. 223, 231. If navigable waters are not vested in him as the property of the nation, and under his prerogative, for public purposes, she would be entitled to dower in them. Free fishery is a franchise, or branch of the king's

prerogative. 2 Black. Com. If the king did not hold the soil itself by virtue of his prerogative, a right granted out of it could not be considered a franchise.

The feudal law was introduced by William the conqueror Admit that the Norman kings pretended to claim the sea and navigable rivers upon feudal principles, as their private property, yet the Saxon kings held it as a part of the prerogative; (Bac. Abr. Prerogative B 3) and Magna Carta revived the Saxon doctrine and put an end to the Norman usurpation. If we were to admit that the kings of England, both before and since Magna Carta held the sea and navigable rivers as private transferable property; yet they held it subject to the common right of fishery **\*33** in the subject, which is a vested right, and may be pleaded. 1 Pen. Rep. 391. *Post v. Mun*, 1 South. 61. *Richardson v. the Mayor of Oxford*, 2 H. Black. 182. Har. L. T. 11, 19, 20. 4 Term Rep. 437. To destroy the vested legal right would be the highest effort of legislation. A king of England, upon the principles of the British constitution, cannot do it. In Hargrave it is admitted, that the king cannot, by alienation, destroy the jus publicum, and that the common right of fishery is a part of the jus publicum. When he tells us, then, that the king may, by alienation, destroy this common right of fishery, it only proves that the author is inconsistent with himself. The construction put upon Magna Carta, in Hargrave, is opposed to all the authorities upon that subject above cited. It supposes the barons of Runnymede were anxious to put an end to royal encroachment, by prohibiting the subject from the right of fishing, and yet they left it in the power of the king to defeat their right at any time, and to any extent, by merely granting the soil to his favourites, an impotent effort which was unworthy of them.

Having ascertained the right and powers of the king over the navigable waters of England, it is easy to shew that he possessed the same rights and powers, and no others, over the public navigable waters of this country. England claimed North-America by right of prior discovery. The soil, on the principles of the British law and constitution, vested in the king, and for the purpose of being parcelled out among his subjects. The English government could only hold it for the purpose of being settled. Vattel 99, book 1, chap. 18, secs. 207, 208. The people emigrating under the duke of York to America, brought with them all the laws and rights of Englishmen, except such as were rendered inapplicable by the change of their local situation. 1 Bl. Com. 107. If the king had retained immediate dominion over this country, instead of granting it to the duke of York, he would have transferred the soil to the inhabitants, who, of course, would take the same rights and interests in the adjacent navigable waters as in England. His having owned all the soil, would give the king no greater power over the navigable waters. Suppose a manor in England, through which a navigable river flows, should revert to the king, and he should parcel it out again to his subjects, they would take the same rights as before in the navigable waters.

**\*\*24 \*34** It is said, the people migrating here brought with them political, but not municipal, rights; and that the provision on this subject, in Magna Carta, was merely local. On the contrary, they brought civil, as well as political rights. Constitution of N. J. Smith's Hist. N. J. 291. 8 Craneh 242. 1 Mass. T R. 60, 61. Laws restraining the power of the king, more especially on navigable waters which supplied the inhabitants of a wilderness with food, were all important to them, and peculiarly applicable to their situation. But the king caused to be created proprietary governments here, by the grant to the duke of York. In the construction of this charter, we are to consider--1. What the king had a right to grant; and--2. What he intended to grant. I. It is manifest he could give to the duke of York, and his assigns, no greater right and power over the navigable waters here than he himself would have possessed; and, if the words of the grant are more extensive, all beyond his legitimate right is absolutely void. As he could only possess a right in these navigable waters, subject to the common right of fishery of the inhabitants, which was unalienable, the duke of York, and all claiming under him, would take the right of the king, subject to the same restriction;--but 2. The king did not intend to grant to the duke and his assigns, as an individual, an exclusive right of fishery in these navigable waters. In the construction of this charter, we should consider it as a great state paper, not to be confined within the petty trammels of a mere private conveyance. The grant is not made to him as an individual, but as a qualified sovereign, created so by the same instrument, and thereby vested with a qualified sovereignty over the country. He puts the duke in his place, with his powers, and to hold the territory for the same purposes that he held it; the soil to be parcelled out among emigrants; the navigable waters to be used by those emigrants for navigation and fishing. He, therefore, gives the duke the soil and rivers, and all royalties, with the powers of government, to be exercised according to the laws and statutes of the realm of England. Admitting, for a moment, the abstract power of the king to make an exclusive grant of fishery to an individual, in navigable waters, yet, in the present case, he granted to the duke of York, as sovereign over them, to hold them as he held them, with a common right of fishery in the settlers. The grant of the duke to Berkley and Carteret, and the subsequent grants, will receive

**\*35** the same construction. Hence the people here always exercised a common right of fishery. 1 Allinson's N. J. Laws 57, preamble. Learming & Spicer 368, 369, 371, 129, sec. 6. It is said, this was a conquered country: be it so. This would give the king no greater power over his British subjects; he conquered with their arms. Vattel 391, book 3, chap. 13, sec. 202. Smith's Hist. N. J. 119. The country, however, was not conquered, but retaken from the Ditch.

**\*\*25** It is said in the grant to Lord Baltimore, (1 Harris and M'Henry 564) there is an express reservation of the right of fishery to the inhabitants of England and Ireland. I t might have been doubted, whether the right of fishery would have extended to them, and was not confined to the inhabitants of Maryland. But why was there no reservation in favour of the latter? Not, surely, because it was intended they should be deprived of it, but because it was clear they would have had a right, without a reservation in their favour. The interference is clearly in our favour, notwithstanding the opinion of Mr. Dulaney.

It is said, that all the ramparts of the people's rights are to be found in the concessions and fundamental constitutions, and that in the disputes before the surrender to queen Anne, the people always appealed to them. It is manifest those provisions were merely precautionary, intended to operate upon the local government. If Charles had intended despotism here, his grantee and his successors would have

pursued the plan. See Mr. Walsh's Appeal, on that subject. These provisions would have been nugatory if they were not in pursuance of the original charter. They could not otherwise have bound the king, and, of course, would not have been appealed to. The duke of York and his successors, the proprietors, having held these navigable waters subject to the common right of the people, in the quality of limited sovereigns, vested with the prerogatives of the king, in the surrender to queen Anne, gave back all their rights and powers over those waters. This surrender was made because the proprietors had no right of government strictly. Learming & Spicer 613. Bac. Abr. tit. Courts Palatinate. That their rights over navigable waters were surrendered, is proved--First, impliedly: because if the king, as already shewn, could not make such grants to an individual for a private purpose, the moment the great public object of the grant ceased, which was the creation \*36 of a qualified local government for the settlement and regulation of the country, the rights over these waters reverted to the king. Secondly, by express words they surrender all powers, authorities, and privileges of and concerning the government. Learming & Spicer 618. Privilege is an appropriate technical term to convey the idea of their rights under the prerogative, and was so understood by the proprietors. Learming & Spicer 590. It is objected, that the proprietors, in their previous negotiations, claimed all their rights in the sea. So they made many other claims which were eventually abandoned, and there would have been in the surrender a reservation of the claim, if it had not been abandoned. If these rights are not surrendered no other royalties are: such as waifs, estrays, forfeitures, felons' goods, &c. Yet the queen understood they were surrendered. (See her instructions to Cornbury about forfeitures. Learming & Spicer 627)--But we now come to our second proposition.

\*\*26 Suppose these r ight s over navigable waters, which the proprietors possessed, were not surrendered. Suppose further, that the king possessed, and the proprietors, while clothed with the powers of government, possessed the right of destroying, by alienations of the soil to individuals, the common right of fishery of the people at large. Such a right would manifestly be a powerful act of sovereignty. It would be a strong high-handed exercise of legitimate arbitrary power against moral right, and not an exercise of power naturally and fairly inherent in the right possessed. When the proprietors, therefore, surrendered the government, if they retained their rights in the navigable waters subject to the common rights therein of the people, when they ceased to be clothed with the powers of government and sunk to the condition of common individuals, they could no longer exercise the high sovereign act of defeating the rights of the people in the navigable waters, but they and their alienees must hold them subject to such rights. It has been said, that whether the king had a right or not to grant these several exclusive fisheries in navigable rivers he did in fact grant them, and the proprietors have enjoyed them under the grant, and it is now too late to disturb them. I have already shewn that the king made no such grant; but if he had, and the proprietors had illegally enjoyed the possession under his grant, it would not avail them. *Stationers' Company v. Carnan,* 2 Black. Rep**. \*37** 1004. 7 Mod. 108. It is notorious, that the proprietors have never exercised such a right, but the people have been in the constant immemorial practice of using all the public waters for fishing and taking oysters. It is said, that these oysters were planted by the plaintiff, and that he has a right to them though deposited in a public river, and that they are different from running fish. But there is no such distinction. Pen. Reports 391. *Richardson v. Mayor of Oxford*, 2 H. Black. 182. Besides, in the present case, the plaintiff threw his oysters on a natural oyster-bed, when the defendant unquestionably had a right to take oysters. The doctrine above contended for does not interfere with the fisheries on the Delaware, where the owners possess the exclusive right of haul upon the adjacent shores. Scott, on same side.--It was incumbent on the plaint i f f to shew a t i t le. The possession of unenclosed premises is necessarily according to the right. **Arnold** never held adverse or exclusive possession, and the act of throwing oysters on the flat, so far from being considered an act of possession, has been adjudged by this court an abandonment of them to the common mass. 1 Pen. 391, 395. Possession, then, out of the question, we must return to the inquiry of title, and here the title to the farm adjacent does not aid the plaintiff, for that, in terms, excludes the place where the supposed trespass was committed. It therefore became necessary to shew a survey or conveyance to evince that the title was out of the council of proprietors, in conformity with the doctrine urged by the plaintiff himself.

**\*\*27** He does not give or offer in evidence any conveyance or assurance from the proprietors; no common law t i t le is offered, but he shews a survey bearing date 13th April, 1818. When it was recorded, does not appear; when it was inspected and approved, does not appear; that it ever was inspected and approved, does not appear. Inspection, approbation, &c. are substantive acts, and the subject matter of clear proof. The state (Pat. N. J. Laws 82, sec. 3) enacts, "that any survey made of any lands within either the eastern or western division of the proprietors of the state of New Jersey, and inspected and approved by the general proprietors or council of proprietors of such division, and, by their order or direction, entered upon record in the secretary's office of this state, or the surveyor-general's office of **\*38** such division shall, from and after such record is made, preclude and forever bar such proprietors and their successors from any demand thereon, any plea of deficiency of right, or otherwise, notwithstanding." This survey is now produced under the operation of this statute, to excuse the non-production of a direct conveyance from the proprietors to the plaintiff in this cause. In the acknowledged absence of all conveyance from them, shall it be sufficient to make the defendant liable, as a trespasser, to him who causes the survey to be made? The survey is made wholly at the instance, and under the direction, of the party. It requires no warrant, and, in this case, had none accompanying it. Suppose a man to walk over unlocated lands between the time of a survey and the time of its being recorded, against whom does he trespass, the proprietors, or that individual who has caused the survey to be made? Is it certain that the survey will ever be recorded? Many caveats interpose, and evince that it is unlawful to record. Many preferences are given by the statute, which the council are to decide. If we imagine conflicting surveys, we shall be brought to the conclusion, inevitably, that the act of the council is essential to the title. Inspecting, approving, and recording the survey are, by this law, in the absence of all ordinary and regular conveyance, made equal

to the delivery of a deed, and the time of delivery, beyond all controversy, is the time when the title passes. To my mind it seems clear that this is the only rational construction of the statute. From and after such record is made the survey shall be operative, and it shall, from and after that time, preclude and forever bar, &c.

But admitting, for the sake of argument, that a title, such as the proprietors could grant, was vested in the plaintiff, antecedent to the supposed trespass, we must proceed to examine what that title is. The plaintiff claims an exclusive fishery in and upon certain parts of the Rariton river, where the tide ebbs and flows. There is a natural oyster-bed there, and it is below low water mark. The defendant, **Mundy**, has taken oysters from this bed, and this is the supposed trespass. Our first proposition is, that the proprietors have no right to survey a navigable river, where the tide ebbs and flows, for the purpose of vesting private and exclusive rights therein in individuals. Our second proposition is, that the people have a vested right, communis piscarice, in such rivers, by the common law.

**\*\*28 \*39** Our argument under the first of these heads is, that by prerogative, the king of England, in navigable rivers, has a right of fishery, (not several nor exclusive) and that he has an exclusive right to royal fish; that he has and holds these rights by prerogative only, as incident to the kingly office and sovereignty, and that, therefore, he cannot convey the sea, nor an arm of the sea, nor a navigable river, to a private individual for a private purpose. We place our argument on this broad basis, and insist, that this is the doctrine of the common law, of civil law, and of national law.

The case of a cession from one sovereignty to another, as in the case of Louisiana, the Floridas, and the immense countries west of the Missouri, does not bear upon this subject. In the entire cession of the countries, the seas and the rivers, of course, go with the sovereignty. We insist, that although between the ascent to the throne by William the conqueror, whose title evinces that his crown was the crown of conquest, and Magna Carta, the king did actually grant out navigable rivers, exclusive fisheries, wiers in rivers, &c. yet it was contrary to common law and common right. The Norman succession considered England precisely as the counsel opposed to us consider this country, a conquered country. And they endeavored to impose that law on Englishmen, "the pleasure of the king," which we are now told was the law, the true and real law binding on our ancestors. The extortions and exactions of the followers and favourites of the Norman usurpation, far transcending their policy or their wisdom, finally roused the spirit of Englishmen. Their Saxon liberties were still remembered with the fondest recollection, and the barons, the nobles, the great men et tota communitas Anglia, with one vigorous exertion of their strength, asserted the return of their ancient rights and laws, and, on the plains of Runnymede, received their acknowledgment in the first charter. They considered this charter as a great confirmation of many of their liberties; as the restoration of many of the great principles of the common law; as restraining the king from preventing the people of their rights and securing many important principles.

Magna Carta, then, was the great fundamental law of England, binding alike on prince, noble, and peasant; securing rights and prohibiting their infringement. This charter, cap. 16, declares--"No banks shall henceforth be fenced, but such as were **\*40** in defence in the time of our grandfather king Henry, by the same places and by the same bounds as they were accustomed in his time." Sir Edward Coke's comment on this statute (2 Inst. 30) explains it in a style so decisive that there is no escape. He says, "that no owner of the banks of rivers shall so appropriate or keep the rivers several to him, to defend or bar others, either to have passage or fish there, otherwise than they were used in the reign of king Henry II." See also cap. 23 of Magna Carta. To the same effect is 2 nb. 39; and in Salk. 357 and 6 Mod. 73, we have the decision of that great constitutional Judge Holt, that the king's grant cannot bar a subject from fishing in a navigable river. In 2 Sul. Feud. Law 241, 1 Reeve 234, Willes 265, 2 Bos. Pul. 472, 1 Camp. 312, we have the same doctrines and principles quoted and remarked on with high approbation; and that these principles are not peculiar to the law of England, but are co-extensive with civilization and the government of law we have but to turn to Coop. Justin. 67, I Vattel 11, 117, and 2 Domat. 399. The answer to this is not satisfactory to my mind. It is, that the king had the right of soil, and could grant it, and that with the grant of the soil, and as incident thereto, the fishery must go. It is fairly admitted, that the king has the right of soil in navigable rivers, as a royalty as incident to, and inseparable from, his character of sovereign, but it by no means follows, that he may alien that which he holds quasi in trust for the subject.

**\*\*29** Unusual pains and industry have produced against us the case reported in Davies 150, and Sir Matthew Hale's treatise in Har. L. T. The case in Davies was decided in Ireland, in the reign of James T. when the royal prerogative was at the highest; when the firs divinurn was every where taught, believed, and ruled; and when contest with the kingly power, in defence of the subject's right, was esteemed the madness of folly. Nevertheless, there is nothing there decided at war with the great principles for which we contend. It is said, that every river where the tide ebbs is a royal river; and that the fishery is a royal fishery, and belongs to the king by prerogative; and that he shall have exclusive right of royal fish. Let me ask, why is the phrase exclusive applied to royal fish if he has the right of excluding the subject from other fish?

The sole object intended by citing Sir Matthew Hale's treatise **\*41** was to prove that there actually were, and are to this day, in England, several and exclusive fisheries in navigable rivers. Magna Carta acknowledged it hundreds of years ago, but enacted that none should continue, except sucn as were in use in the lifetime Henrici regis avi nostri et per eadem loca et eosdem terminos. I understand this great man as inquiring into the titles of exclusive fishery, and the result is, there are two. 1. Grant. 2. Prescription of immemorial use, which implies a grant. The times or the dates of these grants had not become the question in discussion, and, besides, many grants of several fishery might have emanated from the crown, such as had been acquired by forfeiture, escheat, or in a variety of ways. I ask for the evidence, that the king may now create a new several of fishery. It is that alone which is prohibited by Magna Carta. Lord Hale certainly produces no instance of a modern grant, none so late as the reign of king John.

I think the conclusion therefore obvious, that the kings of England are, by the policy of the law, the owners of the beds of navigable rivers, yet that it is a qualified ownership, and such as that they cannot part with for private purposes, but must hold them quasi in trust for the subject. The grant from king Charles II. to the duke of York was, I think, founded on these principles. The conveyance was of New York and New Jersey, with power of government, and reserving an appeal to the king in council. He entered to make the duke of York a sub-sovereign; he conveyed the lands to him as a subject, and the royalties as a sovereign. He understood well that these navigable rivers belonged to the sovereignty. They continued in the sovereign still, for he alone could hold them, as trustee, for the subject's use.

It is a little remarkable how mere a self-murder the argument of our opposing counsel is, when applied to the fisheries in the Delaware river. In the conveyance from the duke of York to Carteret and Berkley, the western extremity is the eastern margin of the Delaware. The river Delaware was not conveyed to them, that remained in sovereignty; and now we are told, that the divisional line of this state extends westward only to the east margin of the Delaware. It does not extend an inch into the river; and yet many men, from owning the adjacent soil, are the owners of valuable fisheries. Examine this position one moment. The boundary of the state is the east margin of the river, and **\*42** yet there are fisheries appurtenant, out of the state, to invade which would be a trespass, and clausum fregit would lie.

**\*\*30** I deny every word of this doctrine. The state of New Jersey, as a free and sovereign state, extends usque ad medium filum aqua, east and west. In the character and capacity of proprietors. Carteret and Berkley took neither the Hudson nor the Delaware. So far forth as sovereignty was created, and no farther, were these great navigable rivers given: the land only was given, and rivers not navigable, the only lawful objects of property.

When New Jersey and Pennsylvania became free and sovereign, the Delaware rolled between them, and, ipso facto, the centre of that river became the division line, until a mutual convention between them settled their boundary; and such, we are sure, was their apprehension of the matter, for, by treaty, they divided the river and the islands within it. In like manner is the divisional line with New York ultimately to be settled. Precisely the reasoning urged against us would bring the jurisdiction of New York to high water mark on the Jersey shore. New York answers to our claims, and reasons just as the council of proprietors do here. The whole of the two states was given to the duke of York; what was not sold off remains to us. New Jersey, by special metes, was sold off, and you are to take this strict measure? Not so. The great river Hudson vested and remained in the sovereignty till the declaration of independence; it then became a great natural boundary, and vested in the sovereignties of the two states, and the middle is the proper boundary until treaty shall establish another.

The result seems to me to be conclusively this, that the sovereign has allodium of the soil of the sea and its arms; a right of fishery, quasi in trust for all the citizens and subjects; that he has the exclusive right to royal fish; that fishery and navigation are co-extensive; the subject in a limited government, and the citizen in a free republic have, in my mind, the undoubted communem piscariam and the right of navigation. The king’s prerogative in England may be, and often is, one of the subject's rights; the sea is res communis. In relation to newly discovered countries, our original proposition seems to me unimpaired. The soil and the rivers are a great national domain. The country must be inhabited, or the king loses his right; and when inhabited, the people carry with them the same rights and privileges they **\*43** had in the mother country, I said, before, that fishery and navigation were coextensive.

If King Charles II. could grant, and did grant, all of New Jersey, all the rivers, &c. for private purposes; if there was no public law to restrain him in the use; if his assignees stand in pall ratione; and if, under this conveyance, now after the bond of union between this country and England is severed for ever, the assignees, the lords proprietors, can assert the right and exercise it too, of parcelling out exclusive fisheries in the navigable rivers; if their claim be just and lawful, viz. that the whole was theirs, and what is not sold still remains to them, I ask, what is to prevent their taxing navigation and commerce? Every sloop that sails commits a trespass. This controversy about the oysters is but the entering wedge; the shad fisheries and the navigation come next; and the same process of reasoning which will justify the one, in like manner will establish the other.

**\*\*31** Their title to the rivers, we are told, was not a public title for public use, in which all the citizens had an interest, but it was a private individual interest of their own, the subject of sale for money. It is a plain and direct assertion, that fisheries, navigation, and bridges belong exclusively to them.

I have taken no notice of the conveyance of sovereignty to the lords proprietors; it is not here necessary to discuss that. The decision in the reign of queen Anne was, that they could not lawfully exercise jurisdiction and government, and the surrender of the government to her was founded on that decision. But if the government did pass by the grant of the duke of York to Carteret and Berkley, and if their assigns could, and did, take the government by virtue of their grant, it is clear that they took the royalties therein mentioned, rivers, bays, ports, coasts of the sea, &c. in the character of sovereignty, as that common property of the nation, the nominal ownership of which is ascribed to the sovereign, but which is held in trust, and of which all have a common right to partake. The surrender to queen Anne restored all these royalties to the crown of England, if they ever were separated. It follows, that upon the Revolution, when the people of New Jersey became free, sovereign, and independent, all these royalties vested in them the legal title and the use existing in the same; and that the legislature of this state never having given any exclusive right or title to the plaintiff, he is without right or title, and was, therefore, properly called at the trial.

**\*44** R. Stockton, in reply, after stating the case from the record generally, said--This nonsuit, if supported, would be of serious import to an important species of property which had been claimed and enjoyed from the first settlement of New Jersey; it struck at the root of all title of several fishery in

navigable rivers in the state of New Jersey, a property all important to numerous respectable families located on those rivers, and enjoyed uninterruptedly until this defence had called it into question.

**Opinion**

The plaintiff’s complaint was for breaking his close covered with water and taking away planted oysters. To sustain his suit, it was incumbent on him to prove--1. That he had title and possession of the locus in quo. 2. That the oysters were his. 3. That the defendant entered and took them. These points being established, it would rest with the defendant to shew that lie had a right to enter and do what he did. The place where, &c. was a mud flat on the river Rariton, opposite the farm of the plaintiff, the greater part between high and low water mark, all between the land and the channel of the river, and being of no kind of benefit to, and utterly unfit for, navigation.

To this ground the plaintiff sets up his titles. 1. By the common law, as being a mud flat between a navigable river and the plaintiffs farm, bounded by the river, and being immediately opposite to his farm. 2. By a proprietary survey, made prior to the trespass, by which the whole premises were conveyed to him by the proprietors; which would operate either as a new grant, or a confirmation, according as it might be necessary to apply it to the subject matter.

**\*\*32 I.** As to his title to the flat, as opposite and adjoining his main farm. It is true, that at the common law, this right seems to be restricted to high water mark, in the case of navigable or public rivers, but extends to the channel, or ad filum aquce, in private rivers, or those not navigable. It might be contended, with much reliance, that all the rivers included within the conveyance from Charles II**.** to the duke of York ceased to be public, and were made private rivers by the conveyance to the duke, he being then a subject, and the property being a country wild and uninhabited, except by savage tribes.

Upon this ground, perhaps, it is that Swift in his System, vol . I **.** 343, lays down the general proposition "that in navigable rivers, every proprietor of land is deemed to have the exclusive **\*45** right in rivers and seas adjoining his land to the channel;" and he adds, "that no person may take oysters or any shell-fish from their beds in front of another's land, or draw a seine for other fish, though he does not for that purpose enter upon the land of the adjoining proprietor." It is also a notorious fact, that in the discussion which took place some years ago between the commissioners of this state and New York, our commissioners defended our claim to the channel of the Hudson upon the ground, that to all purposes, but that of navigation, that river must be considered as a private river. Rep. of Com. 14, 15. This report was made to the legislature; their proceedings approved, and their argument published under the sanction of the legislature.

**II.** But it is unnecessary to press this point, because we gave in evidence a survey and location of the oyster bed, regularly made, in virtue of a proprietary right, before the trespass complained of. One of the adverse counsel has taken an exception to this title in limine, that although "this survey and location was made prior, yet it was recorded after the trespass, as if the title was founded on the record, or even the approbation by the counsel of the proprietors, and not on the actual survey and location." I shall not stop to answer this objection. The Chief Justice, in his opinion has fully and ably disposed of it; his reasoning on that point needs no aid from the bar; it will take care of itself, and there it will be left by me.

The general question then is, whether these mud flats did not pass in full propriety to the plaintiff, either by his title to the main farm, or by this particular survey? If the title to this flat ever was in the proprietors, it certainly has passed to us. That it was in the proprietors, no court of justice in New Jersey is at liberty to deny. This title has the same foundation upon which rests all title to real estate here; it is simple and conclusive. Charles II. claiming and in possession of the whole, conveys to the duke of York a much greater territory. The terms of the grant are as extensive as the English language affords, and as English lawyers could put into a conveyance. It conveys "all the lands, soils, rivers, waters, harbours, fishings, fowlings, royalties, profits, commodities, and appurtenances in fee simple, together with the powers of government, with the exceptions, that he holds of the king by the tenure of free soccage, and that his laws shall be assimilated as near as may be to the laws of England. **\*46** The duke conveys, in the very same terms, to Carteret and Berkley; and all their rights have been transmitted, by mesne conveyances, to the present proprietors. They purchased not only the soil and waters, but the government also, and were the lords, legislators and owners of the territory, as fully as the duke had been. Who, then, can doubt but that as all our title to land must be deduced from this grant, so, according to the terms used, and the intent of both parties, it did pass, not only the fast land, but also all those parts of the sea shore, bays and rivers not considered as part of the fast land, which a king of England acquiring title to a new and uninhabited country would legally grant and convey. It is admitted on all hands, that the fast land to high water mark passed; and it has been, and will be abundantly shewn, that the rest, to wit, the shore between high and low water mark, the flats, bays, rivers and waters, from the sea to high water mark, passed.

**\*\*33** Now, without going at present into the quest ion of general right to several fishery incidental to, and inseparably attached, as we think it is, to the right of soil, may we not say that the plaintiffs evidence sustained his case, and that he ought not to have been nonsuited. We show that the land was ours; that the plaintiff purchased the oysters; planted them on his own ground; staked that ground off, but not so as to interfere either with the right of taking swimming fish or of free navigation. Thus did the plaintiff purchase, and plant on his own soil, the fry of shell-fish taken from distant natural beds, with intent to improve them; but the defendant entered his close, with tongs took the oysters out of the very soil, and converted them to his own use. Did not these oysters belong to the plaintiff? The original foundation of all personal property is appropriation at the expense, and by the labour of the claimant. 2 Black. Com. 9, 391. In respect to animals called in law fera natura, which can, when in a state of nature, have no particular owner, it is emphatically so. Deer put into a park, rabbits in a warren, fish in a pond, become

private property by caption and detention. The case of oysters planted on a man's own soil is at least as strong. The plaintiff's case includes in it every principle of original acquisition; the payment of the purchase money, made the fry the property of plaintiff; the labour in planting them; the deposit on his own land; constituted each a good foundation of exclusive property; nor **\*47** could such an act of planting, though in the water, amount to an abandonment. Such was not the intention nor tendency of the act; but the very reverse was intended when he planted them in his own soil and put up public visible marks, distinguishing them from all others. If, then, such be the foundation of all property; if exclusive right to the fish that swim, the deer that bound, and to the bird that flies, may be acquired by appropriation, why shall he not have in the oysters which he has purchased with his money, planted by his labour, and deposited on his own soil, from which they never can depart of themselves, the same rights? What is the answer of the adverse counsel? It is that this oyster-bed is located in a navigable river, where the tide ebbs and flows, the defendant had a common right to fish there, and, therefore, his entry and taking away the oysters was lawful.

Waiving, at present, the position, I shall hereafter endeavour to maintain, that the plaintiff has shewn full title to a several fishery on this ground, for all kinds of fish; I shall here deny that there was any common right to take these fish. The common right, where it exists, is confined to fish in their natural state, swimming, if they are floating fish, and if they are shellfish, in a state of nature where they are spawned. It is clear, that, at common law, the owner of a river might make a weir across it, if it did not injure the navigation, because it was his own, and such a weir, per se, made a several fishery. Har. L. T. 18, 22, 23. 4 Mass. Rep. 527. Now here is a grant of the land itself, laid in front of the plaintiffs farm, of moderate and reasonable extent, not at all impeding or injuring the navigation, appropriating only a mud flat, planted with small fry at private expense; how, upon any sound principle, can a pretended common right to fish authorize an individual against the will of the owner, forcibly to enter and carry them off? What is a common of fishery? It is a mere privilege or franchise; it is no title to the land or fish; a mere privilege to take fish, and must be used reasonably; to extend it further than to take fish in their natural state, is unjust and unreasonable, and therefore unlawful. It would permit what the law reprobates, the taking the property of another without compensation. To support it is little better than to authorize plunder, whatever fine names it may go by. No case can be shewn, justifying the taking of fish out of a pool, pond, or weir in a navigable river, under pretence of the common right. The **\*48** only question in such cases is, whether the pond, pool, or weir is a nuisance to the navigation? It is said, that on this ground there were some oysters naturally bred. Suppose there were, did this authorize the defendant to take those which the plaintiff had planted there? It was incumbent on the defendant to have shewn in evidence, that those he took were natural oysters. He made no pretence of this; on the contrary, it is stated by the report of the Chief Justice, that he took the oysters planted by the plaintiff.

**\*\*34** Again--it was said, that mixing them with the natural oysters destroyed our property. Not so. There was no evidence that the rows of planted oysters could not be distinguished from the natural. The defendant had sufficient ground left upon which to exercise his right. The owner of the soil has a right to fence in if he leaves enough for common use. 2 Bac. 392. The court instead of nonsuiting the plaintiff should have put it to the jury to decide, whether the oysters taken were those planted? whether they could be distinguished from the natural oysters? and whether there was not common enough left by the plaintiff unenclosed? If we are owners of the soil, the defendant had no right to enter and take the oysters from the soil; our act in planting and appropriating amounted only to a surcharge of the common. In such case the commoner is put to his action. The case of *Cooper v. Marshall* (1 Bur. 259) is full in point. In England, the right of property in oyster-beds in navigable rivers is acknowledged as existing at common law, and is protected by penal statutes. 3 Chitty's Crown Law 359. By the statute 31 George III. chap. 51, the taking oysters from such beds is made a misdemeanor. 3 Chitty's Crown Law 359. By the 48 George III. chap. 144, it is made felony; yet there is no prior statute making such beds in navigable rivers the subject of private property. By these statutes, the legislature recognize oyster-beds and the oysters there planted as private property, and protect it by making the spoliation thereof an indictable offence. 5 Esp. Rep. 62. 1 Camp. 309. In the cases which have occurred under these statutes, this idea of common right to take oysters has never been set up as a justification of the offence; but the distinction between floating fish in a state of nature, and oysters in a bed, is recognized. In the case of the *State v. Capt. Lewis*, who was indicted for an assault upon these same Woodbridge men, in defending his oyster-bed adjoining the premises, tried at the **\*49** Court of Oyer and Terminer of Middlesex county a few years ago, he was defended on his right of property to the bed and the oysters which he had planted; and although the assault was by presenting a loaded pistol, attended by a threat of inflicting death if the trespassers did not desist, and was fully proved, yet the defendant was acquitted by the jury on the charge of the Chief Justice, that Capt. Lewis had a right to defend his property, and that what he did, did not exceed the bounds of defence. This case, compared with the present, affords a strong instance of discrepancy in judicial opinions. One citizen loads his pistol, takes the field and drives off the plunderers, acting as they did, on this same pretence of common right; another citizen, not so adventurous, submits peaceably, appeals to the law of the land, and is nonsuited by the same respectable judge by whose direction the other had been acquitted!

The principles of private right and of public convenience require that this species of property should be protected. The oysters on the open beds are nearly exhausted; the rakers have become so numerous that oysters are not permitted to attain any maturity; they are small and worthless--hence the price of those fit for use is greatly enhanced; but if this reasonable use of a man's own soil is permitted and protected, every land owner on the shores of our bays and salt rivers will have an oyster-bed; the quantity brought into market will bring down the price, so that the poor as well as rich may eat and be glad.

**\*\*35** The only other case which has occurred in New Jersey was cited from 1 Pen. 391, by the adverse counsel. But in that case the planter of the oysters had no pretence of right of soil; he was not the owner of the adjoining farm, nor had he made any location of the premises; he was merely a wayfaring man, who dropt his oysters in a navigable river. At the time when that case was decided it seemed quite clear, from the anxiety manifested by the judges to protect planted oysters, that if he had been owner of the soil he would have been successful.

**II**. General point.--But not to rest on this particular case, as forming an except ion to a general rule, shall follow the adverse counsel through the great point which they have laboured, and, notwithstanding the learned arguments we have heard. I submit it that our claim to a several fishery has been fully sustained. The adverse counsel yield to us some of our ground. They **\*50** seemed to admit that these rivers, bays and waters, with the land they cover, are the subjects of exclusive property, and that by the law of England the king is the general owner.

The points debated are--1. Could the king lawfully grant a right of several fishery in a navigable river? and did he grant such a right to the duke of York, and he to the proprietors? 2. If he could, and such right did originally pass, was it surrendered by the proprietors to queen Anne?

1. The right of the king of England to make such a grant is denied by the defendant's counsel. But it has already been shewn--1. That, by the common law, the king had such a right. 2. That there was no statute of England which prohibited the king from making such a grant of lands in New Jersey.

1. Charles II. as king of England, was owner of New Jersey. His title was such as was recognized by all civilized nations, discovery of a new and before unknown territory inhabited by savages--conquest from the Indians and Dutch; these were the foundations of his right. We have an authentic history of these transactions. The English first discovered and took possession of this part of North America. Being at war with the states of Holland, they were driven out by their enemy, who took possession and built the city of New York, then called New Amsterdam. They extended their settlements into New Jersey, particularly into the adjacent counties of Bergen, Essex, Monmouth, Somerset and Middlesex, the first inhabitants of which were generally Hollanders. But in 1664, the English re-conquered the territory and expelled the Dutch government. The king thus gained a new title, by conquest over a civilized owner. His grantee, the duke of York, took complete possession, and the whole landed property of New Jersey is held immediately from the king of England. He held it not merely in point of jurisdiction, but also of ownership. It was unappropriated land, a savage wilderness, a great waste. To such property the law appoints the king as owner, because there is no other. Moreover, it is a fundamental principle of the common law, that all lands, even those of private men, are held of the king. Where there is no private owner, therefore, all persons must claim title through him. 2 Black. Com. 49, 50. In respect to the old settled and granted lands in England this may be a fiction of law, but it is truth and history here. It was a newly discovered wilderness, \*51 conquered by the king of England; it was his from necessity, and belonged to him solely, substantially, and beneficially. Thus, being the lord and owner of the land, shores, r ivers, bays, and waters, he conveys to the duke of York as fully and amply as he held them, except only that his title was allodial, the duke's feudal, in free and common soccage. Not only does he convey the full propriety, but to make it more full, and as extensive as possible, he grants also the powers of government. The duke conveys to Berkley and Carteret, and they to the proprietors, as fully and extensively as the same were conveyed to the duke. This was a solemn deliberate act, well considered at the time, and intended to convey all which the granting words imply. It was twice conveyed; the first grants were in 1664, but at the date of the first grant to the duke, the Dutch were in possession, but they were expelled the same year. Ten years afterwards, doubts being entertained whether the re-conquest did not give the king a new title, notwithstanding his grant of 1664, he, in 1674, made a second grant to the duke, and he to the proprietors, in the same terms with the first. Then, to wit, in July, 1676, followed the deed of partition, commonly called the quinti parte deed, by which East Jersey is assigned to Carteret, and West Jersey to Berkley; and afterwards, in 1682, the trustees of Carteret convey East Jersey to the twelve proprietors, under whom the present proprietors claim. All these me.vne conveyances adopt the words of the original grant in extenso, constituting the proprietors as fully owners and governors as the duke, or even the king himself had been, saving only their allegiance to the British crown. Under this title did the proprietors take possession as owners and rulers. They appointed their governor, made their constitutions, granted lands, and did everything which pertained to full and absolute ownership and dominion. This title, and the proceedings of the proprietors under it, were repeatedly confirmed by the 'English monarchs, nor were their powers ever questioned until a short time before the surrender of the government to queen Anne, and then nothing further was questioned than the grant of the important powers of political government. Was all this delusion? Had the grantees really no beneficial interest? Were they trustees for the expected settlers, or the true owners and proprietors of everything included legally in the forms of the grants? Let every landholder, every owner of several \*52 fishery, from Hackensack to Cape May, look well to the answer given to these questions, all our titles depend upon it; the answer of law, liberty, and justice at this time of day is, that all which the grants purport to grant, were legally and effectually granted.

\*\*36 By the common law, the king is the owner of all navigable rivers, bays, and shores below low water mark, and he owns them, not as trustee, but in full dominion and propriety. Davies 152 to 155. 6 Corm. Dig. tit. Prerogative 55 (D 50). 5 lb. Navigation (A) 102. Har. L. T. 10, 11. He has as full a right to grant and convey, at the common law, as a private man has to convey his farm, and this law has annexed to this right but two limitations. 1. That these waters shall remain highways for passage and navigation. 2. That while they remain ungranted there is a common right of fishery therein. The cases cited fully prove, that in places over which the tide ebbs and flows, between high and low water mark (seaward) the king, by the common law, has not only the jurisdiction but the property. This was the law as understood by Lord Hale, a most learned judge, not inclined to stretch the rights of the crown, and that even in regard to the waters, seas, and rivers within the English dominions. How much stronger is the case here, as to

waters washing a newly acquired territory uninhabited only by the savage tribes, and acquired by conquest. That the king, as owner, may grant to an individual a several fishery in a navigable river, is the received common law of England. 5 Com. Dig. Navigation B, 102. Har. L. T. 17, 18, 19, 22, 23. lb. 34, 5, particularly the case of *Crow v. Johnson*. These authorities are express to the point, and need no comment. Neither Lord Hale nor Chief Baron Comyns understood the rule of the common law to be what the counsel contend for. What answer is given to these cases? The adverse counsel say, that they refer to old grants made by the kings of England, by usurpation, before the passing the celebrated statute of Magna Carta; that such grants are prohibited by this statute, and, therefore, the grant was void as to the right of fishery. This position of the defendant's counsel is not founded in law. Have we not proved that the king is owner by the common law? Shall he then, of all owners, be the only one who cannot grant all that belonged to him? This is in truth reversing the most fundamental principle of the English law \*53 which gives to the king, by his prerogative, more ample powers than any subject can possess. Lord Hale makes no such distinction. He wrote in the reign of this same king, two centuries after Magna Carta, and he considers it then as perfectly clear that the king might lawfully grant these exclusive water rights.

If such grants were considered usurpations, why were they not annulled by course of law? Would so great and learned a lawyer as Hale have treated them with such respect, if they were all unlawful by the common law? The gentlemen are obliged to concede, that an individual may claim a several fishery in a navigable river by prescription. This concession admits the legal power of the king to grant, for it is a first rule of this branch of the law, that nothing can be prescribed for which could not be granted. Prescription presupposes a grant, which from length of time cannot be shewn. 7 Coke's Rep. 18. 2 Black. Corn. 264. When, therefore, modern judges and writers agree that you may prescribe for several fisheries, they do admit that if the grant could be shewn it would be good, for prescription means usage, time out of mind, founded on original grant.

**\*\*37** The true rule has not been given to us by the adverse counsel; it is this, that prima facice fishery in a navigable river is common. He who sets up an exclusive right must shew title by either grant or prescription presumed by the law to be founded on grant. Indeed, if ownership of the soil is essential to a right of several fishery it does not seem strictly correct to say, that you may make title to it by prescription, for soil cannot pass by prescription. It is more accurate to say, that by prescription a right of common fishery may be destroyed. That the plaintiff's right to several fishery may be established by grant, and the defendant's prima facice right of common destroyed by it is fully proved. Chief Baron Comyns says, "So a man by grant or prescription may have several fishery in a navigable river." 6 Com, Dig. 56. This is his own position; he afterwards cites the case of *Warren v. Matthews*, cited against us as being contra, in his manner, when he thinks the case is not law.

Lord Mansfield gives the same rule as laid down by Comyns. 4 Bur. 2164. And Justice Yates says, in express terms, that several fishery passes by grant or prescription. We have then the authority of such great men as Hale, Comyns, Mansfield, and Yates to prove that, by the common law, a right of several **\*54** fishery may be granted. That the words of these grants do convey a several fishery, if by law it may be conveyed, has been fully demonstrated by the opening counsel. It passes by a grant of the soil, which is as well of the water over the soil as of the soil under the water. Har. L. T 17, 19. 5 Bur. 2814. Davies 180-1. It has never been doubted but that a conveyance of the soil passes fishery. The doubt has been whether there could be a right of several fishery without the soil, (Doug. 56.) and the modern opinion seems to be that there cannot. A right of several fishery is not a mere appurtenance to the land, but the land itself, and, therefore, when the land passes so must the fishery. Hence Lord Hale and Chief Justice Parsons say, that making a weir rightfully makes a several fishery. So, by a grant of all waters, several fishery passes. In our case the grants are drawn with an evident intent to pass all which the king could grant, either as land or as water. Then if the king, by the common law, was competent to grant, and did grant, a right of several fishery, the remaining question is, whether this right was taken away by statute?

III. The celebrated Magna Carta is relied on, or rather two sections of that statute, to wit, the 16th and 23d, and when the words of these sections are read it is no small tax upon the gravity of argument to discuss its application to the present case.

16th section, statute at large--"No banks shall be defended but such as were in defence in the time of king Henry our grandfather." The counsel for the defendant asserts, that this section prohibited Charles II. from granting to the duke of York the waters of New Jersey? Who can forbear a smile? What banks are meant, the banks of the Hudson, Rariton, Delaware, Potomac, or Mississippi? What did "our grandfather king Henry" know about them? The banks intended by the parliament are those of the great navigable waters of England; it is local in its provision on its very face. How "defended" by sticking poles of willow whips in a mud flat, over which the smallest boat at high water can glide, to mark out an oyster-bed at Amboy! Is this the "defence" which that statute was intended to put down? No! the famous barons who extorted that statute from John, spoke of those artificial banks or mounds raised in navigable rivers in England, by Which not only the natural passage of the fish was stopped but also the navigation interrupted. This sixteenth \*55 section was so illy penned and useless, and the object so much better attained by subsequent statutes, that even when Bracton wrote it was considered out of use in England. 2 Inst 30. And Judge Blackstone, in his tracts, analyzing this famous statute, does not even give us either of these sections.

**\*\*38** 23d section, Statute at large, 6--"All weirs shall be utterly put down by Thames and Medway and through all England, except on the sea coast." This in its terms is local, confined to the realm of England; and what does it enact even there? What is a weir? It is a dam across a river. But did it mean, even there, that there should be neither dam nor stake stuck in the mud in any mud flat in England? It meant simply to prohibit nuisances. If the weir did no injury it was not within the purview or intent of the statute.

For this exposition, we give the authority of Coke and Hale, and the parliament of England. Har. L. T. 9. Hale, after giving the words of this section of the statute, says it was meant to restrain nuisances, and "these nuisances were such as hindered the passage of boats." lb. 22. Again--commenting on this and some subsequent statutes, Lord Hale says, "and by force of these statutes, weirs that were prejudicial to the passage of vessels were to be pulled down. But that did no way disaffirm the property, but only remove the annoyance."

The statutes 25 Edward III. chap. 4, and 1 Henry IV. chap. 12, were passed to amend and explain these senseless sections; (1 Statute at large 260. lb. 429) and Lord Coke, in commenting on them all says, "the generality of the words of the 23d section of Magna Carta are corrected and restricted, by the two subsequent statutes, to such erections as were nuisances." 13 Coke 35.

In 3 Bur. 1768, we find a case of several fishery in the river Thames, and the court say upon this subject, "that a man may do anything with his own which is not a nuisance." Here we have a sensible practical explanation of these old English statutes, and it becomes useless to inquire, whether any part of the local prohibitory provisions of the statute law of the mother country applied to this new acquisition? There was much crude opinion in England on the general question of the statute law extending here. Lord Holt, the great whig Chief Justice of England, on whose sole authority the general point of the adverse \*56 .counsel rests, says, "the law of England does not extend to Virginia; her law is what the king pleases." Salk. 666. He probably meant the statute law of England, and perhaps he was right so far, speaking as an English judge. The doctrine of the colonists here was, that so much of the statute law as suited their condition was brought over, as well as the common law; and further, they undertook to say what did suit them. But the first proprietors and settlers did not repose themselves upon the statutes of England for their rights and liberties, but took care to grant on the one side and secure on the other, in what is called the grants and concessions, all the great principles of English liberty. The great political clauses of Magna Carta, particularly the 29th section, which is the bill of rights of the people of England, is adopted word for word, and incorporated into the grants and concessions. These grants and concessions do in fact exhibit an original contract between the people and their rulers, a complete free written constitution. The venerable ancestors of the people of New Jersey have the uncommon honour of having first reduced to practice the theory of original contract between the governor and the people, and of presenting to the world the first written constitution which effectually secured the religious and civil liberty of the settlers. They wanted not the protection of English statutes, finally to be construed and applied, or not, by English judges. They demanded, and received, a constitution of their own, securing to them and their children all the benefits of a free government. And yet the learned counsel accuse us of advancing and advocating slavish principles, because we insist that these miserable samples of rude legislation contained in the above sections of an English statute, speaking of our grandfather Henry, and of the Thames and Medway, ought to be excluded from all operation now in New Jersey. There is nothing, then, in the statutes relied on interfering with our title, and the question recurs, might not the king, by the common law, grant the soil, and with it several fishery in the colony of New Jersey?

\*\*39 The dictum of Judge Blackstone is relied on. 2 Black. Com. 39. He is the first elementary writer who denies to the king the power of granting since the statute of Magna Carta, but this part of the great work was reviewed by the learned author after Mr. Hargrave's observations upon his doctrine of fishery, and is now carefully penned, and is expressly confined to a grant by \*57 the king of the franchise of free fishery. He does not say, that the king could not grant the soil of a river, and, of course, several fishery as part of that soil. The distinction between several and free fishery, in respect of such grants, is palpable and obvious. The right of free fishery is an exclusive right to take fish in a navigable river not granted away, but belonging to the king by his prerogative. In the king's hands, the common right of taking fish in all the people attaches to it, and he may not now grant to a favourite an exclusive right, and yet remain owner jure corona, for while the property is in him, such exclusive right is in derogation of the common right of the subject. But if the king grants the soil, the presumption of law is, that he grants it for good reasons, and that no prejudice will flow from it, and it immediately becomes the freehold of the party. The grantee holds it subject to the jus publicum, (which is not the common right of fishery) and must take care that he erects no nuisance; but under this limitation it is as much his as the fast land, and he cannot be deprived of it without injustice.

2 Cruise 297, also ci ted against us, fol lows Blackstone, uses his caut ious language, and confines the restriction to the franchise of free fishery. It is true that Lord Holt, in the case of *Warren v. Matthews*, before alluded to, as reported in 6 Mod. 73, cited against us, is made to say, that there can be no several fishery in a navigable river. AS it stands in the book, it is a mere dictum. What the particulars of the case were does not appear, and the general position is not considered as law by Hale, Comyns, Mansfield, and Yates.

It is asserted by the adverse counsel, that the old grants of several fishery were usurpations contrary to the common law. No case has been, or can be, shewn to warrant that assertion. The common law seems admitted to be in favour of the power of the king by all the old writers. The only question made has been, whether he was not restrained by statute? We have shewn what that restraint is, and that it is nothing more than a restraint against authorizing a nuisance.

Again--it is said, that although the king may be the owner of this sort of property, by the common law, yet he is not so to every intent; that he holds the jure corona, as a trustee for the people, and, therefore, cannot convey to their prejudice. It is likened to the other dominions of the crown, which they assert **\*58** he has no power to alienate; and they run a distinction between what the king has as king, in virtue of his prerogative, and what he holds in his own right, as private property. For example, they say that he claims the sea, bays, rivers, and shores by his prerogative, for his people, and, therefore, may not grant to their prejudice. But lands which accrue by escheat or forfeiture, say they, are his own, and he may grant them to whom he pleases. There is no kind of solidity, either in the reasoning or the distinction. At the common law the king is not, as to his lands, a trustee for the people, and might alien the domains of the crown. 3 Cruise 14, sec. 5. 4 Statute at large 88. He had the same, nay a greater, power to grant than a private man. He was never restrained until after the revolution of 1688, by the statute of Anne, (3 Cm. 565) which is confined to his lands in England, and was passed long after our title accrued, and that statute permits the alienation for thirty-three years.

**\*\*40** By the common law, all the king's lands belong to him jure corona. 6 Com. Dig. 61 (D 63). His natural character is merged in his political; he can, in his own name as an individual, hold nothing; it is by his prerogative that he takes by forfeiture or escheat; he claims and owns royal fish, as they are called, by his prerogative, and yet they may be granted. I Black. Com. 298. In short, he is considered, by that law, as having a mere political character, and claims and holds all that he has as king, but may grant at his pleasure. Davies 152. It is palpable that this course of reasoning would go to prove that the proprietary title to lands in New Jersey is worthless. Charles acquired the main land as king; he was entitled to it only by his prerogative. If he was disabled to grant what he held as king he could not convey an acre of land.

But it is again asserted, that the grantee of the king, and those claiming under him, hold subject to the common right of fishery vested by the common law in the people. This is in truth the pivot upon which the defendant's case rests; but the principles we have established, and the cases we have produced, demolish it. We have shewn that the grant of the king passes the very t i t le and propriety of the land and water, absolutely and without any such restriction; and that a right of several fishery passes with the soil. Where a several fishery passes, a common right of fishery cannot exist; they are utterly incompatible, for **\*59** the right of several fishery is altogether exclusive. This assertion, then, is but a repetition of the fundamental position, that the king cannot grant several fishery in a navigable river. What authority has been produced? what dictum that the king's grantee of the soil of a river holds subject to the right of fishery? Lord Hale says, it is true, that he holds subject to the jus publicum, but he tells us what that is: it is the right of "passage and re-passage with their goods by water," (Har. L. T 36) which must not be taken from them under pretence of a royal grant. For this is the right of the people by the law of nature, rivers being great highways furnished by the great Creator for the use of the human race. Common of fishery is no more a part of the jus publicum, than common of pasturage belonging in all the tenants of a particular manor.

Again--it is said, that the king of England, alone, could do no act to divest the right of the people, wi thout the aid of the other branches of the legislature, and, therefore, his grants are void, so far as the common right of fishery is concerned. This is part of the old error the counsel for the defendant have fal len into in denying that the king is, by the common law, the true owner and proprietor of everything acquired in his regal capacity. That he is such absolute owner has been fully proved; and that he may, in all cases in which he is not restrained by statute, convey in full propriety, has also been demonstrated. No authority has been shewn, or can be found, to support this novel idea; it is utterly inconsistent with the whole system of the common law, touching the prerogative of the king.

**\*\*41** It is also said, that the great object of these original grants was the settlement of the country, and that they must be construed so as best to promote that end; that the right of fishing, being a common right, must be considered as reserved to them by these grants, because it is for their benefit that it should be retained. This is a strange doctrine, as appl ied to grants, deeds, and muniments of t i t le to land; i f i t is adopted, and acted upon, and improved by modern ingenuity in the best manner for the good of the people, it will soon render such instruments of little avail to the owner. Fortunately, however, it happens to be in direct repugnancy to the law of the land, by which the construction of all solemn conveyances, and of the words inserted in them, have been fully settled, so as never to admit considerations of political **\*60** policy in any manner to affect their legal operation. But if we could admit, for a moment, such considerations into this case, we might ask, what was the best plan to effect an actual settlement of this wilderness in the reign of Charles **II.?** Surely it was by encouraging a few men of enterprise and capital to embark in, and devote themselves to, the object. The settlers were to be brought from England, and maintained and protected here till able to take care of themselves. Hence the policy to encourage the immediate adventurers by most extensive grants and powers, and of leaving it to them to parcel out the lands without restriction. The duke first sold to two, who would probably never have purchased if the powers and rights of the original grant from the king had been curtailed; these sold to the twelve; they to the twenty-four; and they again to the forty-eight, on the original terms, leaving them to make their own contracts with future adventurers. And even as to the subpurchasers, the small proprietors, surely the right now in discussion being secured to the landholder would be an additional inducement to substantial purchasers to fix themselves on the waters of the territory.

It is further objected, that we have not been able to shew that the king of England has ever granted a right of several fishery in a navigable river since the statute of Magna Carta. If this be true, which is denied, it is because several fishery is dependant on the ownership of the soil, and because all the lands of England, especially those on their rivers and the sea shore, have been granted and parcelled out ever since the time of the Norman conqueror. England being an island, the English have been a commercial nation time out of mind, and the jurisdiction and property of their great rivers, from early times, has been distributed among their great corporations. Sir John Davies says, "the city of London, by charter from the king, hath the river Thames granted to them, but because it was conceived that the soil and ground of the river did not pass by that grant, they purchased another charter, by which the king granted to them solum et fundum of the said river." He does not say which of the kings gave this charter, but it is not likely that both grants were prior to Magna Carta.

**\*\*42** The case of Bulbrock v. Goodire proves that several fishery is now held in the Thames by individuals claiming under the corporation. 3 Bur. 1768. In3 Chitty's Criminal Law 974, we **\*61** have an indictment for taking oysters from the oyster fishery of the borough of Lin Reges in the county of Norfolk, within the limits and precincts of the port of Lin Reges. This, no doubt, is the case of several fishery belonging to that corporation, as owners of the river. In Davies 155, this case is stated: "kingHenry III granted to Strangewaystotam illam liberam piscariam vocatum the fleet in Abbotsbury,which is a bay and creek of the sea:" and he adds,"this was a several fishery on a branch of the sea." The assertion is then incorrect in point of fact, and it is not doubted, but that if we had a full collection of royal grants to corporations and individuals since Magna Carta, many would be found granting the solum et fundum of navigable rivers in England.

It has been further asserted, that the people have always exercised the right of taking fish; and a grantee of the proprietors now, for the first time, has set up this pretence. There is no foundation in fact for either branch of this assertion. That the people have been in the habit of taking oysters from the unappropriated beds may be true, but that such a right has been exercised in places where the soil of the river has been sold and located is denied, and has not been proved. It is a matter of fact, and ought to have been proved. The defendant gave some evidence, that in former times, before the survey, the Woodbridge people insisted on their right, and so did the owner of our main farm insist on his, and resist theirs; but it is well known that the Woodbridge men claimed the right of fishing not as a right of common, but under their grant from the proprietors, commonly called the Woodbridge charter. When this action was brought, they discovered that the charter upon which they relied didnot cover this oyster-bed, and then they, for the first time, by the advice of their learned counsel, took this new ground of common right. There is not a particle of evidence that they ever before asserted a title by general right of common fishery; on the contrary, they claimed by grant, as the plaintiff does. The people of this state exercise a right of fowling and hunting in the waste of the proprietors. Surely when the proprietors sell, and the purchaser encloses and improves, such a right could not remain; and yet that is precisely the same sort of common right as that exercised by our adversaries in regard to fishing.

As to this being a new claim, now for the first time got up, the **\*62** documents produced should have shielded us from this reproach; we have shewn many grants of the soils of the rivers from the public records, and many more from the earliest times no doubt exist. Is it not a notorious fact, that numerous fisheries have been held on all our great rivers for more than a century without dispute? Many actions of trespass have been brought in this court, and heavy damages recoveredfor taking fish from such several fisheries; not merely for hauling on the land, but fortaking the fish swimming in the river. The doctrine upon which this nonsuit was ordered will destroy all this species of property from Powles Hook to Cape May. It is well known that seines may be drawn without touching the land. Shad fisheries of immense value, which have been transmitted from fat her to son, time out of mind, are destroyed at a stroke, though the property in them has been admitted by the legislature in all their acts taxing and regulating them. The argument, then, from possession and usage, is altogether on the side of the plaintiff.

**\*\*43** This doctrine of a right of several fishery is not confined to New Jersey; it is recognized and protected in many of our sister states. In Massachusetts, the fisheries all belong to the public corporations, who distribute them out among the different towns. This proves that they were considered as passing by their charters, and that there is no right of common in these fisheries in the whole mass of the people. In Connecticut, as early as the year 1790, the Supreme

Court, in the case of Adgate v. Story, determined that the adjoining proprietor might maintain trespass against one who drew a seine in a navigable river fronting his land. 1 Swift's System 343. In Pennsylvania, it has been judicially admitted, that a several fishery might have been granted by the proprietors before the extinction of their title, or by the state since. 2 Bin. 475.

The act of the legislature of Pennsylvania vesting in the commonwealth the estates of the late proprietors, grants all the soil, royal ties, and franchises granted by Charles IT. to William Penn, and the Supreme Court inthe cases just cited, admit that the right of several fishery passed. 1 Dal. Penn. Laws 822.

In Maryland, upon Lord Baltimore's grant, it was held, that the king had power to grant several fishery, and that the forms of that grant, not so comprehensive as ours, did convey it. The only doubt was on a provisoreserving the common right of \*63 fishery to the people of England. Har.& M'Hen. Rep.564. And, finally, wefind the settlers in West Jersey contracting for the right of common of fishery with the proprietors, and the proprietors granting it to them. Learming & Spicer 390. But no such grant has ever been made by the eastern proprietors, and the concession and acceptance of it shews that, in the opinion of both parties, it did not exist without it.

IV. The only remaining point to be discussed is, whether the title of several fishery was surrendered and given up to queen Anne when the proprietors yielded up to her their jurisdiction and powers of government? This argument was delicate and dangerous, because it gives up at once all the rest of the case, admitting that the right in question did pass by the original grants to the proprietors; for if it did not exist it could not be surrendered. And here it is to be remarked, that the crown of England executed every reasonable act of further assurance to protect and enforce the grants to the proprietors while the government remained in the proprietors, as the documents laid before the court fully prove. The only trouble they met with was from the duke's governors in New York. When he became king, he was too much engaged in his own plans at home to spend time in the affairs of his colonies; but after the revolution, and towards the latter end of the reign of William III the British court betrayed the same disposition which had before appeared in regard to other colonies, to infringe the liberal charters which had been first granted to the adventurers in America; and the crown lawyers began to question

*the validity of that part of the grant of Charles II which conveyed the powers of government in extenso. And so many impediments to the liberal views and exertions of the proprietors to settle the country were thrown in the way, that they judged it most expedient to open a treaty for the surrender of the government to the crown of England, so far as related to the great political powers of government.*

**\*\*44** Learming & Spicer 588, give the propositions of the proprietors. In the 9th section it proposed, that the proprietors may be lords of the soil and hold courts. Ib. 595, the answer of the board of trade is, that they have no objection to this, in case those officers be like such as constitute the courts Leet and Baron in England. Ib. 590, in section 13th, the proprietors reserve all royalties, enumerating them, "to remain to the proprietors \*64 with all other privileges and advantages, as amply as in the grant and confirmation to them of the 14th March, 1682." 596, the answer of the board is, "This article may be reasonable, except as to the goods and chattels of traitors, & c., which is matter of state;" and they add these significant words, "Nor can right accruing to the proprietors from the seas adjacent be well circumscribed."

With this protocol before us, we proceed to the final treaty, which is found in the instrument called the surrender. This instrument recites the original grants, and that the king did grant to the duke, and he to the proprietors, "full and absolute power and authority to appoint governors, and to correct, punish, pardon, govern, and rule all the adventurers, according to such laws &c. as the duke or his assigns should establish, with power to use and exercise martial law in case of insurrection, rebellion, or mutiny, and to make war against all persons who should attempt to inhabit without the leave of the duke or his assigns." Learming & Spicer 609, 12, 13. It then recites, "that her majesty queen Anne had been advised that the proprietors have no power to execute any of the said powers, but that the same belonged to her majesty in right of her crown." It further recites, "that the proprietors, being desirous to submit themselves to her majesty, are willing to surrender all their pretences to the said powers of government." Then they do surrender and yield up to the queen "all these the said powers and authorities to correct, punish, pardon, govern and rule;" and also the right to make laws and appoint governors; "and also the powers to use and exercise martial law, and to make war," &c.

Is it not, then, self-evident that this deed of surrender only embraced the great political powers of government which, as the country was becoming populous, were inconsistent with dependence on the British crown; and that it did not convey or surrender any estate, property, franchise, royalty, or privilege appertaining to the soil, rivers, and bays which entered essentially into the estimate of the value of the soil, and had become their property? It was so understood by the queen and her council. Immediately after the surrender, Lord Cornbury was appointed the first royal governor. He received written instructions, the 36th section of which recommends passing such laws "as will secure the right of property of the soil to the proprietors," **\*65** and "all such privileges as were expressed in the conveyance to the duke of York, excepting only the right of government." Learming & Spicer 628, sec. 36.

**\*\*45** Now, unless this court is prepared to pronounce that the claim of right of common of all fish is one of those great political rights which pertained essentially to the crown of England, and a part of the right of government, it cannot be within that deed of surrender. Indeed, unless the words of the deed of surrender are disregarded as well as the manifest intent and meaning of the contracting parties, there is nothing in this objection.

**KIRKPATRICK C. J.**

This is an action of trespass for entering upon the plaintiff's oyster-bed in the mouth of the Rariton, at Perth Amboy, and taking and carrying away his oysters there planted. It was brought to trial at the Middlesex circuit, in December last, when, upon the case made out, the plaintiff was nonsuited; and upon coming in of the Postea there was a rule to shew cause why that nonsuit should not be set aside and

a new trial granted.

It appeared in evidence, upon the trial, that the pl aintiff, on the 14t h of February, 1814, had purchased in, and, at the time of the supposed trespass, was in possession of, a certain farm, commonly called Nevill's farm, containing one hundred and seventy-five acres, 'or thereabouts, lying on the river Rariton, opposite to this oyster-bed, and extending, according to the words of the deed, to the bank of the river; that one Joseph Coddington, who had before owned and possessed the said farm, and under whom the plaintiff held, had, twenty years ago, and more, and while so in possession, staked off a part of the oyster-bed in question, and that part of it, too, from which these oysters were taken, and had, during his time there, claimed the exclusive right of taking oysters upon the bed so staked off; but the people had always disputed that right, had entered upon it, and taken oysters from it, when they pleased, and if opposed by Coddington, that the strongest usually prevailed. And it further appeared, that the plaintiff, soon after he came into the possession of the said farm, staked off the present bed, being greater, but including Coddington's, began to plant oysters upon it, and has continued to plant more or less, at the proper seasons, every year since that time; that some of the stakes, **\*66** by which it is so staked off, stand below low water mark, but that they are so slender as to oppose no obstruction to the navigation of the river, even with the smallest craft; that this bed is about fifty yards below common low water mark; the tide ebbs and flows over it; it is frequently bare at the full and change of the moon, and commonly, though not always so, in the fall and spring; that there have always been oysters upon it, as well as upon the other beds in these waters, and that the space between it and the shore is what they call a mud flat, commonly covered with water, but not a channel for vessels or other craft usually plying in that river. And it further appeared, that the plaintiff, on the 3d of April, 1818, by virtue of a warrant of location from the proprietors of East Jersey, caused a survey to be made for himself there of 41.59 acres of land covered with water, including a certain survey of wharves formerly made to one Sonmans, and leaving for his survey 35.59 acres, including the oyster-bed in question. And although it appeared, that this survey had been made before the supposed trespass, and had been approved and recorded in due form, yet it did not appear, that such approving and recording had been before the said trespass, the time of the recording not appearing upon the record.

And it further appeared in evidence that the defendant had entered upon the said bed, so staked off, and taken oysters there, at the time in the declaration set forth. And, indeed, it was admitted by the defendant himself, that he, together with others, had so done, but merely with a view of trying the plaintiffs pretended right, and not with a view of injuring the bed, or taking the oysters further than was necessary for this purpose.

**\*\*46** Upon this state of facts, the defendant moved for a nonsuit--1. Because the plaintiff had shewn no title arising from possession only, that is, an exclusive and adverse possession. 2. Because he had shewn no title under the proprietors, it not having appeared that his survey had been approved and recorded before the supposed trespass was committed. 3. Because the proprietors themselves had no title which they could convey, even if the form of conveyance had been complete. Upon the last of these reasons the plaintiff was called. But yet, still, in shewing cause upon this rule, the defendant's counsel have insisted upon the first and second reasons also, against the claim of the plaintiff, which he still maintains, so that it becomes necessary to look a little into each of them in their order. And

**\*67** 1. As to the mere possession. This is no other way proved than by shewing the conveyance for, and the possession of, the Nevill farm upon the shore opposite to this oyster-bed, extending, to make the most of it, to the water's edge only; and by shewing further, the staking off of the said bed, the planting of oysters upon it, and sometimes fishing and taking oysters there, as other people also did, the claim of exclusive right notwithstanding.

Now, upon this it is to be observed, that though a grant of land to a subject or citizen, bounded upon a fresh water stream or river not navigable, and where the tide neither ebbs nor flows, extends to the channel of such river, usque ad filum aquce, as they have it in our old books; yet that a grant of land bounded upon a river or other water which is navigable, and where the tide does ebb and flow, extends to the edge of the water only, that is to say, to high water mark, and no further. See the case of the river Banne, (Davies 152, 155); Har. L. T. 5; Carter v. Mareott, (Bur. 2164 All pretence of possession, therefore, in this case, as being connected with, and appurtenant to, the adjacent land, must fail. The grant for that could extend only to high water mark, and it could, therefore, carry with it no part of the adjacent land covered with water. And if the plaintiff would set up a possession founded upon the staking off the bed, planting oysters upon it, and sometimes fishing there, even if it were a subject matter that could be taken possession of in that way, that possession has not been proved to be either so complete, so exclusive, or so continued, as to establish a right against those having equal claim with himself.

He pretends to no prescription; none such exists in this country; he pretends to no grant, none has even been mentioned. He places himself in the situation of a fisherman, who, because he has fished for many years, would claim the exclusive possession of the waters, and the exclusive right of fishing in them. Upon the ground of possession merely, then, I think the plaintiff cannot stand. But the nonsuit cannot be maintained upon this alone, because he sets up another title.

**\*\*47** 2. As to the form of the conveyance and the operation of the survey. The proprietors of East Jersey are tenants in common of the soil; their mode of severing this common estate is by issuing warrants, from time to time, to the several proprietors; according to their respective rights, authorizing them to survey; **\*68** and appropriate in severalty, the quantities therein contained. Such warrant does not convey a title to the proprietor, he had that before; it only authorizes him to sever so much from the common stock, and when so severed, by the proper officer, it operates as a release to him for so much. This is the case when the proprietor locates for himself. When he sells his warrant to another, that other becomes a tenant in common with all the proprietors pro tanto, and, in the same manner, he proceeds to convert his common, into a several, right. Regularly there is a deed of conveyance upon the transfer of this warrant for so much of the common property and that deed of conveyance, and the survey upon the warrant, is the title of the transferee. It is true, that the survey must be inspected and approved by the board of proprietors, and must be carefully entered and kept in the secretary's office, or in the office of the surveyor-general of the division, but this is for the sake of security, order, and regularity only, and is, by no means, the passing of the title. It proves that the title has already passed, but it is not the means of passing it. It may be likened to the acknowledgment of a deed by a femme covert. Her deed cannot prevail against her, unless such acknowledgment be regularly made and recorded; yet such acknowledgment does not pass the title, the deed has already done that, and it operates from the day of its date.

The view which has been taken of this subject, and so much insisted upon by one of the defendant's counsel, I think is quite too narrow. He has placed himself upon the third section of the act of January 5, 1787, "for the limitation of suits respecting titles to lands." That section enacts, "that a survey made, inspected, and approved by the council of proprietors, and by their order recorded in the secretary's office, or in the surveyor-general's office, shall, from and after such record is made, preclude and forever bar such proprietors from any demand thereon, any plea of deficiency of right, or otherwise, notwithstanding."

Now this is a statute merely for the limitation of suits. It is made for the benefit of him that has the survey; if he procures it to be inspected, approved, and recorded, it is a bar against the proprietors and those holding under them; if he does not do so, it is no bar, but stands just where it did before the statute was made. The statute is not imperative upon him that has the survey to procure it to be inspected, approved, and recorded; it **\*69** does not make it void in case he does not do so, but leaves it where it was before, and he loses his bar.

**\*\*48** Let us see, then, how those surveys were viewed before this statute. We shall be enabled, pretty satisfactorily, to do this, by looking into the act of March 27, 1719. In the tenth section of that act, it is enacted, "that the surveyor-general shall hold a public office, in which shall be carefully entered and kept the surveys of all lands thereafter to be made; that such entries shall be considered as matter of record, and may be pleaded as evidence in any of the courts," &c. but it prescribes no time within which they shall be entered, nor does it make them void if not so entered. In the eleventh section of the same act it is recited, "that great inconveniences have happened by making and not recording of surveys, whereby many have not only got lands surveyed which have been formerly surveyed, not knowing of any former survey, but have settled, and made great improvements on the same, and have been afterwards ousted thereof;" and then it is provided, "that surveys heretofore made shall be brought in and recorded within a certain time, or for ever after to be void and of no effect as against succeeding surveys of the same lands duly recorded." Now, if those prior surveys had been of no effect until they were approved and recorded, how could those who had settled and improved under posterior surveys be ousted by them? or how could the evil here complained of ever have happened at all? and if they had effect, that effect is no way impaired by this act, unless it be against posterior surveys of the same lands, duly approved and recorded. The truth is, I believe, that the survey of the proper officers, under a warrant duly issued for that purpose,has always been considered as the act of severance; the inspecting, approving, and recording, as relating back to that act; and the party surveying, as having an estate in severalty from that time. And, of course, except in the case of posterior surveys, the time of inspecting, approving, and recording has not been thought material. And, as to the mode of partition, however necessary it may have been in other cases of tenancy in common, that it should be made by deed; yet in this proprietary estate, upon locations of this kind, I believe it never has been so done. As to the form of the conveyance, therefore, in this respect, the defendant's objection cannot prevail.

3. As to the right of the proprietors to convey. This is the **\*70** great question in the cause, and though we have taken time since last term to look into it, yet I must confess, for myself, that I have not done so in so full and satisfactory a manner as could have been wished; and my apology must be, that during a very great part of the vacation, I have been necessarily abroad, attending to other official duties, and during the time I had assigned to myself for this purpose, I have been so much indisposed as not tobe able very satisfactorily to attend to business of any kind. I have, nevertheless, so far looked into it as to satisfy myself of the principle that must prevail.

**\*\*49** The grant of Charles II.to the duke of York was not only of territory but of government also. It was made, not with a view to give that territory and that government to the duke, to be enjoyed as a private estate, but with a view to the settlement of it as a great colony, to the enlargement of the British empire, and the extension of its laws and dominions. In construing this grant, therefore, we ought always to have our eye fixed upon these great objects. If we shall find some things contained in it, which by the laws of England, as well as of all other civilized countries, and even by the very law of nature itself, are declared to be the common property of all men, then, by every fair rule of construction, we are to consider these things as granted to him, as the representative of the sovereign, and as a trustee to support the title for the common use, and especially so, if we shall find that the king himself had no other dominion over them.

The grant is not only of all lands, but of "all rivers,harbours, waters, fishings, &c. and of all other royalties, so far as the king had estate, right, title, or interest therein, together with full and absolute power and authority to correct, punish, pardon, govern, and rule all such the subjects of the king, his heirs, and successors, as should, from time to time, adventure themselves into the said territory;" and for this purpose to make statutes, ordinances, & c. provided the same should not be contrary to the laws, statutes, and government of England, but saving to the inhabitants, nevertheless, the right of appeal, and to the crown the right of hearing and determining the same. The duke was to govern, but he was to govern, substantially, according to the principles of the British constitution. The colonists were to be governed by him, but, by the very words of the charter, they were to be British subjects, and to enjoy the protection, liberty, and privileges **\*71** of the British government. In order to accomplish those great objects, the king selected his royal brother, and granted to him all the rights which he himself had, or could exercise in and over this great territory, saving to himself only the right of hearing appeals. Those things, therefore, which were, properly speaking, the subjects of property, and which the king himself could divide and grant severally to the settlers, the duke, by virtue of this charter, could also divide and grant; but those things which were not so, and which the king could not grant, but held for the common use, the duke necessarily held for the same use, and in the same way.

Let us see, then, upon what principle the king held the subject matter of this inquiry; what right he had in it, and how far he could dispose of it.

Everything susceptible of property is considered as belonging to the nation that possesses the country, and as forming the entire mass of its wealth. But the nation does not possess all those things in the same manner. By very far the greater part of them are divided among the individuals of the nation, and become private property. Those things not divided among the individuals still belong to the nation, and are called public property. Of these, again, some are reserved for the necessities of the state, and are used for the public benefit,and those are called "the domain of the crown or of the republic;" others remain common to all the citizens, who take of them and use them, each according to his necessities, and according to the laws which regulate their use, and are called common property. Of this latter kind, according to the writers upon the law of nature and of nations, and upon the civil law, are the air, the running water, the sea, the

fish, and the wild beasts. Vattel l ib. i, 20. 2 Black. Com. 14. But inasmuch as the things which constitute this common property are things in which a sort of transient usufructuary possession, only, can be had; and inasmuch as the title to them and to the soil by which they are supported, and to which they are appurtenant, cannot well, according to the common law notion of title, be vested in all the people; therefore, the wisdom of that law has placed it in the hands of the sovereign power, to be held, protected, and regulated for the common use and benefit. But still, though this title, strictly speaking, is in the sovereign, yet the use is common to all the people. This principle, with respect **\*72** to rivers and arms of the sea, is clearly maintained in the case of the royal fishery upon the Banne, in Ireland, in Sir John Davies' report of that case 56, 57, and in Hale's treatise de jure marls et brachiorum ejusdum. Bracton, too, quoting from Justinian, says, "publica sunt omnia fiumina et portus ideoque jus piscandi omnibus commune est in portu fluminibusque, et riparum etiam usus est publicus jure gentium, sicut et ipsius fluminis.” Bracton lib. i, chap. 12.

**\*\*50** In Lord Fitzwalter's case, (1 Mod. 105) it is said, that in an action of trespass for fishing in a river, where the tide flows and reflows, it is a good justification to say, that the locus in quo est brachiam marls in qua unusquisque subjectus domini regis habet et habere debet liberam piscarium, for that, prima facie, the fishing is common to all. In Warren v. Matthews, **(**6Mod. 73) we are told every subject of common right may fish with lawful nets in a navigable river, as well as in the sea, and the king's grant cannot bar him thereof. Same case (Salk. 357). Carter v. Marcott (Bur. 2162). In navigable rivers, the fishery is common, it is prima facie in the king, but is public and for the common use,Nothing can be more clear, therefore, than, that part of the property of a nation which has not been divided among the individuals, and which Vattel callspublic property, is divided into two kinds, one destined for the use of the nation in its aggregate national capacity, being a source of the public revenue, to defray the public expense, called the domain of the crown, and the other destined for the common use and immediate enjoyment of every individual citizen, according to his necessity, bei ng t he i mmediate gi ft of nature to all men, and, therefore, called the common property. The title of both these, for the greater order, and, perhaps, of necessity, is placed in the hands of the sovereign power, but it is placed there for different purposes. The citizen cannot enter upon the domain of" the crown and apply •it, or any part of it, to his immediate use. He cannot go into the king's forests and fall and carry away the trees, though it is the public property; it is placed in the hands of the king for a different purpose, it is the domain of the crown, a source of revenue; so neither can the king intrude upon the common property, thus understood, and appropriate it to himself, or to the fiscal purposes of the nation, the enjoyment of it is a natural right which cannot be infringed or taken away, unless by arbitrary power; and that, **\*73** in theory at least, could not exist in a free government, such as England has always claimed to be.

But if this be so it will be asked, how does it happen that in England, whose polity in this respect we are now examining, we find not only navigable rivers, but also arms of the sea, ports, harbours, and certain portions of the main sea itself upon the coasts, and all the fisheries appertaining to them in the hands of individuals. That the fact is so cannot be controverted; but how it became so is not so easy, at this period of time, satisfactorily to shew. So far as it depends upon royal grant, however, it seems pretty clear that it has always been considered as an encroachment upon the common rights of the people.

An exclusive right of fishing in a navigable river, is said to be a royal franchise, that is, a privilege or branch of the royal prerogative, granted by the king to a private person. This royal prerogative, we are told, was first claimed by the crown, upon the coming in of William the conqueror, and was considered by the people to be a usurpation of their ancient common rights. Accordingly, in Magna Carta, which is said to be nothing more than a restoration of the ancient common law, we find this usurpation broken down and prohibited in future. That charter, as passed in the time of king John enacts, that where the banks of rivers had first been defended in his time. (that is, when they had first been fenced in. and shut against the common use. in his time) they should be from thenceforth laid open. - And. by the charter of Henry III which is but an amplification and confirmation of the former, it is enacted. "that no hanks shall he defended (that is. shut against the common use) from henceforth, but such as were in defence in the time of king Henry our grandfather, by the same places and the same bounds as they were wont to be in his time." By this charter it has been understood, and the words fairly import, that all grants of rivers, and rights of fishery in rivers or arms of the sea, made by the kings of England before the time of Henry H. were established and confirmed, but that the right of the crown to make such royal grants, and by that means to appropriate to individuals what before was the common right of all, and the means of livelihood for all, for all future time, was wholly taken away. And whatever diversity there may be found in the books, with respect to the different kinds of fishery, it can no way affect the operation of the charter in this respect, **\*74** because that forbids all manner of fencing in, or shutting, fisheries against the common use. All claim, therefore, of an exclusive right of fishery in a navigable river, founded upon the king's grant or prescription, which presupposes a grant, must reach as far back as Henry II. This we find expressly laid down by Sir William Blackstone, one of the greatest men that ever wrote upon the laws of England. 2 Black. Corn. 39. Lord Chief Justice Holt, too, lays it down as a principle, "that the king's grant cannot bar a subject from fishing in a navigable river; " (6 Mod. 73; Salk. 357) and pretty nearly to the same effect is Mod. 105. The case of Garter v. Marcott seems to admit, that such a right can be maintained by prescription, which runs back beyond the memory of man. Bur. 2162.

**\*\*51** Against this doctrine has been cited and much relied upon, Lord Hale's treatise de jure maxis brachiorumque ejusdem, given to us by Hargrave in his law tracts, and the case of the royal fishery upon the river Banne, in Ireland, by Sir John Davies. But making a little allowance for both the judge and the reporter being disciples of Seldon, and converts to his doctrine of the mare clausum, everything they have said may, in my view of it, be admitted in the fullest extent, and yet the positions here laid down be in no way shaken; nay, indeed, I have rather considered them as the great foundations upon which they are to rest.

Lord Hale says, "the sea, and the arms of the sea, and the navigable rivers in which the tide ebbs and flows, are of t he domi ni on of t he ki ng, as of his proper inheritance; and that this dominion, embraces, also, the shores, litora, the spaces covered with the slime and mud deposited by the water between the high and the low water mark, in the ordinary flow and reflow of the tide; that this dominion consists, first, in the right of jurisdiction which he exercises by his maritime courts; and, secondly, in the right of fishing in the waters; but that though the king is the owner of these waters, and, as consequent of his property, hath the primary right of fishing therein, yet the common people of England have regularly a liberty of fishing in the sea, and the creeks and the arms thereof, as a public common piscary, and may not, without injury to their right, be restrained thereof." This is his general doctrine.

He then proceeds and says, that "though the king hath this right communi jure, yet a subject, also, may have such right, and **\*75** that either by king's grant or prescription; that the king may grant fishing within a creek of the sea, and that he may also grant a navigable river that is an arm of the sea, with the water and soil thereof."

But when he speaks of this power of granting, as a common law right in the king, he must be understood as speaking of the common law before it was confined and restrained by Magna Carta, and as it was received and acted upon by the kings of England before that time; and accordingly all the grants which he has been able to produce, after the most diligent search, are before the date of that charter. He has given, in support of his doctrine, five grants, and five only, one by Canute the Dane; two by William the conqueror; one by Edward the confessor, and one by John himself before passing of this statute. And that the law was so understood at that time, or rather so construed by arbitrary kings; that they did so grant, and that those grants were confirmed by Magna Carta, and are now the foundation of most of the several rights of fishery in England, cannot be doubted. And, besides this, Lord Hale, in his treatise, has nothing material on this subject that Ican discover. In examining this subject, I do not speak of the jure regium as it is called, the right of regulation which the king has in all the navigable waters of the kingdom; that is quite another thing, and wholly foreign from the present question.

**\*\*52.** Then as to the case of the Banne water in Ireland. It was this: the plaintiff had obtained a royal grant for the territory of Rout, adjoining the river Banne, in which grant was contained, among other things, piscarias, piscationes, agues, aquarum, cursus, & c., in territoris predicto, reserving to the crown three parts of the said fishery. And the question was, whether this fishery passed by the grant? And it was held, that it did not; not indeed, upon the principle, that the king could not grant in that case, but upon the construction of the grant.

In the discussion of the case, however, it was laid down, "that every navigable river, so far as the tide ebbs and flows, is a royal river, and that the fishery of it is a royal fishery, and belongs to the king by his prerogative; and the reason is, that the river participates of the nature of the sea, and is said to be a branch of the sea so far as it flows; and the sea is not only under the dominion of the king, but it is also his proper inheritance, and, **\*76** therefore, he shall have the land gained out of it, and also the grand fishes of the sea, such as whales, sturgeons, &c., which are royal fish, and no subject can have them without the king's special grant; and he shall have the wild swans also, as royal fowls, on the sea and its branches." Now what does this, taken in its whole extent, prove? It proves, that the wisdom of the law has placed the titles of rivers, &c. in the king; that if the river shall leave its bed, or if otherwise, there shall be alluvions or derelictions by the waters, the land so made shall then, and not before, belong to the king, as part of his domain; and that he has an exclusive right inthese waters to his royal fish and swans, but it proves no more. Nay, indeed, it does prove more, for the very position, that he has an exclusive right to the royal fish and swans, proves that he has no such right to any others. It would be absurd to contend, that he had an exclusive prerogative right to these fish and swans, if he had also the same right to all the fish in the river, and all the aquatic birds upon it.

Again--it is said, in the same book, "that, by the common law of England, a roan may have a proper and several interest as well in a water or river as in a fishery; and that, therefore, a water may be granted." The cases produced to support the latter part of this position are grants from private individuals to private individuals, but even if they were from the king, it would not alter the case, for there is no doubt, that many such exist; but the question is, can such a grant be made by the king since the reign of Henry II.? It is enough to say, that no instance of it has been produced. Recent confirmations of ancient grants made before that time, which are recognized and established by the chatter of Henry III prove nothing to the purpose.

Upon the whole, therefore, I am of opinion, as I was at the trial, that by the law of nature, which is the only true foundation of all the social rights; that by the civil law, which formerly governed almost the whole civilized world, and which is still the foundation of the polity of almost every nation in Europe; that by the common law of England, of which our ancestors boasted, and to which it were well if we ourselves paid a more sacred regard; I say Iam of opinion, that by all these, the navigable rivers in which the tide ebbs and flows, the ports, the bays, the coasts of the sea, including both the water and the land under **\*77** the water, for the purpose of passing and repassing, navigation, fishing, fowling, sustenance, and all the other uses of the water and its products (a few things excepted) are common to all the citizens, and that each has a right to use them according to his necessities, subject only to the laws which regulate that use; that the property, indeed, strictly speaking, is vested in the sovereign, but it is vested in him not for his own use, but for the use of the citizen, that is, for his direct and immediate enjoyment.

**\*\*53** Iam of opinion, that this great principle of the common law was, in ancient times, inEngland gradually encroached upon and broken down; that the powerful barons, in some instances, appropriated to themselves these common rights; that the kings themselves, also, in some instances during the same period, granted them out to their courtiers and favourites; and that these seizures and these royal favours are the ground of all the several fisheries in England, now claimed either by prescription or by grant; that the great charter, as it is commonly called, which was nothing but a restoration of common right, though it did not annul, but confirmed, what had been thus tortiously done, yet restored again the principles of the common law, in this as well as in many other respects; and since that time no king of England has had the power of granting away these common rights, and thereby despoiling the subject of the enjoyment of them.

Iam of opinion, that when Charles II took possession of this country, by his right of discovery, he took possession of it in his sovereign capacity; that he had the same right in it, and the same power over it, as he had in and over his other dominions, and no more; that this right consisted chiefly in the power of granting the soil to private citizens for the purposes of settlement and colonization, of establishing a government, of appointing a governor, of conveying to him all those things appurtenant to the sovereignty, commonly called royalties, for the benefit of colonists; but that he could not, and never did, so grant what is called the common property as to convert it into private property; that these royalties, therefore, which constitute that common property of which the rivers, bays, ports, and coasts of the sea were part, by the grant of king Charles, passed to the duke of York, as the governor of the province exercising the royal authority for the public benefit, and not as the proprietor of the soil, and for his own private use; and that if they passed from the duke of York to his grantees, which is a very doubtful question, then, upon the surrender **\*78** of the government, as appurtenant thereto, and inseparable therefrom, they reverted to the crown of England. And T am further of opinion, that, upon the Revolution, all these royal rights became vested inthe people of New Jersey as the sovereign of the country, and are now in their hands; and that they, having, themselves, both the legal title and the usufruct, may make such disposition of them, and such regulation concerning them, as they may think fit; that this power of disposition and regulation must be exercised by t hem i n their sovereign capacity; that the legislature is their rightful representative in this respect, and, therefore, that the legislature, in the exercise of this power, may lawfully erect ports, harbours, basins, docks, and wharves on the coasts of the sea and in the arms thereof, and in the navigable rivers; that they may bank off those waters and reclaim the land upon the shores; that they may build dams, locks, and bridges for the improvement of the navigation and the ease of passage; that they may clear and improve fishing places, to increase the product of the fishery; that they may create, enlarge, and improve oyster beds, by planting oysters therein in order to procure a more ample supply; that they may do these things, themselves, at the public expense, or they may authorize others to do it by their own labour, and at their own expense, giving them reasonable tolls, rents, profits, or exclusive and temporary enjoyments; but still this power, which may be thus exercised by the sovereignty of the state, is nothing more than whatis called the jus regium, the right of regulating, improving, and securing for the common benefit of every individual citizen. The sovereign power itself, therefore, cannot, consistently with the principles of the law of nature and the constitution of a well ordered society, make a direct and absolute grant of the waters of the state, divesting all the citizens of their common right. It would be a grievance which never could be long borne by a free people.

**\*\*54** From this statement, it is seen that, in my opinion, the proprietors, as such, never had, since the surrender of the government, any such right to, interest in, or power over, these waters, or the land covered by them, as that they could convey the same and convert them into private property; and that, therefore, the grant in question is void, and ought not to prevail for the benefit of the plaintiff, and, of course, that the rule to shew cause must be discharged.

**\*79 ROSSELL J.**

It is a fact, as singular as it was unexpected in the jurisprudence of our state, that the taking a few bushels of oysters, alleged to be the property of the plaintiff in this suit, should involve in it questions momentous in their nature, as well as in their magnitude; calling forth the talents, learning, and industry of our bar; affecting the rights of all our citizens, and embracing, in their investigation, the laws of nations and of England, the relative rights of sovereign and subjects, as well as the municipal regulations of our own country.

The plaintiff’s counsel contend, that the nonsuit granted on the trial of this cause, by the Chief Justice, should be set aside, on two grounds:--1. That the locus in quo whereon these oysters were laid, was his own proper freehold, by virtue of a proprietary right, duly laid thereon, returned and approved of by the council of proprietors of East Jersey, and recorded by their authorized officer, in consequence of which he claims a several fishery. 2. That he had purchased and planted those oysters on the spot from whence they were taken by the defendant; and as a public notice, that he, by placing them on the soil of the river Rariton, had not abandoned his property in them, he had surrounded them with small stakes. The defendant claims a right to those oysters, having taken them from a bed called an oyster-bed, situate on the river Rariton, below the common low water mark, and on which it had been usual for the people of East Jersey to fish for oysters, from the first settlement of the country.

In support of the first of these positions, the counsel for the plaintiff contend, that Charles II in the year 1664, granted unto his brother, the duke of York, the land, soil, seas, bays, rivers, with divers franchises, royalties, and government of New Jersey; that the duke of York granted the same, in like words and powers, to Lord Berkley and Sir George Carteret; that these, by grant, conveyed to the Earl of Perth, William Penn, and others, that part of New Jersey called East Jersey, and to Edward Billinge, that part called West Jersey, together with all the royalties, franchises, and government, as fully as they were granted by the king to the duke of York; and that the present proprietors of East Jersey, deriving their respective titles to their several shares or proportions to all the unlocated soil and waters of East Jersey, by virtue of several mesne conveyances from the original proprietors, had a legal power to dispose of rights to the plaintiff **\*80** to locate them on this oyster-bed, whereon the trespass is alleged to have been committed. And it is insisted, that as Charles II. did grant, so he had the power to grant, not only the whole soil of a newly discovered, or conquered, country, but certain parts of his royal prerogative, as named in the grants or letters patent to and from the duke of York.

**\*\*55** In support of these positions, they cite numerous authorities. Vattel 120-5-7, sec. 266, and 101, sec. 210. 2 Black. Com. 15. 1 Ib. 264, 286. Davies 152. 6 Com. Dig. Navigation D 50, 60, title Prerogative. 4 Bur. 2163-4-5. 3 Cruise, sec. 14, title Deed, 565-8. 17 John. 209-10-13. 3 Term. Reports 253. 2 Bin. 475. 4 Mass. Rep. 140. Har. & McHen. Rep. 564. Har. L. T. 5,7, 10, 11, 14, 17, 19. 1 Rutherf. 91.2 lb. 82. 3 Chit. Crim. Law 359.2 Ld. Ray. 1274. 2 Salk. 666. Smith's Hist. N. J. Learming & Spicer, Grants and Concessions.

From these authorities it abundantly appears, that by the law of nations and of England, a conqueror has a right to impose such laws on the conquered, as he may think proper; that in England, all property, real and personal, capable of ownership vests in some one or more individuals or bodies corporate; that the titles to lands in England are said to be held, in general, mediately from the king; that certain rights and powers are vested in him, as the head of the government, under the name or title of prerogative, amongst which may be numbered, on the present occasion, the sovereignty of the sea, to a certain extent, and of all public rivers, royal fish, as whales and sturgeons, wrecks, treasure-trove, &c.; that the kings of England have, from time to time, frequently alienated part of the domains belonging to the crown, and bestowed many franchises on their favourites, and rewarded individuals, for their faithful services, with parts of their lands, or granted them many exclusive privileges, as a right to fish in arms of the sea, or public rivers wherein the sea ebbs and flows; and lastly, that King Charles II did, i n t he year 1664, grant to the duke of York all the lands, islands, soils, rivers, harbours, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings, fowli ngs, and all other royalties in, belonging, or appertaining to the state of New Jersey, as well as the government of the same (saving and reserving to the crown the receiving, hearing, and determining appeals in and touching any judgment or sentence to be there made or given); to appoint **\*81** governors, and to make all necessary laws, &c., so always that they be not contrary to the laws and statutes of England, but as near as may be agreeable thereto.

After a careful examination of the authorities cited to establish the plaintiffs claim to these oysters, and his right to a several fishery on the bed whereon they were laid, I shall proceed to examine the correctness of the inferences and conclusions his counsel have drawn from those authorities. And it may not be amiss to take a very brief view here of the manner in which this country was first settled by English subjects.

In the preface of Grants and Concessions, by Leaming & Spicer, they say: "The great success of the house of Austria on this side the Atlantic, and the prodigious wealth they had drawn from their colonies, could not fail pointing out to so enterprising a people as the Britons, this as a seat of future wealth and grandeur. But the authority of a limited government, aided by the example of a few individuals, would have scarcely been sufficient to prevail on the common people to shake off that attachment inherent in all to their native soil, and dare an untrod ocean in search of a country they had only heard of. It was, therefore, necessary to cultivate such a spirit as should ripen them for the undertaking; in order to which, King Charles II in 1668, granted to the duke of York the soil and government of New Jersey, who afterwards transferred the same to other proprietors, who wisely secured to the adventurers their religion, liberties, and property by which New Jersey was, with great rapidity, transformed from a savage wilderness to a Christian and civilized country."

**\*\*56** These Grants and Concessions, as well as Smith's Hist . of N. **J** contain many provisions, agreements and descriptions of the country, and invitations to settlers from England. In the 17 section of what is called their great charter (Learming & Spicer 395) they, the proprietors, declare that none shall be deprived or condemned of life, liberty, or estate, or any way hurt in his or their privileges, freedoms, or franchises without a trial by jury. So, in page 12, they secure to the settlers all such freedoms and privileges within the said province as to his majesty's subjects do of right belong. In page 28, the proprietors instruct their governor to especially provide for the interest, liberty, and defence of all who shall plant or inhabit the said province. In page 54, the proprietors set forth their claim to all strays of beasts at land, and **\*82** all wrecks at sea. In page 141, in the year 1682, the duke of York confirms to the twenty-four proprietors, their heirs, and assigns, as well for the planting, peopling, and improving the lands, territories, &c. all islands, bays, rivers, &c. repeating all things named in the original grant, with all his interest, claim, and demand in law or equity; and then goes on to say, (page 148) as also the free use of all bays, rivers, and waters leading into, or lying between, the said premises (of East Jersey) for navigation, free trade, fishing, or other ways.

This confirmation became necessary to establish the rights of the proprietors, for two reasons:

1. The Dutch had claimed a right to this country, and had, for a number of years, possession of New York and parts adjacent in this state, and, also, had made settlements on both sides of the Delaware. They were dispossessed thereof in 1668, by the English under Colonel Nichols. At the expiration of the war that followed soon after between England and the states of Holland, they were silent as to their pretensions to this country.

2. Although it might be true, that Charles II. might delegate the powers of government to an individual, and endow him with many royal franchises, it was strongly contended, that the duke of York had no such power; and more especially, it could not pass from proprietor to proprietor, in the manner this state had been conveyed. These objections were laid before the king; the proprietors were made acquainted with those difficulties, which occasioned them to say, (Leaming & Spicer, sec. 613) "Her majesty hath been advised that we have no right, nor can legally execute any of the said powers, but that it belongs to her majesty, in right of her crown, to constitute governors, &c.; and, being desirous to submit ourselves to her majesty, are willing to surrender all our pretences," &c.

For a more full description of the powers of a conqueror over the conquered, Vattel, Dyer, and Vaughan may be consulted. In Dyer 166, 224, and in Vaughan 281, it is laid down, "If a king of England makes a new conquest of any country, the persons there born are his subjects, for by saving the lives of the people he gains a property in them, and may impose on them what law he pleases. But, until such laws are given, the laws and customs of the conquered country shall hold place, unless contrary to our religion, or malum in se, or are silent. In all such cases, the law of the conquering country shall prevail." in 2 Salk, 412, **\*83** where the laws of the conquered are rejected or silent, they shall be governed according to the rules of natural justice. In Ib. 166, 411-12, and in 2 Willes 7, if there be an uninhabited country found out by British subjects, as the law is their birthright wherever they go, they carry their laws with them, they are, therefore, governed by the laws of England.

**\*\*57.** It is true, that in 1 Black. Com. 108, it is laid down, "That the common law of England, as such, does not extend to the American plantations." In this he is contradicted by the authorities above stated, and a number of others of great celebrity; by the universal understanding of all the English emigrating to this country; by the legislature of our own and several of the neighboring states; and, indeed, it appears directly opposed to his declarations in another part of the same page, where he says, "If an uninhabited country is planted by British subjects, all the English laws applicable to their situation are immediately there in force. "What reason can be given why a people, with the approbation of their king, sent to colonize a ceded or conquered country for the benefit and aggrandisement of the mother country, should be deprived of their birthright? Why more than if they went without the king's consent to colonize an uninhabited country from discontent at home, from whim, caprice, or the advancement of their individual interest? In conquered, or ceded, countries, (which our American plantations principally are) "that have laws of their own, the king may, indeed, alter or change those laws, until which the ancient laws of the country prevail, unlesssuch as are against the law of God, as in an infidel country. They, the American plantations, were obtained either by conquest, as driving out the natives, or by treaties." 1 Black. Com. 108. This will not apply to New Jersey; it was never ceded by name or description, to England, nor did we drive out the natives, but by a peaceable purchase became possessed of their rights to the soil, &c.; and that the proprietors, governors, and settlers were all united in the opinion that the common law and the laws of England were their birthright, is manifest from what has been before stated, as well as from other parts of Leaming & Spicer, Smith's Hist. N. J. our own constitution, and decisions of our highest courts of judicature. In the year 1680, the proprietors, protesting against a duty exacted of them by the duke of York, say, (Smith's Hist. N. J. 118) "If **\*84** wewould not assure people of an easy, free and safe government, an uninterrupted liberty of conscience, and an inviolable possession of their civil rights and freedoms, a mere wilderness would be no encouragement." lb. 118--"To say, that this is a conquered country, and the king, as conqueror, has the power to make laws, raise money, &c. But suppose the king were an absolute conqueror, doth his power extend over his own English people as over the conquered? Are not they some of the letters that make up the word conqueror? Did Alexander conquer alone, or Cæsar beat by himself? Shall their armies of countrymen and natives lie at the same mercy as the vanquished? The Norman duke used not the companions of his victors/ so ill; natural right and human prudence oppose such doctrine all the world over." Ib. 120, our case is better yet, for the king's grant to the duke is plainly restrictive to the laws and government of England. There are home-born rights declared to be law by statutes, as in the great charter 29 and 34 Edward III**.** chap. We humbly say we have not lost "any part of our liberty by leaving our country, for we leave not our king or government by quitting our soil. Under favour we buy nothing of the duke if not the right of free colonization as Englishmen with no diminution, but expectation of some increase, of those freedoms and privileges enjoyed in our country. The soil is none of his; it is the natives' by the jus gentium, the law of nations. It would be an ill argument to convert to Christianity, to expel, instead of purchasing, them out of those countries." Ib. 190—Governor Coxe, the greatest proprietor of West Jersey, appointed in 1687, writes thus, "I do, in my heart, highly approve of the ratified fundamentals, &c. that no person shall be deprived of life, limb, estate, privilege, freedom. Franchises, without a due trial. &c., as well as all other parts of the fundamentals, if it appears there is nothing in them contrary to the laws of England which extend to our colony, by the breach whereof we inevitably expose ourselves to the forfeiture of our charter." In 1702, Lord Cornbury was appointed governor by Queen Anne. In his address, that year, to the council and assembly, he says, "Her majesty has commanded me to assure you of her protection upon all occasions. Under her auspicious reign, you will enjoy all the liberty and happiness that good subjects can wish for under the best laws in the universe, I mean the laws of England. "The legislature, in answer, **\*85** say, "they are satisfied that the Queen will protect them in the full enjoyment of their rights, liberties, and properties, and they are happy under the government of the greatest queen and the best of laws," &c. lb. 414--In 1720, Governor Burnet was appointed, and addressed the legislature, he congratulates them on the accession of George I. ""to which," he adds, "you owe the preservation of your laws and liberties."

**\*\*58** Ib. 560--In 1699, the proprietors of East Jersey, in a memorial to the lords commissioners of trade and plantations, offer to surrender the government thereof to the king, towards which, they say, they enumerate the following particulars:--"First, that his majesty would confirm to them the soil and lands. "And in the 13th article--"all lands, goods, and chattels of felons, &c. treasure-trove, mines and minerals, royal mines, wrecks, royal fish that shall be forfeited, found, or taken within East Jersey, or within the seas adjacent, to remain to the proprietors," &c.

I b. 572--This not succeeding, in 1701, the proprietors of East and West Jersey presented another memorial, the 14th section of which says, "That all such further privileges, franchises, and liberties, as upon consideration shall be found necessary for the good government and prosperity of the said province, and increasing the trade, may be granted to the proprietors." Leam. & Spi. 681--In 1680, "As we are the representatives of the freeholders of this province, we dare not grant his majesty's patent, though under the great seal of England, to be our rule; for the great charter of England, alias Magna Carta, are the only rules of privilege and safety of every free-born Englishman."

Thus our forefathers, bringing with them so much of the common law of Great Britain as was applicable to their change of situation, settled New Jersey, claiming, as their birthright, all the liberties enjoyed in their native land, with the addition of a number of privileges granted them by the proprietors, as an encouragement to them, and as a benefit to both.

As to the right of Charles II. to grant the sea, bays, rivers, fisheries, and other royal franchises in such manner as to now vest, by a string of conveyances from subject to subject, a several fishery in the plaintiff, as contended for by his counsel. Dav. 150, 152; Bur. 2164; 3 Cruise 170, Franchise, sec. 68; Salk. 637, and Esp. Dig. pl. i, 270, are relied on as supporting that position. In the case of the royal fishery of the river Banne, in Ireland, **\*86** it was resolved by the court there--"I. That a man may have a proper and several fishery as well in a water or river as in a fishery, and, therefore, a water may be granted. 2. There are two kinds of rivers, navigable and not navigable. Every navigable river, so far as the sea ebbs and flows, is a royal river, and the fishery of it is a royal fishery, and belongs to the king by his prerogative. But in every other river not navigable, and in the fishery of such rivers, the ter-tenants on each side have an interest of common right. The reason for which the king hath an interest in such navigable river, so high as the sea flows and ebbs in it, is because such river participates of the nature of the sea, and is said to be a branch of the sea. The sea is not only under the dominion of the king, but is his proper inheritance, and, therefore, the king shall have the land which is gained of the sea, also the grand fishes of the sea, as whales and sturgeons, which are royal fishes, and no subject can have them without the king's special grant, for the king ought of right to save and defend his realm, as well against the sea as against his enemies. The commission of sewers was awarded by the king, by virtue of his prerogative, and extends to not onlywalls and banks of the sea but also to navigable rivers and fresh waters. In statute 25, Henry VIII the king by reason of his prerogative, ought to provide that navigable streams be made passable. 3. The city of London, by charter from the king, had the river Thames granted to them. But because it was conceived that the soil and ground of the river did not pass by the grant, they purchased another charter, by which the king granted them solum et fundum of the said river, by force of which the city receives rents of those who fix posts or wharves on the soil of said river; and although the king permits people to have passage over such rivers, he hath the sole interest in the soil, and also in the fishery, although the profit of it is not commonly taken by him if it is not of extraordinary and certain value, as the fishery of the Banne hath at all times been. Wherefore it was resolved, that the river Banne, so far as the sea flows and ebbs in it, is a royal river, and the fishery of salmon there is a royal fishery, which belongs to the king as a several fishery, and not to those who have the soil on each side of the water. On the other hand, it was agreed, that every inland river not navigable appertains to the owners of the soil where it has its course."

**\*\*59 \*87** 3. That no part of this royal fishery of the Banne could pass by the grant of lands adjoining by the general grant of all fisheries. This is a fishery in gross, and a parcel of the inheritance of the crown by itself. The case itself also states, that in this river, Banne, there was a rich fishery of salmon, which was parcel of the ancient inheritance of the crown, as appears by the pipe-rolls and surveys, where it was found in charge of the officers of the pipe office as a several fishery, and was granted to the city of London in fee farm. This was intruded on and shared amongst the Irish lords, who took possession by strong hand, and held it a long time. The king granted, by letters patent to Sir Randal M'Donald, a parcel of the county of Antrim adjoining the river Banne, where the fishery is, together with all waters, fish, and fisheries within the said territory. And the question before the court was, whether the grant included any part of this fishery? which was determined in the negative, on the ground, that it was a several fishery belonging to the crown, as a parcel of its ancient inheritance, which was proved by several pipe-rolls and surveys, and was in charge of the officers of thepipe office. It was also let in fee farm, the mode by which the lands attached to the crown were generally held by the tenants of the crown. Nor do I see how else it could be called a royal fishery, and salmon royal fish, which is in the same book, as well as in many others, confined to whales, and sturgeons. The same book, 111-12,in another case of tanistry, says, "the king, as conqueror of Ireland has possession of all lands which he willeth to seize and retain in his own hands, for his profit or pleasure. And where the natives of a conquered country are received under the protection of the conqueror, and are permitted to retain their possessions, their heirs shall be adj udged in a good title, without grant or confirmation, according to the rules of law there established." Salkeld, Espinasse, and other authorities, cite the case from Davies of the river Banne, as supporting the doctrine they hold.

2 Cruise 278--"A franchise is a branch of the royal prerogative, subsisting in the hands of a subject by grant from the king, annexed to manors and the right to hold courts leet, to have waifs, wrecks, royal fish, which consist of whales and sturgeons." So in lb. 297--"A free fishery, or exclusive right of fishing in a public river is a royal franchise, which is now frequently vested in private persons, either by grant from the crown or by prescription." **\*88** But he adds--"This right was probably first claimed by the crown upon the establishment of the Normans, and was deemed by the people a usurpation."

In 4 Bur. 2162, it was declared as 'the opinion of the whole court, that one might prescribe for a several fishery, parcel of a manor, where the sea flows and reflows, but he must prove a right by prescription, the presumption is against him. Innavigable rivers, where the sea flows and reflows, the right of fishing is common. And Lord Mansfield adds--"The rule of law is uniform, in rivers not navigable, the proprietors of the land have the right of fishery on their respective sides; but in navigable rivers they have it not, the fishery is common."

**\*\*60** In 1 and 2 Modern, Lord Hale says--"In case of private rivers, the lords having the soil is good evidence to prove he hath the right of fishing, and it puts the proof on them who claim liberam piscariam. But in case of a river that flows and reflows prima facie it is common to all. If any claim it to himself, the proof lieth on his side; and it is a good justification to say, the locus in quo is a branch of the sea, and that the subjects of the king are entitled to a free fishery. The soil of the Severn, with particular restraints, as gurgites, is in the lords, and a special kind of fishing, but the common kind of fishing is common to all. The soil of the Thames is in the king; the Lord Mayor is conservator of the river, and it is common to all fishermen; therefore there is no such contradiction betwixt the soil being in one, and yet the river being common to all fishers."

5 and 6 Comyns, titles Navigation and Prescription. These authorities, and others relied on by the plaintiff, cite the ancient authority of Davies and the river Banne in support of the doctrines they establish.

On the part of the defendant, has been citedl Salkeld 357. Lord Holt says, "the subject has a right to fish in all navigable rivers as he has in the sea." 6 Mod. 73--"Every subject of common right may fish with lawful nets in the navigable rivers, and the king's grant cannot bar them thereof The crown only has a right to royal fish, and that only, the king may grant." In Lord Ray. 725--"The public are, at common' law, entitled to towing paths on the banks of navigable rivers." 2 Black. 39--"A free fishery, or exclusive right of fishing in a public river, is a royal franchise, and is considered as such in all countries where the **\*89** feudal polity has prevailed; though the making such grant, and by that means appropriating what it seems unnatural to restrain, the use of running water was prohibited for the future by king John' s great charter, so that a franchise of free fishery ought now to be, at least, as old as the reign of Henry II." In 4 Black. 423-4--"King John, and afterwards his son Henry III consented to the two famous charters of English liberties, Magna Carta and Carta de foresta, by which care was taken to protect the subject against oppression, and every individual of the nation in the free enjoyment of his life, his liberty, and his property, prohibited for the future the grants of exclusive fisheries, and the erection of new bridges oppressive to the neighbourhood." The same doctrine is recognized in Espinasse, in Jacob's L. D. and other writers on this subject 5 Bac. Abr. 494, title Prerogative--"The king's prerogative is part of the law of England, and is a word of large extent, including all the rights and privileges which by law the king hath as head of the commonwealth, entrusted with the execution of the laws; for as they maintain his safety, power, and dignity, so they likewise declare the rights and liberties of the subject. Hence it is an established rule, that all prerogatives must be for the advancement and good of the people, otherwise they should not be allowed by law. The sovereignty is in the parliament, of which the king is only a part; but, as executive magistrate, he is clothed with great powers, all intended for the good of the people, none to their detriment, nor can any prerogative be legally so employed. And it is to answer the ends of government, and for the good of the, people by a fiction of law he is considered the universal occupant of all lands; not that the people held their lands by any actual royal grant." Ib. 156-7--"So the king has sovereign dominion in all seas and great rivers, and a right to the fisheries and to the soil, so that if a river, as far as there is a flux of the sea, leaves its channel it belongs to the king, who protects his subjects from pirates, and provides for the security of trade and navigation. But notwithstanding the king's prerogative in seas and navigable rivers, yet it hath been always held, that a subject may fish in the sea, which being a matter of common right, and the means of livelihood, and for the good of the commonwealth, cannot be restrained by grant or prescription. Also, of common right, with lawful nets in navigable rivers, as well as in the sea, **\*90** and the king's grant cannot bar them thereof, except royal whales and sturgeons, in which he has a right as a perpetual sign of his dominion, and which only he may grant."

**\*\*61** lb. 205--"It seems clearly agreed, that the king may alien, grant, or charge any branch of his revenue in which he has an estate of inheritance, as also his lands in fee simple, though seized of them as jure coronet This power is founded on reasons of state, as he cannot raise money on the subject without an act of parliament. If he had not the power of aliening his lands, the kingdom might suffer from sudden invasion," &c.

4. Comyns, Grant E--"Bythe grant of a piscary, the soil or water does not pass. By a grant of water, the soil does not pass. The king, by his grant, cannot alter the law in any respect, nor dispense with things in which the subject hath an interest, or change the common law by charter or Magna Carta, which is incorporated into the common law." 6 Comyns, title Prerogative D 7. lb. D 49--"Every navigable river, as high as the sea flows, belongs to the king, but every one may fish in the sea of common right."

On compar i ng al l the above authorities, and the reasons on which they are founded, we are compelled to acknowledge, that although the kings of England formerly may have lavished on favourites, or rewarded the service of individuals with many franchises entrusted to them for the public benefit, yet the people ever considered it as a violation of good faith, an unlawful infringement of their common rights, and as destructive alike to their liberties and their interests; until the evil increasing beyond endurance, they, sword in hand, forced from their king, the most solemn and public declaration of their rights in Magna Carta.

1. Black. Com. 128--"The absolute rights of every Englishman, as they are founded on nature and reason, so they are coeval with our form of government. At some times we have seen them oppressed by overbearing and tyrannical princes; at others, so luxuriant as even to tend to anarchy. But the vigour of our free constitution has always delivered the nation, and the balance of our rights and liberties has settled to its proper level, and their fundamental articles asserted in parliament: first, by the great charter of our liberties obtained from king John; afterwards, its confirmation," &c.

If we add to all these the conduct pursued by the proprietors **\*91** themselves in the first settlement of New Jersey, by favourable and public descriptions of the country, and by letters to individuals to induce their fellow subjects to settle here, we shall be more and more convinced that the claim of the plaintiff to the exclusive right of this fishery is without legal foundation. In Smith's History of New Jersey we find the proprietors, in 1683, sent over Thomas Rudyard as their deputy governor of East Jersey. In May, the same year, he writes from thence, page 168—"We have one thing more particular here, which is vast oyster-banks,which is constant fresh victuals during the winter to English as well as Indians; of these there are many all along our coasts, from the sea as high as against New York, where they come and fetch them." Ib. 170--"Upon our view and survey of Amboy point, we find it extraordinary well situate for a great town. At low water mark, round about the point, are oysters of two kinds, some as small as English, and others two or three mouthfuls, exceeding good. We have store of clams, esteemed much better than oysters, and fish we have a very great store. Sea-nets are good merchandise here."

**\*\*62** S. Groom, another proprietor, and surveyor-general, writes from Amboy 1781, page 174--"The Indians come thither to get fish, fowl, oysters, clams, & c. as people go to market."

Gawen Lawrie, a deputy governor for East Jersey, writes from Elizabeth-Town, and, in page 177, says-"Pork and beef at two pence per pound; fish and fowl plenty; oysters, I think, would serve all England." Again, in page 180--"There is a great plenty of oysters, fish, and fowl."

In page 187, three of the proprietors give a particular description of East Jersey, and say-"There are no fishermen that follow only that trade, save some that go a whaling upon the coast; and for other fish, there is abundance to be had everywhere through the country, in all rivers, and the people, with sieves, catch one or two barrels a day, for their own use, and to sell to others."

In page 541, the proprietors describe the country, and invite settlers thus:-- "It is likewise proper for such who are inclined to fishing, the whole coast and very harbours' mouths being fit for it, which has been no small rise to the New England people, and may be carried on with great advantage. The Indians catch **\*92** fish, and sell at a less price than the value of time an Englishman must spend in taking them."

As early as 1718, (Nevill's Laws 86) is found "An act for the preservation of oysters:--Sec. 1. Whereas it is found that the oyster-beds within this province are wasted and destroyed, the preservation of which will tend to the great benefit of the poor people and others inhabiting this province, all persons are prohibited from raking or gathering oysters from off any beds in this province from the 10th of May to the 10th of September; and that no persons, at any time, should carry them away in any boat or vessel not wholly owned by a person living within the province."

And in this way others wrote to their friends, and in no part of the many public or private communications of the proprietors or inhabitants do we see even a hint that the navigable rivers of New Jersey were considered in any other point of view than, to use their own words, "inlets which God and nature formed" as the highway to the country, or the fisheries as anything more than as the rich provision of the same bountiful Creator for the common use and benefit of the settlers. The proprietors were men who understood their rights, and were fearless in the defence of them. If those who twice purchased New Jersey; who braved the dangers of an immense ocean; shared in the toils, sufferings, and privations of the first settlers; who claimed all strays by land, and wrecks by sea, in virtue of their grants, and never for a moment conceived that these grants swallowed up what, by the law of the land they left, had ever been considered the common rights of Englishmen; shall we, after a lapse of almost three centuries, insult the memory of men who were an ornament to the human race, whose virtues have highly exalted their names, and whose labours have been a blessing to the world, by saying, they knew nothing of their privileges, and that their birthrights were lost forever in the forests of New Jersey; that their boasted Magna Carta was a farce from which they could derive no benefit; and that liberty, which they so highly valued, was confined to the grants and concessions? or that our legislatures, from time to time taking upon them to regulate fisheries of oysters as well as of floating fish for the public benefit, were totally ignorant of their powers, overstepped the bounds prescribed by the constitution, to the destruction of the **\*93** rights and interests of individuals? I think not. The foregoing facts speak strong language, and impress the mind more forcibly than volumes of abstruse and theoretical reasoning; and, on a careful examination of the whole subject, I am of opinion, that the plaintiff had no such property in the oyster-bed in question by laying a proprietary thereon, as to give him an exclusive right to the oyster fishery there.

**\*\*63** On the second point. I think that question has been decided by this court in the case of Shepard & Layton v. Leverson (1 Pen. 391), and although I differed from my brethren in their view and determination of that case, respect for their opinions prevents a wish, on my part, to shake that determination. The Chief Justice there says--"That in a common fishery, no man can appropriate to himself any particular shoal, bed or spot, to the exclusion of others. That the planting these oysters was returning them to their proper element to mix with their kind, and was, in contemplation of law, a complete abandonment."

Justice Pennington says--"It is admitted that the plaintiff planted a quantity of oysters in a public navigable river, or highway, where the tide ebbed and flowed, and in which fish and oysters were taken as of right ; that there were no oysters to be found at that particular spot at the time of planting. Now although there may not have been any oysters on the particular spot where the oysters were put down, at the time of doing it, yet there may have grown oysters there since, in which case he would not be entitled to all the oysters found in the same bed. This case would resemble the case of a stranger voluntarily throwing his grain or money into my heap, when, from the difficulty of separation, caused by his own folly, I would be entitled to the whole." But the present case does not present as fair a claim to the verdict of a jury, or the judgment of a court, as the one from Monmouth. There it was admitted that the oysters were placed on a part of the bed of the river where no oysters grew. Here they were confessedly placed on an old and frequented oyster-bed. If returning oysters into their natural element, the river, even if no oysters grew in that particular spot, and the mere possibility of a future increase, was such an abandonment of the right of ownership as to justify the taking them, in the opinion of the court, surely there can be no pretence for saying, that **\*94** placing them in that element where oysters had grown for ages was not, in contemplation of law, a complete abandonment of the plaintiffs right. On much consideration of this case, I am of the opinion that the plaintiff should take nothing by his motion.

Therefore, let the rule to shew cause be discharged.

His honour Judge FORD had made up an opinion concurring with his brethren, but did not deliver it at large. CITED IN Silvers ads. Reynolds, 2 Harr. 278. Martin v. Wardell, 3 Harr. 507. Gough v. Bell, 1 Zab. 156. Gough v. Bell, 2 Zab. 441. Bell v. Gough, 3 Zab. 624. Townsend v. Brown, 4 Zab. 80. Inslee v. PraII, 1 Dutch. 666. State v. Taylor, 3 Dutch. 117. Cobb v. Davenport, 3 Vr. 369. Stevens v. Paterson and Newark R. R. Co., 5 Vr. 537. Estell v. Bricksburg L. & I. Co., 6 Vr. 237. Wooley v. Campbell, 8 Vr. 165. Associates v. Jersey

City, 4 Hal. Ch. 724. Att'y-Gen. v. Del. and Bound Brook R. R. Co., 12 C. E. Gr. 638.

**All Citations**

6 N.J.L. 1, 1821 WL 1269, 10 Am.Dec. 356, 1 Halst. 1

Supreme Court of the USA opined in the National Audubon Society vs Superior Court or “Mono Lake Case”- [Supreme Court of California in National Audubon Society v. Superior Court of Alpine County (popularly known as the Mono Lake Case”)(33 Cal.3d 419)]

**Opinion**

BROUSSARD, Justice.

Mono Lake, the second largest lake in California, sits at the base of the Sierra Nevada escarpment near the eastern entrance to Yosemite **National** Park. The lake is saline; it contains no fish but supports a large population of brine shrimp which feed vast numbers of nesting and migratory birds. Islands in the lake protect a large breeding colony of California gulls, and the lake itself serves as a haven on the migration route for thousands of Northern Phalarope, Wilson's Phalarope, and Eared Greve. Towers and spires of tufa on the north and south shores are matters of geological interest and a tourist attraction.

Although Mono Lake receives some water from rain and snow on the lake surface, historically most of its supply came from snowmelt in the Sierra Nevada. Five freshwater streams--Mill, Lee Vining, Walker, Parker and Rush Creeks—arise near the crest of the range and carry the annual runoff to the west shore of the lake. In 1940, however, the Division of Water Resources, the predecessor to the present California Water Resources Board, 1 granted the Department of Water and Power of the City of Los Angeles (hereafter DWP) a permit to appropriate virtually the entire flow of four of the five streams flowing into the lake. DWP promptly constructed facilities to divert about half the flow of these streams into DWP's Owens Valley aqueduct. In 1970 DWP completed a second diversion tunnel, and since that time has taken virtually the entire flow of these streams.

As a result of these diversions, the level of the lake has dropped; the surface area has diminished by one-third; one of the two principal islands in the lake has become a peninsula, exposing the gull rookery there to coyotes and other predators and causing the gulls to abandon the former island. The ultimate effect of continued diversions is a matter of intense dispute, but there seems little \*425 doubt that both the scenic beauty and the ecological values of Mono Lake are imperiled.2

**\*\*712** Plaintiffs filed suit in superior court to enjoin the DWP diversions on the theory that the shores, bed and waters of Mono Lake are protected by a public trust. Plaintiffs' suit was transferred to the federal **\*\*\*349** district court, which requested that the state courts determine the relationship between the public trust doctrine and the water rights system, and decide whether plaintiffs must exhaust administrative remedies before the Water Board prior to filing suit. The superior court then entered summary judgments against plaintiffs on both matters, ruling that the public trust doctrine offered no independent basis for challenging the DWP diversions, and that plaintiffs had failed to exhaust administrative remedies. Plaintiffs petitioned us directly for writ of mandate to review that decision; in view of the importance of the issues presented, we issued an alternative writ. (See County of Sacramento v. Hickman (1967) 66 Cal.2d 841, 845, 59 Cal.Rptr. 609, 428 P.2d 593.)

This case brings together for the first time two systems of legal thought: the appropriative water rights system which since the days of the gold rush has dominated California water law, and the public trust doctrine which, after evolving as a shield for the protection of tidelands, now extends its protective scope to navigable lakes.

Ever since we first recognized that the public trust protects environmental and recreational values (Marks r. Whitney (1971) 6 Cal.3d 251, 98 Cal.Rptr. 790, 491 P.2d 374), the two systems of legal thought have been on a collision course. (Johnson, Public Trust Protection for Stream Flows and Lake Levels (1980) 14 U.C. Davis L.Rev. 233.) They meet in a unique and dramatic setting which highlights the clash of values. Mono Lake is a scenic and ecological treasure of **national** significance, imperiled by continued diversions of water; yet, the need of Los Angeles for water is apparent, its reliance on rights granted by the board evident, the cost of curtailing diversions substantial.

[1] Attempting to integrate the teachings and values of both the public trust and the appropriative water rights system, we have arrived at certain conclusions which we briefly summarize here. In our opinion, the core of the public trust doctrine is the state's authority as sovereign to exercise a continuous supervision and control over the navigable waters of the state and the lands underlying those waters. This authority applies to the waters tributary to Mono Lake and **\*426** bars DWP or any other party from claiming a vested right to divert waters once it becomes clear that such diversions harm the interests protected by the public trust. The corollary rule which evolved in tideland and lakeshore cases barring conveyance of rights free of the trust except to serve trust purposes cannot, however, apply without modification to flowing waters. The prosperity and habitability of much of this state requires the diversion of great quantities of water from its streams for purposes unconnected to any navigation, commerce, fishing, recreation, or ecological use relating to the source stream. The state must have the power to grant nonvested usufructuary rights to appropriate water even if diversions harm public trust uses. Approval of such diversion without considering public trust values, however, may result in needless destruction of those values. Accordingly, we believe that before state courts and agencies approve water diversions they should consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests. The water rights enjoyed by DWP were granted, the diversion was commenced, and has continued to the present without any consideration of the impact upon the public trust. An objective study and reconsideration of the water rights in the Mono Basin is long overdue. The water law of California —which we conceive to be an integration including both the public trust doctrine and the board-administered appropriative rights system—permits such a reconsideration; the values underlying that integration require it.

**\*\*713 [2]** With regard to the secondary issue of exhaustion of administrative remedies, the powers, experience, and expertise of the Water Board all argue in favor of granting that agency primary jurisdiction. Long established precedent, however, declares that **\*\*\*350** courts have concurrent jurisdiction in water right controversies. The Legislature, instead of overturning that precedent, has implicitly acknowledged its vitality by providing a procedure under which the courts can refer water rights disputes to the water board as referee. We therefore conclude that the courts may continue to exercise concurrent jurisdiction, but note that in cases where the board's experience or expert knowledge may be useful the courts should not hesitate to seek such aid.

1. Background and history of the Mono Lake litigation.

DWP supplies water to the City of Los Angeles. Early in this century, it became clear that the city's anticipated needs would exceed the water available from local sources, and so in 1913 the city constructed an aqueduct to carry water from the Owens River 233 miles over the Antelope-Mojave plateau into the coastal plain and thirsty city.

**\*427** The city's attempt to acquire rights to water needed by local farmers met with fierce, and at times violent, opposition. (See generally County of Inyo v. Public Utilities Com. (1980) 26 Cal.3d 154, 156¬157, 161 Cal.Rptr. 172, 604 P.2d 566; Kahrl, Water and Power: The Conflict Over Los Angeles' Water Supply in the Owens Valley (1982).) But when the Owens Valley War" was over, virtually all the waters of the Owens River and its tributaries flowed south to Los Angeles. Owens Lake was transformed into an alkali flat.3

The city's rapid expansion soon strained this new supply, too, and prompted a search for water from other regions. The Mono Basin was a predictable object of this extension, since it lay within 50 miles of the natural origin of Owens River, and thus could easily be integrated into the existing aqueduct system.

After purchasing the riparian rights incident to Lee Vining, Walker, Parker and Rush Creeks, as well as the riparian rights pertaining to Mono Lake,4 the city applied to the Water Board in 1940 for permits to appropriate the waters of the four tributaries. At hearings before the board, various interested individuals protested that the city's proposed appropriations would lower the surface level of Mono Lake and thereby impair its commercial, recreational and scenic uses.

The board's primary authority to reject that application lay in a 1921 amendment to the Water Commission Act of 1913, which authorized the board to reject an application "when in its judgment the proposed appropriation would not best conserve the public interest." (Stats. 1921, ch. 329, § 1, p. 443, now codified as Wat.Code, § 1255.) 5 The 1921 enactment, however, also "declared to be the established policy of this state that the use of water for domestic purposes is the highest use of water" (id., now codified as Wat.Code, § 1254), and directed the Water Board to be guided by this declaration of policy. Since DWP sought water for domestic use, the board concluded that it had to grant the application notwithstanding **\*\*714** the harm to public trust uses of Mono Lake. 6

**\*\*\*351 \*428** The board's decision states that [i]t is indeed unfortunate that the City's proposed development will result in decreasing the aesthetic advantages of Mono Basin but there is apparently nothing that this office can do to prevent it. The use to which the City proposes to put the water under its Applications ... is defined by the Water Commission Act as the highest to which water may be applied and to make available unappropriated water for this use the City has, by the condemnation proceedings described above, acquired the littoral and riparian rights on Mono Lake and its tributaries south of Mill Creek. This office therefore has no alternative but to dismiss all protests based upon the possible lowering of the water level in Mono Lake and the effect that the diversion of water from these streams may have upon the aesthetic and recreational value of the Basin." (Div.Wat. Resources Dec. 7053, 7055, 8042 & 8043 (Apr. 11, 1940), at p. 26, italics added.) 7

By April of 1941, the city had completed the extension of its aqueduct system into the Mono Basin by construction of certain conduits, reservoirs at Grant and Crowley Lakes, and the Mono Craters Tunnel from the1 Mono Basin to the Owens River. In the 1950's, the city constructed hydroelectric power plants along the system to generate electricity from the energy of the appropriated water as it flowed downhill into the Owens Valley.

Between 1940 and 1970, the city diverted an average of 57,067 acre-feet of water per year from the Mono Basin. The impact of these diversions on Mono Lake was clear and immediate: the lake's surface level receded at an average of 1.1 feet per year.

In June of 1970, the city completed a second aqueduct designed to increase the total flow into the aqueduct by 50 percent. 8 Between 1970 and I980, the city **\*429** diverted an average of 99,580 acre-feet per year from the Mono Basin. By October of 1979, the lake had shrunk from its prediversion area of 85 square miles to an area of 60.3 square miles. Its surface level had dropped to 6,373 feet above sea level, 43 feet below the prediversion level. 9

**\*\*715** No party seriously disputes the facts set forth above. However, the parties hotly **\*\*\*352** dispute the projected effects of future diversions on the lake itself, as well as the indirect effects of past, present and future diversions on the Mono Basin environment.

DWP expects that its future diversions of about 100,000 acre-feet per year will lower the lake's surface level another 43 feet and reduce its surface area by about 22 square miles over the next 80 to 100 years, at which point the lake will gradually approach environmental equilibrium (the point at which inflow from precipitation, groundwater and nondiverted tributaries equals outflow by evaporation and other means). At this point, according to DWP, the lake will stabilize at a level 6,330 feet above the sea's, with a surface area of approximately 38 square miles. Thus, by DWP's own estimates, unabated diversions will ultimately produce a lake that is about 56 percent smaller on the surface and 42 percent shallower than its natural size.

Plaintiffs consider these projections unrealistically optimistic. They allege that, 50 years hence, the lake will be at least 50 feet shallower than it now is, and hold less than 20 percent of its natural volume. Further, plaintiffs fear that "the lake will not stabilize at this level," but "may continue to reduce in size until it is dried up." Moreover, unlike DWP, plaintiffs believe that the lake's gradual recession indirectly causes a host of adverse environmental impacts. Many of these alleged impacts are related to an increase in the lake's salinity, caused by the decrease in its water volume.

As noted above, Mono Lake has no outlets. The lake loses water only by evaporation and seepage. Natural salts do not evaporate with water, but are left behind. Prior to commencement of the DWP diversions, this naturally rising salinity was balanced by a constant and substantial supply of fresh water from the tributaries. Now, however, DWP diverts most of the fresh water inflow. The resultant imbalance between inflow and outflow not only diminishes the lake's size, but also drastically increases its salinity.

**\*430** Plaintiffs predict that the lake's steadily increasing salinity, if unchecked, will wreak havoc throughout the local food chain. They contend that the lake's algae, and the brine shrimp and brine flies that feed on it, cannot survive the projected salinity increase. To support this assertion, plaintiffs point to a 50 percent reduction in the shrimp hatch for the spring of 1980 and a startling 95 percent reduction for the spring of 1981. These reductions affirm experimental evidence indicating that brine shrimp populations diminish as the salinity of the water surrounding them increases. (See Task Force Report at pp. 20-21.) DWP admits these substantial reductions, but blames them on factors other than salinity.

DWP's diversions also present several threats to the millions of local and migratory birds using the lake. First, since many species of birds feed on the lakes brine shrimp, any reduction in shrimp population allegedly caused by rising salinity endangers a major avian food source. The Task Force Report considered it "unlikely that any of Mono Lake's major bird species ... will persist at the lake if populations of invertebrates disappear." (Task Force Report at p. 20.) Second, the increasing salinity makes it more difficult for the birds to maintain osmotic equilibrium with their environment.10

**\*\*716** The California gull is especially endangered, both by the increase in salinity and by loss of nesting sites. Ninety-five percent of this state's gull population and 25 percent of the total species population nests at the lake. (Take Force Report at p. 21.) Most of the gulls nest on islands in the lake**. \*\*\*353** As the lake recedes, land between the shore and some of the islands has been exposed, offering such predators as the coyote easy access to the gull nests and chicks. In 1979, coyotes reached Negrit Island, once the most popular nesting site, and the number of gull nests at the lake declined sharply. In 1981, 95 percent of the hatched chicks did not survive to maturity. Plaintiffs blame this decline and alarming mortality rate on the predator access created by the land bridges; DWP suggests numerous other causes, such as increased ambient temperatures and human activities, and claims that the joining of some islands with the mainland is offset by the emergence of new islands due to the lake's recession. Plaintiffs allege that DWP's diversions adversely affect the human species and its activities as well. First, as the lake recedes, it has exposed more than **\*431** 18,000 acres of lake bed composed of very fine silt which, once dry, easily becomes airborne in winds. This silt contains a high concentration of alkali and other minerals that irritate the mucous membranes and respiratory systems of humans and other animals. (See Task Force Report at p. 22.) While the precise extent of this threat to the public health has yet to be determined, such threat as exists can be expected to increase with the exposure of additional lake bed. DWP, however, claims that its diversions neither affect the air quality in Mono Basin nor present a hazard to human health. Furthermore, the lake's recession obviously diminishes its value as an economic, recreational, and scenic resource. Of course, there will be less lake to use and enjoy. The declining shrimp hatch depresses a local shrimping industry. The rings of dry lake bed are difficult to traverse on foot, and thus impair human access to the lake, and reduce the lake's substantial scenic value. Mono Lake has long been treasured as a unique scenic, recreational and scientific resource (see, e.g., City of Los Angeles v. Aitken, supra, 10 Cal.App.2d 460,.462-463, 52 P.2d 585; Task Force Report at pp. 22-24), but continued diversions threaten to turn it into a desert wasteland like the dry bed of Owens Lake.

To abate this destruction, plaintiffs filed suit for injunctive and declaratory relief in the Superior Court for Mono County on May 21, 1979. 11

DWP moved to change venue. When the court granted the motion and transferred the case to Alpine County, DWP sought an extraordinary writ to bar this transfer. The writ was denied, and the Superior Court for Alpine County set a tentative trial date for March of 1980.

In January of that year, DWP cross-complained against 117 individuals and entities claiming water rights in the Mono Basin. On February 20, 1980, one cross-defendant, the United States, removed the case to the District Court for the Eastern District of **\*\*717** California. On DWP's motion, the district court stayed its proceedings under the federal abstention doctrine 12 to allow resolution by **\*432** California courts of two important issues of California law: "1. What is the **\*\*\*354** interrelationship of the public trust doctrine and the California water rights system, in the context of the right of the Los Angeles Department of Water and Power (Department') to divert water from Mono Lake pursuant to permits and licenses issued under the California water rights system? In other words, is the public trust doctrine in this context subsumed in the California water rights system, or does it function independently of that system? Stated differently, can the plaintiffs challenge the Department's permits and licenses by arguing that those permits and licenses are limited by the public trust doctrine, or must the plaintiffs challenge the permits and licenses by arguing that the water diversions and uses authorized thereunder are not 'reasonable or beneficial' as required under the California water rights system? 2. Do the exhaustion principles applied in the water rights context apply to plaintiffs' action pending in the United States District Court for the Eastern District of California?" 13

**[3] [4]** In response to this order, plaintiffs filed a new complaint for declaratory relief in the Alpine County Superior Court. 14 On November 9, **\*433** 1981, that court **\*\*718** entered summary judgment against plaintiffs. Its notice of intended ruling stated that "[t]he California water rights system is **\*\*\*355** a comprehensive and exclusive system for determining the legality of the diversions of the City of Los Angeles in the Mono Basin.... The Public Trust Doctrine does not function independently of that system. This Court concludes that as regards the right of the City of Los Angeles to divert waters in the Mono Basin that the Public Trust Doctrine is subsumed in the water rights system of the state." With respect to exhaustion of administrative remedies, the superior court concluded that plaintiffs would be required to exhaust their remedy before the Water Board either under a challenge based on an independent public trust claim or one based on asserted unreasonable or nonbeneficial use of appropriated water.

Plaintiffs filed a petition for mandate directly with this court to review the summary judgment of the Alpine County Superior Court. We issued an alternative writ and set the case for argument.

2. The Public Trust Doctrine in California.

"By the law of nature these things are common to mankind—the air, running water, the sea and consequently the shores of the sea." (Institutes of Justinian **\*434** 2.1.1.) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns "all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people.' " (Colherg, Inc. v. State of California ex rel. Dept. Pub. Works (1967) 67 Ca1.2d 408, 416, 62 Cal.Rptr. 401, 432 P.2d 3.) 15

The State of California acquired title as trustee to such lands and waterways upon its admission to the union (City of Berkeley v. Superior Court (1980) 26 Ca1.3d 515, 521, 162 Cal.Rptr. 327, 606 P.2d 362 and cases there cited); from the earliest days (see Eldridge v. Cowell (1854) 4 Cal. 80, 87) its "719 judicial decisions have recognized and enforced the trust obligation. 16

Three aspects of the public trust doctrine require consideration in this opinion: the purpose of the trust; the scope of the trust, particularly as it applies to the nonnavigable tributaries of a navigable lake; and the powers and duties of the state as trustee of **\*\*\*356** the public trust. We discuss these questions in the order listed.

(a) The purpose of the public trust.

The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in Marks v. Whitney, supra, 6 Ca1.3d 251, 98 Cal.Rptr. 790, 491 P.2d 374, "[p]ublic trust easements [were] traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the state, and to use the bottom of the navigable waters for anchoring, standing, or other purposes." (P. 259, 98 Cal.Rptr. 790, 491 P.2d 374.) We went on, however, to hold that the traditional triad of uses—navigation, commerce and fishing—did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that "[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the state is not burdened with an outmoded classification favoring one mode of utilization over another. [Citation.] There is a growing public recognition that one of the most important public uses of the tidelands—a use encompassed within the tidelands trust—is the preservation of those lands in their natural state, so that they may **\*435** serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area." (Pp. 259-260, 98 Cal.Rptr. 790, 491 P.2d 374.)

Mono Lake is a navigable waterway. (City of Los Angeles v. Aitken, supra, 10 Cal.App.2d 460, 466, 52 P.2d 585.) It supports a small local industry which harvests brine shrimp for sale as fish food, which endeavour probably qualifies the lake as a "fishery" under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological—the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds. Under Marks v. Whitney, supra, 6 Ca1.3d 251, 98 Cal.Rptr. 790, 491 P.2d 374, it is clear that protection of these values is among the purposes of the public trust.

(b) The scope of the public trust.

**[5] [6]** Early English decisions generally assumed the public trust was limited to tidal waters and the lands exposed and covered by the daily tides (see Stevens, op. cit. supra, 14 U.C.Davis L.Rev. 195, 201 and authorities there cited); many American decisions, including the leading California cases, also concern tidelands. (See, e.g., City of Berkeley v. Superior Court (1980) 26 Cal.3d 515, 162 Cal.Rptr. 327, 606 P.2d 362; Marks v. Whitney supra, 6 Ca1.3d 251, 98 Cal.Rptr. 790, 491 P.2d 374; People v. California Fish Co. (1913) 166 Cal. 576, 138 P. 79.) It is, however, well settled in the United States generally and in California that the public trust is not limited by the reach of the tides, but encompasses all navigable lakes and streams. (See Illinois Central Railroad Co. v. Illinois (1892) 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018 (Lake Michigan); State of California v. Superior Court (Lyon) (1981) 29 Ca1.3d 210, 172 Cal.Rptr. 696, 625 P.2d 239 (Clear Lake ); State of California v. Superior Court (Fogerty) (1981) 29 Cal.3d 240, 172 Cal.Rptr. 713, 625 P.2d 256 (Lake Tahoe); People v. Gold Run D. & M. Co. (1884) 66 Cal. 138, 4 P. 1152 (Sacramento River); **\*\*720** Hitchings v. Del Rio Woods Recreation & Park Dist. (1976) 55 Cal.App.3d 560, 127 Cal.Rptr. 830 (Russian River).)17

Mono Lake is, as we have said, a navigable waterway. The beds, shores and waters of the lake are without question protected by the public trust. The streams diverted by DWP, however, are not themselves navigable. **\*\*\*357** Accordingly, we must address in this case a question not discussed in any recent public trust case— whether the public trust limits conduct affecting nonnavigable tributaries to navigable waterways.

**\*436** This question was considered in two venerable California decisions. The first, People v. Gold Run D. & M. Co. (1884) 66 Cal. 138, 4 P. 1152, is one of the epochal decisions of California history, a signpost which marked the transition from a mining economy to one predominately commercial and agricultural. The Gold Run Ditch and Mining Company and other mining operators used huge water cannon to wash gold-bearing gravel from hillsides; in the process they dumped 600,000 cubic yards of sand and gravel annually into the north fork of the American River. The debris, washed downstream, raised the beds of the American and Sacramento Rivers, impairing navigation, polluting the waters, and creating the danger that in time of flood the rivers would turn from their channels and inundate nearby lands.

Although recognizing that its decision might destroy the remains of the state’s gold mining industry, the court affirmed an injunction barring the dumping. The opinion stressed the harm to the navigability of the Sacramento River, "a great public highway, in which the people of the State have paramount and controlling rights." (P. 146, 4 P. 1152.) Defendant's dumping, the court said, was "an unauthorized invasion of the rights of the public to its navigation." (P. 147, 4 P. 1152.) Rejecting the argument that dumping was sanctioned by custom and legislative acquiescence, the opinion asserted that "the rights of the people in the navigable rivers of the State are paramount and controlling. The State holds the absolute right to all navigable waters and the soils under them.

The soil she holds as trustee of a public trust for the benefit of the people; and she may, by her legislature, grant it to an individual; but she cannot grant the rights of the people to the use of the navigable waters flowing over it...." (Pp. 151-152, 4 P. 1152.)

In the second decision, People v. Russ (1901) 132 Cal. 102, 64 P. 111, the defendant erected dams on sloughs which adjoined a navigable river. Finding the sloughs nonnavigable, the trial court gave judgment for defendant. We reversed, directing the trial court to make a finding as to the effect of the dams on the navigability of the river. "Directly diverting waters in material quantities from a navigable stream may be enjoined as a public nuisance. Neither may the waters of a navigable stream be diverted in substantial quantities by drawing from its tributaries ....If the dams upon these sloughs result in the obstruction of Salt River as a navigable stream, they constitute a public nuisance." (P. 106, 64 P. 111.)

DWP points out that the Gold Run decision did not involve diversion of water, and that in Russ there had been no finding of impairment to navigation. But the principles recognized by those decisions apply fully to a case in which diversions from a nonnavigable, tributary impair the public trust in a downstream river or lake. "If the public trust doctrine applies to constrain fills which destroy navigation and other public trust uses in navigable waters, it should equally apply to constrain the extraction of water that destroys navigation and **\*437** other public interests. Both actions result in the same damage to the public interest." (Johnson, Public Trust Protection for Stream Flows and Luke Levels (1980) 14 U.C.Davis L.Rev. 233, 257-258; see Dunning, The Significance of California's Public Trust Easement for California **\*\*721** Water Rights Law (1980) 14 U.C.Davis L.Rev. 357, 359-360.)

**[7]** We conclude that the public trust doctrine, as recognized and developed in California decisions, protects navigable waters18 from harm caused by diversion of nonnavigable tributaries.19

**\*\*\*358** (c) Duties and powers of the state as trustee. In the following review of the authority and obligations of the state as administrator of the public trust, the dominant theme is the state's sovereign power and duty to exercise continued supervision over the trust. One consequence, of importance to this and many other cases, is that parties acquiring rights in trust property generally hold those rights subject to the trust, and can assert no vested right to use those rights in a manner harmful to the trust.

As we noted recently in City of Berkeley v. Superior Court, supra, 26 Cal.3d 515, 162 Cal.Rptr. 327, 606 P.2d 362, the decision of the United States Supreme Court in Illinois Central Railroad Company v. Illinois, supra, 146 U.S. 387, 13 S.Ct. 110, 36 L.td. 1018, "remains the primary authority even today, almost nine decades after it was decided." (26 Cal.3d 521, 162 Cal.Rptr. 327, 606 P.2d 362.) The Illinois Legislature in 1886 had granted the railroad in fee simple 1,000 acres of submerged lands, virtually the entire Chicago waterfront. Four years later it sought to revoke that grant. The Supreme Court upheld the revocatory legislation. Its opinion explained that lands under navigable waters conveyed to private parties for wharves, docks, and other structures in furtherance of trust purposes could be granted free of the trust because the conveyance is consistent with the purpose of the trust. But the legislature, it held, did not have the power to convey the entire city waterfront free of trust, thus barring all future legislatures from protecting the public interest. The opinion declares that: "A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation. The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, ... than it can abdicate its police powers in the administration of government and the preservation of **\*438** the peace. In the administration of government the use of such powers may for a limited period be delegated to a municipality or other body, but there always remains with the State the right to revoke those powers and exercise them in a more direct manner, and one more conformable to its wishes. So with trusts connected with public property, or property of a special character, like lands under navigable waterways, they cannot be placed entirely beyond the direction and control of the State." (146 U.S. pp. 453-454, 13 S.Ct. p. 118.)

Turning to the Illinois Central grant, the court stated that: "Any grant of the kind is necessarily revocable, and the exercise of the trust by which the property was held by the State can be resumed at any time. Undoubtedly there may be expenses incurred in improvements made under such a grant which the State ought to pay; but, be that as it may, the power to resume the trust whenever the State judges best is, we think, incontrovertible.... The ownership of the navigable waters of the harbor and of the lands under them is a subject of public concern to the whole people of the State. The trust with which they are held, therefore, is governmental and cannot be alienated, except in those instances mentioned **\*\*722** of parcels used in the improvement of the interest thus held, or when parcels can be disposed of without detriment to the public interest in the lands and waters remaining." (Pp. 455456, 13 S.Ct. p. 119.)

The California Supreme Court indorsed the Illinois Central principles in People v. California Fish Co. (1913) 166 Cal. 576, 138 P. 79. California Fish concerned title to about 80,000 acres of tidelands conveyed by **\*\*\*359** state commissioners pursuant to statutory authorization. The court first set out principles to govern the interpretation of statutes conveying that property: "[S]tatutes purporting to authorize an abandonment of ... public use will be carefully scanned to ascertain whether or not such was the legislative intention, and that intent must be clearly expressed or necessarily implied. It will not be implied if any other inference is reasonably possible. And if any interpretation of the statute is reasonably possible which would not involve a destruction of the public use or an intention to terminate it in violation of the trust, the courts will give the statute such interpretation." (Id., at p. 597, 138 P. 79.) Applying these principles, the court held that because the statute in question and the grants pursuant thereto were not made for trust purposes, the grantees did not acquire absolute title; instead, the grantees "own the soil, subject to the easement of the public for the public uses of navigation and commerce, and to the right of the state, as administrator and controller of these public uses and the public trust therefor, to enter upon and possess the same for the preservation and advancement of the public uses and to make such changes and improvements as may be deemed advisable for those purposes." (Id., at pp. 598-599, 138 P. 79.)

Finally, rejecting the claim of the tideland purchasers for compensation, the court stated they did not lose title, but retained it subject to the public trust. (See \***439** pp. 599-601.) While the state may not "retake the absolute title without compensation" (p. 599, 138 P. 79), it may without such payment erect improvements to further navigation and take other actions to promote the public trust. 20

Boone v. Kingsbury (1928) 206 Cal. 148, 273 R 797, presents another aspect of this matter. The Legislature authorized the Surveyor-General to lease trust lands for oil drilling. Applying the principles of Illinois Central, the court upheld that statute on the ground that the derricks would not substantially interfere with the trust. Any licenses granted by the statute, moreover, remained subject to the trust: "The state may at any time remove [the] structures ..., even though they have been erected with its license or consent, if it subsequently determines them to be purprestures or finds that they substantially interfere with navigation or commerce." (Pp. 192-193, 273 P. 797.) 21

**\*\*\*360 \*\*723** Finally, in our recent decision in City of Berkeley v. Superior Court, supra, 26 Ca1.3d 515, 162 Cal.Rptr. 327, 606 P.2d 362, we considered whether deeds executed by the Board of Tidelands Commissioners pursuant to an 1870 act conferred title free of the trust. Applying the principles of earlier decisions, we held that the grantees' title was subject to the trust, both because the Legislature had not made clear its intention to authorize a conveyance free of the trust and because the 1870 act and the conveyances under it were not intended to further trust purposes. **\*440** Once again we rejected the claim that establishment of the public trust constituted a taking of property for which compensation was required: "We do not divest anyone of title to property; the consequence of our decision will be only that some landowners whose predecessors in interest acquired property under the 1870 act will, like the grantees in California Fish, hold it subject to the public trust." (P. 532, 162 Cal.Rptr. 327, 606 P.2d 362.)22

**[8] [9]** In summary, the foregoing cases amply demonstrate the continuing power of the state as administrator of the public trust, a power which extends to the revocation of previously granted rights or to the enforcement of the trust against lands long thought free of the trust (see City of Berkeley v. Superior Court, supra, 26 Ca1.3d 515, 162 Cal.Rptr. 327, 606 P.2d 362). Except for those rare instances in which a grantee may acquire a right to use former trust property free of trust restrictions, the grantee holds subject to the trust, and while he may assert a vested right to the servient estate (the right of use subject to the trust) and to any improvements he erects, he can claim no vested right to bar recognition of the trust or state action to carry out its purposes.

Since the public trust doctrine does not prevent the state from choosing between trust uses (Colberg, Inc. v. State of California, supra, 67 Cal.2d 408, 419, 62 Cal.Rptr. 401, 432 P.2d 3; County of Orange v. Heim (1973) 30 Cal.App.3d 694, 707, 106 Cal.Rptr. 825), the Attorney General of California, seeking to maximize state power under the trust, argues for a broad concept of trust uses. In his view, "trust uses" encompass all public uses, so that in practical effect the doctrine would impose no restrictions on the state's ability to allocate trust property. We know of no authority which supports this view of the public trust, except perhaps the dissenting opinion in Illinois Central R. Co. v. Illinois, supra, 146 U.S. 387, 13 S.Ct. 110, 36 L.Ed. 1018. Most decisions and commentators assume that "trust uses" relate to uses and activities in the vicinity of the lake, stream, or tidal reach at issue (see, e.g., City of Los Angeles v. Aitken, supra, 10 Cal.App.2d 460, 468-469; State of Cal. ex rel. State Lands Com. v. County of Orange, supra, 134 Cal.App.3d 20, 184 Cal.Rptr. 423; Sax, \*\*724 op. cit. supra, 68 Mich.L.Rev. 471, 542.) The tideland cases make this point clear; after City of Berkeley v. Superior Court, supra. 26 Cal.3d 515, 162 Cal.Rptr. 327, 606 P.2d 362, no one could contend that the state could grant tidelands free of the trust merely because the grant served some public purpose, such as increasing tax revenues, or because the grantee might put the property to a commercial use.

**\*441 [10]** Thus, the public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation **\*\*\*361** of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust.

3. The California Water Rights System.

“It is laid down by our law writers, that the right of property in water is usufructuary, and consists not so much of the fluid itself as the advantage of its use." (Eddy v. Simpson (1853) 3 Cal. 249, 252.) Hence, the cases do not speak of the ownership of water, but only of the right to its use. (Rancho Santa Margarita v. Vail (1938) 11 Cal.2d 501, 554-555, 81 P.2d 533; see generally Hutchins, The Cal.Law of Water Rights (1956) pp. 36-38; 1 Rogers & Nichols, Water for Cal. (1967) p. 191.) Accordingly, Water Code section 102 provides that "WI water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law."

Our recent decision in People v. Shirokow (1980) 26 Cal.3d 301, 162 Cal.Rptr. 30, 605 P.2d 859, described the early history of the appropriative water rights system in California. We explained that "California operates under the so-called dual system of water rights which recognizes both the appropriation and the riparian doctrines. (Hutchins, The California Law of Water Rights, supra, at pp. 40, 55-67.) The riparian doctrine confers upon the owner of land contiguous to a watercourse the right to the reasonable and beneficial use of water on his land. The appropriation doctrine contemplates the diversion of water and applies to 'any taking of water for other than riparian or overlying uses.' (City of Pasadena v. City of Alhambra (1949) 33 Cal.2d 908, 925 [207 P.2d 17], and cases there cited.) ...”

"Common law appropriation originated in the gold rush days when miners diverted water necessary to work their placer mining claims. The miners adopted among themselves the priority rule of 'first in time, first in right,' and California courts looked to principles of equity and of real property law to adjudicate conflicting claims. [Citations.] Thus it was initially the law in this state that a person could appropriate water merely by diverting it and putting it to use.

**\*442** "The first appropriation statute was enacted in 1872 and provided for initiation of the appropriative right by the posting and recordation of notice. (Civ.Code, §§ 1410-1422.) The nonstatutory method retained its vitality and appropriative rights were acquired by following either procedure. [Citation.]

"Both methods were superseded by the 1913 enactment of the Water Commission Act, which created a Water Commission and provided a procedure for the appropriation of water for useful and beneficial purposes. The main purpose of the act was. 'to provide an orderly method for the appropriation of [unappropriated] waters.' (Temescal Water Co. v. Dept. Public Works (1955) 44 Ca1.2d 90, 95 [280 P.2d 1]; Bloss v. Rahilly (1940) 16 Cal.2d 70, 75 [104 P.2d 1049].) By amendment in 1923, the statutory procedure became the exclusive means of acquiring appropriative rights. (§ 1225, Stats.1923, ch. 87.) The provisions of the Water Commission Act, as amended from time to time, have been codified in Water Code, divisions 1 and 2. (Stats.1943, ch. 368.)" (Pp. 307-308, 162 Cal.Rptr. 30, 605 P.2d 859, fns. omitted.)

**\*\*725** The role of the Water Board under the 1913 Act, as Shirokow indicated, was a very limited one. The only water subject to appropriation under the act was water which was not then being applied to useful and beneficial purposes, and was not otherwise appropriated. (See Wat.Code, §1201, based upon Stats.1913, ch. 586, p. 1017, § 11.) Thus, appropriative rights acquired under the act were inferior to pre-existing rights such as riparian rights, pueblo rights, and prior prescriptive appropriations. (See City of San Diego v. Cuyamaca Water Co. (1.913) 209 Cal. 105, 287 P. 475.)

Judicial decisions confirmed this limited role. According to the courts, the function of the Water Board was restricted to determining **\*\*\*362** if unappropriated water was available; if it was, and no competing appropriator submitted a claim, the grant of an appropriation was a ministerial act. (Tulare Water Co. v. State Water Com. (1921) 187 Cal. 533, 202 P. 874.)

In 1926, however, a decision of this court led. to a constitutional amendment which radically altered water law in California and led to an expansion of the powers of the board. In Herminghaus v. South California Edison Co. (1926) 200 Cal. 81, 252 P. 607, we held not only that riparian rights took priority over appropriations authorized by the Water Board, a point which had always been clear, but that as between the riparian and the appropriator, the former's use of water was not limited by the doctrine of reasonable use. (Pp. 100-101, 252 P. 607.) That decision led to a constitutional amendment which abolished the right of a riparian to devote water to unreasonable uses, and established the doctrine of reasonable use as an overriding feature of California water law. (See Fullerton v. State Water Resources Control Bd. (1979) 90 Cal.App.3d 590, 596, 153 Cal.Rptr. 518, and cases there cited.)

**\*443** Article X, section 2 (enacted in 1928 as art. XIV, § 3) reads in pertinent part as follows: "It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water.... This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained."

**[11]** This amendment does more than merely overturn Herminghaus—it establishes state water policy. All uses of water, including public trust uses, must now conform to the standard of reasonable use. (See Peabody v. City of Vallejo (1935) 2 Cal.2d 351, 367, 40 P.2d 486; People ex rel. State Water Resources Control Bd. v. Forta (1976) 54 Cal.App.3d 743, 749-750, 126 Cal.Rptr. 851.) 23

The 1928 amendment did not declare whether the in-stream uses protected by the public trust could be considered reasonable and beneficial uses. In a 1936 case involving Mono Lake, however, the court squarely rejected DWP's argument that use of stream water to maintain the lake's scenic and recreational values violated the constitutional provision barring unreasonable uses. (County of Los Angeles v. Aitken, **\*\*726** supra, I0 Cal.App.2d 460, 52 P.2d 685.) The point is now settled by statute, Water Code section 1243 providing that "[t]he use of water for recreation and preservation and enhancement of fish and wildlife resources is a beneficial use of water." (See also Cal Trout, Inc. v. State Water Resources Control Bd. (1979) 90 Cal.App.3d 816, 821, 153 Cal.Rptr. 672.)

The 1928 amendment itself did not expand the authority of the Water Board. The board remained, under controlling judicial decisions, a ministerial body with the limited task of determining priorities between claimants seeking to appropriate unclaimed water. More recent statutory and judicial developments, however, have greatly enhanced the power of the Water Board to oversee the **\*444** reasonable use of water and, in the process, made clear its authority to weigh and protect public trust values.

**\*\*\*363** In 1955, the Legislature declared that in acting on appropriative applications, "the board shall consider the relative benefit to be derived from (1) all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes .... The board may subject such appropriations to such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest, the water sought to be appropriated." (Wat.Code, § 1257.) In 1959 it stated that "[t]he use of water for recreation and preservation and enhancement of fish and wildlife resources is a beneficial use of water." (Wat.Code, § 1243.) Finally in 1969 the

Legislature instructed that determining the amount of water available for appropriation, the board shall take into account, whenever it is in the public interest, the amounts of water needed to remain in the source for protection of beneficial uses." (Wat.Code, § 1243.5.)

Judicial decisions have also expanded the powers of the Water Board. In Temescal Water Co. v. Dept. Public Works (1955) 44 Cal.2d 90, 280 P.2d 1, we rejected the holding of Tulare Water Co. v. State Water Com., supra, 187 Cal. 533, 202 P. 874, and held that the decision of the board to grant an application to appropriate water was a quasi-judicial decision, not a ministerial act. In People v. Shirokow„supra, 26 Cal.3d 301, 162 Cal.Rptr. 30, 605 P.2d 859, we held that the board could enjoin diversion of water by the owner of a prescriptive right who refused to comply with water conservation programs, even though his right was not based on a board license.

Our decision rested on the legislative intent "to vest in the board expansive powers to safeguard the scarce water resources of the state." (P. 309, 162 Cal.Rptr. 30, 605 P.2d 859; see also Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist., supra, 26 Cal.3d 183, 194-195, 161 Cal.Rptr. 466, 605 P.2d 1; In re Waters of Long Valley Creek Stream System (1979) 25 Cal.3d 339, 158 Cal.Rptr. 350, 599 P.2d 656.) Although the courts have refused to allow the board to appropriate water for in-stream uses, even those decisions have declared that the board has the power and duty to protect such uses by withholding water from appropriation. (Fullerton v. State Water Resources Control Bd, supra, 90 Cal.App.3d 590, 603-604, 153 Cal.Rptr. 518; Cal. Trout, Inc. v. State Water Resources Control Bd., supra, 90 Cal.App.3d 816, 821, 153 Cal.Rptr. 672.)

**[12]** Thus, the function of the Water Board has steadily evolved from the narrow role of deciding priorities between competing appropriators to the charge of comprehensive planning and allocation of waters. This change necessarily affects the board's responsibility with respect to the public trust. The board of limited powers of 1913 had neither the power nor duty to consider interests protected by the public trust; the present board, in undertaking planning and allocation of water resources, is required by statute to take those interests into account.

**\*445** 4. The relationship between the Public Trust Doctrine and the California Water Rights System.

As we have seen, the public trust doctrine and the appropriative water rights system **\*\*727** administered by the Water Board developed independently of each other. Each developed comprehensive rules and principles which, if applied to the full extent of their scope, would occupy the field of allocation of stream waters to the exclusion of any competing system of legal thought. Plaintiffs, for example, argues that the public trust is antecedent to and thus limits all appropriative water rights, an argument which implies that most appropriative water rights in California were acquired and are presently being used unlawfully. 24

Defendant DWP, on the other hand, argues that the public trust doctrine as to stream **\*\*\*364** waters has been "subsumed" into the appropriative water rights system and, absorbed by that body of law, quietly disappeared; according to DWP, the recipient of a board license enjoys a vested right in perpetuity to take water without concern for the consequences to the trust.

We are unable to accept either position. In our opinion, both the public trust doctrine and the water rights system embody important precepts which make the law more responsive to the diverse needs and interests involved in the planning and allocation of water resources. To embrace one system of thought and reject the other would lead to an unbalanced structure, one which would either decry as a breach of trust appropriations essential to the economic development of this state, or deny any duty to protect or even consider the values promoted by the public trust. Therefore, seeking an accommodation which will make use of the pertinent principles of both the public trust doctrine and the appropriative water rights system, and drawing upon the history of the public trust and the water rights system, the body of judicial precedent, and the views of expert commentators, we reach the following conclusions:

**[13]** a. The state as sovereign retains continuing supervisory control over its navigable waters and the lands beneath those waters. This principle, fundamental to the concept of the public trust, applies to rights in flowing waters as well as to rights in tidelands and lakeshores; it prevents any party from acquiring a vested right to appropriate water in a manner harmful to the interests protected by the public trust. 25

**\*446** **[14]** b. As a matter of current and historical necessity, the Legislature, acting directly or through an authorized agency such as the Water Board, has the power to grant usufructuary licenses that will permit an appropriator to take water from flowing streams and use that water in a distant part of the state, even though this taking does not promote, and may unavoidably harm, the trust uses at the source stream. The population and economy of this state depend upon the appropriation of vast quantities of water for uses unrelated to in-stream trust values.26

California's Constitution (see art. X, § 2), its statutes (see Wat.Code, §§ 100, 104), decisions (see, e.g., Waterford I. Dist. v. Turlock I Dist. (1920) 50 Cal.App. 213, 220, 194 P. 757), and commentators (e.g., Hutchins, The Cal.Law of Water Rights, op. cit. supra, p. 11) all emphasize the need to make efficient use of California's limited water resources: all **\*\*728** recognize, at least implicitly, that efficient use requires diverting water from in-stream uses. Now that the economy and population centers of this state have developed in reliance upon appropriated water, it would be disingenuous to hold that such appropriations are and have always been improper to the extent that they harm public trust uses, and can be justified only upon theories of reliance or estoppel.

**[15]** c. The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. 27

Just as the history of **\*\*\*365** this state shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. (See Johnson, op. cit. supra, 14 U.C. Davis L.Rev. 233, 256-257; Robie, Some Reflections on Environmental Considerations in Water Rights Administration (1972), 2 Ecology L.Q. 695, 710-711; Comment, op. cit. supra, 33 Hastings L.J. 653, 654.) As a matter of practical necessity the state may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the state must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see **\*447** United Plainsmen v. N.D. State Water Con. Commission (N.D.1976) 247 N.W.2d 457, 462-463), and to preserve, so far as consistent with the public interest, the uses protected by the trust.

**[16] [17]** Once the state has approved an appropriation, the public trust imposes a duty of continuing supervision over the taking and use of the appropriated water. In exercising its sovereign power to allocate water resources in the public interest, the state is not confined by past allocation decisions which may be incorrect in light of current knowledge or inconsistent with current needs.

**[18]** The state accordingly has the power to reconsider allocation decisions even though those decisions were made after due consideration of their effect on the public trust. 28 The case for reconsidering a particular decision, however, is even stronger when that decision failed to weigh and consider public trust uses. In the case before us, the salient fact is that no responsible body has ever determined the impact of diverting the entire flow of the Mono Lake tributaries into the Los Angeles Acqueduct. This is not a case in which the Legislature, the Water Board, or any judicial body has determined that the needs of Los Angeles outweigh the needs of the Mono Basin, that the benefit gained is worth the price. Neither has any responsible body determined whether some lesser taking would better balance the diverse interests. 29 Instead, **\*\*729** DWP acquired rights to the entire flow in 1940 from a water board which believed it lacked both the power and the duty to protect the Mono Lake environment, and continues to exercise those rights in apparent disregard for the resulting damage to the scenery, ecology, and human uses of Mono Lake.

It is clear that some responsible body ought to reconsider the allocation of the waters of the Mono Basin. 30

No vested rights bar such reconsideration. We **\*448** recognize **\*\*\*366** the substantial concerns voiced by Los

Angeles—the city's need for water, its reliance upon the 1940 board decision, the cost both in terms of money and environmental impact of obtaining water elsewhere. Such concerns must enter into any allocation decision. We hold only that they do not preclude a reconsideration and reallocation which also takes into account the impact of water diversion on the Mono Lake environment.

5. Exhaustion of Administrative Remedies.

On motion for summary judgment, the trial court held that plaintiffs must exhaust their administrative remedies before the Water Board prior to filing suit in superior court. Plaintiffs, supported on this point by DWP, contend that the courts and the board have concurrent jurisdiction over the merits of their claim, and thus that they had no duty to exhaust any administrative remedy before filing suit.

The first question we must face is whether plaintiffs had any Water Board remedy to exhaust. There appear to be two possible grounds upon which plaintiffs could initiate a board proceeding. First, they could claim that DWP was making an unreasonable use of water, in violation either of controlling constitutional and statutory provisions or of the terms of DWP's license. (See Cal.Admin.Code, tit. 23, § 764.10.) Plaintiffs, however, expressly disclaim any intent to charge unreasonable use, and announced instead their intent to found their action solely on the public trust doctrine, so this remedy is unavailable. The only alternative method of bringing the issue before the board is a proceeding invoking Water Code section 2501, which provides that "[t]he board may determine, in the proceedings provided for in this chapter, all rights to water of a stream system whether based upon appropriation, riparian right, or other basis of right." We recognize certain difficulties in applying this remedy to the present case. It is unclear whether a claim based on the public trust is a "water right" in the technical sense of that term. (See Dunning, op. cit. supra, 14 U.C. Davis L.Rev. 357, 383; cf. Fullerton v. State Water Resources Control Bd., supra, 90 Cal.App.3d 590, 604, 153 Cal.Rptr. 518.) Also, the relevant chapter of the Water Code refers to petitions filed by "claimants to water" (see, e.g., Wat.Code, § 2525); it is uncertain whether a person asserting the interest of the public trust would be considered a "claimant."

**\*449 \*\*730** In recent decisions, however, we have discerned a legislative intent to grant the Water Board a "broad," "open-ended," "expansive" authority to undertake comprehensive planning and allocation of water. resources. (In re Waters of Long Valley Creek Stream System (1979) 25 Cal.3d 339, 348-349, 350, fn. 5, 158 Cal.Rptr. 350, 599 P.2d 656; People v. Shirokow, supra, 26 Cal.3d 301, 309, 162 Cal.Rptr. 30, 605 P.2d 859.) Both cases emphasized the board's power to adjudicate all competing claims, even riparian claims (Long Beach ) and prescriptive claims (Shirokow ) which do not fall within the appropriative licensing system. Having construed section 2501 to give the board broad substantive powers—powers adequate to carry out the legislative mandate of comprehensive protection of water resources —it would be inconsistent to read that statute so narrowly that the board lacked jurisdiction to employ those powers.

**[19]** We therefore construe Water Code section 2501 to permit a person claiming **\*\*\*367** that a use of water is harmful to interests protected by the public trust to seek a board determination of the allocation of water in a stream system, a determination which may include reconsideration of rights previously granted in that system.

Under this interpretation of section 2501, plaintiffs have a remedy before the Water Board.

Must plaintiffs exhaust this administrative remedy before filing suit in superior court? A long line of decisions indicate that remedies before the Water Board are not exclusive, but that the courts have concurrent original jurisdiction.

As we observed earlier in this opinion (see ante, pp. 362-363 of 189 Cal.Rptr., pp. 725-726 of 658 P.2d), for much of its history the Water Board was an agency of limited scope and power. Many water right disputes, such as those involving riparian rights, pueblo rights, and prescriptive rights, did not fall within the jurisdiction of the board. But even in cases which arguably came within the board's limited jurisdiction, the parties often filed directly in the superior court, which assumed jurisdiction and decided the case. (See, e.g., Allen v. California Water & Tel. Co. (1946) 29 Cal.2d 466, 176 P.2d 8.) All public trust cases cited in this opinion were filed directly in the courts. Thus, a 1967 treatise on California water law could conclude that "[g]enerally, the superior courts of California have original jurisdiction over water rights controversies ..." but in some cases must share concurrent jurisdiction with administrative bodies. (1 Rogers & Nichols, op. cit. supra, at p. 528.)

Although prior cases had assumed jurisdictional concurrency, we first discussed that question in our decision in Environmental Defense Fund, Inc. v. East Bay **\*450** Mun. Utility Dist. (1977) 20 Cal.3d 327, 142 Cal.Rptr. 904, 572 P.2d 1128 (EDF I ), and our later decision in the same case on remand from the United States Supreme Court, Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist., supra, 26 Cal.3d 183, 161 Cal.Rptr. 466, 605 P.2d I (EDF II ). Plaintiff in that case sued to enjoin performance of a contract for diversion of water from the American River on the ground that under the doctrine of reasonable use the utility district should instead use reclaimed waste water. Intervenor County of Sacramento claimed the diversion was an unreasonable use because the diversion point was too far upstream, and would deprive downstream users of the water.

In EDF I we held that the Legislature had intended to vest regulation of waste water reclamation in the Water Board because of the need for expert evaluation of the health and feasibility problems involved. We therefore concluded that the plaintiffs' superior court action to compel waste water reclamation was barred by failure to exhaust administrative remedies. (20 Cal.3d 327, 343-344, 142 Cal.Rptr. 904, 572 P.2d 1128.)

EDF I further held the intervener's claim concerning the diversion point was barred by federal preemption (p.340), but the United States Supreme Court vacated our decision and remanded for reconsideration **\*\*731** in light of California v. United States (1978) 438 U.S. 645, 98 S.Ct. 2985, 57 L.Ed.2d 1018. On remand, we found no federal preemption, and further held that intervener's claim was not defeated by failure to exhaust administrative remedies. Noting that "the courts [had] traditionally exercised jurisdiction of claims of unreasonable water use" (EDF II, 26 Ca1.3d 183, 199, 161 Cal.Rptr. 466, 605 P.2d 1), we stated that "[a]part from overriding considerations such as are presented by health and safety dangers involved in the reclamation of waste water, we are satisfied that the courts have concurrent jurisdiction with ... administrative agencies to enforce the self-executing provisions of article X, section 2." (P. 200, 161 Cal.Rptr. 466, 605 P.2d 1.) 31

**\*\*\*368** The present case involves the same considerations as those before us in the EDF cases. On the one hand, we have the board with experience and expert knowledge, not only in the intricacies of water law but in the economic and engineering problems involved in implementing water policy.32

The board, moreover, is charged with a duty of comprehensive planning, a function difficult to perform if some cases bypass board jurisdiction.

On the other hand, we **\*451** have an established line of authority declaring the concurrent jurisdiction of the courts, and reliance upon that authority by the plaintiffs.

We have seriously considered whether, in light of the broad powers and duties which the Legislature has conferred on the Water Board, we should overrule EDF II and declare that henceforth the board has exclusive primary jurisdiction in matters falling within its purview. We perceive, however, that the Legislature has chosen an alternative means of reconciling board expertise and judicial precedent. Instead of granting the board exclusive primary jurisdiction, it has enacted a series of statutes designed to permit state courts, and even federal courts, to make use of the experience and expert knowledge of the board.

Water Code section 2000 provides that "[i]n any suit brought in any court of competent jurisdiction in this State for determination of rights to water, the court may order a reference to the board, as referee, of any or all issues involved in the suit." Section 2001 provides alternatively that the court "may refer the suit to the board for investigation of and report upon any or all of the physical facts involved." Finally, recognizing that some water cases will be filed in or transferred to federal courts, section 2075 provides that "[i]n case suit is brought in a federal court for determination of the rights to water within, or partially within, this State, the board may accept a reference of such suit as master or referee for the court."

These statutes necessarily imply that the superior court has concurrent original jurisdiction in suits to determine water rights, for a reference to the board as referee or master would rarely if ever be appropriate in a case filed originally with the board. The court, however, need not proceed in ignorance, nor need it invest the time required to acquire the skills and knowledge **\*\*732** the board already possesses. When the case raises issues which should be considered by the board, the court may refer the case to the board. Thus the courts, through the exercise of sound discretion and the use of their reference powers, can substantially eliminate the danger that litigation will bypass the board's expert knowledge and frustrate its duty of comprehensive planning. 33

**\*452** 6. Conclusion

This has been a long and involved answer to the two questions posed by the federal **\*\*\*369** district court. In summarizing our opinion, we will essay a shorter version of our response.

The federal court inquired first of the interrelationship between the public trust doctrine and the California water rights system, asking whether the "public trust doctrine in this context [is] subsumed in the California water rights system, or ... function[s] independently of that system?" Our answer is -neither." The public trust doctrine and the appropriative water rights system are parts of an integrated system of water law. The public trust doctrine serves the function in that integrated system of preserving the continuing sovereign power of the state to protect public trust uses, a power which precludes anyone from acquiring a vested right to harm the public trust, and imposes a continuing duty on the state to take such uses into account in allocating water resources.

**[20]** Restating its question, the federal court asked: "[C]an the plaintiffs challenge the Department's permits and licenses by arguing that those permits and licenses are limited by the public trust doctrine, or must the plaintiffs... [argue] that the water diversions and uses authorized thereunder are not `reasonable or beneficial' as required under the California water rights system?" We reply that plaintiffs can rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono Basin.

**[21]** The federal court's second question asked whether plaintiffs must exhaust an administrative remedy before filing suit. Our response is "No." The courts and the Water Board have concurrent jurisdiction in cases of this kind. If the nature or complexity of the issues indicate that an initial determination by the board is appropriate, the courts may refer the matter to the board.

This opinion is but one step in the eventual resolution of the Mono Lake controversy. We do not dictate any particular allocation of water. Our objective is to resolve a legal conundrum in which two competing systems of thought—the public trust doctrine and the appropriative water rights system—existed independently of each other, espousing principles which seemingly suggested opposite results. We hope by integrating these two doctrines to clear away the legal barriers which have so far prevented either the Water Board or the courts from taking a new and objective look at the water resources of the Mono Basin. The human and environmental uses of Mono Lake—uses protected by the public trust doctrine—deserve to be taken into account. Such uses should not be destroyed because the state mistakenly thought itself powerless to protect them.

**\*453** Let a peremptory writ of mandate issue commanding the Superior Court of Alpine County to vacate its judgment in this action \*\*733 and to enter a new judgment consistent with the views stated in this opinion. 34

BIRD, C.J., and MOSK, KAUS and REYNOSO, JJ., concur.

KAUS, Justice, concurring.

I concur in the court's opinion. While i share Justice Richardson's reservations on the issue of concurrent

jurisdiction, I doubt that the problem can be solved by making the question of exclusive board jurisdiction depend on such rather vague tests as those announced in EDF I and EDF II. If a majority of the court were inclined to reconsider the issue, I would respectfully suggest that the exclusive jurisdiction of the board should be broadened to include disputes such as the present one. This would, obviously, involve the overruling of certain precedents on which plaintiffs justifiably \*\*\*370 relied. The new rule should, therefore, not be applicable to them.

Since, however, the requisite majority interest in reconsidering the question of concurrent jurisdiction is lacking,

I join the court's opinion.

RICHARDSON, Justice, concurring and dissenting.

I concur with parts 1 through 4 of the majority opinion and with its analysis of the relationship between the public trust doctrine and the water rights system in this state. I respectfully dissent, however, from part 5 of the opinion wherein the majority holds that the courts and the California Water Resources Board (Water Board) have concurrent jurisdiction in cases of this kind. In my view, there are several compelling reasons for holding that the Water Board has exclusive original jurisdiction over the present dispute, subject of course to judicial review of its decision.

As the majority recognizes, the matter of concurrent jurisdiction involves the related issue of exhaustion of administrative remedies. It is well settled that where an administrative remedy is provided by statute, that remedy must be pursued and exhausted before the courts will act. (Albelleira v. District Court of Appeal (1941) 17 Ca1.2d 280, 292, 109 P.2d 942.) This doctrine applies to disputes regarding water appropriated pursuant to permits issued by the Water Board. (Temescal Water Co. v. Dept. Public Works (1955) 44 Ca1.2d 90, 106, 280 P.2d l.) The majority concedes that plaintiffs had an administrative remedy available to them in the present case, namely, a proceeding under Water Code section 2501 "to seek a board determination of the allocation of water in

a stream system," including "reconsideration of rights previously granted in that system." (Ante, p. 367 of 189

Cal.Rptr., p. 730 of 658 P.2d.) Nevertheless, the majority **\*454** concludes that prior cases of this court, together with certain statutory provisions permitting (but not requiring) reference of water disputes to the Water Board, both excuse plaintiffs' failure to exhaust their administrative remedy and allow the courts to exercise concurrent jurisdiction in cases of this kind. I reach a contrary conclusion.

As the majority explains (ante, p. 36'7 of 189 Cal.Rptr., p. 730 of 658 P.2d), earlier cases which held that the court shared concurrent jurisdiction with the Water Board were decided at a time when the board "was an agency of limited scope and power," without authority to consider many water right issues such as the application of the public trust. Indeed, the Water Board in the present case itself had assumed that it lacked jurisdiction over public trust issues; the board's 1940 decision granting appropriative permits reflects that assumption. (Ante, pp. 350-351 of 189 Cal.Rptr., pp. 713-714 of 658 P.2d.) If, as the majority now holds, the Water Board's jurisdiction extends to public trust issues, it is entirely proper to apply the exhaustion of **\*\*734** remedies principle and insist that plaintiffs seek reconsideration from the board before litigating the matter in court.

The majority relies primarily upon Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist. (1980) 26 Ca1.3d 183, 198-200, 161 Cal.Rptr. 466, 605 P.2d 1 (EDF II ), but our language in that case supports the view that, in cases of the kind now before us, the board has exclusive jurisdiction. In EDF II, we held that "Apart from overriding considerations," the courts have concurrent jurisdiction with the Water Board to enforce the self-executing constitutional proscriptions against unreasonable water use and diversion. (P. 200, 161 Cal.Rptr. 466, 605 P.2d 1.) Most of the "overriding considerations" referred to in EDF II are present here.

Thus, in that case we observed that waste water reclamation disputes require consideration of such complex and "transcendent" factors as the potential danger to public health and safety and the feasibility of reclamation, factors which would require deference to "appropriate administrative agencies," **\*\*\*371** such as the Water Board, and would foreclose concurrent court jurisdiction. (P. 199, 161 Cal.Rptr. 466, 605 P.2d 1; see also Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist. (1977) 20 Ca1.3d 327, 343¬344, 142 Cal.Rptr. 904, 572 P.2d 1128 (EDF I ).) We repeated our earlier observation that "private judicial litigation involves piecemeal adjudication determining only the relative rights of the parties before the court, whereas in administrative proceedings comprehensive adjudication considers the interests of other concerned persons who may not be parties to the court action." (EDF II, 26 Ca1.3d at p. 199, 161 Cal.Rptr. 466, 605 P.2d I; see In re Waters of Long Valley Creek Stream System (1979) 25 Ca1.3d 339, 359-360, 158 Cal.Rptr. 350, 599 P.2d 656.)

The same "overriding considerations" catalogued by us in EDF II seem applicable here. Although this case does not involve waste water reclamation, nevertheless the balancing of public trust values affecting Mono Lake and the **\*455** water rights of a large metropolitan community presents similarly complex, overriding and "transcendent" issues which demand initial consideration by the Water Board. Only the board, which had issued the very licenses and permits now under challenge, possesses the experience and expertise needed to balance all of the various competing interests in reaching a fair and reasonable resolution of this vastly important litigation.

As we noted in EDF I, "The scope and technical complexity of issues concerning water resource management are unequalled by virtually any other type of activity presented to the courts." (20 Ca1.3d at p. 344, 142 Cal.Rptr. 904, 572 P.2d 1128.) As the majority opinion herein amply demonstrates, similar complexities are presented here. The majority concedes that (1) "The present case involves the same considerations as those before us in the EDF cases," (2) the Water Board possesses the expertise to resolve "the intricacies of water law" and "the economic and engineering problems involved in implementing water policy," and (3) the board "is charged with a duty of comprehensive planning, a function difficult to perform if some cases bypass board jurisdiction." (Ante, p. 368 of 189 Cal.Rptr., p. 731 of 658 P.2d.) Thus, the case for exclusive board jurisdiction seems to me truly overwhelming.

The majority's suggestion that various statutory provisions contemplate the exercise of concurrent jurisdiction in cases of this kind is unconvincing. These provisions (Wat.Code, §§ 2000, 2001, 2075) merely authorize the courts in water rights cases to refer the issues to the Water Board for its determination as a referee. Obviously, these provisions do not purport to excuse a prior failure to exhaust available administrative remedies before the Water Board. Moreover, these provisions do not attempt to resolve the question, presented in the EDF cases, whether "overriding considerations" dictate an exception to the general rule of concurrent jurisdiction.

As we said in EDF I, "When ... the statutory pattern regulating a subject matter integrates the administrative agency \*\*735 into the regulatory scheme and the subject of the litigation demands a high level of expertise within the agency's special competence, we are satisfied that the litigation in the first instance must be addressed to the agency. [Citation.]" (20 Cal.3d at p. 344, 142 Cal.Rptr. 904, 572 P.2d 1128.) That principle seems fully applicable here.

I would affirm the judgment.

**All Citations** 33 Cal.3d 419, 658 P.2d 709, 189 Cal.Rptr. 346, 21 ERC 1490, 13 Envtl. L. Rep. 20,272,

**Footnotes**

1 For convenience we shall refer to the state agency with authority to grant appropriative rights as the Water Board or the board, without regard to the various names which this agency has borne since it was first created in 1913.

2. For discussion of the effect of diversions on the ecology of Mono Lake, see Young, The Troubled Waters of Mono Lake (Oct. 1981) **National** Geographic, at page 504; Jehl, Jr., Mono Lake: A Vital Way Station for the Wilson's Phalarope (Oct. 1981) **National** Geographic, at page 520; Hoff, The Legal Battle Over Mono Lake (Jan. 1982) Cal.Law., at page 28; (Cal. Dept. Water Resources, Rep. of the Interagency Task Force on Mono Lake (Dec. 1969) (hereafter Task Force Report)).

3 Ironically, among the decisions reviewed in preparing this opinion was one in which Los Angeles was held liable for permitting water to flow into Owens Lake, damaging mineral extraction facilities constructed in reliance on the city taking the entire flow of the Owens River. (Natural Soda Prod. Co. v. City of Los Angeles (1943) 23 Cal.2d 193, 143 P.2d 12.)

4 Between 1920 and 1934, the city purchased lands riparian to creeks feeding Mono Lake and riparian rights incident to such lands. In 1934, the city brought an eminent domain proceeding for condemnation of the rights of Mono Lake landowners. (City of Los Angeles v. Aitken, (1935) 10 Cal.App.2d 460, 52 P.2d 585.)

5 In theory, the board could have rejected the city's application on the ground that the waters of the streams were already being put to beneficial use or that the DWP proposed an unreasonable use of water in violation of article X, section 2 of the California Constitution. It does not appear that the board considered either proposition.

6. DWP calls our attention to a 1940 decision of the Water Board involving Rock Creek, a tributary of the Owens River, in which the board stated that "the Water Commission Act requires it to protect streams in recreational areas by guarding against depletion below some minimum amount consonant with the general recreational conditions and the character of the stream." (Div. Wat. Resources Dec. 3850 (Apr.11, 1940), at p. 24.) The decision concluded that the board had insufficient information to decide what conditions, if any, to place upon DWP's application to divert water from Rock Creek for hydroelectric generation.

We do not know why the board was seemingly more willing to limit diversions to protect recreational values for Rock Creek than for the creeks flowing into Mono Lake. (Neither do we know the eventual outcome of the Rock Creek application.) The language of the board's opinions suggests that the crucial distinction was that the application for the Mono Lake streams was for domestic use, the highest use under the Water Code, while the Rock Creekapplication was for power generation.

7. Plaintiffs submitted an interrogatory to the present Water Board, inquiring: "Do you contend that the predecessor of the Water Board, at the time it issued the DWP appropriation permit, held the view that, notwithstanding the protests based on environmental concerns, it had no alternative but to issue DWP the permits DWP sought to export water from the Mono Basin?" The Water Board replied: "The [Water] Board believes that its predecessor did hold the view that, notwithstanding protests based upon loss of land values resulting from diminished recreational opportunity, if unappropriated water is available, it had no alternative but to issue DWP the permits DWP sought in order to export water from the Mono Basin ...."

8. In 1974 the Water Board confirmed that DWP had perfected its appropriative right by the actual taking and beneficial use of water, and issued two permanent licenses (board licenses Nos. 10191 and 10192) authorizing DWP to divert up to 167,000 acre-feet annually (far more than the average annual flow) from Lee Vining, Walker, Parker and Rush Creeks. The Water Board viewed this action as a ministerial action, based on the 1940 decision, and held no hearings on the matter.

9. In 1979 the California Department of Water Resources and the United States Department of the Interior undertook a joint study of the Mono Basin. The study recommends that the level of Mono Lake be stabilized at 6,388 feet. To achieve this end it recommended that exports of water from the Mono Basin be reduced from the present average of 100,000 acre-feet annually to a limit of 15,000 acre-feet. (Task Force Report at pp. 36-55.) Legislation was introduced to implement this recommendation, but was not enacted.

10 In the face of rising salinity, birds can maintain such equilibrium only by increasing either their secretion of salts or their intake of fresh water. The former option is foreclosed, however, because Mono Lake is already so salty that the birds have reached their limit of salt secretion. Thus, the birds must drink more fresh water to maintain the osmotic equilibrium necessary to their survival. As the Task Force predicts, "[t]he need for more time and energy to obtain fresh water will mean reduced energy and time for other vital activities such as feeding, nesting, etc. Birds attempting to breed at Mono Lake ... are likely to suffer the most from direct salinity effects, since the adult birds must devote so much time to obtain fresh water that they may not be able to raise young successfully." (Task Force Report, at p. 19.)

11 DWP contended that plaintiffs lack standing to sue to enjoin violations of the public trust, citing Antioch v. Williams lrr. Dist. (1922) 188 Cal. 451, 205 P. 688 and Miller & Lux v. Enterprise Canal and Land Co. (1904) 142 Cal. 208, 75 P. 770, both of which held that only the state or the United States could sue to enjoin diversions which might imperil downstream navigability. Judicial decisions since those cases, however, have greatly expanded the right of a member of the public to sue as a taxpayer or private attorney general. (See Van Atta v. Scott (1980) 27 Cal.3d 424, 447-450, 166 Cal.Rptr. 149, 613 P.2d 210, and cases there cited.) Consistently with these decisions, Marks v. Whitney, supra, 6 Cal.3d 251, 98 Cal.Rptr. 790, 491 P.2d 374, expressly held that any member of the general public (p. 261, 98 Cal.Rptr. 790, 491 P.2d 374) has standing to raise a claim of harm to the public trust. (Pp. 261-262, 98 Cal.Rptr. 790, 491 P.2d 374; see also Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist. (1980) 26 Cal.3d 183, 161 Cal.Rptr. 466, 605 P.2d 1, in which we permitted a public interest organization to sue to enjoin allegedly unreasonable uses of water.) We conclude that plaintiffs have standing to sue to protect the public trust.

12. The federal practice of abstention sprang from the decision in Railroad Comm. of Texas v. Pullman Co. (1941) 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971. (See generally, Wright et al., Federal Practice and Procedure, § 4241 et seq.) In Pullman, the Supreme Court held that, where resolution of an open state question presented in a federal action might prevent the federal court from reaching a constitutional question in that action, the court should stay its proceedings and order the parties to seek resolution of the state question in state courts. In Pullman -type cases, the federal court retains jurisdiction so that it may either apply the resolved state law, or resolve the state question itself if the state courts refuse to do so for any reason.

Though federal abstention was originally limited to Pullman -type cases, the grounds for abstention were later expanded in accordance with the policies of federalism. Abstention is now "appropriate where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar." (Colorado River Water Conservation Dist. v. United States (1976) 424 U.S. 800, 814, 96 S.Ct. 1236, 1244, 47 L.Ed.2d 483 citing Louisiana Power & Light Co. v. City of Thibodaux (1959) 360 U.S. 25, 79 S.Ct. 1070, 3 L.Ed.2d 1058 and Kaiser Steel Corp. v. W.S. Ranch Co. (1968) 391 U.S. 593, 88 S.Ct. 1753, 20 L.Ed.2d 835.) Kaiser Steel is similar to the case at bar. In that diversity case, W.S. Ranch Co. sued Kaiser Steel for trespass. Kaiser claimed that a New Mexico statute authorized it to trespass as necessary for use of its water rights granted by New Mexico. The ranch replied that if the statute so authorized Kaiser, the statute would violate the state constitution, which allowed the taking of private property only for "public use." Both the district court and the court of appeals reached the merits of the case after denying Kaiser's motion to stay the determination until conclusion of a declaratory relief action then pending in New Mexico courts. The United States Supreme Court reversed, reasoning in a per curiam opinion that "[t]he Court of Appeal erred in refusing to stay its hand.

The state law issue which is crucial in this case is one of vital concern in the arid State of New Mexico, where water is one of the most valuable natural resources. The issue, moreover, is truly a novel one ... [, and] will eventually have to be resolved by the New Mexico courts....

Sound judicial administration requires that the parties in this case be given the benefit of the same rule of law which will apply to all other businesses and landowners concerned with the use of this vital state resource." (Kaiser Steel Corp. v. W.S. Ranch Co., supra, 391 U.S. at p. 594, 88 S.Ct. at p. 1754.)

13. DWP objected to the form of the abstention order, and petitioned the United States Court of Appeals for the Ninth Circuit for leave to file an interlocutory appeal. The Ninth Circuit denied this petition.

14. DWP argues that the second superior court action, filed after the federal court's abstention order, constitutes a request for an advisory opinion and thus seeks relief beyond the jurisdiction of the California courts. (See Younger v. Superior Court (1978) 21 Cal.3d 102, 119-120, 145 Cal.Rptr. 674, 577 P.2d 1014, and cases there cited.) No California case has discussed the propriety of a declaratory relief action filed to resolve an unsettled issue of California law following a federal court abstention. A holding that such a suit is an improper attempt to obtain an advisory opinion, however, would constitute a decision by the California courts to refuse to cooperate in the federal abstention procedure. It would thus compel federal courts to decide unsettled questions of California law which under principles of sound judicial administration (see Kaiser Steel Corp. v. W.S. Ranch Co., supra, 391 U.S. 593, 594, 88

S.Ct. 1753, 1754) should be resolved by the state courts. The usual objections to advisory opinions do not apply to the present case. This is not a collusive suit (compare People v. Pratt (1866) 30 Cal. 223), nor an attempt to get the courts to resolve a hypothetical future disagreement (compare Younger v. Superior Court, supra, 21 Cal.3d 102, 145 Cal.Rptr. 674, 577 P.2d 1014). It is, rather, one phase of a hotly contested current controversy. The only conceivable basis for refusing to decide the present case is that our decision will not finally resolve that controversy, but will serve only as an interim resolution of some issues necessary to the final decision. That fact, however, is insufficient to render the issue nonjusticiable. As the Court of Appeal stated in response to a similar contention, it is in the interest of the parties and the public that a determination be made; "even if that determination be but one step in the process, it is a useful one." (Regents of University of California v. State Bd. of Equalization (1977) 73 Cal.App.3d 660, 664, 140 Cal.Rptr. 857.) If the issue of justiciability is in doubt, it should be resolved in favor of justiciability in cases of great public interest. (See, e.g., California Physicians' Service v. Garrison (1946) 28 Cal.2d 790, 801, 172 P.2d 4 [trial court's determination of justiciability will not be overturned on appeal absent clear showing of abuse of discretion]; Golden Gate Bridge etc. Dist. v. Felt (1931) 214 Cal. 308, 315-319, 5 P.2d 585 [jurisdiction retained over admittedly friendly suit of public importance, where dismissal would have delayed construction of Golden Gate Bridge]; California Water & Telephone Co. v. County of Los Angeles (1917) 253 Cal.App.2d 16, 26, 61 Cal.Rptr. 618 [doubts about the justiciability of a dispute should be resolved in favor of immediate adjudication, where "the public is interested in the settlement of the dispute."].)

15. Spanish law and subsequently Mexican law also recognized the public trust doctrine. (See City of Los Angeles v. Venice Peninsula Properties (1982) 31 Cal.3d 288, 297, 182 Cal.Rptr. 599, 644 P.2d 792.) Commentators have suggested that the public trust rights under Hispanic law, guaranteed by the Treaty of Guadalupe Hidalgo, serve as an independent basis for the public trust doctrine in California. (See Stevens, The Public Trust: A Sovereign's Ancient Prerogative Becomes the People's Environmental Right (1980) 14 U.C.Davis L.Rev. 195, 197; Dyer, California Beach Access: The Mexican Law and the Public Trust (1972) 2 Ecology L.Q. 571.)

16. For the history of the public trust doctrine, see generally Sax, The Public Trust Doctrine In Natural Resource Law: Effective Judicial Intervention (1970) 68 Mich.L.Rev. 471; Stevens, op. cit. supra, 14 U.C.Davis L.Rev. 195.

17. A waterway usable only for pleasure boating is nevertheless a navigable waterway and protected by the public trust. (See People ex rel. Younger v. County of El Dorado (1979) 96 Cal.App.3d 403, 157 Cal.Rptr. 815, (South Fork of American River); People ex rel. Baker v. Mack (1971) 19 Cal:App.3d 1040, 97 Cal.Rptr. 448 (Fall River ).)

18. For review of California decisions on navigability, see Dunning, op. cit. supra, 14 U.C.Davis L.Rev. 357, 384-386.

19. In view of the conclusion stated in the text, we need not consider the question whether the public trust extends for some purposes—such as protection of fishing, environmental values, and recreation interests —to nonnavigable streams. For discussion of this subject, see Walston, The Public Trust Doctrine in the Water Rights Context: The Wrong Environmental Remedy (1982) 22 Santa Clara L.Rev. 63, 85. 20. In Mallon v. City of Long Beach (1955) 44 Cal.2d 199, 282 P.2d 481, the court held that revenues derived from the use of trust property ordinarily must be used for trust purposes. (Pp. 205206, 282 P.2d 481.) (See also City of Long Beach v. Morse (1947) 31 Cal.2d 254, 188 P.2d 17; State of California ex rel. State Lands Com.v.County of Orange (1982) 134 Cal.App.3d 20, 184 Cal.Rptr. 423.)

The Legislature could abandon the trust.over the proceeds, the court said, absent evidence that the abandonment would impair the power of future legislatures to protect and promote trust uses. (44 Cal.2d p. 207, 282 P.2d 481.) So long as the tidelands themselves remained subject to the trust, however, future legislatures would have the power to revoke the abandonment and reestablish a trust on the revenues. (Ibid.) (See City of Coronado v. San Diego Unified Port District (1964) 227 Cal.App.2d 455, 473-474, 38 Cal.Rptr. 834.)

21. In Colberg, Inc. v. State of California, supra, 67 Cal.2d 408, 62 Cal.Rptr. 401, 432 P.2d 3, the state constructed a freeway bridge which partially impaired navigation in the Stockton Deep Water Ship Channel. Upstream shipyard owners, disclaiming any reliance on the public trust, filed suit for damages on a theory of inverse condemnation. The opinion stated that "the state, as trustee for the benefit of the people, has power to deal with its navigable waters in any manner consistent with the improvement of commercial intercourse, whether navigational or otherwise." (P. 419, 62 Cal.Rptr. 401, 432 P.2d 3.) then concluded that lands littoral to navigable waters are burdened by a navigational servitude in favour the state and, absent an actual taking of those lands, the owners cannot claim damages when the state acts within its powers. We agree with DWP and the state that Colberg demonstrates the power of the state, as administrator of the public trust, to prefer one trust use over another. We cannot agree, however, with DWP's further contention that Colberg proves the power of a state agency to abrogate the public trust merely by authorizing a use inconsistent with the trust. Not only did plaintiffs in Colberg deliberately decline to assert public trust rights, but the decision rests on the power of the state to promote one trust purpose (commerce) over another (navigation), not on any power to grant rights free of the trust. (See Dunning, op. cit. supra, 14 U.C.Davis L.Rev. 357, 382-388.)

22. We noted, however, that "any improvements made on such lands could not be appropriated by the state without compensation." (Pp. 533-534, 162 Cal.Rptr. 327, 606 P.2d 362, citing Illinois Central R. Co. v. Illinois, supra, 146 U.S. 387, 455, 13 S.Ct. 110, 119, 36 L.Ed. 1018.)

In State of California v. Superior Court (Fogerty), supra, 29 Ca1.3d 240, 249, 172 Cal.Rptr. 713, 625 P.2d 256, we stated that owners of shoreline property in Lake Tahoe would be entitled to compensation if enforcement of the public trust required them to remove improvements. By implication, however, the determination that the property was subject to the trust, despite its implication as to future uses and improvements, was not considered a taking requiring compensation.

23 After the effective date of the 1928 amendment, no one can acquire a vested right to the unreasonable use of water. (See Joslin v. Marin Mun. Water Dist. (1967) 67 Cal.2d 132, 145, 60 Cal.Rptr. 377, 429 P.2d 889; 1 Rogers & Nichols, op. cit. supra, p. 413 and cases there cited.)

24 Plaintiffs suggest that appropriative rights expressly conferred by the Legislature would not be limited by the public trust doctrine. The Attorney General informs us, however, that the Legislature has rarely created water rights by express legislation, but instead has delegated that task to the Water Board.

25 As we discussed earlier (ante, p. 360 of 189 Cal.Rptr., p. 723 of 658 P.2d), there are rare exceptions to the rule stated in the text. It is unlikely that these exceptions will often apply to usufructuary water rights. (See discussion in Johnson, op. cit. supra, 14 U.C. Davis L.Rev. 233, 263-264.)

26 In contrast, the population and economy of this state does not depend on the conveyance of vast expanses of tidelands or other property underlying navigable waters. (See Comment, The Public Trust Doctrine and California Water Law: National Audubon Society v. Dept. of Water and Power (1982) 33 Hastings L.J. 653, 668.) Our opinion does not affect the restrictions imposed by the public trust.doctrine upon transfer of such properties free of the trust.

27 Amendments to the Water Code enacted in 1955 and subsequent years codify in part the duty of the Water Board to consider public trust uses of stream water. (See, ante, p. 363 of 189 Cal.Rptr., p. 726 of 658 P.2d).) The requirements of the California Environmental Quality Act (Pub. Resources Code, §21000 et seq.) impose a similar obligation. (See Robie, op, cit. supra, 2 Ecology L.Q. 695.) These enactments do not render the judicially fashioned public trust doctrine superfluous. Aside from the possibility that statutory protections can be repealed, the noncodified public trust doctrine remains important both to confirm the state's sovereign supervision and to require consideration of public trust uses in cases filed directly in the courts without prior proceedings before the board.

28 The state Attorney General asserts that the Water Board could also reconsider the DWP water rights under the doctrine of unreasonable use under article X, section 2. DWP maintains, however, that its use of the water for domestic consumption is prima facie reasonable. The dispute centers on the test of unreasonable use—does it refer only to inordinate and wasteful use of water, as in Peabody v. City of

Vallejo, supra, 2 Cal.2d 351, 40 P.2d 486, or to any use less than the optimum allocation of water? (On this question, see generally Joslin v. Mann Mun. Water Dist., supra, 67 Cal.2d 132, 138-141, 60

Cal.Rptr. 377, 429 P.2d 889.) In view of our reliance on the public trust doctrine as a basis for reconsideration of DWP's usufructuary rights, we need not resolve that controversy.

29. The one objective study which has been done to date, the Report of the Interagency Task Force on Mono Lake recommended a sharp curtailment in the diversion of water by the DWP. (See Task Force Report at pp. 36-40.) The task force, however, had only the authority to make recommendations, and lacked power to adjudicate disputed issues of fact or law or to allocate water.

30. In approving the DWP appropriative claim, the 1940 Water Board relied on Water Code section 106 which states that lilt is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation." DWP points to this section, and to a 1945 enactment which declares a policy of protecting municipal water rights (Wat.Code, § 106.5), and inquires into the role of these policy declarations in any reconsideration of DWP's rights in the Mono Lake tributaries. Although the primary function of these provisions, particularly section 106, is principles of California water policy applicable to any allocation of water resources. In the latter context, however, these policy declarations must be read in conjunction with later enactments requiring consideration of in-stream uses (Wat.Code, §§ 1243, 1257, quoted ante at pp. 44-45) and judicial decisions explaining the policy embodied in the public-trust doctrine. Thus, neither domestic and municipal uses nor in-stream uses can claim an absolute priority.

31. This case does not fall within the exception established in EDF II granting the board exclusive jurisdiction over reclamation of waste waters and other matters involving a potential danger to public health. (See EDF II, pp. 199-200, 161 Cal.Rptr. 466, 605 P.2d 1.) The issues involving Mono Lake are complex, and because the emerging lakebed may contribute to dust storms, the case includes a public health aspect. Nevertheless, those issues are more analogous to those typically decided by the courts under their concurrent jurisdiction (such as the claim of intervener in EDF II that the diversion point of water was too far upstream) than they are to the narrow and specialized problem of reclaiming waste water. If we read the exception in EDF II so broadly that any complex case with tangential effect on public health came within the board's exclusive jurisdiction, that exception would consume the rule of concurrent jurisdiction.

32. We noted in EDF I that "[t]he scope and technical complexity of issues concerning water resource management are unequalled by virtually any other type of activity presented to the courts." (EDF I, supra, 20 Ca1.3d 327, 344, 142 Cal.Rptr. 904, 572 P.2d 1128.)

33 The state Attorney General argues that even though the courts generally possess concurrent jurisdiction in water cases, the board should have exclusive jurisdiction over actions attacking a board-granted water right. In view of the reference power of the courts, we think this exception unnecessary. The court presently has the power to refer such cases to the board whenever reference is appropriate; a rule of exclusive jurisdiction, requiring all such cases to be initiated before the board, would not significantly improve the fairness or efficiency of the process. In some cases, including the present one, it would lead to unproductive controversy over whether the plaintiff is challenging a right granted by the board or merely asserting an alleged right of higher priority.

34. The superior court should determine whether plaintiffs are entitled to attorney fees under Code of Civil Procedure section 1021.5 and Woodland Hills Residents Ass'n, Inc. v. City Council (1979) 23 Ca1.3d 917, 938-940, 154 Cal.Rptr. 503, 593 P.2d 200.

**Public Trust Doctrine in the Parliaments of Various Countries:**

It is a matter of pride and honour for us that under the far-sighted leadership of our Father of the Nation Bangabandhu Sheikh Mujibur Rahman, our country Bangladesh constitutionally recognised the Public Trust Doctrine as the first country in the world to do so by adopting the Constitution of Bangladesh in 1972. The Father of the Nation made the Public Trust Doctrine one of the fundamental principles of state policy.

On the other hand the State of Pennsylvania in the United States adopted its Constitution in January 1, 1874. Later in 1971 the legislative assembly of Pennsylvania inserted the Section 28 to its Constitution and gave the Public Trust Doctrine constitutional recognition. After that in 1974 The State of Montana amended its Constitution to give constitutional recognition to the Public Trust Doctrine.

Some other states including Minnesota, Michigan etc. adopted various environmental rights acts and gave statutory recognition to the Public Trust Doctrine. Vermont announced it through an act in 2008.

Ecuador adopted the Public Trust Doctrine in its Constitution in 2008. It is as mentioned below:

**“Rights of Nature Articles in Ecuador’s Constitution**

**Title II**

**Fundamental Rights**

**Chapter I**

**Entitlement, Application and Interpretation Principles of the Fundamental Rights**

**Art. 10 Rights Entitlement,- “ Person and people have the fundamental rights guaranteed in this constitution and in the international human rights instrument.**

**Nature is subject to those rights given by the constitution by and law**

**Chapter 7th: Rights for Nature**

**Art. 71. Nature or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.**

**Every person, people, community or nationality, will able to demand the recognitions of rights for nature before the public organisms. The application and interpretation of these rights will follow the related principles established in the Constitution.**

**The State will motivate natural and juridical persons as well as collectives to protect nature; it will promote respect towards all the elements that form an ecosystem.**

**Art. 72. Nature has the right to restoration this integral restoration is independent of the oblition on natural and juridical persons the State to indemnify the people and the collectives that defend on the natural systems.**

**In the cases of severe or permanent environmental impact, including the ones caused by the exploitation on non-renewable natural resources, the state will establish the most efficient mechanisms for the restoration, and will adoped the adequate measures to eliminate or mitigate the harmful environmental consequences**

**Art. 73. The State will apply precaution and restriction measures in all the activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles.**

**The introduction of organisms and organic and inorganic material that can alter in a definitive way the national genetic patrimony is prohibited.**

**Art. 74. The persons, people, communities and nationalities will have the right to benefit from the environment and form natural wealth that will allow wellbeing.**

**The environmental services are cannot be appropriated; its production, provision, use and exploitation, will be regulated by the State.”**

**Bangladesh and Public Trust Doctrine:**

**Father of the Nation Bangabandhu Sheikh Mujibur Rahman and Public Trust Doctrine:**

The Father of the Nation Bangabandhu Sheikh Mujibur Rahman included the preservation and protection of the Public Trust Property or the Public Property as one of the fundamental policies of the state in the Part II of the Constitution. As it is of importance, Article 21 of the Constitution is quoted exactly as it 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.*

(2) Every person in the service of the Republic has a duty to strive at all times to serve the people.”

From the plain reading of the Article 21, it is plain as a whistle that the Constituent Assembly under the leadership of the Father of the Nation adopted the Public Trust Doctrine in our Constitution. It is a matter of pride and honour for us that our country has recognised the Public Trust Doctrine as the first country in the world. The greatest Bangalee of all times, Father of the Nation Bangabandhu Sheikh Mujibur Rahman was the first statesman to have successfully implemented the Public Trust Doctrine. He always gave special priorities to the environment and climate in every aspect of the management of the state. As a result of that he included the Article 21 in the Part II of the Constitution as one of the fundamental principles of state policy.

After that Father of the Nation President Bangabandhu Sheikh Mujibur Rahman enacted “The Bangladesh Wild Life (Preservation) Order, 1973”. Later on after winning the 1st National Parliamentary Election the Awami League government under the leadership of its Prime Minister Father of the Nation President Bangabandhu Sheikh Mujibur Rahman enacted The Bangladesh Wild Life (Preservation) (Amendment) Act, 1973 (Act No. VII of 1973). That was later amended into The Bangladesh Wild Life (Prevention) (Amendment) Act, 1974 (Act No. XVII of 1974). Later the Act was repealed by the enactment of বন্যপ্রাণী (সংরক্ষণ ও নিরাপত্তা) আইন, ২০১২ (Wild Life (Preservation and Protection) Act, 2012). But as the Order of 1973 is still important in this discussion, it is quoted exactly as it follows:

**THE BANGLADESH WILDLIFE (PRESERVATION) ORDER, 1973**

**PRESIDENT’S ORDER NO. 23 OF 1973 [28TH March, 1973]**

WHEREAS it is expedient to provide for the preservation, conservation and management of wildlife in Bangladesh,

NOW, THEREFORE, in pursuance of paragraph 3 of the Fourth Schedule to the Constitution of the People’s Republic of Bangladesh, and in exercise of all powers enabling him in that behalf, the President is pleased to make the following Order:-

1. (1) This Order may be called the Bangladesh Wild Life (Preservation) (Preservation) Order, 1973.

(2) It extends to the whole of Bangladesh. It shall come into force at once.

(3) It shall come into force at once.

2. In this Order, unless there is anything repugnant in the subject or context,-

(a) “capture” means the taking alive of any wild animal;

(b) “dealer”, in relation 1[to wild animals], trophies or meat, means any person who, in course of trade or business carried on by him whether on his own behalf or on behalf of any other person,-

(i) sells, purchases or barters 2[any wild animal], trophy or meat; or

(ii) cuts, carves, polishes, preserves, cleans, mounts or otherwise prepares wild animal’s] trophy or meat; or 1[any

(iii) manufactures any article from trophies or meat;

(c) “game reserve” means an area declared by the Government as such for the protection of wild life and increase in the population of important species wherein capturing of wild animals shall be unlawful;

(d) “Government” means the Government of the People’s Republic of Bangladesh;

(e) “hunt” means-

(i) killing, capturing, poisoning, snaring and trapping of any wild animal and any attempt to do so; or

(ii) driving any wild animal for any of the purposes specified in sub-clause (i); or

(iii) injuring or destroying or taking any part of the body of such wild animal or taking of nests or eggs of wild birds and 2[reptiles];

(f) “licence”, “special licence”, “permit” and “special permit” mean, respectively, a licence, a special licence, a permit or a special permit granted or issued under this Order or the rules made thereunder;

(g) “meat” means fat, blood, flesh or any edible part of 3[a wild animal], whether fresh or preserved;

(h) “national park” means comparatively large areas of outstanding scenic and natural beauty with the primary object of protection and preservation of scenery, flora and fauna in the natural state to which access for public recreation and education and research may be allowed;

(i) “offence” means an offence punishable under this Order 1[or] any rule made thereunder;

(j) “officer” means any person appointed in this behalf to carry out all or any of the purposes of this Order or to do anything required by this Order or any rule made thereunder to be done by an officer, and includes a Forest Officer as defined in clause (2) of section 2 of the Forest Act, 1927 (Act No. XVI of 1927), and 2[such other persons as may be authorised by the Government] to carry out such purpose or to do such thing as the Government may specify;

(k) “prescribed” means prescribed by rules made under this Order;

(l) “private game reserve” means an area or private land set aside by the owner thereof for the same purpose as a game reserve and declared as such under Article 24;

(m) “schedule” means a Schedule appended to this Order;

(n) “trophy” means any 3[dead wild animal] or any horn, antler, tooth, tusk, bone, claw, hoof, skin,

hair, feather, egg, shell or other durable part of 4[a wild animal] whether or not included in a manufactured or processed article;

(o) “wild animal” means any vertebrate creature, other than human beings and animals of usually

domesticated species or fish, and includes the eggs of birds and reptiles; and

(p) “wild life sanctuary” means an area, closed to hunting, shooting or trapping of wild animals and declared as such under Article 23 by the Government as undisturbed breeding ground primarily for the protection of wild life inclusive of all natural resources, such as vegetation, soil, and water.

**3. (1) The Government may, for the purposes of this Order, appoint such officers and honorary officers to assist the officers as it considers necessary.**

(2) Except as otherwise prescribed, an honorary officer shall exercise all the powers of an officer and shall hold office for a period of three years unless his appointment is earlier revoked.

4. (1) As soon as may be, after the coming into force of this Order, the Government shall constitute, by notification in the official Gazette, a Board, to be called as the Bangladesh Wild Life Advisory Board, consisting of such members as the Government may deem necessary to appoint.

(2) The Bangladesh Wild Life Advisory Board shall perform such functions as the Government may assign to it.

5. (1) The wild animals specified in the First Schedule 1[\* \* \*] shall be known as “game animals” and shall not be hunted, killed or captured, save in accordance with the terms of a permit 2[\* \* \*].

(2) The wild animals specified in the Third Schedule 3[\* \* \*] shall be known as “Protected Animals” and shall not be hunted, killed or captured save as otherwise expressly provided in this Order.

**6. (1) No person shall –**

a. (i) hunt any wild animal by means of a set-gun, drop spear, deadfall, gun trap, an explosive projectile bomb, grenade, electrical contrivances, a baited hook or any other trap whatsoever;

(ii) hunt any game animal by means of an automatic weapon of a calibre, used by the Bangladesh Army, Bangladesh Rifle or Police Force, a shot gun, rifle of 22 calibre or less, or a projectile containing any drug or chemical substance having the property of anesthetising, paralysing, stupifying or rendering 1[a wild animal] crippled whether partly or totally;

b. (i) use any motor vehicle, motor drivenvessel, watercraft of any type or aircraft or any other manually or mechanically propelled vehicle of any type to pursue any game animal, or to drive or stampede game animals for any purpose whatsoever;

(ii) use or have in his possession any poison or like injurious substance for the purpose of hunting a game animal;

(iii) shoot any game animal from any aircraft, motor vehicle, rail trolley cart, boats or any kind of water craft or any other conveyance;

(iv) hunt with the help of live decoys, call birds or any other artificial contrivances;

c. construct or use or have in his possession any pitfall, game pit, trench or similar excavation or any fence or enclosure, or set fire to any vegetation or any other contrivance for the purpose of hunting any game animal.

**(2) It shall not be an offence to use a motor vehicle or aircraft to drive any wild animal away from an aerodrome or airstrip when such action is necessary to ensure the safety of aircraft using that aerodrome.**

**(3) 1[An officer may] grant capture licence and allow employment of a method of hunting specified in** **clause (1).**

7. No person shall possess or use Hawks for hawking, or possess or use dogs for coursing, the game animals specified in the First Schedule except under a special licence 2[\* \* \*].

8. (1) If, in any place, any wild animal whether protected or game animal or meat or trophy of such wild animal which is found dead or dying or which has been killed or caught or bred in captivity or kept in possession of any body by any means otherwise than in accordance with the provisions of this Order shall be the property of the Government.

(2) No person shall, by any means, acquire or keep in his possession or custody or control, or transfer to any person by way of gift or sale, or destroy, or otherwise damage, such Government property without previous written permission from the 3[\* \* \*] officer.

9. 4[(1) Any person having the control, custody or possession of any wild animal or meat or trophy of any wild animal shall, within such period as the Government may by notification in the official Gazette specify, declare to an officer 5[\* \* \*] the number and description of such wild animal, meat or trophy and the place where it is kept.]

**(2) On receipt of such declaration, the 1[\* \* \*] officer shall enter upon the premises of such person in the prescribed manner and such person shall produce the declared wild animal, meat or trophy for inspection and verification before such officer; and if the declaration is found correct, the 2[\* \* \*] officer shall fix upon or put such mark of registration on such wild animal, meat or trophy as may be prescribed as lawful possession.**

(3) No person shall counterfeit, exchange or in any way interfere with any mark of registration fixed or put on by the 3[\* \* \*] officer on any wild animal, meat or trophy.

(4) The 4[\* \* \*] officer shall, on being satisfied that the requirements of clauses (1) and (2) have been fulfilled, issue, in the prescribed manner, a Certificate of Lawful Possession of such wild animal, meat or trophy.

(5) The 5[\* \* \*] officer may, pending legal action, seize any wild animal, meat or trophy which has not been legally acquired or imported under this Order.

10. Any person who-

a. fails to make a declaration under clause (1) of Article 9, or

b. conceals in such declaration any material fact, or

c. counterfeits, exchanges or in any way interferes with any mark of registration fixed or put on any wild animal, meat or trophy, for which a Certificate of Lawful Possession has been issued, or alters or in any way changes a certificate or ownership,

shall be guilty of an offence.

11. (1) No person shall transfer by gift, sale or otherwise to any other person any wild animal, meat

or trophy of any kind unless he is in possession of a certificate of Lawful Possession in respect thereof.

(2) No person shall receive by gift, purchase or otherwise any wild animal, trophy or meat unless he receives at the same time a valid Certificate of Lawful Possession in respect thereof.

12. (1) No person shall import or attempt to import into Bangladesh any live wild animal of an endemic or exotic species, or any trophy or meat of a kind specified in the Second Schedule,-

(i) except through a customs port of entry;

(ii) unless he produces to the Customs Officer satisfactory proof that such wild animal, trophy or meat has been lawfully exported from the country of export;

(iii) unless he produces an Import Permit issued by the Government under this Order.

**(2) It shall be the duty of a Customs Officer to detain any live wild animal or any trophy or meat of any kind specified in the Second Schedule until the documents required by clause (1) have been produced to him; and if those documents are not produced within a reasonable time, the wild animal, trophy or** **meat, shall be forfeited and disposed of 1[in such manner as may be prescribed].**

**13. (1) No person shall export or attempt to export any wild animal, trophy or meat except** **those mentioned in the First Schedule,-**

(i) except through a customs port of exit;

(ii) unless he produces to the Customs Officer an Export Permit Government under this Order].

**(2) An officer** 1[issued by the **2[\* \* \*] may issue, or refuse to issue without assigning any reason, an Export Permit to 3[the owner having the Certificate of Lawful] Possession of any wild animal, trophy or meat of any** **kind specified in the First Schedule, and in case of receipt of such Export Permit the owner of the wild** **animal, trophy or meat shall immediately surrender to** **the said officer the Certificate of Lawful Possession relating thereto.**

14. (1) Nothing in this Order shall apply to any wild animal, trophy or meat in transit through Bangladesh:

Provided that 4[the wild animal], trophy or meat-

(i) shall be accompanied by the necessary transit customs documents;

(ii) shall be entered through a customs port of entry;

(iii) shall not be unloaded from the ship or motor vehicle or any carrier on which it is being carried, or in the case of air transport, it shall not leave the precincts of the airport at which it is landed or transhipped without being checked nor shall, except in the case of customs warehouse, remain in such precincts for more than 48 hours.

**15. (1) No person shall, with a view to carrying on a profession, trade or business, buy, sell or otherwise deal in wild animals, trophies or meat, or process or manufacture goods or articles from such trophies or meat unless he is in possession of a valid permit, hereinafter called a Dealer’s Permit, issued for the purpose by an officer 1 [\* \* \*].**

(2) An officer 2[**\* \* \***] may grant, or refuse to grant without assigning any reason, a Dealer’s Permit to any person to deal in any wild animal, trophy or meat, or any class of wild animals, trophies or meat specified in such permit.

(3) A Dealer’s Permit shall be issued on payment of the prescribed fee and shall remain valid for a period of one year from the date of its issue unless earlier cancelled.

(4) (i) The holder of a Dealer’s Permit shall maintain such register or record of his dealings as be prescribed] and shall produce it for inspection at any reasonable time when called upon to do so;

(ii) The officer 4[\* \* \*] may suspend or cancel Dealer’s Permit at any time and if he suspends or cancels it, he shall record in writing the reason therefore.

**(5) Nothing in this Article shall be construed to exempt the holder of a Dealer’s Permit from complying with the provisions of Articles 8, 9, 11, 12 and 13.**

16. An officer 1[\* \* \*] may stop any vehicle or vessel and may search without warrant any person, vessel, vehicle, animal, package, receptacle or covering or any suspected place to satisfy himself as to whether or not an offence against this Order has been committed.

17. An officer 2[\* \* \*] may seize any wild animal together with any firearm, net, trap, snare, bow arrow or any vehicle or vessel or anything whatsoever used or suspected to have been used in the commission of an offence against this Order.

18. Every person in possession of a wild animal or trophy specified in the Second Schedule shall produce his Certificate of Lawful Possession on a demand made by an officer 3[\* \* \*].

19. Every purchaser of forest 4[produce, persons serving under the] Public Works Department, Chaukidars, Dafadars, Village Watchmen, Village Headman, Chairman and members of Union Panchayet, Kanungo and Tahsildar shall be bound, in the absence of a reasonable excuse, to give to an officer or 5[\* \* \*] information in respect of any snaring, trapping, netting, unauthorised killing or any other offence against this Order committed within the limits of his jurisdiction, as soon as the commission of such offence comes to his knowledge.

**20. Notwithstanding anything contained in this Order, 1[any property seized under Article 17 which is subject to speedy and natural decay, the officer seizing such property] may sell it and deal with the proceeds thereof in the same manner as he would have dealt with such property if it would not have been sold.**

21. (1) Notwithstanding any other provisions of this Order, it shall not be an offence-

a. for any person to kill any wild animal by any means in defence of his own life or that of any other person;

b. for the owner of any standing crops or his employee to kill by any means within the bounds of such crops, any wild animal causing material damage to such crops;

c. for the owner of livestock or his employee to kill 2[any wild animal] causing damage to the livestock in any way within a reasonable distance of where that livestock is grazing or where it is enclosed for the night:

Provided that paragraphs (b) and (c) shall not apply to any unlawful occupation of, or cultivation in, a national park, wild life sanctuary, or a reserved or protected forest or to any livestock illegally grazing or herded therein.

**(2) The killing under clause (1) of any wild animal specified in the First or Third Schedule shall be reported to the nearest officer immediately.**

**(3) The meat or trophy, or any protected or game animal killed under this Article shall be the property of the Government and shall be disposed of in such manner as 1[may be prescribed].**

22. When in any proceedings taken under this Order or in consequence of anything done under this Order a question arises as to whether any wild animal, trophy or meat is the property of the Government, such wild animal, trophy or meat shall be presumed to be the property of the Government until the contrary is proved.

Provided that, the burden of proving that the accused is in lawful possession, custody or control of such wild animal, meat or trophy shall lie on such person.

23. (1) The Government may, by notification in the official Gazette, declare any area to be wild life sanctuary.

(2) No person shall-

(i) enter or reside in any wild life sanctuary; or

(ii) cultivate any land in any wild life sanctuary; or

(iii) damage or destroy any vegetation in any wild life sanctuary; or

(iv) hunt, kill or capture any wild animal in any wild life sanctuary or within one mile from the boundaries of a wild life sanctuary; or

(v) introduce any exotic species of animal into a wild life sanctuary; or

(vi) introduce any domestic animal or allow any domestic animal to stray into a wild life sanctuary; or

(vii) cause any fire in a wild life sanctuary; or

(viii) pollute water flowing in or through a wild life sanctuary:

**Provided that Government may, for scientific purposes or for aesthetic enjoyment or betterment of scenery, relax all or any of the prohibitions specified above.**

(3) The Government may declare any area to be a national park where the following acts shall not be allowed, namely:-

(i) hunting, killing or capturing any wild animal in a national park and within the radius of one mile outside its boundary;

(ii) firing any gun or doing any other act which may disturb

any wild animal or doing any act which may interfere with the breeding places of any wild animal;

(iii) felling, taping, burning or in any way damaging or destroying, taking, collecting or removing any plant or tree therefrom;

(iv) clearing or breaking up any land for cultivation, mining or for any other purpose;

(v) polluting water flowing in and through the national park:

**Provided that the Government may, for scientific purposes or for betterment of the national park or for aesthetic enjoyment of scenery or for any other exceptional reasons, relax all or any of the prohibitions specified above.**

(4) Construction of access roads, rest houses and hotels and provision of amenities for the public shall be so planned as may not impair, 1[the primary] object of the establishment of a national park.

(5) The Government may declare any area to be a game reserve and allow hunting and shooting of wild animals under a special permit wherein the maximum number of the wild animals to be killed and the area and the duration for which such permit shall remain valid shall be specified.

**(6) Such alterations in the boundaries of wild life sanctuaries, national parks and game reserves may be affected as the Government may approve.**

24. (1) Where the Government is satisfied that an area of private land has been dedicated by its owner to the same purposes as a game reserve, the Government, on an application of the owner, declare, by notification in the official Gazette, such area to be private game reserve.

(2) The owner of such private game reserve shall, within its boundary, exercise all the powers of an officer under this Order.

(3) If the Government is satisfied that a private game reserve does not meet the requirements for being treated as such, the 1[Government may, at] any time, declare, by notification in the official Gazette, that it has ceased to be a private game reserve from such date as may be specified in the notification.

25. Interference by anyone in the discharge of the duties of 2[an officer] shall be an offence.

26. (1) If a person-

a. contravenes or attempts to contravene the provisions of Article 5, 7, 9, 10, 11, 12, 13, 14, 15 and 23, he shall be punished with imprisonment which may, subject to the minimum of six months, extend to one year and also with a fine which may, subject to the minimum of Taka five hundred, extend to Taka one thousand, and the hunting licence, gun licence under Arms Act, 1878, shooting permit or special permit issued to such person shall be cancelled and the firearms, vehicles, vessels, watercraft, appliances or anything used in the commission of the offence including the wild animals meat or trophy found in his possession shall be confiscated;

b. contravenes or attempts to contravene the provisions of Articles 6 and 25, he shall be punished with imprisonment which may, subject to the minimum of one year, extend to two years and also with a fine which may, subject to the minimum of Taka one thousand, extend to Taka two thousand and the hunting licence, gun licence under Arms Act, 1878, shooting permit or special permit issued to such person shall be cancelled and the firearms, vehicles, vessels, watercrafts, appliances or anything used in the commission of the offence including the wild animal, meat or trophy found in his possession shall be confiscated;

c. contravenes or attempts to contravene the provisions of Articles 18 and 21, he shall be punished with a fine which may, subject to the minimum of Taka two hundred and fifty, extend to Taka five hundred.

**(2) Any person who contravenes any provision of this Order or any rule made thereunder for the contravention of which no specific penalty has been provided, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Taka five hundred, or with both.**

27. No court shall take cognizance of any offence under this Order except on the complaint of an officer\*].

28. Nothing contained in this Order shall be deemed to prevent any person from being prosecuted under any other law for any act of commission or omission which constitutes an offence under this Order,

or from being liable under any other law to any higher punishment

or penalty than that provided by this Order.

29. When an offender is not known or cannot be found, any officer 2[\* \* \*] may, if he finds that an offence has been committed, confiscate the property used in the commission of the offence.

**30. The Government may, as and when considers it necessary, set up a mobile court for trying offences under this Order.**

31. (1) Any officer1 not below the rank of a Forester or Senior Wildlife Scout] may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any offence under this Order.

(2) Every officer making an arrest under this Article shall, without unnecessary delay and subject to the provisions of this Order as to release on bond, take or send the person arrested before the Magistrate having jurisdiction in the case or the officer-in-charge of the nearest police station.32. Any officer not below the rank of Forest Ranger or Wild Life Supervisor1 [\* \*]2 who, or whose subordinate,] has arrested any person under Article 31 may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case or before the officer-in-charge of the nearest police station.

33. Every officer 3[\* \* \*] shall be competent to take all lawful means to prevent the commission of any offence under this Order.

34. The offences under this Order shall be tried by a Magistrate of the First Class.

**35. The District Magistrate or any Magistrate of the First Class specially empowered by the Government in this behalf may try an offence punishable under this Order summarily, under the Code of Criminal Procedure, 1898, subject to the1 [provisions] of Chapter XXII of that Code.**

36. (1) The Government may, by notification in the official Gazette, empower an officer-

a. to accept from any person against whom a reasonable suspicion exists that he has committed any offence under this Order a sum of money by way of compensation for the offence which such person is suspected to have committed; and

b. to release any property which has been seized as liable to confiscation, on payment of such value thereof as may be estimated by such officer;

c. to discharge in such cases as may be prescribed the suspected person if he is in custody or to release the seized property on payment of such sum of money, or such value as compensation to such officer as may be determined and to withdraw the proceedings against such person or property.

**(2) The sum of money accepted as compensation under sub-clause (a) of clause (1) shall not be less than Taka one thousand and shall not exceed Taka two thousand.** (3) No officer shall have power to compound a second and subsequent offence2 [committed by] the same person or persons under this Order.

37. Any person in possession of arms under a licence issued under the Arms Act, 1878, and residing within 5 miles from, **the boundary of a wild life sanctuary, national park** **or gam reserve shall, within1[such date as the**  **Government may, by notification in the official Gazette, direct, apply to the nearest officer in the] prescribed form for the registration of his name.**

38. The Government may vest in any officer2

[\* \* \*] all or any of the following powers, namely:-

a. the power of a civil court to compel the attendance of witnesses and the production of documents and material objects;

b. the power to issue a search-warrant under the Code of Criminal Procedure, 1898;

c. the power to hold an inquiry into an offence under this Order and in the course of such inquiry to receive and record evidence; and

d. the power to prosecute a case before a Magistrate.

**39. All officers under this Order shall be deemed to be public servants within the meaning of the section 21 of the Penal Code.**

40. Under this Order, carrying of fire arms up to the rank of Junior Wild Life Scout shall be treated as part of the uniform.

41. No suit, prosecution or other legal proceedings shall lie against any officer for anything done in good faith or intended to be done in pursuance of any provisions of this Order or the rules made thereunder.

**42. All police officers shall, upon request made by any person employed under this Order, assist him in the due discharge of his duties under this Order.**

43. An officer may, in the course of his official duties, resort to the use of firearms in exercise of his right of private defence of person and properties when the situation and circumstances are beyond the physical control of such officer.

44. The Government may, by notification in the official Gazette, delegate all or any of the powers conferred upon it under the provisions of this Order to any officer subordinate to it.

45. Notwithstanding anything contained in this Order, the Government may, in the interest of scientific or any public purpose, allow, by notifications in the official Gazette, killing or capturing of any wild animal in such place and by such means as may be specified in the notification.

46. The Government may, by notification in the official Gazette, in respect of any specified area-

(i) add to or exclude from a Schedule any wild bird or animal subject to such conditions as may be prescribed;

(ii) alter the period during which any wild bird or animal specified in the First Schedule may be killed.

**47. (1) The Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the provisions of this Order.**

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe-

\*] ;

(a) the powers and duties of the officers 1

[\* \*

(b) the form in which, and the terms and conditions on which, a licence or a permit or a special licence or a special permit may be granted;

(c) the fees to be charged for any licence or permit or a special licence or special permit;

(d) in the case of any species of wild animals, the number and the sex that may be killed under a licence;

(e) rewards to be given to the persons who render help in the detection of offences under this Order;

(f) the authorities by whom licences may be issued; and

(g) the management of wild life sanctuaries, national parks and game reserves.

48. **The enactments mentioned in the table below are hereby repealed to the extent specified in the third column thereof.**

|  |  |  |
| --- | --- | --- |
|  | TABLE  ENACTMENTS REPEALED |  |
| Year NO.  Bengal Act. | Short Title. | Extent of repeal |
| 1932 VIII | The Bengal Rhinoceros Preservation Act, | The Whole |
|  | 1932------ |  |
| 1912 VIII | The Wild Birds and Animals Protection Act, 1912--- | Do |
| 1879 | The Elephant Preservation Act, 1879 | Do |

FIRST SCHEDULE

PART I

**List of Mammals, Reptiles and Birds of Bangladesh which are open to shooting and may be hunted on an ordinary gage hunting [permit].**

|  |  |  |
| --- | --- | --- |
| English Name | Bengali Name | Scientific Name |
| Pintail | ............................... | Anas acuts |
| Shoveller | ............................... | Anas clypeata |
| Widgeon | ............................... | Anas Penelope |
| Gadwell | ............................... | Anas strepera |
| Grey leg goose | ............................... | Anser anser |
| Bar headed goose | ............................... | Anser indicus |
| Baer’s pochard | ............................... | Aytha Baeri |
| Pochard of Dunbird | ............................... | Aytha farina |
| Lesser whistling teel | ............................... | Dendrocygna javanica |
| Red crested pochard | ............................... | Netta rufina |
| Brahminy duck |  | Tadorna ferruginea  ARIDIEDAE |

|  |  |  |
| --- | --- | --- |
| Pondheran or Paddy bird |  | Ardeola grayii. |
| Cattle egret |  | Bubulcus ibis. |
| Little egret | ধড়বগ, বরবগ, ধলাবগ | Egretta garazetta |
|  |  | CARNIVORA |
| Fox | খেঁকশিয়াল | Vulpes bengalensis |
|  |  | CHARADRIDAE |
| Pintail snipe |  | Capella strenura |
| Lettle ringed plover |  | Charadrius dubius |
| Curlew |  | Numenius phacopus |
| Eastern golden plovor |  | Pluvialis dominica |
| Grey plover |  | Phevialis squatorola |
|  |  | CHARADRIDAE |
| Common sandsnipper |  | Tringa hupoleucos |
| Green shank |  | Tringa nebularia |
| Green sandsnipper |  | Tringa ochropus |
| Marsh sandsnipper |  | Tringa stangnatilis |
| Grey headed lapuring |  | Vanellus cinereus |
|  |  | PODENTIA |
| Little grede | ডুবুরী, ডুবডুবী, ছেড়া ছেইরা | Podiceps ruficollis |
| Indian here | খরগোস | Lepus nigricollis |
| Himalyan mouse hare | খরগোস | Ochotona roylei |
|  |  | THRESKIORNITHIDATE |
| Spoon bill | খুতেবগ | Platalea lencorodia |
|  |  | UNGULATA |
| Indian wild bear | জংলী শুকর | Sus serofa |

**FIRST SCHEDULE**

**PART II**

List of Mammals, Reptiles and Birds of Bangladesh for the hunting of which a special permit is required.

|  |  |  |
| --- | --- | --- |
| Name of animals | Season when hunting is permitted | Localities where hunting is permitted |
| Mammals, Reptiles, and1 [Birds] population, increase of which threatens the balance of nature of a particular locality or becomes a threat to public life (as in cases of man eating tiger,2 [rogue] elephants, etc.) | As declared by the Chief Wild Life Warden from time to time | In places as declared by the Chief Wild Life Warden |

**SECOND SCHEDULE**

**Wild animals, trophies or meat for the possession, transfer or import of which a certificate of lawful possession is required.**

(1) Any live protected animal or game animal.

(2) Any trophy or meat derived from a protected animal.

(3) Horns and tusks, etc., of deer, samber, bison, gayal, gaur and elephant.

(4) Skins of bear, otter, tiger, leopard, jungle eat, lizard, deer, samber, pangolin, crocodile and python.

**THIRD SCHEDULE**

**Protected animals, i.e., animals which shall not be hunted, killed or captured**

1. All animals,5 [reptiles] and birds when immature or not fully grown (except poisonous snakes, rats, mouse, fruit bats, pipistrelles, etc., which endanger public life).

2. All female game animals when-

(a) pregnant.

(b) in a condition that indicates they are suckling or feeding young.

(c) accompanied by their immature off-spring.

3. All females of animals as per Part II of the First Schedule (except when declared as in case of a man-eating tigress, [rouge] elephant, etc)

4. All individuals of the following species of mammals:-

All individuals of the following races, species, genera or groups of mammals:

|  |  |  |
| --- | --- | --- |
| English Name | Bengali name | Scientific name |
|  |  | CARNIVORA |
| Binturong | …. | Arctictis binturong |
| Small toothed Palm Civet | …. | Arcto galidia trivirgata |
| Dhole | জংলী কুকুর | Cuon alpinus |
| Leopard Cat | বন বিড়াল | Felis bengalensis |
| Junge Cat | বন বিড়াল | Felis chaus |
| Marbled Cat | … | Felis marmorata |
| Clouded leopard | … | Felis nebulosa |
| Golden Cat | … | Felis nebulosa |
| Fishing Cat | মাছ বিড়াল | Felis veverrina |
| Sun Bear | … | Herpestes edwardsi |
| Common Mongoose | বেজী | edwardsi |
| Hyeana | হায়েনা | Hyeana hyeana |
| Sloth bear | ভাল্লুক | Melursus ursinus |
| Masked Palm Civet | … | Peguna larvata |
| Leopard | চিতাবাঘ | Panthera pardus |
| Bengal Tiger | বাঘ | Panthera tigris tigris |
| Pllm Civet | ভোঁদড় | Paradoxurus hemaphroditus |
| Asiatic Black Bear | ভাল্লুক | Salenarctos thibetanus |
| Small Indian Civet | গন্ধগোকুল | Viverricula indica |
| Panther | চিতাবাঘ | …. |
|  |  | CETACEA |
| Common Dolphin |  | Delphinus dielphis |
| Little Indian propoise |  | Neomeris phocasnoides |
| Gangetic Dolphin | শুশুক | Plantanista gangetica |
|  |  | EDENTATA |
| Pangolin | বনরুই | Manis crassicaudata |
| Pangolin | বনরুই | Manis javanijca |
|  | … | HYSTRICIDAE |
| Brush-tailed porcupine | … | Atherurus macrourus |
| Indian restless Porcupine | সজারু | Hystrix hodgsonil |
|  |  | INSECTIVORA |
| Phygmy shrew | … | Suncus etruscus |
| Common Musk Shrew | চিবগ | Suncus murinus |
| Kastem Mole |  | Talpa Micrura |
|  |  | LOGMORPHA |
| Phygmy shrew | খরগোস | Suncus etruscus |
| Common Musk Shrew |  | Suncus murinus |
| Kastern Mole | … | Talpa Micrura |
|  | উদ বিড়ালী | LOGMORPHA |
| Assamcese rabbit | উদ বিড়ালী | Caprimulgus hispidus |
|  | উদ বিড়ালী | MUSTELIDAE |
| Hag badger | লেজী | Arctonyx Collaris |
| Clawless Otter |  | Lutra cinerea |
| Common Otter | উল্লুক | Lutra lutra |
| Smooth Indian Otter | … | Lutra perspicillata |
| Honey badger | প্যারাইল্লা বানর | Mellivora capemsis |
|  | বানর | PRIMATES |
| Hoolock | লজ্জাবতী বানর | Hylobates hoolock |
| Assamese Macaque | হনুমান | Macaca assamenasis |
| Crab-Eating Monkey | … | Macaca cynomolgus |
| Rhesus Monkey | … | Macaca Mulatta |
| Slow Loris |  | Nyctichebus coucang |
| Langur | কাঠ বিড়াল | Presbutis entellus |
| Leaf monkey | … | Presbytis pileatus |
| Southern capped Langur | … | Presbutis pileatus durga |
|  |  | RODENTIA |
| Pallas’s Squirrel | … | Callosciurus erythracus |
| Orange-belli | … |  |
| Hoary bellied Himalayan |  | Dreomys pygerythrus |
| Squirrel --- |  |  |
| Orange-bellied Himalayan Squirrel |  | Dreomys lokrish |
| Indian Palm squirrel |  | Funambulus palmaram |
| Three striped squirrel |  | Funambulus tristriatus |
| Patricoloured flying squirrel |  | Hylopstep alboniger |
| Flying squirrel |  | Pataurista petaurista |

|  |  |  |
| --- | --- | --- |
| Giant squirrel | কাঠ বিড়াল | Ratufa indica |
|  |  | UNGULATA |
| Antilope (Indian) |  | Antelope corvicarpa |
| Spotted deer | চিতল, চিত্রা | Axis axis |
| Hog deer | নেতৃনী হরিণ | Axis porcimus |
| Banting | গৌর | Box benteng |
| Gaur, Bison | বনগ্রু | Bos gaurus |
| Gayal, Bison | গয়াল | Bos grontalis |
| Nilgai |  | Boselaphus gragocamalus |
| Serow |  | Capriconis sumatrezensis |
| Swamp deer | বায়শিংগা | Cervus duvancelie |
| Samber | সম্বর | Cervus unicolor |
| Elephant | হাতি | Elephas maximus |
| Barking Deer | মায়ামৃগ | Muntiacus muntjac |
| Water buffalo | মহিষ | Probalus nubalis |
| Lesser one horned Rhinoceros |  | Rhinoceros spp |

5. All individuals of the following species genera of families of reptiles:-

|  |  |  |
| --- | --- | --- |
| English name | Bengali name | Scientific name |
| Little Pink whale | তিমি | Balanenoptera acutoro strata |
| Great Indian Fin whale | তিমি | Balsenoptera musculus |
| Hamiltons Terrapin |  | Domonia hamiltonii |
| Flap shelled spotted Turtle | কচ্ছপ | Lissemys punctata Punctata |
| Bengal eyed terrapin |  | Morcnia ecellata |
| Roof Turtle |  | Machuga tecta tecta |
| Claw-tailed tortoise |  | Testudo elongata |
| Bengal three keeled land |  | Terrapin nocoria tricarinata |
| Terrapin Scared Black Mud Turtle | কাছিম | Trionyz nigricans |
| Ganges Soft Shell |  | Trionyx gangeticus |
| Bronwn Soft Shell |  | Trionyx hurum |
|  |  | EMYDOSAURIA |
| Gharial |  | Garialis gangelicus |
| Estuarine crocodile | মেছোকুমীর | Crocodylus perosus |
| Marsh Crocodile | কুমীর | Crocodylus palustris |
|  |  | SQUAMATA |
| Beaked Deep Sea Snake |  | Enbydrina schistoza |
| Merton’s Tokay | তমাক | Gecko gecko azheri |
| Rock Phthon | অজগর | Python molurus |
| Reticulated Python |  | Python reticulatus |
| Diads Worm snake |  | Typholpa diardi |
| Grey Indian Monitor | গোসাপ | Varanus bengalensis |
| Ruddy Snub nosed Monitor | গোসাপশ সোনাগদী | Varanus flavescans |
| Tricolour Caspian Monitor | গোসাপ, রামগদী | Varanas Griscus Caspicu |
| Ocillated Water Monitor | গোসাপ | Varanus salvator |
| Black Lizard | কালাগদী | Varanus nebulosus |

6. All individuals of the following species of BIRDS:

|  |  |  |
| --- | --- | --- |
| English Name | Bengali Name | Scientific name  ACCIPITTRIDAE |
| Skira | তুর্কী বাজ | Accipter bedius |
| Crested Goshwk |  | Accipter trivirgatus |
| Imperial eagle |  | Aquila heliacal |
| Lesser spotted eagle |  | Aqila promarina |
| Tawmy eagle |  | Aquila rapax |
| Blyth’s baza | বাজ | Avideda ierdoni |
| White eyed buzzard eagle |  | Butastur teesa |
| Short toed eagle |  | Circaetus gallicus |
| Marsh harrier |  | Circus aeruginosus |
| Pale harrier |  | Circus macrourus |
| Pied harrier | রাখাল ভুলানী | Circus melanoleucos |
| Montagu’s harrier |  | Circus pygargus |
| Eastern march harrier |  | Circus spilonotus |
| Black winged kite | কাপাস্মী | Elanus Caeruleus |
| Larger falcon | শিকরে বাজ | Falco biarmicus |
| Shahree falcon |  | Falco peregrinator |
| Eastern peregrine falcon |  | Falco perigrinus |
| Oriental hobby |  | Falco serverus |
| Kesteel | সাপ ঘাউরী | Falcio tinnunculus |
| Eastern Reg-legged falcon |  | Falco vespertinus |
| White backed vulcher | শকুন | Gyps bengalensis |
| White bellied Sea-eagle |  | Haliasetus leucogaster |
| Palla’s fishing eagle | মাছাল, কুড়া | Haliasetus leucoryphus |
| Bhahminy kite | শঙ্খচিল, লাল চিল | Haliastur indicus |
| Booted hawk eagle |  | Mieranetus pennatus |
| Grey headed fishing eagle | মাছ ঘোড়াল | Ichthyophaga ichthayaetus |
| Black eagle |  | Ictinaetus malayensis |
| Rufous bellied hawk eagle |  | Lophortriorchis Kienerii |
| White legged fulconet |  | Macrohierax melanoleucos |
| Pariah kite | কালা চিল | Milvus migruns |
| Osprey | কোড়ল, কুড়া | Pandion haliaetus |
| Indian honey buzzard | গৃধিনী | Pernis ruticollis |
| Crested serpent eagle | তিলাই বাজ, ধুম্বা | Spilomis Cheela |
| Changeable hawk eagle |  | Spizaetus limnaetus |
| Black or King Vulchar | রাজ শকুন, গিন্নি | Torgos calvus |

|  |  |  |
| --- | --- | --- |
|  |  | ALAUOIDE |
| Eastern skylark | ঐরত পাখী | Alauda gugula |
| Humes short toed lark |  | Calandrella acutirostris |
| Ashy crown tinch lark |  | Erenoperix grisca |
| Red winged bush lark |  | Mirafia ensthrostera |
| Singing winged bush lark |  | Mirafra assanica |
| Assam winged bush |  | Mirafra assamica |
|  |  | ALCEDINIDAE |
| Common king fisher | ছোট মাছরাঙা | Aleedo atthis |
| Blythis Kingfisher |  | Alcedo Hercules |
| Blue eared kingfisher |  | Aleedo meninting |
| Three toed Kingfisher |  | Ceys erithacus |
| Greater pied Kingfisher |  | Ceyyle laugubris |
|  |  | ALLEEDINIDAE |
| Lesser pied Kingfisher | পকড়া মাছরাঙা | Ceyyle rudis |
| Rudy Kingfisher |  | Haleyon Ceromenda |
| White coloured Kingfisher |  | Haleyon chloris |
| Black capped Kingfisher |  | Haleyon pileate |
| White breasted Kingfisher | সাদা বুক মাছরাঙা | Haleyon smynresis |
| Brown winged Kingfisher | এড় মাছরাঙা, খুরিয়াল | Pelargopsis amauroptera |
| Storkbilled Kingfisher |  | Pelargopsis capensis |
|  |  | ANATIDAE |
| Common teal | পেড়ী হাস | Anas Crecoa |
| Spotbill or grey Duck |  | Anas heecilorbyncha |
| Mallard | নিল শির | Anas plantyrhynchos |
| Winged teal |  | Anas querguedula |
| Forest bean goose | রাজ হাস | Ansar Fabilis |
| Tupted pochard duch |  | Aytha Fuligola |
| White winged wood duch | ভদি হাঁস | Cairna Scutulata |
| Large whistling Teal | শরালী | Dendrocygna bicolor |
| Cotton Teal | বেলে হাঁস | Nattapus coromaudelianus |
| Puck teaded duck | গোলব শির | Rhoduessa Caryophyllacea |
| Mukta or Comb duck |  | Sarkidiornis molanotos |
| Shel duck | চকা, সাচক | Tadorma Tadorna |
|  |  | APODIADAE |
| House swift | আবাবিল | Apus affinis |
| Alpine swift |  | Apus mella |

|  |  |  |
| --- | --- | --- |
| White throated spine tailed swift |  | Chaetura candakut |
| Edible nest swift let |  | Collocalia innominata |
| Palm swift | বাতাস সিয়া, নাককাট্রি | Cypsiurus parvus |
| Crested swift |  | Hemiprocne longipennis |
|  |  | ARDIEDAE |
| Grey Heron | অঞ্জন | Ardea cineoria |
| Giant white billed heron |  | Ardea imperialis |
| Purple heron | লাল কাক | Ardea purpuria |
| Chinese pond heron |  | Ardeala graii |
| Little Green heron |  | Butorides striatus |
| Black bittern | নল গোঙ্গা | Dupetor flavicolis |
| Little egret | ঈর বক, বড় বক | Egretta alba |
| Indian reef beron |  | Egretta gularis |
| Smaller Egret | কোরচি বক | Egretta infermedia |
| Tiger bittern |  | Corsachius melanocephalus |
| Chest nut bittern | খয়রি বক, লাল বক | Ixobrychus Cinnamomeous |
| Yellow bittern |  | Ixobrychus sinersis |
| Night heron | ওয়াক, রাত চোরা | Nycticorax Mucticorax |
|  |  | ARTAMIDAE |
| Ashy swallow shrike | লাটোরা | Artamus fascus |
|  |  | BUCEROTIDAE |
| Fufous necked hornbill | ধনেশ | Accros nepalensis |
| Pied hornbill | ক্যাট ক্যাইটা ধনেশ | Anthracoceros maladaricus |
| Great hornbill | ধনেশ | Buceros bicornis |
| Wreathed hornbill | ধনেশ | Rhyliceos undulates |
|  |  | BURHINIDAE |
| Stone Curlew | বগুদি | Burhinus Cedicnemus |
| Great stone Curlew | বগুদি | Esacus magnirostris |
| Small Indian pratincole |  | Glareola lacteal |
| Avocet | বাক চষ্ণু | Recurviresta avosetta |
|  |  | CAMPEPHAGIDAE |
| Smaller Cuckoo shrike |  | C. Molaschistos |
| Large Cuckoo shrike |  | C. novaehbllandiae |
| Pied flycatcher shrike | পাবুদ, কাল কখ্যাতি | Hempipus picatus |
| Short billed minivet |  | Paricrocotus flammacus |
| Small minivet |  | Pericrocotus Cinnamomeus |
| Scarlet minivet |  | Pericrocotus hammacus |

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| Yellow throated minivet |  | Pericrocotus solaris |
| Common wood shrike |  | Tephrodurnis pordicerionus |
| Large wood shrike |  | Tephrodurnis Virgatus |
|  |  | CAPITONIDAE |
| Blue throated barbet | বড় বসন্ত বাউরী মেঘবউ, ধনিয়া পাখী | Megalaima asiatica Megalaima australis |
| Blue eared barbet  Crimson breasted barbet | ছোট বসন্ত বাউরী বসন্ত বাউরী | Megalaima baemacaphala Megalaima lineate. |
| Lincated barbet |  | CAPRIMULGIDAE |
| Franxlin’s night jar  Jungle night jar  Long tailed night jar | সন্ধ্যা পেঁচা  কানা কুয়া  দিন কানা | Caprimulgus affinis Caprimulgus indicus Caprimulgus macrurus |
|  |  | CHARADIIDAE |
| Trunstone |  | Arenaria interpres |
| Sanderling |  | Calidris albus |
| Dunlin |  | Calidris alpinus |
| Little stint |  | Calidris minutus |
| Long toed stint |  | Calidris subminutus |
| Termminck’s stint |  | Calidris temminckii |
| Eastern knot |  | Calidris tenuirostris |
| Curlew sent piper |  | Calidris testaceus |
| Gtrsy dmo[r | কাদা খোচা | Capella media |
| Jacl snipe |  | Capella minima |
| Solitary snipe | বন চাহা | Capella solitaria |
| Chines Kentish plover | বাটান | Charadrius alexandrinus |
| Large sand plover | ছোট বাটান | Charadrius alexandrines |
| Lesser sand plover | বাটান | Charadrius mongolus |
| Long billed ring plover | বাটান | Charadrius placidus |
| Spoon billed sand piper |  | Eurynorhynehus pygmeum |
| Broad billed sandpiper |  | Linicola falcinellus |
| Black tailed godwit |  | Limosa limosa |
| Snipe billed godwit |  | Limondromus sunipalmatus |
| Ruft and Reeve |  | Philomachus pugnax |
| Avocet |  | REcurvirestra avosetta |
| Painted snipe | বেগ সারজী | Rostratula bengalensis |
| Wood cock |  | Scolopax rusticola |

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|  |  | CHARADRIIDAE |
| Wook sandpiper | বালু বাটান | Tringa glareda |
| Armstrongs Sandpiper |  | Tringa guttfar |
| Terek sandpiper |  | Tringa terek |
| Spotted red shank | মটরি | Tringa totanus |
| Red wattled Lapwing | হট টিটি | Vanellus indicus |
| White tailed Lapwing | টিটি | Vanellus leucurus |
| Spar Winged Lapwing |  | Vanellus spinosus |
| Lapwing | টিটি | Vanellus vanellus |
|  |  | CICONIIDAE |
| Open billed stork | ঠোঁটে ভাঙা, সামক খোল | Amas tomus oscitaus |
| Eastern white stork |  | Cinonia Ciconia |
| White necked stork |  | Cinonia episcopus |
| Black stork |  | Cinonia Nigra |
| Painted stork | সোনা জন্মা | Ibis leucocephalus |
| Greater adjutant |  | Leptoptilos dubius |
| Lesser adjutant | ওদন চড়, মদন টাক | Leptoptilos javinicus |
| Black nacked stork | রাম শালিক | Xenorhynchus asiaticus |
|  |  | COLOMBIDA |
| Emarald dove | রাজা ঘূঘু | Chalcophaps indica |
| Blue rock pigeon |  | Columba Livia |
| Purple Wood Pigeon | বেগুনী কবুতর | Columba Punicea |
| Green imperial Pigeon |  | Columba Ducula aenea |
| Bar-tailed Cuckoo dove |  | Macropygia unchall |
| Mountain Imperial Pigeon | ধুম কল | Ducula badia |
| Spotted dove |  | Streptopelia Chinensis |
| Rufous Turtle Dove | বন পরাবত, ঘুঘু | Streptopelia orientalis |
| Red Turtle Dove | লাল ঘুঘু | Streptopalia Tranquebarica |
| Thich billed green pigeon | হরিকল | Tyeran biceneta |
| Orange breasted pigeon | হরিকল | Tyeran biceneta |
| Orange breasted pigeon | হরিকল | Tyeran curvirostra |
| Yettow footed pigeon | হরিকল | Tyeran Phoeniciptera |
| Grey fronted pigeon | হরিকল | Tyeran pomdadora |
|  |  | CORACIIDAE |
| Indian roller | নীল কন্ঠ | Coracias benghalensis |
| Broad billed roller or blue tay | নীল কন্ঠ | Eurystomus orientalis |
|  |  | CORVIDAE |

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| Jungle Crow | দাড় কাক | Corvus macrorhynchos |
| Grey tree-pie | কাট ময়ূর | Dendrocitta Formosa |
| Rufous Tree pie | হাড়ি চাচা, তাউরা | Dendrocitta Vagabunda |
| Green Magpie |  | Kitta chinesis |
| Red billed Green magpie |  | Kitta crythrorhyncha |
|  |  | CUCULIDAE |
| Plaintive cuckoo | ছোট কোকিল | Cacomantis merulinus |
| Banded bay cuckoo |  | Cacomantis soneratii |
| Crow Pheasant | কানা কোককা, হারিকরি | Centropus Sinersis |
| Pied crested cuckoo | শাহী বুলবুল | Clamator jacobinus |
| The Cuckoo |  | Cuculus canorus |
| Hodgson’s Hawk Cuckoo |  | Cuculus fugax |
| Indian Cuckoo |  | Cuculus Micropterus |
| Small Cuckoo |  | Cuculus Poliocepbalus |
| Common hawk cuckoo | চোখ গেল, পাপিয়া | Cuculus varius |
| Koel | কোকিল | Endynanuys Scolopacea |
| Large Green billed malkoha | বন কোকিল | Rhopodytes tristis |
| Drongo Cuckoo |  | Surniculus lugubris |
| Sirkeer Cuckoo |  | Taccocua leschnaulti |
|  |  | DICAEIDAE |
| Yellowvented flower pecker | মধুপায়ী | Dicaeum charysorrheum |
| Tickells vented floerpecker |  | Dicaeum erythrorhynchos |
| Planncoloured flowr pecker |  | Dicaeum concolor |
| Scarletbacked flower pecker |  | Dicaeum cruentatum |
| Orange bellied flower pecker |  | Dicaeum trigonostigma |
|  |  | DiCRURIDAE |
| Black drongo | ফিঙে, ফেউচ্চা | Dicrurus adsimilis |
| Brongzed Drongo |  | Dicrurus aenena |
| Ashy drongo |  | Dicrurus Leucophacus |
| Grater racket tailed drongo |  | Dicrurus paradiscus |
|  |  | EMBERIZIDAE |
| Deccan Crested bunting |  | Melophus lathami |
| Black faced bunting |  | Emberiza spodocephala |
| Yellow breasted bunting |  | Emberiza Sureola |
| Red Munia |  | Estrilda emandara |
| White throated munia |  | Lonchura malabarica |
| Chast nut munia |  | Lonchura Punctualata |

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| Whitehacked Munia |  | Lonchura Striata |
| Spotted Munia | সবুজ মুনিয়া | Lonchura Punctulata |
| Gould’s Broad billed |  | Serilophus lunatus |
| Common rosefinch |  | Carpodacus erythrinus |
| Demoiselle crane |  | Anthropoides Virgo |
| Masked Finfoot |  | Helippais personata |
| House martin | আবাবিল | Elichon Kashmiriense |
| Striated Swallow | নাকুটি চাতক | Hirundo daurica |
| Sand martin | আবাবিল | Hirundo daurica |
| Wire bailed Swallow | সূচ লেঞ্জা | Hirundo smitnii |
| Larger Straited Swallow | তাল চক্ষু, তাল চাটা | Hirundo Striolata |
| Plain Sand Martin | আবাবিল | Riparia paludicala |
| Collard Sand Martin | আবাবিল | Riparia riparia |
| Common lora |  | Aegithina tiphia |
| Gold fronted chloropsis | সবুজালী | Chloropsis aurifroms |
| Blue winged chloropsis | সবুজালী | Chloropsis Cochirchinensis |
| Orange billied Chloropsis | সবুজালী | Chloropsis hardwickil |
| Fairy blue bird |  | Irona puella |
| Pheasant tailed jacana | বেউয়া, বিল | Hydrophazianus chirurgus |
| Bronzed winged jacana | জল পিপি | Metropidius indicus |
| Brown Shrike | লাটোয়া | Lanius cristatus |
| Black headed shrike | লাটোয়া | Lanius schach |
| Tipetan Shrike | লাটোয়া | Lanius tephronotus |
| Large Cuckoo shrike | কাপসসী |  |
| Whiskered tern | গাঙচিল | Chlidonias hybrida |
| White winged black tern |  | Chlidonias lencoptera |
| Gull billed tern |  | Gelocheliden nilotica |
| Caspian tern |  | Hydroprogne caspia |
| Brown headed gull |  | Larus brunnicephalus |
| Lesser black backed owl |  | Larus fuscus |
| Great black head Gull |  | Larus ichthyaetus |
| Black headed Gull |  | Larus ridibundus |
| Indian Skimmer | গাঙচিল | Rychope albicollis |
| Black bellied tern | গাঙচিল | Sterna acuticauda |
| Large crested tern |  | Stena bergii |
| Common tern |  | Sterna hirundo |
| Little tern | গাঙচিল | Sterna Sibifrons |

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| Indian River Tern |  | Sterna Surautia |
|  |  | MEROPIDAE |
| Chestnut headed bee eater | বাঁশপতি | Merops leschenaultia |
| Green bee eater | সুইচোর | Merops Oricutalis |
| Blue tailed bee eater | বড়সুইচোর | Merops Philippinus |
| Blue bearded bee eater |  | Nyctyonis athertoni |
|  |  | NOTACILLIDAE |
| Chinese three pipit |  | Anthus hodgsoni |
| Paddy field pipit |  | Anthus novaeseelandiae |
| Dark Pipit |  | Anthus Pelopus |
| Pied or White Wagtail |  | Anthus Motacilla alba |
| Grey wagtail |  | Motacilla Caspica |
| Yellow headed wantail |  | Motacilla Citreola |
| Yellow wagtail |  | Motacilla flava |
|  |  | MUSCICAPIDAE |
| Paddy field warbbor |  | Acrocephalus Agricola |
| Blunt winged paddy field warbler |  | Acrocephalus Concinens |
| Blythis Reed Warbler |  | Acrocephalus dewatorum |
| Great reed warbler |  | Acrocephalaus Stentoeus |
| Napal babler |  | Alcippe Commoda |
| Red throated tit babbler |  | Alcippe Commoda |
| Spotted bush warbler |  | Bradypterus throraicu |
| Great necked laughing thrush |  | Carrulax moniligerus |
| White crested laughing thrush |  | Carrulax pectoralis |
| Bristiled grass warbler |  | Chaetornis strisatus |
| Yellow yed babbler |  | Chrysomma Sinensis |
| White tailed blue robin |  | Cinclidium leicurum |
| Yellow bellied fentail warbler |  | Cisticola exilis |
| Streaked fentail warbler |  | Cisticola juncidis |
| Magpie robin |  | Coysychus Saularis |
| Grey headed fly catcher | ফুটকী | Culicicafa ceybrensis |
| Black backed forktail |  | Enicurus immaculatus |
| Leschenaults forktail |  | Enicurus leschemsulti |
| Spotted forktail |  | Enicurus maculatus |
| Stay backed forktail |  | Encurus schistaceus |
| Blue chat |  | Erithacus brunneus |
| Ruby throat |  | Erithacus Calliope |

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| Siberian blue chat |  | Erithacus cyane |
| Himalayan ruby throat |  | Erithacus pectoralis |
| Blue throat |  | Erithacus arecicus |
| Delesserts laughing thrush | বক গুর গুরালী | Garrulax delesserti |
| Yellow throated laughing thrush | বক গুর গুরালী | Garrulax galbanus |
| Crimson winged laughing thrush | বক গুর গুরালী | Garrulax phoeniceus |
| Rufous necked laughing thrush | বক গুর গুরালী | Garrulax ruficellis |
| Streaked laughing thrush |  | Garrulax virgatus |
| Large grass warbler |  | Graminicola lenghalensis |
| Booted warbler |  | Hippalais caligata |
| Slender billed scimitar babler |  | Kiphirhyncus superciliaris |
| Silver eard mosia |  | Leiothrix argentauris |
| Palla’s grass hopper warbler |  | Locustella certhiola |
| Temminck’s grass hopper warbler |  | Locustella lanceolate |
| Yellow breasted babbler |  | Macronous gularis |
| Straited marsh warbler |  | Megalurus palustris |
| Lesser scaly breasted Wren |  | Miroura pusilla |
| Babbler |  |  |
| Black naped flycatcher |  | Monarcha azurea |
| Blue rock thrush | পাথুরে দোয়েল | Monticola solitarius |
| Red breasted flycatcher |  | Muscicapa solitarius |
| Large billed blue fly Catcher |  | Muscipapa banyumas |
| Brooks fly Catcher |  | Muscicapa Poliogenys |
| Blue throated fly Catcher |  | Muscicapa rubeculoides |
| White browed Blue Flycatcher |  | Muscicapa superciliaris |
| Verditer Flycatcher |  | Muscicapa thalassina |
| Thickell’s Blue Flycatcher |  | Muscicapa tickelliae |
| Golden headed tailor bird |  | Orthtomus cucullatus |
| Tailor bird | টুনটুনি | Orthtomus sutorius |
| Mangrove Whistler |  | Pachycophala Cinera |
| Red headed barrot bill |  | Pavadoxornis ruficeps |
| Black redstart |  | Phoenicurus ochrunus |
| Daurian Redstart |  | Phoenicurus suroreus |
| Thick billed Warbler |  | Phragmaticolca acdon |
| Thickell’s leaf warbler |  | Phylloscopus affinis |
| Black browed leaf warbler |  | Phylloscopus cautator |
| Smoky willow Warbler |  | Phylloscopus fuligiventer |

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| Dusky leaf Warbler |  | Phylloscopus fuscatus |
| Yellow browed leaf Warbler |  | Phylloscopus inornatus |
| Large billed laf warbler |  | Phlloscopus magnirostris |
| Phythis leaf warbler |  | Ph7loscopus reguloides |
| Dull green leaf Warbler |  | Phylloscopus trochiloides |
| Rustysheeked Scimitar Babbler |  | Pomatorhinus erythrogeny |
| Large Scimitar Babbler |  | Pomotorhinus hypoleucos |
| Rufous necked Scimitar Babbler |  | Pomatohinus ruficolis |
| Long tailed grass warbler |  | Prinia burnesi |
| Yellow bellied long tailed warbler |  | Prinia flaviventris |
| Streaked Longtailed Warbler |  | Prinia gracilus |
| Franklinis Longtailed Warbler |  | Prinia hodgsonii |
| Beavens Longlailed Warbler |  | Prinia rufescens |
| Ashy Longtailed Warbler |  | Prinia socialis |
| Tawny flanked Longtailed |  | Prinia subslara |
| Jungle Longtailed Warbler |  | Prinia sylvatica |
| Chestnut throated shrike Babbler |  | Pteruthius melanotis |
| White browed fantail flycatcher |  | Rhipidura albicollis |
| Yellow bellied fantail Flycatcher |  | Rhipidura hypoxantha |
| Phumbeoous Redstart |  | Ryhacornis fuliginonus |
| Long billed wren babbler |  | Rimator malacoptilus |
| Pied bush chat |  | Saxicola Caprata |
| Barkgrey bush chat |  | Saxicola ferrea |
| Jerdon’s bush chat |  | Saxicola jerdoni |
| Stone chat |  | Saxicola torguta |
| Yellow eyed Flycatcher Warbler |  | Seicecus burkei |
| Goldex headed Rubbler |  | Siachyris chrysaea |
| Red froned Babbler |  | Stachyris rufifrons |
| Paradise Flycatcher |  | Terpsiphone paradise |
| Abbot’s Babbler |  | Trichastoma abotti |
| Red capped Babbler |  | Timalia pileate |
| Straited Babbler |  | Turdoides earlei |
| Jungle Babbler |  | Turdoides striatus |
| Black throated thrush |  | Turdus ruficollis |
| Headed Yutina chestnut |  | Yuhina castaniceps |
| Yellow napped Yutina |  | Yuhina flavicollis |
| Black clinned yuhunia |  | Yuhina nigrementa |

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| White bellied Yuhunia |  | Yuhina antholeuca |
| Golden mountain thrush |  | Zoothera dauma |
| Orange headed ground thrush |  | Zoothera eitrina |
|  |  | NEOTARINIIDAE |
| Mrs. Gould’s Sunbird |  | Aethopyga gouldiae |
| Yellowbacked Sunbird |  | Aethopyga siparaja |
| Purple Sunbird |  | Nectarinia Zeylonica |
| Little Spiderhunter |  | Arachnothera longirostris |
| Streaked Spiderhunter |  | Arachnothera megna |
| Van Hasselts Sunbird |  | Nectarinia sperata |
| Purplernumped Sunbird |  | Nectarinia asiatica |
|  |  | OTIDIDAE |
| Bengal horican |  | Eupodotia bengalensis |
|  |  | PARIDAE |
| Grey tit |  | Parus majer |
| Spotted billed pelican | গগন বেড় | Pelecenus philippensis |
|  |  | PHALACROCORACIDE |
| Darter or sank bird | গয়ার | Anhinga rufa |
| Shag | পান কাউর | Phalacrocorax fusciecllis |
| White cheekad hill patridge |  | Arborephila atrogularia |
| Rufus throated hill patridge |  | Arborophila rufogularis |
| Bamboo patridge |  | Bambusicola fytetii |
| Blue breasted quail |  | Conturnix chinensis |
| Rain quail | তিতির | Coturnix coromandelica |
| Assam black patridge |  | Francolinus francotinus |
| Swamp patridge |  | Francolinus gularis |
| Red jungle fowl |  | Gallus gallus |
| Black breasted Kalij | মথুরা | Lophura leucomelana |
| Common pea fowl |  | Pavo cristatus |
| Burmese fowl |  | Pavo muticus |
| Peacock pheasant | কাটময়ূর | Polyplectron bicalearats |
| Peacock | ময়ূর |  |
|  |  | PICIDAE |
| Red eard Bay wood pecker | কাট ঠোকরা | Blythipicus pyrrhotis |
| Larga Golden becked woodpecker | কাট ঠোকরা | Chrysocolaptes lercidus |
| Stripe breasted pied wood pecker | কাট ঠোকরা | Dendrocopos atratui. |
| Grey crowned pigmy wood pecker | কাট ঠোকরা | Dendrocohos canicapillus |

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| Yellow fronted pied wood pecker | কাট ঠোকরা | Dendrocops mabrattensis |
| Fulvous breasted pied wood pecker | কাট ঠোকরা | Dendrocopos macei |
| Pigmy wood pecker | কাট ঠোকরা | Dendrocopos namus |
| Lesser golden backed wood pecker | কাট ঠোকরা | Dinopium bengalensis |
| Golden backed three toed wood pecer | কাট ঠোকরা | Dinopium javanensis |
| Yellow fronted rised wood pecker | কাট ঠোকরা | Dinopium marnathensis |
| Pale headed wood pecker | কাট ঠোকরা | Gecinulus grautia |
| Heart spotted wood pecker | কাট ঠোকরা | Hemicircus cancute |
| Rufous bellied wood-pecker | কাট ঠোকরা | Hypicus hyperithrus |
| Wryneck wood-pecker | কাট ঠোকরা | Jynx torguilla |
| Rufous wood-pecker | কাট ঠোকরা | Micropternus breachyurus |
| Speckled piculet |  | Picumnus innominatus |
| Black napped green wood-pecker | কাট ঠোকরা | Picus canus |
| Small yellow-naped wood-pecker | কাট ঠোকরা | Picus chorolophus |
| Large Yellow-naped wood-pecker | কাট ঠোকরা | Picus harinucha |
| Little scaly billed green wood | কাট ঠোকরা | Picus myrmecophoneus |
| Pecker |  |  |
| Rufous piculet |  | Sasia ochracea |
|  |  | PITIDAE |
| Indian pitta |  | Pitta brachyuran |
| Blue pitta |  | Pitta cyanea |
| Blue winged pitta |  | Pitta moulccensis |
| Blue napped pitta |  | Pitta nepalensis |
| Green breasted pitta |  | Pitta sordida |
|  |  | PLOCEIDAE |
| Black throated Baya |  | Ploceus bengalensis |
| Streaked Baya |  | Ploceus Manyar |
| Baya |  | Ploceus |
|  |  | PODARCIDAE |
| Hodgson’s frogmouth |  | Patrachostomus hodgsoni |
|  |  | Patrachostomus hodgsoni |
|  |  | PSITTACIDAE |
| Lorikeet | লট কল | Loriculus vernalis |
| Red breasted parakeet | টিয়া কাজলা | Psittacila alexandri |
| B lossom heoded parakeet | টিয়া কইরিদি | Psittacila cyanocephala |
| Large Indian parakeet | তোতা পাখি | Psittacila eupatria |
| Burmese slaty headed parakeet | টিয়া মানো | Psittaila finschil |

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| Roseringed parakeet | টিয়া | Psittacila krameri |
| Eastern blossom headed parakeet | টিয়া | Psittacila roseate |
|  |  | PTEROCLIDAE |
| Painted sandgrouse |  | Pterocles indicus |
|  |  | PYCNONOTIDAE |
| White throated Bulbul | সিপাহী বুলবুল | Criniger flaveolus |
| Brown cared Bulbul |  | Hypsipetes flavalus |
| Black Bulbul |  | Hypsipetes  Madagascariensis |
| Rufous bellied Bulbul |  | Hypsipetes Virescens |
| Olive Bulbul |  | Hypsipetes Viridiscens |
| Black peaded Bulbul | সিপাহী বুলবুল | Pycnontus atriceps |
| Redvented Bulbul | সিপাহী বুলবুল | Pycnontus cafex |
| Blyth’s Bulbul | সিপাহী বুলবুল | Pycnontus flavescens |
| Redwhiskered Bulbul |  | Pycnontus jacosus |
| Black headed yellow Bulbul |  | Pycnontus Melanictorus |
| Pinch billed Bulbul | বুলবুল | Spizixos canifrons |
|  |  | RALLIDAE |
| Brown Crane | কাগ | Amaurornis akool |
| Rudy Crane | পিঠা কাগ | Amaurornis fuscus |
| White breasted Waterhen | ডাহুক | Amaurornis phownicurus |
| Elwese crane | কাগ | Amaurornis spp |
| Coot | জল কুকুট | Falica atra |
| Water Cock, Kora | কোড়া | Gallierex Cinerea |
| Moorhen | তেল কুপি | Gallinula chloropus |
| Purple Moorhen |  | Porphyrio prophyrio |
| Water rail | জল মুরগী | Rallus aquaticus |
| Chestnut bellied Nuthatch | চোরা পাখী | Sitta castanea |
| Beautiful Nuthatch |  | Sitta Formosa |
|  |  | SITTIDAEI |
| Velvelfronted Nuthatch |  | Sitta frontalis |
|  |  | SITTIDAEI |
| Spotted Owlet | কোটরে পেঁচা | Athene brama |
| Short earned Owl |  | Asio flammeus |
| Eagle Owl |  | Bubo bubo |
| Tawny fish Owl |  | Bubo flavipes |
| Forest eagle Owl |  | Bubo nipalensis |

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| Brown fish Owl | ভুতম পেঁচা, ধুধু | Bubo zeylonensis |
| Pigmy Owlet |  | Glancidium brodii |
| Barred Owlet |  | Glaudidium cucucloides |
| Brown hawk owl |  | Ninox scutulata |
| Collard Scops Owl |  | Otus spilocephalus |
| Scops Owl |  | Otus Scops |
| Spootted Scops Owl |  | Otus spilocephalus |
| Bay Owl |  | Phodilus badius |
| Barn Owl |  | Tyto alba |
| Grass Owl |  | Tyto capensis |
|  | লক্ষী পেঁচা | STURNIDAE |
| Jungle Myna |  | Acridotheres fusces |
| Bank Myna |  | Acridotheres ginginianus |
| Shot crested Myna | বন শালিক | Acridotheres |
| Common Myna | গাঙ শালিক | Acridotheres tristis |
| Glossy Starling | ঝুটি শালিক | Aplonis panayensis |
| Spotted winged stare | শালিক | Saroglossa spiloptera |
| Pied Myna | গোশালিক | Sturnus contra |
| Grey Headed Myna | ফাঁট শালিক | Sturnus malabaricus |
| Brahminy Myna | লাল শালিক | Sturnus pagodarum |
|  |  | THRESKIORNITHIDAE |
| Glossy ibis |  | Plegadis falcinellus |
| Black ibis | খয়রা | Pseudibis papillosa |
| White Ibis | সাদা দোচরা | Threskiornis melanocephala |
|  |  | TROGONIDAE |
| Red headed trogon |  | Harpactes arythrocephalus |
|  |  | TROGONIDAE |
| Common bustard quail | তিতির | Turnix suscitator |
| Little bustard quail |  | Turnix sylvatica |
|  |  | UPUPIDAE |
| Hoopee | হুদহুদ | Upupa epops |
| White eye |  | Zosterops palpehrosa |
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Thereafter, the Awami League government under the leadership of father of the nation Bangabandhu Sheikh Mujibur Rahman enacted the THE TERRITORIAL WATERS AND MARITIME ZONE ACT, 1974. Considering its importance, THE TERRITORIAL WATERS AND MARITIME ZONE ACT, 1974 (ACT NO. XXVI OF 1974) has been exactly quoted below:

***An Act to Provide for the declaration of the territorial waters and maritime zones.***

*WHEREAS clause (2) of Article 143 of the Constitution provides that Parliament may, from time to time, by law provide for the determination of the territorial waters and the continental shelf of Bangladesh;*

*AND WHEREAS it is necessary to provide fo the declaration of the territorial waters, continental shelf and other maritime zones and for matter ancillary thereto;*

*It is hereby enacted as follows:-*

1. *This Act may be called the Territorial Waters and Short title Maritime Zones Act, 1974.*
2. *In this Act, unless there is anything repugnant to the Definitions subject or context,-   
   (a) “conservation zone” means a conservation zone established under section 6;   
   (b) “contiguous zone” means the zone of the high seas declared by section 4 to be the contiguous zone of Bangladesh;   
   (c) “continental shelf” means the continental shelf of Bangladesh referred to in section 7;   
   (d) “economic zone” means the zone of the high seas declared under section 5 to be the economic zone of Bangladesh;   
   (e) “territorial waters” means the limits of sea declared under section 3 to be the territorial waters of Bangladesh.*
3. *(1) The Government may, by notification in the official Gazette, declare the limits of the sea beyond the land territory and internal waters of Bangladesh which shall be the territorial waters of Bangladesh specifying in the notification the baseline-   
   (a) From which such limits shall be measured; and   
   (b) The waters on the landward side of which shall form part of the internal waters of Bangladesh.   
   (2) Where a single island, rock or a composite group thereof constituting the part of the territory of Bangladesh is situated seawards from the main coast or baseline, territorial waters shall extend to the limits declared by notification under sub-section (1) measured from the low waterline along the coast of such island, rock or composite group.   
   (3) The sovereignty of the Republic extends to the territorial waters as well as to the air space over and the bed and subsoil of, such waters.   
   (4) No foreign ship shall, unless is enjoys the right of innocent passage, pass through the territorial waters.   
   (5) Foreign ship having the right of innocent passage through the territorial waters shall, while exercising such right, observe the laws and rules in force in Bangladesh.   
   (6) The Government may, by notification in the official Gazette, suspend, in the specified areas of the territorial waters, the innocent passage of any ship if it is of opinion that such suspension is necessary for the security of the Republic.   
   (7) No foreign warship shall pass through the territorial waters except with the previous permission of the Government.   
   (8) The Government may take such steps as may be necessary-   
   (a) to prevent the passage through the territorial waters of any foreign ship having no right of innocent passage;   
   (b) to prevent and punish the contravention of any law or rule in force in Bangladesh by any foreign ship exercising the right of innocent passage;   
   (c) to prevent the passage of any foreign warship without previous permission of the Government; and (d) to prevent and punish any activity which is prejudicial to the security or interest of the Republic.*

***Explanation.-*** *In this section “warship” includes any surface or sub-surface vessel or craft which is or may be used for the purpose of naval warfare.*

1. *(1) The zone of the high seas contiguous to the territorial waters and extending seawards to a line six nautical miles measured from the outer limits of the territorial waters is hereby declared to be the contiguous zone of Bangladesh.   
   (2) The Government may exercise such powers and take such measures in or in respect of the contiguous zone as it may consider necessary to prevent and punish the contravention of, and attempt to contravene, any law or regulation in force in Bangladesh relating to-   
   (a) the security of the Republic;   
   (b) the immigration and sanitation; and   
   (c) customs and other fiscal matters.*
2. *(1) The Government may, by notification in the Official Gazette, declare any zone of the high seas adjacent to the territorial waters to be the economic zone of Bangladesh specifying therein the limits of such zone.   
   (2) All natural resources within the economic zone, both living and non-living, on or under the seabed and subsoil or on the water surface or within the water column shall vest exclusively in the Republic.   
   (3) Nothing in sub-section (2) shall be deemed to affect fishing within the economic zone by a citizen of Bangladesh who uses for the purpose vessels which are not mechanically propelled.*
3. *The Government may, with a view to the maintenance of the productivity of the living resources of the sea, by notification in the official Gazette, established conservation zones in such areas of the sea adjacent to the territorial waters as may be specified in the notification and may take such conservation measures in any zone so established as it may deem appropriate for the purpose including measures to protect the living resources of the sea from indiscriminate exploitation, depletion or destruction.*
4. *(1) The continental shelf of Bangladesh comprises-   
   (a) the seabed and subsoil of the submarine areas adjacent to the coast of Bangladesh but beyond the limits of the territorial waters up to the outer limits of the continental margin bordering on the ocean basin or abyssal floor, and   
   (b) the seabed and subsoil of the analogous submarine areas adjacent to the coasts of any island, rock or any composite group thereof constituting part of the territory of Bangladesh.*

*(2) Subject to sub-section (1), the Government may, by notification in the Official Gazette, specify the limits thereof.*

*(3) No person shall, except under and in accordance with the terms of, a licence or permission granted by Government explore or exploit any resources of the continental shelf or carry out any search or excavation or conduct any research within the limits of the continental shelf;*

*Provided that no such licence of permission shall be necessary for fishing by a citizen of Bangladesh who uses for the purpose vessels which are not mechanically propelled.*

*Explanation.- Resources of the continental shelf include mineral and other non-living resources together with living organisms belonging to sedentary species, that is to say, organisms which at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.*

*(4) The Government may construct, maintain or operate within the continental shelf installations and other devices necessary for the exploration and exploitation of its resources.*

1. *The Government may, with a view to preventing and controlling marine pollution and preserving the quality and ecological balance in the marine environment in the high seas adjacent to the territorial waters, take such measures as it may deem appropriate for the purpose.*
2. *(1) The Government may make rules for carrying out the purposes of this Act.   
   (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide-*

*(a) for the regulation of the conduct of any person in or upon the territorial waters, contiguous zone, economic zone, conservation zone and continental shelf;   
(b) for measures to protect, use and exploit the resources of the economic zone;   
(c) for conservation measures to protect the living resources of the sea;   
(d) for measures regulating the exploration and exploitation of resources within the continental shelf; and   
(e) for measures designed to prevent and control of marine pollution of the high seas.   
(3) In making any rule under this section the Government may provide that a contravention of the rule shall be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand taka.*

Thereafter, the Awami League government under the leadership of the father of the nation Bangabandhu Sheikh Mujibur Rahman enacted THE BANGLADESH PETROLEUM ACT, 1974 (ACT NO. LXIX OF 1974). Considering its importance, Section 6(1) of the Act is exactly quoted below:

*6.(1) It shall be the duty of any person engaged in any petroleum operation-*

*(a) to ensure that such petroleum operation is carried on in a proper and workmanlike manner and in accordance with good oil-field practice;*

*(b) to carry on petroleum operation in any area in a manner that does not interfere with navigation, fishing, and conservation of resources of the sea and sea-bed;*

*(c) to consider factors connected with the ecology and environment.*

Thereafter, on 09.08.1974, the Land Ministry under the directions of father of the nation Bangabandhu Sheikh Mujibur Rahman handed over 10,000 acres of coastal land to the Ministry of Forest for forestation.

***GOVERNMENT OF THE PEOPLE’S REPUBLIC OF BANGLADESH   
MINISTRY OF LAND ADMINITRATION AND LAND REFORMS SECTION-V.*** *Memo No. 389-v-248/73-I. S. dated 9.8.74   
To: The Addl. Deputy Commissioner (Rev), Chittagong.   
Sub:- Transfer of khas land in favour of Ministry of Forest Fisheries and Livestock for the purpose of costal Afftation.   
Ref: His memoranda Nos. 3413/SA dated 11.10.74, 3431/SA dated 13.10.73, 3806/SA dated 24.11.73, 3826/SA dated 28.11.73 and 3874/SA dated 30.11.73.*

*The undersigned is directed to convey the sanction of Govt. to the transfer of khas lands measuring 9,925.04 acres a stated below and specified in his memoranda under reference to the Ministry of Forests, Fisheries and Livestock for the purpose Coastal Afforestation free of cost subject to the condition – the land shall revert to the Ministry of Land Admn. And Land Reforms when no longer required for the purpose for which they transferred.*

*Home of P.S. Area   
1. Teknaf 4,830.44 acres.   
2. Chakaria 244.74 acres   
3. Kutubdia 507.74 acres   
4. Moincal 3,192.04 acres   
5. Sandwip 523.11 acres   
6. Sitakundu 627.00 acres   
Total= 9,925.04 acres   
  
2. Necessary action may please be taken to deliver possession of the lands to the local representative of the Ministry of Forests, Fisheries and Livestook immediately.*

*(Abdul Matlib)*

*Section Officer-V,   
Ministry of Land Admn. And land*

*Memo No. 389/1(2)-V-248/73-L.S. dated 9.8.74.*

*Copy forwarded for information to:-*

*(1) The Divisional Forest officer, Coastal Afforestation, Chit*

*(2) Ministry of Forests, Fisheries and Livestock.*

*(Abdul Matlib)   
Section Officer-V,   
Ministry of Land Admn.   
And land Reforms.*

Based on the discussion on the aforementioned provisions of the Constitution and the relevant laws, it is sufficiently clear that, at a time when countries of the world were not particularly aware of the Public Trust Doctrine, at such a time the father of the nation Bangabandhu Sheikh Mujibur Rahman undertook the strong initiative to protect, conserve and develop the nature, climate and population, that is, the public trust property by incorporating the Public Trust Doctrine in the Constitution and the laws. If the father of the nation had been alive, Bangladesh would have become a more attractive country than Singapore a long time ago.

**Honourable Prime Minister Sheikh Hasina and Public Trust Doctrine (1996-2000)**

After being elected in the 7th Parliamentary Election, the Awami League government under the leadership of Honourable Prime Minister Sheikh Hasina placed specific attention to the environment and climate. Upon taking the responsibility of the Prime Minister for the first time, she granted the topmost priority to environment and climate. In 1997, the Awami League government under the leadership of Honourable Prime Minister Sheikh Hasina legally recognized the Public Trust Doctrine by enacting the Environment Conservation Rules 1997. Considering the importance, rules 3, 4, 5, 12, 13 and 17 of the Environment Conservation Rules 1997 have been quoted below:

***3. Declaration of Ecologically Critical Area. –*** *(1) The Government shall take the following factors into consideration while declaring any area as Ecologically Critical Area under sub-section (1) of section 5:-*

*(a) human habitat;*

*(b) ancient monument;*

*(c) archeological site;*

*(d) forest sanctuary;*

*(e) national park;*

*(f) game reserve;*

*(g) wild animals habitat;*

*(h) wetland;*

*(i) mangrove;*

*(j) forest area;*

*(k) bio-diversity of the relevant area; and*

*(l) other relevant factors.*

*(2) The Government shall, in accordance with the standards referred to in rules 12 and 13, specify the activities or processes which can not be continued or initiated in an Ecologically Critical Area. 1*

***4. Vehicles emitting smoke injurious to health and otherwise harmful.-***

*(1) The owner of a vehicle using petrol, diesel and gas as fuel shall, before registration of the vehicle or renewal of its fitness certificate under the Motor Vehicles Ordinance, 1983 (LV of 1983), hereinafter referred to as the said Ordinance, ensure that a catalytic converter or a diesel particulate filter is fitted in the vehicle.*

*(2) If a vehicle is not fitted with the apparatus mentioned in sub-rule (1) and if it violates the standards specified in schedule 6 or, as the case may be, 7, the vehicle shall be deemed to be a vehicle emitting smoke harmful to the environment or injurious to health.*

***5. Application relating to pollution or degradation of environment. –***

*(1) Any person affected or likely to be affected as mentioned in sub-section (1) of section 8 may apply to the Director General in Form-1 for remedy of the damage or apprehended damage.*

*(2) The Director General shall, within three months of receiving an application under sub-rule (1), dispose it of in accordance with sub-section (2) of section 8.*

***12. Determination of environmental standards.–*** *For carrying out the purposes of clause (a) of sub-section (2) of section 20, the standards for air, water, sound, odor and other components of the environment shall be determined in accordance with the standards specified in Schedules - 2, 3, 4, 5, 6,7 and 8.*

***13. Determination of the standards for discharge and emission of waste.*** *– For carrying out the purposes of clause (e) of sub-section (2) of section 20, the standard limits of the discharge of liquid waste and gaseous emission shall be determined in accordance with the standards specified in Schedules 9, 10 & 11, and the standards of the discharge or emission of wastes of various industrial units shall be determined in accordance with standards specified in Schedule -12.*

***17. Information of special incident.–*** *If, at any place, discharge or emission of environment pollutants occur in excess of the prescribed standards or if any place is under threat of facing such discharge or emission as a result of any accident or unforeseen incident, then the person or persons in charge of that place shall immediately inform the Director General of the occurrence or the threat.*

Thereafter, in 2000, the Awami League government under the leadership of the Honourable Prime Minister Sheikh Hasina enacted the Environment Court Act, 2000 (Act No. XI of 2000), [which was later repealed and replaced by Environment Court Act, 2010 (Act No. XXXXXVI of 2000)] which is as follows:

***The Environment Court Act, 2000*** *Act No. 11 of 2000   
[Bangla text of the Act was published in the Bangladesh Gazette, extra-ordinary issue of 10-4-2000 and amended by Act No. 10 of 2002]****An Act to provide for the establishment of environment courts and matters incidental thereto.*** *Whereas it is expedient and necessary to provide for the establishment of Environment Courts for the trial of offences relating to environmental pollution and matters incidental thereto;*

*It is hereby enacted as follows:-*

***1. Short title****.- This Act may be called the Environment Court Act, 2000.*

***2. Definitions.-*** *In this Act, unless there is anything contrary to the subject or context-*

*“Civil Procedure Code” means the Code of Civil Procedure, 1908 (Act V of 1908);*

*“Criminal Procedure Code” means the Code of Criminal Procedure, 1898 (Act V of 1898);*

*“Director General” means the Director General of the Department of Environment;*

*“Environment Appeal Court” means an Environment Appeal Court constituted under this Act;*

*“Environment Court” means an Environment Court constituted under this Act;*

*“environmental law” means this Act, the Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995), any other law specified by the Government in the official Gazette for the purposes of this Act, and the rules made under these laws;*

*“Inspector” means an Inspector of the Department of Environment or any other person authorized by the Director General by a general or special order or a person authorized under any other environmental law to inspect or investigate;*

*“Special Magistrate” means a Special Magistrate appointed under section 5B.*

***3. Overriding effect of the Act.-*** *Notwithstanding anything contained to the contrary in any other law for the time being in force, the provisions of this Act shall have effect.*

***4. Establishment of Environment Courts.-*** *(1) For carrying out the purposes of this Act, the Government shall, by notification in the official Gazette, establish one or more Environment Court in each Division.*

*(2) An Environment Court shall be constituted with one judge and, in consultation with the Supreme Court, the Government shall-*

*(a) appoint an officer of the judicial service of the rank of Joint District Judge, and such Judge shall dispose of cases only under environmental laws; and*

*(b) if it considers necessary, appoint a judge of the rank of Joint District Judge for a Division or a specified part thereof to act as the judge of an Environment Court in addition to his ordinary functions, and the said judge shall, in addition to his ordinary functions, dispose of the cases that fall within the jurisdiction of an Environment Court.]*

*(3) Each Environment Court shall have its seat at the Divisional Headquarter; however, the Government, if it considers necessary, may, by general or specific order published in the official Gazette, specify places outside the Divisional Headquarter where the court can hold its sittings.*

*(4) If more than one Environment Court are established in any Division, the Government shall, by notification in the official Gazette, specify the territorial jurisdiction of each such Court.*

***5. Jurisdiction of Environment Court.- (****1) Notwithstanding anything contained to the contrary in any other law, a case shall, in accordance with the provisions of this Act, be directly instituted in an Environment Court for trial of an offence or for compensation under an environmental law, and only that court can take cognizance and hold proceedings for trial and disposal of those cases.*

*(2) An Environment Court shall be competent to impose penalty for offences under section 5A of this Act and under any other environmental law, to confiscate an equipment or part thereof, a transport used in the commission of such offence or an article or other thing involved with the offence, and to pass order or decree for compensation in appropriate cases; and in addition, the said court may in the same judgment make all or any of the following orders keeping in view of the circumstances of the offence or relevant facts:-*

*(a) issuing a direction to the offender or other relevant person not to repeat or continue or, as the case may be, not to do the act or to make the omission which constitutes the offence;*

*(b) issuing a direction to the offender or other relevant person to take such preventive or remedial measures in relation to the injury or probable injury to environment as the court considers appropriate keeping in view of the circumstances of the offence or the relevant facts;*

*(c) in case of a direction under clause (b), specifying a time limit and a further direction to submit within the specified time a report to the Director General or other appropriate authority on the implementation of the direction*

*Provided that where a direction under clause (b) or (c) is issued, the person directed may apply to the court within 15 days of the judgment for review of such direction and the court shall, after giving the Director General a reasonable opportunity of being heard, dispose of the application within 30 days after it is made*

*(3) No Environment Court shall take cognizance of an offence or receive any suit for compensation except on the written report of an Inspector or any other person authorized by the Director General: Provided that if the Environment Court is satisfied that a person presented a written request to the said Inspector or authorized person to accept a complaint about an offence or a claim for compensation and no action was taken within 60 (sixty) days after such request, and that such complain or claim deserves to be taken into cognizance for the purpose of trial, then the court may, after giving the Inspector or the authorized person or the Director General a reasonable opportunity of being heard, directly receive the complaint or claim for compensation without such written report, or may, if it considers appropriate, direct the said Inspector or the authorized person to investigate the offence or*

*(4) The Environment Court can take cognisance of any offences under the Environmental law based on complaints.*

*(5) If upon the application of either party, or on the basis of any information received from other sources, the Environment Appeal Court deems it necessary, it may transfer a case from one environment court to another and may re-transfer the same.*

***6. Power of entry, search, etc****.- The Director General or a person authorised by the Director General may, for the purpose of investigation, enter any place, search into, or seize any thing or collect sample from, or inspect, that place according to the method prescribed by the rules.*

***7. Procedure for investigation****.- (1) An offence under an environmental law shall ordinarily be investigated by an Inspector, but the Director General may, by a general or special order, authorize any other officer subordinate to him to investigate any particular kind of offences or a specified offence.*

*(2) The Government may, if needed, prescribe under rules any procedure in addition to, or different from the Code of Criminal Procedure for the purposes of investigation of offences under environmental law.  
8. Procedure and power of Environment Court.- (1) Unless otherwise provided in this Act, provisions of the Criminal Procedure Code shall be applicable in the case of lodging a compliant about an offence under this Act, trial thereof and the Environment Court shall be deemed to be a criminal court and it shall follow the procedure laid down in the Criminal Procedure Code for trial and disposal of a case triable by the Sessions Court.*

*(3) The Environment Court shall be competent to order the investigating officer or other person investigating to hold further investigation of the offence in relation to which a case is pending before it and also to specify the time limit for submission of the report of such further investigation.*

*(4) The Environment Court shall be competent to exercise any power conferred on it by this Act or any other environmental law.*

*(5) Any person appearing on behalf of complainant before the Environment Court shall be deemed to be a Public Prosecutor  
(6) Subject to provisions of this Act, the Civil Procedure Code shall be applicable to the trial and disposal of a case relating to compensation; and the Environment Court, for the purpose of trial and disposal of a suit for compensation, be deemed to be a civil court and shall be competent to exercise all the powers of a civil court.*

*(7) Hearing of a case at the trial stage shall not be adjourned more than three times and the Environment Court shall conclude the trial within one hundred eighty days:*

*Provided that where the trial is not completed within the above time-limit, the Environment Court shall, within 15 days after expiry of that period, inform the Environment Appeal Court of the delay and the reasons for such delay, and shall complete the trial of the case within ninety days after the expiry of the above mentioned one hundred eighty days.*

***9. Conversion of fines to compensation****.- (1) Notwithstanding anything contained to the contrary in any other law for the time being in force, the Environment Court may, if it considers necessary, convert fines imposed by it as compensation to be paid to persons affected as a result of the commission of an offence under an environmental law; and the fine or compensation shall be realizable from the person who has been sentenced with the fine.*

*(2) If a claim for compensation is related to an offence under an environmental law in such a manner that the trial of the offence and the claim should be held in the same proceedings, then the Environment Court shall try the offence first and, if the compensation to be awarded is not commensurate with the fine imposed as a penalty of the offence, then the application for compensation can be considered separately.*

***10. Authority of Environment Court to inspect****.- (1) If, at any stage of the trial of a case, any question arises relating to any property, object or place of occurrence of an offence the Environment Court can inspect the property, object or the place of occurrence, after serving notice on the parties or their lawyers as to the place and time of inspection.*

*(2) During inspection or immediately thereafter, the Judge shall record the results of the inspection in the form of a memorandum and such memorandum shall be an evidence in the trial of the case and such evidence shall not be called in question by any party.*

***11. Appeal****.- (1) Notwithstanding anything contained to the contrary in the Civil Procedure Code or the Criminal Procedure Code, no question shall, except in accordance with the provisions of this Act, be raised before any court or other authority on the proceedings, order or decision of, or a decree of compensation passed and penalty imposed by, the Environment Court.*

*(2) A party aggrieved by a Judgment or a decree of compensation passed or a penalty imposed by the Environment Court can file an appeal to the Environment Appeal Court established under section 12 within thirty days of the date of passing the judgment, decree of compensation or penalty, or order of dismissal of a civil suit or an order specified in sub-section (3).*

*(3) An appeal shall lie to the Environment Appeal Court against an order of interim or temporary injunction, an order to maintain status quo, an order granting or refusing bail, an order of framing charge or discharge, and an order of taking cognizance of an offence or refusal thereof passed by an Environment Court; no other interim order shall be appealable.*

*(4) Notwithstanding the provisions of sub-section (1), a party aggrieved by a judgment or decree passed by an Environment Court in a suit for compensation shall not be entitled to file an the appeal against the said judgment or decree without depositing half of the decreed amount with the court which passed the decree.*

***12. Environment Appeal Court.-*** *(1) For carrying out the purposes of this Act, the Government shall, by notification in the Official Gazette, establish 2 one or more than one Environment Appeal Court.*

*(2) An Environment Appeal Court shall be constituted with one judge and, in consultation with the Supreme Court, the Government shall appoint a judge from the District and Sessions Judges.*

*(3) The seat of the Environment Appeal Court shall be in Dhaka or any other place specified by the Government.*

*(4) For the purpose of disposal of appeals relating to offences, the Environment Appeal Court may exercise all the powers of a Sessions Court as an Appeal Court under the Criminal Procedure Code.*

*(5) For the purpose of disposal of an appeal relating to a suit for compensation, the Environment Appeal Court may exercise all the powers of an appellate court under the Civil Procedure Code.*

***13. Pending cases.-*** *A case under an environmental law pending in any court immediately before the commencement of this Act, shall be so continued and disposed of in that court as if this Act has not been enacted.*

***14. Power to make rules.-*** *For carrying out the purposes of this Act, the Government may, by notification in the Official Gazette, make rules.*

Since the haphazardly promulgated Bangladesh Environment Conservation Act 1995 (Act No. I of 1995) was an incomplete and vague law, the Awami League government under the leadership of the Honourable Prime Minister, in order to make the law time-befitting, enacted the Bangladesh Environment Conservation (Amendment) Act 2000 (Act No. XII of 2000) which is quoted below:

**Bangladesh Environment Conservation (Amendment) Act 2000**

Act No. 12 of 2000

[Published in Bangladesh gazette additional edition on 10.04.2000 AD]

**An Act enacted to amend the Bangladesh Environment Conservation Act 1995**

*Whereas the amendment of the Bangladesh Environment Conservation Act 1995 is necessary for the fulfilment of the objectives laid down below,*

*It is hereby enacted as follows:*

1. ***Short title-*** *This Act shall be known as the Bangladesh Environment Conservation (Amendment) Act 2000.*
2. ***Substitution of section 7 of the Act No. I of 1995****- Section 7 of the Bangladesh Environment Conservation Act 1995 (Act No. I of 1995) hereinafter referred to as said Act will be replaced with the following:*

*“7. Remedial measures for injury to ecosystem.- (1) If it appears to the Director General that any act or omission of a person is causing or has caused,directly or indirectly, injury to the ecosystem or to a person or group of persons, the Director General may determine the compensation and direct the firstly mentioned person to pay it and in an appropriate case also direct him to take corrective measures, or may direct the person to take both the measures; and that person shall be bound to comply with the direction.*

*(2) If a person, to whom a direction under sub-section (1) has been issued, fails to comply with the direction, the Director General may file a suit for compensation in the competent court or file a criminal case for failure to comply with the direction or file both kinds of cases.*

*(3) For the purposes of determination of compensation or corrective measures under sub-section (1), the Director General may engage any specialist and other persons.*

*(4) The Government may direct the Director General to take any action under this section and to submit a report thereon.”*

1. ***Amendment of section 15 of Act No. I of 1995****- In the said Act, in section 15 subsection (1), ‘shall be punished with imprisonment of a term not exceeding 5 years or a fine of taka 1 lakh or both’ shall be replaced with ‘shall be punished with imprisonment not exceeding 10 years or fine not exceeding 10 lac taka or both and in appropriate cases, the court may grant a decree for compensation in addition to the penalty mentioned’.*
2. ***Addition of new section after section 15 of the Act No. I of 1995****- Section 15A shall be added after section 15 of the said Act as follows:*

*“15A. Claim for compensation.- Where a person or a group of persons or the*

*public suffers loss due to violation of a provision of this Act or the rules made*

*thereunder or a direction issued under section7, the Director General may file a suit*

*for compensation on behalf of that person, group or the public.”*

1. ***Substitution of section 17 of the Act No. I of 1995****- Section 17 of the said Act shall be replaced with the following:*

*“17. Cognizance of offence: (1) Notwithstanding anything in any other law, all offences punishable under this Act shall be cognizable.*

*(2) No court shall take entertain any case under this Act without the written report of an official authorised by the Director General.”*

Thereafter, the Awami League government led by the Honourable Prime Minister Sheikh Hasina, placing great importance on environment and climate, enacted a landmark legislation called the **Mega city, Divisional Town and District Town’s municipal areas including country’s all the municipal areas’ playground, open space, park and natural water reservoir Conservation Act, 2000**.

Considering its importance, the “Mega city, Divisional Town and District Town’s municipal areas including country’s all the municipal areas’ playground, open space, park and natural water reservoir Conservation Act, 2000 (Act XXXVI of 2000)" is quoted exactly below:

**Mega city, Divisional Town and District Town’s municipal areas including country’s all the municipal areas’ playground, open space, park and natural water reservoir Conservation Act, 2000**

**Act XXXVI of 2000**

**[September 18,2000]**

***An Act enacted to preserve the Mega city, Divisional Town and District Town’s municipal areas including country’s all the municipal areas’ playground, open space, park and natural water reservoir thereto.***

*WHEREAS it is expedient and necessary to enact an Act for preserving the Mega city, Divisional Town and District Town’s municipal areas including country’s all the municipal areas’ playground, open space, park and natural water reservoir thereto, it is hereby enacted as follows:*

*1. (1) This Act may be called the Mega city, Divisional Town and District Town’s municipal areas including country’s all the municipal areas’ playground, open space, park and natural water reservoir Conservation Act, 2000.*

*(2) The Government shall, by notification in the official gazette, prescribe the date on and from which this Act shall come into force.*

*2. In this Act, unless there is anything repugnant in the subject or matter-*

*(a) ‘Park’ means the place declared as the garden or park indicated in master plan or the land survey graph by the government gazette or the government,*

*(b) ‘Open space’ means the place declared as the open space indicated in master plan or by the government gazette or the government, that is being used as an Eid-Gah or in any other way by the public.*

*(c) ‘Authority’ means- Rajdhani Unnayan Kartripakkha, Chattagram Unnayan Kartripakkha, Khulna Unnayan Kartripakkha, Rajshahi Unnayan Kartripakkha and any other development authority for any other city established under any law for the time being in force, City Corporations and all the Municipal authorities of the country including the Divisional Town and District Town’s municipal authorities.*

*(d) ‘Playground’ means the place indicated in master plan for playing and practicing sports,*

*(e) “Prescribed’ means prescribed by the rules made under this Act,*

*(f) ‘Natural wetland’ means the place declared as the flood flowing land as river, canal, beel, pond, stream, fountain indicated in master plan or by the government gazette or the government, and flowing water and the land which conserve the rain water should be included here,*

*(g) ‘Master plan’ means the master plan made under the Act establishing the Rajdhani Unnayan Kartripakkha, Chattagram Unnayan Kartripakkha, Khulna Unnayan Kartripakkha, Rajshahi Unnayan Kartripakkha including any other development authority for any other city, the City Corporations and all the Divisional Town and District Town’s municipal authorities,*

*(h) ‘Class change’ means- any change in the condition of the place concerned, declared or indicated in master plan or by the government gazette, where the concerned place was supposed to be in a situation in any kind including the filling of soil, pucca, semi-pucca or raw houses and the construction of any other type of building.*

*(i) ‘Government’ means the administrative ministry of this Act.*

*3. Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act and the rules made thereunder shall be made applicable.*

*4. (1) A copy of a master plan shall be posted on the notice board of the Head Office and Branch Office, if any, of the authority, within at least one month from the date of final formulation of such master plan, in such a manner, as to attract the attention of the public of the area concerned.*

*(2) The authorities shall arrange for the sale of the printed copies of the master plan or the area-wise design of the master plan to the public at a price determined by the authorities themselves.*

*(3) The concerned authorities shall make arrangements for publicity about the master plan and the responsibilities and duties of the people in any other manner deemed appropriate.*

*5. Except in accordance with the provisions of this Act, the class of the places indicated as the playground, open space, park and natural water reservoir can not be changed or used in any other way or rented, leased or otherwise transferred for similar use. Explanation- For the purposes of this section, the deforestation of a park in such a way that the basic features of the garden are lost, shall be treated as a change in the class of the park.*

*6. (1) If it is necessary to change the class of a place or part of a place mentioned in section 5, the owner of that place shall, after recording the reasons for the proposed change, apply to the Government through the concerned authority.*

*(2) Within 60 days of receipt of the application under sub-section (1), the authority shall, after considering the application, forward the application to the Government with a clear opinion and recommendation on the following matters, among other things, whether the class change of the place of application would be appropriate in the public interest:-*

*(a) Whether the purpose of the master plan will be depreciated if the class of the place of application is changed, if so, then the amount of such depreciation; and*

*(b) Whether the change of class will have any detrimental effect on the environment of the area concerned or is likely to cause any harm to the residents.*

*(3) The provisions of this section shall apply in the same manner, if the place of change of class belongs to the government, local authority, statutory body or company.*

*(4) For the convenience of giving opinion and recommendation under sub-section (2), the concerned authority may ask the applicant for the necessary information and documents and the applicant shall be obliged to provide such information and documents within the time limit fixed by the authority for this purpose, which shall be at least 15 days from the date of receipt of the notice.*

*(5) No application under this section shall be accepted unless it is accompanied by a receipt submitted in the prescribed manner along with the prescribed fee to the authority.*

*7. (1) Within 60 days of receipt of the application under section 6, the Government shall, after considering the opinions and recommendations of the concerned authorities, make a decision on the application and notify the applicant in writing within 15 days from the date of such decision:*

*Provided that, if a decision is taken to disapprove the application, the Government shall give the applicant a chance of hearing within 90 days of receipt of the application.*

*(2) The applicant aggrieved by the decision given under sub-section (1) may apply to the Government for the reconsideration of the decision within 30 days from the date of receipt of the memorandum or notice containing the decision.*

*(3) No application for reconsideration of the decision under sub-section (2) shall be admissible unless it is accompanied by the receipt* *of the payment of the prescribed fee in the prescribed manner to the Government.*

*(4) The decision of the Government on the application made under sub-section (3) shall be final.*

*8. (1) Any person contravening any provision of this Act shall be punishable with imprisonment for a term not exceeding 5 years or with a fine not exceeding 50 (fifty) thousand taka or with both.*

*(2) If the class of a place or part of a place is changed in contravention of the provision of section 5, the concerned authority may, by notice, prevent the land owner or the person contravening the provision from changing the class of the place mentioned in the notice and order demolition of the unauthorized construction in the prescribed manner, and notwithstanding anything contrary contained in any other law, no compensation shall be payable for such demolition.*

*(3) If any construction work has been carried out or any infrastructure has been constructed in contravention of the provisions of this Act, such infrastructure shall be confiscated by the concerned authority in pursuance of the order of the court.*

*9. Notwithstanding anything contrary contained in the Code of Criminal Procedure, 1898 (Act V of 1898), a first class magistrate or a metropolitan magistrate in a metropolitan area may impose a fine on a person under section 8.*

*10. No legal action can be taken against any act, that harms or is likely to harm any person or organization, of the authority or, as the case may be, the Chairman or the Chief Executive Officer or any other officer or employee of the authority or by* *any other person, if it is done in good faith under this Act or the rules formed thereunder.*

*11. If the person contravening any provision under this Act is a company, then the owner, director, manager, secretary or any other officer or agent of that company shall be deemed to have violated the provision unless he proves that he had taken reasonable steps to prevent such contravention.*

*12. (1) No court shall take cognizance of any offense under this Act, without the written complaint of the chairman or the head of the authority, whatever his name may be, or any person authorized by him.*

*(2) Notwithstanding anything contained in any other law, an offense punishable under this Act shall be a cognizable offense.*

*13. The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.*

**Honourable Prime Minister Sheikh Hasina and the Public Trust Doctrine (2009-2018)**

Thereafter, in the year 2008, Awami League President Sheikh Hasina (now the Hon'ble Prime Minister of Bangladesh) included environment and climate as well as public trust doctrine in her party's election manifesto.

In line with the 2008 election manifesto of the Bangladesh Awami League of addressing the impact of climate change, the Awami League government led by the Hon'ble Prime Minister Sheikh Hasina assumed power in 2009 and finalized the **Bangladesh Climate Change Strategy and Action Plan 2009 (BCCSAP 2009).** Bangladesh is the first among all the developing countries to adopt such an integrated action plan. The Climate Change Trust Fund (CCTF) was set up with the government's own funding in 2009-10 financial year under the special initiative of Hon'ble Prime Minister Sheikh Hasina to implement the programs outlined in BCCSP 2009. ***Creating such a fund on their own*** without waiting for the money to be received from the developed countries responsible for climate change is a first in the world and has been exceptionally praised in the international arena.

The Climate Change Trust Fund (CCTF) was formed from the revenue budget of the government to implement the Climate Change Strategy and Action Plan 2009. The goal and objective of the Bangladesh Climate Change Trust Fund is to increase the capacity of the local people of dealing with the risks of the climate change and to innovate and expand the climate resilient technologies.

***The Awami League government under the leadership of the Hon'ble Prime Minister Sheikh Hasina enacted the Climate Trust Act 2010 to ensure the proper management of the Climate Change Trust Fund. Passing a law as such to protect the country and its people from the negative effects of climate change and to fully implement the public trust doctrine (Public Trust Doctrine) is rare in the world.***

In accordance with the provisions of the said Act, a 17-member high-powered Climate Change Board of Trustees has been constituted under the leadership of Hon'ble Minister of Environment and Forests, comprising 10 Hon'ble Ministers/State Ministers, Cabinet Secretary, Finance Secretary, Governor of the Bangladesh Bank, one member of the Planning Commission and two Civil Society Experts. A 13-member technical committee headed by the Secretary, Ministry of Environment and Forests has been constituted to assist the Board.

Bangladesh Climate Change Trust is a statutory organization established under the Ministry of Environment and Forests. Bangladesh Climate Change Trust (BCCT) was formed on 24th January of 2013 in accordance with Section 3 of the Climate Change Trust Act 2010. All the movable and immovable property including the manpower of the already formed Climate Change Unit has also been transferred to the said Trust. Bangladesh Climate Change Trust has been carrying out the secretarial duties of the Technical Committee and Climate Change Trust Board constituted under the Climate Change Trust Act, 2010 as well as other activities of the Trust Fund. A Managing Director of the rank Additional Secretary is acting as the full-time Chief Executive Officer of the Bangladesh Climate Change Trust.

With the vision of building a Bangladesh capable of tackling the impact of climate change, the Awami League government under the leadership of Hon'ble Prime Minister Sheikh Hasina undertook the following missions:

* ***Adoption and implementation of short, medium, and long-term projects to address the negative impacts of the climate change as per the Bangladesh Climate Change Strategy and Action Plan, 2009.***
* ***Necessary actions to address the adverse effects of climate change on the population, biodiversity and nature through adaptation, mitigation, technology development and transfer, capacity building and financing.***
* ***Increased the use of environmental-friendly technologies to reduce carbon emissions.***

On the other hand, according to Section 5 of the Climate Change Trust Act 2010, the main goal to form the Bangladesh Climate Change Trust (BCCT) is:

* ***To increase the adaptability of the people or communities in the climate-change affected and vulnerable areas, to improve the quality of life and to plan and implement necessary actions to address the long-term risks of climate change.***
* ***To address the adverse effects of climate change on the people, biodiversity and nature due to climate change through adaptation, mitigation, technology development and transfer, capacity building and financing.***

On a different note, according to section 6 of the Climate Change Trust Act 2010, the purpose of forming the Bangladesh Climate Change Trust (BCCT) is:

* ***To utilise the trust funds to address the climate change risks as a specific sector outside the government's development and non-development budget.***
* ***To adopt and implement appropriate action plans to ensure the actualization of special programmes relating to climate change and sustainable development.***
* ***Adoption of projects or programs related to the institutional and social empowering and human resource development of local people at the grassroot levels in addressing the climate change.***
* ***Adoption and implementation of the pilot programs with appropriate dissemination in the light of practical research and research findings on adaption, mitigation, technology transfer, finance and investment dealing against the climate change.***
* ***Adopting various periodic plans and implementing projects based on the same in order to adapt to climate change and to mitigate disasters.***
* ***Creating public awareness about the possible environmental disasters caused by the climate change and to adopt and implement appropriate programs to alleviate poverty through institutional, social and capacity building of local communities to deal with the disasters.***
* ***Assisting in emergency response to any natural disaster caused by the climate change.***

Considering its importance, the Climate Change Trust Act, 2010 enacted by the Awami League government under the leadership of Hon'ble Prime Minister Sheikh Hasina is quoted exactly below:

**Bangladesh Gazette**

**Additional Publication**

**Published by the Authorities**

**Tuesday, 12th October, 2010**

**The National Parliament of Bangladesh**

**Dhaka, 12th October, 2010/27th Ashwin, 1417**

The following Act enacted by the Parliament has been approved by the President on 11 October 2010 (26th Ashwin 1417) and hereby enacted for the notification of the public:

**ACT NO. LVII OF 2010**

**An Act to establish a trust to be called the Climate Change Trust to redress the adverse impact of climate change on Bangladesh and to take measures on other matters relating thereto.**

WHEREAS it is expedient and necessary to establish a trust to be called the Climate Change Trust to redress the adverse impact of climate change on Bangladesh and to take measures on other matters relating thereto; it to hereby enacted as follows:

**1. Short title and commencement:** (1) This Act may be called the Climate Change Trust Act, 2010. (2) It shall come into force at once.

**2. Definitions:** In this Act, unless there is anything repugnant in the subject or context,

(1) “Chairman” means the Chairman of the Board of Trustees;   
(2) “Trust” means the Climate Change Trust established under this Act;   
(3) “Fund” means the Climate Change Trust Fund mentioned in section 15;   
(4) “Regulations” means regulations made under this Act;   
(5) “Board of Trustees” means the Board of Trustees constituted under section 9 of this Act;   
(6) “rules” means rules made under this Act;   
(7) “member” means a member of the Board of Trustees or the Technical Committee;   
(8) “Technical Committee” means the Technical Committee formed under this Act.

**3. Establishment of the Trust:** (1) As soon as may be, after the commencement of this Act, the Government shall establish a trust to be called the Climate Change Trust, in accordance with the provisions of this Act.   
(2) The Trust shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and shall by the said name sue and be sued.

**4. Office of the Trust:** (1) The head office of the Trust shall be in Dhaka.   
(2) The Board of Trustees may, if it deems necessary, with prior approval of the Government, establish its branch office at any place in Bangladesh.

**5. Aims of the Trust:** The Trust shall have the following aims, namely:   
(a) to make necessary action plan for capacity building for adjustment of the people or groups of people of the affected and risky areas resulting from climate change, upgrading their life and livelihood and facing the long term risk, and to take measures for implementation thereof;   
(b) to take measures for adaptation, mitigation, technology development and transfer, capacity building and funds for facing adverse effect of climate change on man, biodiversity and the nature.

**6. Objectives of the Trust:** The objectives of the Trust shall be as follows, namely:   
(a) to use the fund of the Trust in facing the risk arising from climate change as a special case out of the development or non-development budget of the Government;   
(b) to initiate and implement suitable action plan for implementation of special program regarding climate change and ensuring sustainable development;   
(c) to initiate project or program regarding institutional and social capacity building of the local people and development of human resources in the grass root level for facing climate change;   
(d) to undertake necessary action research in the field of adaptation, mitigation, technology transfer and finance and investment for facing climate change and in the light of the research result, to initiate and implement pilot programs with dissemination of such result;   
(e) to make necessary action plans of different terms for adjustment with climate change and facing damages and to initiate and implement programs or projects on the basis of them;   
(f) to assist the climate change cells or focal points formed in different Ministries and in the Department of Environment in respect of climate change including the Climate Change Unit established in the Ministry of Environment and Forest for playing their effective role;   
(g) to assist in initiating suitable programs and implementation thereof in order to eradicate poverty by building up the institutional, social or local people’s capacity for creating public awareness on possible environmental disaster arising out of climate change and for facing the disaster;   
(h) to assist any emergency activities following any natural disaster arising out of climate change.

**7. Preparation, adoption and implementation of project:** Projects shall be prepared, adopted and implemented with the money of the Climate Change Trust Fund in accordance with the following procedures, namely:   
(a) in addition to the running development and non-development programs of the Government, the short, medium, and long term development projects shall be adopted through the Trust for the purpose of implementation of special programs relating to climate change;   
(b) the concerned Ministry or Division and the Non-Government Research Institute or Organization having experience in the concerned field shall, in the light of the Bangladesh Climate Change Strategy and Action Plan, 2009, made by the Government, prepare projects or programs relating thereto and submit them to the Board of Trustees;   
(c) the projects or programs relating thereto shall be implemented by the concerned Ministry, Division or Organization in accordance with the guidelines relating to climate change and the projects or programs shall have to be prepared complying with the directions of the Board of Trustees;   
(d) funds shall be allocated to conduct research activities in accordance with the policy formulated by the Board of Trustees for adaptation, mitigation, technology transfer and finance and investment in order to face the effect of climate change;   
(e) necessary funds shall be allocated in accordance with the policy formulated by the Board of Trustees for publicity and advertisement in order to create public awareness of the effect of climate change;   
(f) funds shall be allocated following the policy formulated by the Board of Trustees for arranging seminar, symposium, workshop or training, etc. for sharing knowledge and experience with a view to attaining sustainable disaster recovery and disaster risk reduction.

**8. Administration and direction:** The general direction and administration of the Trust shall vest in the Board of Trustees constituted under section 9.

**9. Constitution of the Board of Trustees:**

(1) The Board of Trustees shall consist of the following members, namely:   
(a) Minister or State Minister in charge of the Ministry of Environment and Forest, who shall also be its Chairman;   
(b) Minister or State Minister in charge of the Ministry of Finance;   
(c) Minister or State Minister in charge of the Ministry of Agriculture;

(d) Minister or State Minister in charge of the Ministry of Food and Disaster Management;   
(e) Minister or State Minister in charge of the Ministry of Foreign Affairs;   
(f) Minister or State Minister in charge of the Ministry of Woman and Child Affairs;   
(g) Minister or State Minister in charge of the Ministry of Water Resources;   
(h) Minister or State Minister in charge of the Ministry of Shipping;   
(i) Minister or State Minister in charge of the Ministry of Health and Family Welfare;   
(j) Minister or State Minister in charge of the Ministry of Local Government, Rural Development and Cooperation; (k) Cabinet Secretary, Cabinet Division;   
(l) Governor, Bangladesh Bank;   
(m) Secretary, Finance Division, Ministry of Finance;   
(n) Member, Agriculture, Water Resources and Rural Institution Division, Planning Commission;   
(o) Two experts in climate change nominated by the Government;   
(p) Secretary, Ministry of Environment and Forest, who shall also be its member-secretary.

(2) The Unit designated or constituted by the Ministry of Environment and Forest shall give secretarial support to the Board of Trustees.

(3) A nominated member mentioned in serial No. (o) of sub-section (1) shall hold his office for a period of 3 (three) years from the date of nomination.

(4) No act or proceeding of the Board of Trustees shall be invalid or be called in question merely on the ground of any vacancy in, or any defect in the constitution of, the Board of Trustees.

**10. Functions of the Board of Trustees:** The functions of the Board of Trustees shall be as follows, namely:   
(a) to conduct and control the overall activities of the Trust;   
(b) to approve projects or programs for using a maximum of 66 percent money of the Fund of the Trust to implement the Bangladesh Climate Change Strategy and Action Plan, 2009 made by the Government and to release, on the recommendation of the Technical Committee, a maximum of 66 percent money of the total Fund and the money accrued as interest on the remaining 34 percent deposited money in favour of the projects or programs adopted for implementation of the aims and objectives of the Trust;   
(c) to take necessary measures for investment of remaining 34 percent deposited money of the Fund;   
(d) to formulate policies and guidelines for implementation of the projects or programs to be adopted with the money of the Fund of the Trust and to give final approval to the projects or programs;   
(e) to give directions to the Technical Committee regarding annual action plan, financing and budget plan for adopting long term projects and programs;   
(f) to approve the recommendations of the Technical Committee in conducting the action research for redressing the effect of climate change;   
(g) to communicate with different donor countries or organizations, with approval of the Government, for collecting funds, if necessary, from other sources except Government financing and to take initiatives and steps for receiving money from them;   
(h) to constitute a general evaluation team and to revise and approve the evaluation report at least once in a year; (i) to solve the problems of the projects or programs adopted on the recommendations of the Technical Committee and in this behalf, to approve the proposals for arranging seminars, symposiums or workshops with a view to sharing the knowledge and experience;   
(j) to give directions for necessary amendment (where applicable) of the projects or programs in accordance with the recommendations of the Technical Committee;   
(k) to formulate policies for supervision of the implementation of the projects or programs adopted;   
(l) to take and implement such programs for facing the risks arisen out of climate change as may be determined by the Government or other programs relating thereto;   
(m) to take any action which is necessary for performing the functions under this section and to do any act for carrying out the purposes of this Act;   
(n) to transfer the unused money to the Fund, if the implementation, including making, processing and approval, of the appropriate project or program is not possible to complete during any financial year;   
(o) to take assistance of competent expert if the Board of Trustees requires;   
(p) subject to the direction given by the Government from time to time, to perform such other duties as may be assigned to it.

**11. Meetings of the Board of Trustees:** (1) Subject to other provisions of this section, the Board of Trustees may determine the procedure of its meetings.

(2) The meetings of the Board of Trustees shall be held, with the consent of the Chairman at such times and places as the Chairman may determine.

(3) The Chairman shall preside over the meetings of the Board of Trustees.

(4) At least one meeting shall be held in every 3 (three) months or, when necessary, a meeting may be held at any time with the consent of the Chairman.

(5) To constitute a quorum at a meeting of the Board of Trustees, the presence of at least one-third of the total number of members of the Board of Trustees shall be required, but in case of an adjourned meeting, no such quorum shall be required.

(6) At a meeting of the Board of Trustees, each member shall have one vote and, in the event of equality of votes, the person presiding over the meeting shall have a second or casting vote.

**12. Technical Committee:** (1) In order to assist the Board of Trustees, a Technical Committee consisting of the following members shall be formed, namely:   
(a) Secretary, Ministry of Environment and Forest, who shall also be its Convener;   
(b) Joint-secretary (Environment), Ministry of Environment and Forest;   
(c) Joint-secretary (Development), Ministry of Environment and Forest;   
(d) a representative or focal point of the Climate Change Cell of the concerned Ministry to be nominated by that Ministry;   
(e) a representative of the Planning Wing of the concerned Ministry to be nominated by that Ministry;   
(f) a representative of the concerned sector of the Planning Commission;   
(g) 2 (two) expert representatives (Director, technical) of the Department of Environment;   
(h) 2 (two) representatives of the social institutions/NGOs/ experts concerned with the project relating to climate change to be nominated by the Government;   
(i) a representative of the Centre for Environmental and Geographic Information Services (CEGIS);   
(j) a representative of the Forest Department;   
(k) Deputy Secretary (Environment-1), Ministry of Environment and Forest, who shall also be its member-secretary.

(2) The Unit designated or constituted by the Ministry of Environment and Forest shall give secretarial support to the Technical Committee. (

3) A nominated member mentioned in serial No. (h) of sub-section (1) shall hold his office for a period of 3 (three) years from the date of nomination.

**13. Functions of the Technical Committee:** The functions of the Technical Committee shall be as follows, namely:   
(a) to make annual budget and action plan regarding climate change and to submit for approval of the Board of Trustees;   
(b) to take measures in accordance with the directions of the Board of Trustees for preparing projects or programs to be adopted with the money of the Trust and to assist the Board of Trustees in formulating policies;   
(c) to assist the Board of Trustees in formulating policies for the supervision of the implementation of the projects adopted;   
(d) to scrutinize the projects or programs submitted by different Ministries or Divisions and to make recommendation for submission to the Board of Trustees;   
(e) to form suitable sub-committees required for scrutiny purposes;   
(f) to provide all types of technical assistance as may be required by the Board of Trustees;

(g) to perform such other duties as may be assigned to it by the Board of Trustees; and (h) to take assistance of competent experts if required by the Technical Committee.

**14. Meetings of the Technical Committee:** (1) The meetings of the Technical Committee may be convened with the consent of the Convener, and shall be held at such places and times as the Convener may determine.   
(2) The Convener of the Technical Committee shall preside over the meeting.   
(3) The Technical committee shall keep the Board of Trustees informed with the decisions of its meetings and shall comply with the specific advice, if any, of the Board of Trustees.

**15. Fund of the Trust:** (1) There shall be a fund of the Trust to be called the climate Change Trust Fund to which the following sums of money shall be credited, namely:   
(a) money granted by the Government from the National Budget;   
(b) money received from the donor countries, organizations and institutions approved by the Government;   
(c) money received from the local and foreign sources approved by the Government;   
(d) income accrued from investment of the fund;   
(e) money received from any other sources approved by the Government.

(2) The money of the Fund shall be deposited in any scheduled bank in the name of the Trust and many be drawn out in the manner prescribed by the Board of Trustees.

(3) A maximum of 66 (sixty six) percent money from the Government grants may be spent every year on the projects of programs relating to the aims and objectives of the Trust, and the minimum 34 (thirty four) percent money and the unspent money shall be credited to the Fund.

(4) Allocation shall be made for standard projects from the profit or interest accrued from the money credited to the Fund.

(5) Necessary expenses of the Trust shall be met from the Fund.

**16. Bank account:** (1) A bank account shall be opened with the approval of the Board of Trustees and shall be operated by the joint signatures of the Chairman and the member secretary of the Board of Trustees.

(2) All activities relating to bank shall be performed with the approval of the Board of Trustees.

**17. Budget:** The Trust shall, by such date each year as the Government may fix, submit to the Government the annual budget statement (related to the Trust) for the next financial year showing the sums which are likely to be required by the Trust from the Government for that financial year.

**18. Audit and accounts:** (1) The Trust shall maintain proper accounts of its income and expenditure and prepare annual statement of accounts.

(2) The Comptroller and Auditor-General of Bangladesh shall audit the accounts of the Trust every year and submit the copy of the audit report to the Government and the Board.

(3) For the purposes of audit under sub-section (2), the Comptroller and Auditor-General or any person authorized by him in this behalf may examine all records, documents, cash or bank balance, securities, stores and other properties of the Trust.

(4) The Board of Trustees shall, as soon as may be after the end of every financial year, submit to the Government an annual report containing a statement of functions performed by it during that financial year.

(5) The Government may, if it deems necessary, require the Board of Trustees at any time to furnish a report or statement on any of its functions and the Board of Trustees shall be bound to furnish such report or statement to the Government.

**19. Managing Director:** (1) The Trust shall have a Managing Director.

(2) The Managing Director Shall be appointed by the Government and the terms and conditions of his service shall be determined by the Government.

(3) The managing Director shall be the full time chief executive officer of the Trust and shall: (a) be responsible to implement the decisions of the Board of Trustees;   
(b) perform the duties and functions assigned to him by the Board of Trustees;   
(c) conduct the administration of the Trust.

(4) If any vacancy occurs in the office of the Managing Director or if the Managing Director is unable to discharge the functions of his office on account of absence, illness or any other cause, any person nominated by the Government shall act as the Managing Director until a newly appointed Managing Director takes over the charge of his office or until the Managing Director resumes the functions of his office.

**20. Delegation of power:** The Board of Trustees may, if it deems necessary and subject to such conditions as may be specified, delegate any of its powers to the Chairman or any member or any officer.

**21. Protection of actions taken in good faith:** No suit or prosecution or any other legal proceeding shall lie against the Board of Trustees or any member, Managing Director or other officers or employees for any damage caused or likely to be caused to any person consequent to anything done in good faith under this Act or rules or regulations.

**22. Power to make rules:** The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

**23. Power to make regulations:** The Board of Trustees may, with the prior approval of the Government and by notification in the official Gazette, make regulations not inconsistent with this Act or rules made there under, for carrying out the purposed of this Act.

**24. Publication of English text:** (1) After the commencement of this Act, the Government shall, by notification in the official Gazette, publish an authentic English text this Act.   
(2) In the event of conflict between the Bangla and the English text, the Bangla text shall prevail.

Ashfaq Hamid,

Secretary.

Thereafter, the Awami League Government under the leadership of Hon'ble Prime Minister Sheikh Hasina enacted the Bangladesh Environmental Conservation (Amendment) Act, 2010 with the aim of making it more up-to-date through further amendments to the Bangladesh Environmental Conservation Act, 1995 (Act No. I of 1995) which are as follows:

**Bangladesh Gazette**

**Additional Publication**

**Published by the Authorities**

**Tuesday, 5th October, 2010**

**The National Parliament of Bangladesh**

**Dhaka, 5th October, 2010/20th Ashwin, 1417**

The following Act enacted by the Parliament has been approved by the President on 5th October 2010 (20th Ashwin 1417) and hereby this Act is being made available to the public:

**Act No. 50 of 2010**

***An Act to provide for further Amendment of The Bangladesh Environment Conservation Act,1995 (Act No.1of 1995).***

*Whereas it is necessary and expedient to provide for further amendment of The Bangladesh Environment Conservation Act,1995 (Act No. 1 of 1995), it is hereby enacted as follows:*

*1.* ***Short title and commencement****‑ (1) This Act may be called the Bangladesh Environment Conservation Act (Amendment), 2010. (2) It shall come into force as soon as possible.*

***2.******Amendment of section 2 under Act No. 1 of 1995‑*** *The Bangladesh environment conservation Act, 1995 (Act No. 1 of 1995), noted it as act, it’s section 2 are as follows‑ (a) Bellow clause (a) following clause (aa) and (aaa) will be included, such as:*

*“ Wetland” means river, canal, beel, haor, baor, pond, stream or wetland recorded in government’s land record as land, or government or government authorized organization declared in official gazette by notification of any marshy land, flood plain land, land of which contain water and rain water;*

*(aaa) “ Hazardous waste” means any kinds of waste, due to its physical or chemical properties or contraction with other waste or substances create toxicity, infection, oxidation, exploration, radioactivity, decay or other harmful effect to environment;”*

*(b) After clause (f) following clause (ff) will be included, such as:*

*“(ff) “hill and tilla” means naturally created earth surface which are above the ground from adjacent plain land, or ground and stone or stone or ground and gravel or mound or place formed any other hard substances and , hill and tilla noted as land in government record;”*

*(c) After clause (g) following clause (gg) will be included, such as:‑*

*“(gg) “Ecologically Critical Area” means such area which are rich in unique biodiversity or due to the importance of environmental perspective necessary to protect or conserve from destructive activities under section 5 of this Act;”.*

***3. Amendment of section 5 under Act No. 1 of 1995‑*** *section 5 under this act will be replaced by following section 5, such as:*

*“5. Declaration of ecologically critical area‑ (1) If the Government is satisfied that an area is in an environmentally critical situation or is threatened to be in such situation, the Government may, by notification in the official gazette, declare such area as an ecologically critical area and take necessary steps for improvement of critical situation immediately.*

*(2) It is noted in all delivered notification under subsection (1) that demarcation of particular area and legal description with map and, all maps and legal description will be shown in certain area and these will be considered as legal description of that area.*

*(3) After declaration of any area as ecologically critical area, the Government will take management plan for this area.*

*(4) The Government shall, in the notification published under subsection (1) specify the activities or processes that cannot be initiated or continued in an ecologically critical area;”.*

*4.* ***Amendment of section 6 under Act No. 1 of 1995‑*** *after the section 6A of this act, following section 6B,6C,6D and 6E will be included, such as:*

*“6B. Restriction on cutting hill.‑ it is prohibited to cut and/or razing of hill and tilla by person or institution of government or semi‑government or personal or autonomous organization or occupied or personal acquisition: Provided that such direction, It will be possible to cut or raze hill or tilla with respect to clearance certificate from the Department in case of necessity of national interest.*

*6C. Restriction on production, import, storage, loading, transportation etc. of hazardous waste, to protect the environmental damage, govt with respect to provision of other law can control by means of provision production, processing, contain, storage, loading, supply, transportation, import, export, disposal, dumping etc. of hazardous waste.*

*6D. Restriction on pollution due to ship breaking. It will not create any environmental pollution and health hazardous by producing hazardous waste from any ship cutting or breaking which have to ensure by every ship owner, importer and user of yard in ship cutting or breaking activities. 6E. Restriction on water reservoir. – Notwithstanding anything contained in any other law for the time being in force, it is prohibited to filling land or changing the class by other means which is already specified as water reservoir: Provided that, Restriction on water course shall be loosed by accepting clearance certificate from department due to importance of national interest;”.*

***5.******Amendment of section 9 under Act No. 1 of 1995*** *– Section 9 of this act – (a) Subsection (1) and subsection (3) will be replaced by following subsection (1) and subsection (3), such as:*

*“(1) Where, due to incident, the discharge of any environmental pollutant occurs or activities or an accident is likely to occur in excess of the limit prescribed by the rules, the person responsible and the person of occupied of the place of occurrence or related organization shall take measures to control or mitigate the environmental pollution.*

*(3) On receipt of information under this section with respect to the accident or other incident, the Director General or a person authorized by him orders the responsible person or organization specified under subsection (1) of section 9 or any other person or organization to take necessary remedial measures to control or mitigate the environmental pollution, and the said person or persons or organization shall be bound to comply as required by the Director General”; (b)*

*After subsection (4) following subsection (5) shall be included, such as: –*

*“(5) Due to the activities of under subsection (1) emitted waste or pollutant excessed the prescribed limit is proved by the Director General or a person authorized by him in immediate test, then that test report shall be accepted as evidence in court.”.*

***6.******Amendment of section 12 under Act No. 1 of 1995*** *– Section 12 of this act shall be substituted by the following section 12, such as: “12. Environmental clearance certificate‑ (1) No industrial unit or project shall be established or undertaken without obtaining, in the manner prescribed by rules, an Environmental Clearance Certificate from the Director General.*

*(2) In the case of establishment of industry or accepting project immediately before the act in force, environmental clearance certificate should be taken immediately after Bangladesh environmental conservation (amendment) act, 2010 in force.*

*(3) In the case of expansion of industry or project, environmental certificate should be taken in specified way under the provision of act.*

*(4) In regard to environmental clearance certificate in written provision of act with other subject environmental impact assessment report, compilation of environmental management plan, surveying public opinion, getting information from public about all these matters, making committee and activities of supplying clearance certificate, minimum required conditions for clearance certificate, appeal etc. shall be noted in detailed.*

*(5) Department shall renew the list of previous years enlisted industry or project for giving environmental clearance certificate and define the minimum quality or responsibility of related person or organization with compilation of environmental impact assessment report or environmental management plan of different industry or project and prepare such list, approve and renew.”*

***7****.* ***Amendment of section 15 under Act No. 1 of 1995*** *– Section 15 of the act shall be substituted by following section 15, such as:*

*“15. Penalties‑ (1) For violation of a provision or for non‑compliance of a direction, or for the activities specified in the following Table, the penalty mentioned against them may be imposed:*

***TABLE***

|  |  |  |
| --- | --- | --- |
| *Serial No.* | *Description of Offence* | *Penalty that may be imposed* |
| *1* | *Non‑compliance of a direction issued under sub‑section (2) or (3) of section 4* | *In case of first offense: Imprisonment minimum of 1 year, not exceeding 2 years or a fine minimum of 50 thousand taka, not exceeding 2 lac taka or both.*  *In case of each subsequent offence: Imprisonment minimum of 2 years, not exceeding 10 years or a fine of 2 lac taka, not exceeding 10 lac taka or both.* |
| *2* | *Violation of sub‑section (4) by continuing activities or processes or by*  *initiating activities or processes, prohibited under subsection (1) of section 5 in an area declared as an ecologically critical area* | *In case of first offense: Imprisonment, not exceeding 2 years or a fine not exceeding 2 lac taka or both.*  *In case of each subsequent offence: Imprisonment of 2 years, not exceeding 10 years or a fine of 2 lac taka, not exceeding 10 lac taka or both.* |
| *8* | *Violation of section 6E* | *In case of first offense: Imprisonment not exceeding 2 years or a fine not exceeding 2 lac taka or both.*  *In case of each subsequent offence: Imprisonment of 2 years, not exceeding 10 years or a fine of 2 lac taka, not exceeding 10 lac taka or both.* |
| *9* | *Non‑compliance of a direction issued under sub‑section (1) of section 7* | *In case of first offense: Imprisonment minimum of 1 year, not exceeding 2 years or a fine minimum of 50 thousand taka, not exceeding 2 lac taka or both.*  *In case of each subsequent offence: Imprisonment of 2 years, not exceeding 10 years or a fine of 2 lac taka, not exceeding 10 lac taka or both.* |
| *10* | *Violation of sub‑section (1) or (2), or failure to take remedial measures in accordance with the direction of DG under subsection (3) of section 9* | *In case of first offence: Imprisonment minimum of 1 year, not exceeding 2 years or a fine minimum of 50 thousand taka, not exceeding 2 lac taka or both.*  *In case of each subsequent offence: Imprisonment of 2 years, not exceeding 10 years or a fine of 2 lac taka, not exceeding 10 lac taka or both.* |
| *11* | *Failure to render, without reasonable excuse, assistance or cooperation to the Director General or a person authorized by him as required by subsection (2) of section 10* | *Imprisonment of 1 year, not exceeding 3 years or a fine of 50 thousand taka, not exceeding 3 lac taka or both;* |

|  |  |  |
| --- | --- | --- |
| *12* | *Violation of section 12* | *Imprisonment of 2 years, not exceeding 5 years or a fine of 1 lac taka, not exceeding 5 lac taka or both.* |
| *13* | *Violation of any other provision of this Act or a direction issued under the*  *rules or obstructing the Director General or a person authorized by him*  *in discharging his duties or intentionally delaying the discharge of such duty.* | *Imprisonment not exceeding 3 years or a fine not exceeding 5 lac taka or both.* |

(*2) Subject to the other provisions of this section, certain offences and penalties for such offences may be specified in the rules, but the penalty so specified shall not exceed imprisonment for 2 (two) years or a fine of Tk. 2 (two) lac or both.*

***8.******Amendment of section 15A under Act No. 1 of 1995*** *– Section 15A of the act shall be substituted by following section 15A and 15B, such as:*

*“15A. Claim for compensation‑ Where a person or a group of persons or the public suffers loss due to violation of a provision of this Act or the rules made thereunder or a direction issued under section 7, the person, group, public or on behalf of them the Director General may file a suit for compensation.*

*15B. Confiscation of materials and equipment involved in offence‑ Where a person is found guilty and sentenced under section 15, all equipment or parts thereof, transport, substance or any other thing used in the commission of the offence may be confiscated or demolished under order of the court.*

***9.******Amendment of section 16 under Act No. 1 of 1995*** *– Under the section 16 of the act:*

*(A) Subsection (1) shall be substituted by following subsection (1), such as:*

*“(1) Where a company or multipurpose society or union violates any provision of this Act or fails to perform its duties in accordance with a notice issued under this Act or the rules or fails to comply with an order or direction, then the owner, partner, proprietor, chairman, managing director, director, general manager, manager, secretary or any other officer or agent of the company, shall be deemed to have violated such provision or have failed to perform the duties in accordance with the notice or failed to comply with the order or direction, unless he proves that the violation or failure was beyond his knowledge or that he exercised due diligence to prevent such violation or failure.”;*

*(B) After subsection (2) following subsection (3) shall be included, such as:*

*“(3) Where a department of government or government’s organization or institution or local government organization or autonomous organization violates any provision of this Act or fails to perform its duties in accordance with a notice issued under this Act or the rules or fails to comply with an order or direction, then the chairman, managing director, director, general manager, manager, secretary or any other officer or agent or which name are they known of department, government’s organization or institution or local government organization or autonomous organization shall be deemed to have violated such provision or have failed to perform the duties in accordance with the notice or failed to comply with the order or direction, unless he proves that the violation or failure was beyond his knowledge or that he exercised due diligence to prevent such violation or failure.”.*

***10.******Amendment of section 17 under Act No. 1 of 1995*** *– Section 17 of act shall be substituted by following section 17, such as:*

*“17. File case for compensation‑ Where a person or a group of persons or the public suffers loss due to violation of a provision of this Act or the rules made thereunder, the person, group, public or on behalf of them the Director General may file a case in environmental court for compensation.”.*

***11.******Amendment of section 20 under Act No. 1 of 1995*** *– Under the section 20 of the act‑*

*(A) The word “provision” noted in subsection (1) shall be replaced by word “provisions”.*

*(B) The word “in provision” noted in subsection (2) shall be replaced by word “in provisions”.*

*(B) The word “in provision” noted in subsection (2) shall be replaced by word “in provisions”.*

*(C) Clause (h) under subsection (2) shall be substituted by following clause (h), such as: “(h) Determination of fees for processing of environmental clearance certificates, getting information and other services;”;*

*(D) After clause (h) under subsection (2) following clause (i), (j), (k), (l) and (m) shall be included, such as:*

*“(i) Provision on making list of hazardous waste, manufacturing, contain, storage, loading, supplying, transportation, import, export, disposal, dumping and control of these;*

*(j) Determination of restriction on location of industry or project in different area and environmental management plan;*

*(k) Procedure of management of environmental critical area;*

*(l) Establishment of environmental research center, activities of research center, procedure of supplying sample in research center, form of publishing research result, procedure of publishing result, determination of fees of getting result and other matter related to conduct research activities;*

*(m) Determination of procedure of mass hearing.”.*

*Pranab Chakrabarti*

*Additional Secretary*

*& Secretary (Acting)*

Thereafter, the Awami League Government under the leadership of Hon'ble Prime Minister Sheikh Hasina enacted the Environment Courts Act, 2010 (Act No. LVI of 2010), which is exactly quoted below:

**Environment Courts Act, 2010**

**Act No. LVI of 2010**

**12th October 2010**

***An Act to provide for the establishment of environment courts for the speedy trail of offences relating to environment and matters incidental thereto.***

*Whereas it is expedient and necessary to provide for the establishment of Environment Courts for speedy trail of offences relating to environment and matters incidental thereto for amending and consolidating existing laws.*

*It is hereby enacted as follows:-*

***1. (1) Short title.*** *- This Act may be called the Environment Court Act, 2010.*

*(2) It shall become effective immediately.*

***Definition.***

*2. In this Act, unless there is anything contrary to this subject or context-*

*(a) “Civil Procedure Code” means the Code of a Civil Procedure, 1908 (Act V of 1908);*

*(b) “Inspector” means an inspector of the Department of Environment or any other person authorized by the Director General by a general or special order or any other any other person authorized under any other environmental law to inspect or investigate;*

*(c) “Environmental Law” means this Act, the Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995), any other law specified by the Government in the official Gazette for the purposes of this Act, and the rules made under these laws;*

*(d) “Environment Court” means an Environment Court constituted under this Act;*

*(e) “Environment Appellate Court” means an Environment Appellate Court constituted under this Act;*

*(f) “Criminal Procedure Code” means the Code of Criminal Procedure, 1898 (Act V of 1898);*

*(c) “Director General” means the Director General of the Department of Environment;*

*(h) “Special Magistrate” means a Special Magistrate appointed under section 5(2);*

*(i) “Special Magistrate Court” means any Special Magistrate Court constituted under this Act. 5(2);*

***3. Overriding effect of the Act****. - Notwithstanding anything contained to the contrary in any other law for the time being in force, the provisions of this Act shall have effect.*

***4. Establishment of Environment Court.-(****1) For carrying out the purposes of this Act, the Government, may, by notification in the official Gazette, establish one or more Environment Courts in each District.*

*(2) An Environment Court shall be constituted with one judge, and in consultation with the Supreme Court, the Government shall appoint an officer of the Judicial Service of the rank of Joint District Judge and the said judge shall in addition to his ordinary function dispose of the cases that fall within the jurisdiction of an Environment Court.*

*(3) Each Environment Court shall have its seat at the District Headquarter; however the Government, if it considers necessary, may by general or specific order published in the official Gazette, specify places within the Administrative District, where the Court can hold its sittings.*

*(4) If more than one Environment Courts are established in any District, the Government shall by notification in the official Gazette, specify the territorial jurisdiction of each such Court.*

***5. Establishment of Special Magistrate Courts****.-(1) For carrying out the purpose of this Act, the Government may by notification in the official Gazette, establish one or more Special Magistrate Courts in each District.*

*(2) The Government in consultation with the Supreme Court may appoint any Metropolitan Magistrate of the first class for any specified area to dispose of all the offences mentioned in the environmental laws, exclusively or in addition to his ordinary function.*

***6. Jurisdiction of Special Magistrate Court.-****(1) Notwithstanding anything contained to the contrary in any other law, the Director General or any other person authorized by him shall directly institute cases in a Special Magistrate Court or lodge complaint (FIR) in a police station according to the Code of Criminal Procedure for trial of offences under environmental law.*

*(2) The Special Magistrate Court shall be competent to impose penalty for offences under environmental law including section 9 of this Act, to confiscate or distribute an equipment or part thereof, a transport used in the commission of such offence or an article or other thing involved with the offence, and to pass order for compensation in appropriate cases; and in addition, the said court may in the same judgment make all or any of the following orders keeping in view of the circumstances of the offence or relevant facts:*

*(a) issuing a direction to the offender or other relevant person not to repeat or continue or, as the case may be, not to do the act or to make the omission which constitutes the offence;*

*(b) issuing a direction to the offender or other relevant person to take such preventive or remedial measures in relation to the injury or probable injury to environment as the court considers appropriate keeping in view of the circumstances of the offence or the relevant facts.*

*(c) in case of direction under clause (b), specifying a time-limit and a further direction to submit within the specified time a report to the Director General or other appropriate authority on the implementation of such direction.*

*Provided that where a direction under direction clause (b) or (c) is issued, the person directed may apply to the court within 15 days of the judgment for review of such direction and the court shall, after giving the Director General a reasonable opportunity of being heard, dispose of the application within subsequent 30 days.*

*(3) No Special Magistrate Court shall take cognizance of an offence except on the written report of an Inspector;*

*Provided that if the Special Magistrate Court is satisfied that a person presented a written request to the said Inspector to accept a complaint about an offence and no action was taken within 60 (sixty) days after such request and that such complain deserves to be taken into cognizance for the purpose of trail, then the court, may, after giving the Inspector or the Director General a reasonable opportunity of being heard, directly receive the complaint without such written report, or may, if it considers appropriate, direct the said Inspector to investigate the offence.*

***7. Jurisdiction of Environment Court.-(****1) Notwithstanding anything contained to the contrary in any other law, cases received from special magistrate, shall, in accordance with the provision of this Act, be disposed of by an Environment Court for trail of offences under the environmental law.*

*(2) A case shall, in accordance with the provision of this Act, be directly instituted in an Environment Court for compensation under the environmental law, and that court can take cognizance and hold proceedings for trail and disposal of those cases.*

*(3) An Environment Court shall be competent to impose penalty for offences under section 8(2) of this Act and under environmental law, to confiscate an equipment or part thereof, a transport used in the commission of such offence or an article or other thing involved with the offence, and to pass order or decree for compensation in appropriate cases; and in addition, the said court may in the same judgment make all or any of the following orders keeping in view of the circumstances of the offence or relevant facts:*

*(a) issuing a direction to the offender or other relevant person not to repeat or to continue, or as they may be, not to do the act or to make the omission which constitutes the offence;*

*(b) issuing a direction to the offender or other relevant person to take such preventive or remedial measures in relation to the injury or probable injury to environment as the court considers appropriate keeping in view of the circumstances of the offence or the relevant facts;*

*(c) in case of a direction under clause (b), specifying a time-limit and a further direction to submit within the specified time a report to the Direction General or other appropriate authority on the implementation of such direction;*

*Provided that where a direction under clause (b) or (c) is issued, the person directed may apply to the court within 15 days of the judgment for review of such direction and the court shall, after giving the Director General a reasonable opportunity of being heard, dispose of the application within subsequent 30 days.*

*(4) No Environment Court shall receive any claim for compensation under environmental law except on the written report of an Inspector;*

*Provided that if the Environment Court is satisfied that a person presented a written request to the said Inspector to accept a claim for compensation and no action was taken within 60 (sixty) days after such request, and that such claim deserves to be taken into cognizance for the purpose of trail, then the Court may, after giving the Inspector or the Director General a reasonable opportunity of being heard, directly receive the claim for compensation without such written report, or may, if it considers appropriate, direct the said Inspector to investigate the claim.*

***8. Penalty for violating Court’s order****.-(1) if a person-*

*(a) violates a direction issued under section 6(2) by a special magistrate by repeating or continuing the offence for the commission of which he has been sentenced, he shall be liable to be sentenced with the penalty prescribed for that offence, provided such penalty shall not be less than the one imposed on him at the time of issuance of the direction;*

*(b) violates a direction issued under section 6(2), by a special magistrate the violation shall be an independent offence for which he shall be liable to be sentenced to an imprisonment not exceeding 5 (five) years or to a fine not exceeding 5 (five) lac taka.*

*(2) If a person-*

*(a) violates a direction issued under section (a) of section 7(3) by a Court by repeating or continuing the offence for the commission of which he has been sentenced, he shall be liable to be sentenced with the penalty prescribed for that offence, provided such penalty shall not be the less than the one imposed on him at the time of issuance of the direction;*

*(b) violates a direction issued under clause (b) or (c) of section 7(3), the violation shall be an independent offence for which he shall be liable to be sentenced to an imprisonment nor exceeding 5 (five) years or to a fine not exceeding 5 (five) lac taka.*

***9. Trail of offences by Special Magistrate.-(****1) Notwithstanding anything contained contrary to the Code of Criminal Procedure, Special Magistrate appointed under sub-section 2 of section 5, shall impose penalty of an imprisonment not exceeding 5 (five) years, or a fine not exceeding 5 (five) lac taka or both or confiscation, destruction or settlement of anything, for the commission of an offence.*

*(2) If any offence is combined with another offence under the environment law and if, for the end of justice, both offences require trail in the same proceedings, then the offence under other law shall be triable in the Special Magistrate if that offence is triable by a Magistrate and if that offence is triable by any Magistrate and if that offence is triable by any other court or tribunal, then the Special Magistrate shall transfer the case to the concerned court or tribunal.*

***10. Trail procedure in Special Magistrate’s Court.-*** *(1) No witness present before the court who is called for by a court of Special Magistrate shall be returned or released without taking his evidence.*

*(2) The Special Magistrate Court shall conclude the trail within one hundred eighty days from the date of framing charge.*

*(3) Where the trial is not completed within the time-limit prescribed in sub-section 2, the Special Magistrate Court shall, within 15 days after expiry of that 180 (one hundred eighty) days, inform the Environment Appellate Court of the delay recording the reasons for such delay, and shall complete the trail of the case within ninety days after the expiry of such 180 (one hundred eighty) days, but if a case is not completed within the said extended period, then the Director General or person authorized by in this regard or lawyer can apply to the Environment Appellate Court within 15 (fifteen) days after the expiry of the extended period to transfer the case to other Special Magistrate Court and Environment Appellate Court, on the basis of such application, may pass order to transfer the case.*

*(4) If any case be transferred under sub-section (3) to a Special Magistrate, that court shall not commence the trail afresh rather the court shall complete the outstanding proceedings from the stage which remained unfinished by the preceding Special Magistrate Court and shall complete the trial within 90 days from the date of receiving the case record.*

*(5) If the trial of a case is not completed within the time-limit prescribed in sub-section (2), (3) and (4), the Environment Appellate Court shall, after 60 (sixty) days after the expiry of the said time-limit, determine who are responsible for such after holding inquiry and on the basis of such inquiry, shall recommended to the concerned authority for taking legal action against the liable person and the said authority shall submit in the form of report to the Environment Appellate Court the actions and outcomes undertaken based on such recommendations within 60 days from the date of receiving such recommendations.*

***11. Power of entry, search etc.-***

*(1) For the purpose of conducting an inspection of any matter or investigation of an offence under an environment law, or when directed by the Directed General or the Environment Court for assessing compensation under this Act, an Inspector may, at any reasonable time, enter any place, search into, or seize anything or collect sample from, or inspect, that place.*

*(2) For the purposes of sub-section (1), an Inspector may, wherever he considers necessary, apply to the Environment Court or to any Special Magistrate for a search warrant in accordance with the Code of Criminal Procedure.*

*(3) An inspector shall, follow the Code of Criminal Procedure and relevant provisions of the environmental law and rules in conducting a search, seizure or inspection under this section.*

***12. Procedure for inquiry, institution of case and investigation.-*** *(1) An offence under environmental law shall ordinarily be investigated by an Inspector, but the Director General may, by a general or special order, authorize any other officer subordinate to him to investigate any particular kind of offence or a specified offence.*

*(2) The said Inspector or other officer, hereinafter referred to as the investigating officer shall on the basis of a written complaint or other information initiate proceeding under this section after obtaining approval of the officer authorized in this behalf by the Director General.*

*(3) The investigating officer shall before initiating a formal investigation of an offence, inquire into and collect information about the offence, prepare a preliminary report thereon and present it to a higher officer authorized by the Director General in this behalf and the officer secondly mentioned shall upon consideration of the relevant facts and circumstances, give his decision within 7 (seven) days as to whether a formal investigation may be initiated or whether no action at all is necessary and accordingly subsequent action shall be taken.*

*(4) If a decision is taken to initiate a formal investigation under sub-section (3), the investigating officer shall present a complaint (Ejahar) based on the preliminary report to the concerned police station, and it shall be recorded in the police station as a First Information Report (FIR) or and after that such investigating officer or any other officer authorized by the director general, as the case may be, shall conduct the investigation and he shall be regarded as the investigating officer of the relevant case.*

*(5) The investigating officer while investigating an offence shall, in relation to that offence, exercise, in accordance with the Code of Criminal Procedure in appropriate cases, the same power as an officer in charge of a police station and he shall, subject to this Act and the rules, follow the Code of Criminal Procedure.*

*(6) Any statement recorded, any article seized, any sample or other information collected at the inquiry stage held before formal investigation may be considered and used for the purpose of formal investigation.*

*(7) The investigating officer shall, after completion of the investigation, obtain the approval of an officer authorized by the Director General in this behalf and submit one copy of the investigation report and the original or attested copies of the supporting document directly to the Environment Court or as the case may be to a Special Magistrate Court, and shall also keep one copy at his office and present another copy to the concerned police station; and such report shall be deemed to be a police report under section 173 of Code of Criminal Procedure.*

*Provided that, if the original copy of any document is not possible to submit before the Court, the explanation for it in details along with the report shall be submitted to the court.*

*(8) Notwithstanding the provisions of sub-section (3) where the investigating officer has reasons to believe that any document, article or equipment involved with an offence is likely to be removed or destroyed, he may, even before a decision of formal investigation under such sub-section, seize the document, article or equipment during conducting investigation or inquiry as the case may be.*

*(9) If any offence is combined with another offence under the environmental law and if, for the end of complete justice, both the offences require investigation and trial simultaneously or in the same proceeding, than the offence under other law shall be investigated by the investigating officer mentioned in sub-section 4.*

*(10) The Government apart from the Department of Environment may empower any other officer to conduct inquiry, institute case relating to offence under environmental law and submit report after holding investigation.*

*(11) While the Special Magistrate is conducting Mobile Court, the Inspector or officer authorized by the Director General in this behalf or officer empowered by the Government in this behalf, May, without following the formalities mentioned in this section, make complaint directly to the Special Magistrate for commission of an offence under environmental law and the Special Magistrate, on the basis of such complaint, may make cognizance of the said offence and try it or send the case for trial as the case may be.*

***13. Assistance from Law Enforcing Agencies and other authorities. -*** *For the purpose of sections 12 and 13, the investigating officer may request any law enforcing agency or other Government authority or statutory organizations for assistance and the requested authority or organization shall accordingly provide assistance.*

***14. Procedure and Power of Environment Court. -*** *(1) Unless otherwise provided in this Act, provisions of the Code of Criminal Procedure shall be applicable in case of lodging a complaint about an offence under this Act, trial thereof and the Environment Court shall be deemed to be a criminal court and it shall follow the procedure for trial and disposal of a case which is specified for disposal of a case by the Sessions Court in accordance with the Code of Criminal Procedure.*

*(2) The Environment Court shall be competent to order the investigating officer or other person investigating to hold further investigating of the offence in relation to which a case is pending before it and also to specify the time-limit for submission of the report of such further investigation.*

*(3) The Environment Court shall be competent to exercise any power conferred on it by this Act or environment law.*

*(4) A case triable by an Environment Court shall be conducted by lawyer appointed by the Director General and the said lawyer shall be deemed to be Special Public Prosecutor in criminal offences and to be Special Government Pleader for the suits of civil nature:*

*Provided that an Inspector or an officer authorized by the Director General may assist the said lawyer in conducting the case and if necessary may make his submission before the court.*

*(5) If any offence is combined with another under the environmental law and if, for the end of justice, both the offence require trial in the same proceeding, than the offence under other law shall be triable in the Environment Court.*

*(6) Subject to provisions of this Act, the Code of Civil Procedure shall be applicable to the trial and disposal of a case relating to compensation, and the Environment Court, for the purpose of trial and disposal of a suit for compensation, be deemed to be a Civil Court and shall be competent to exercise all the powers of a Civil Court.*

*(7) No witness present before the court that is called for by the Environment Court shall be returned or released without taking evidence; however, if the hearing of any case or the act of taking evidence started in the last hour of the daily working time of the Court then such hearing or the act of taking evidence can continue even after the working time.*

*(8) The Environment Court shall conclude the trial within one hundred eighty days from the date of framing charge in respect of offence and from the date of framing issues in respect of claim for compensation.*

*(9) Where the trial is not completed within the time-limit prescribed in sub-section (8), the Environment Court shall, within 15 days after expiry of 180 (one hundred eighty) days, inform the Environment Appellate Court of the delay recording the reasons for such delay, and shall complete the trial of the case within ninety days after the expiry of such one hundred eighty days, but if a case is not completed within the said extended period, then the Director General or person authorized by in this behalf or lawyer can apply to the Environment Appellate Court within 15 (fifteen) days after the expiry of such extended period to transfer the relevant case to the other Environment Court and the Environment Appellate Court, on the basis of such application, may pass order to transfer the case.*

*(10) If any case be transferred under sub-section (9) to Environment Court, that court shall not commence the trail afresh rather the court shall complete the outstanding proceedings from the stage which remained unfinished by the preceding Environment Court and shall complete the trial within 90 days from the date of receiving the case record.*

*(11) If the trial of a case is not completed within the time-limit prescribed in sub-section (8), (9) and (10), the Environment Appellate Court shall, within 60 (sixty) days after the expiry of the said time-limit, determine who is/are responsible for such after holding inquiry and on the basis of such inquiry, shall recommended to the concerned authority for taking legal action against the liable person.*

*(12) The said authority shall submit in the form of report to the Environment Appellate Court the actions and outcomes undertaken based on such recommendations within 60 days from the date of receiving such recommendations under sub-section (11).*

***15. Power to give cost or compensation out of fines. -*** *(1) The Special Magistrate Court or Environment Court may, in its judgment, pass an order to the effect that the amount spent by the prosecution in conducting the case or in appropriate case, the compensation to the persons or institutions affected by the commission of an offence under environmental law should be paid out of the realized from the person or institution who has been sentenced with the fine.*

*(2) If a claim for compensation is related to an offence under an environmental law in such a manner that the trial of the offence and the claim should be held in the same proceedings, then the Environment Court shall try the offence first and if the compensation to be awarded is not commensurate with the fine imposed as a penalty of the offence, then the application for compensation can be considered separately.*

***16. Procedure for realization of fines. -*** *The amount of fine or compensation imposed by the Special Magistrate Court or the Environment Court upon a person or institution who has been sentenced to or any other amount of money fixed by the said court except fine or compensation shall be realizable in accordance with the provisions of sections 386 and 387 of the Code of Criminal Procedure.*

***17. Authority of Environment Court to inspect.-(****1) If, at any stage of the trial of case, any question arises relating to the property, object or place of occurrence of an offence, the Environment Court can inspect the property, object or the place of occurrence, after serving notice on the parties or their lawyers as to the place and time of inspection.*

*(2) During inspection or immediately thereafter, the Judge shall record the result of the inspection in the form of memorandum and such memorandum shall be considered as evidence in the trial of the case.*

***18. Compromise.-*** *(1) Notwithstanding anything contained in Code of Criminal Procedure, certain offence under the Bangladesh Environment Conservation Act, 1995 (Act No. 1 of 1995) may be compromised subject to the satisfaction of the Director General in the following procedure, namely;*

*(a) For non-compliance of a direction issued under sub-section (2) or (3) of section 4 of the said Act, resulting in the commission of first offence, a compliance report executing the said direction is submitted and a minimum fine of 50 (fifty) thousand taka is paid;*

*(b) For violation of sub-section (4), by continuing activities or processes or by initiating activities or processes, prohibited under sub-section (1) of section 5 of the said Act in an area declared as an ecologically critical area, resulting in the commission of first offence a written undertaken stopping permanently the prohibited act or processes with not to reopen the same is submitted and a minimum fine of 50 (fifty) thousand is paid;*

*(c) The Director General or an officer authorized by him in this behalf being prima facie satisfied with the compliance report or written undertaken in case of sub-section (a) or (b) submits compliance report or written undertaken stating the disposal of cases through compromise and a written compliance report is submitted to the concerned court within 5 (five) working days from the date of submission of compliance report, undertaking and submission of fine whichever is later;*

*(2) The compromise under sub-section (1) may also be made after the filing of the suit and during investigation, when the case is ready after submission of police report, during trial, and appeal or revision;*

*(3) If a compromise report is filed by the Director General in a case, the concerned court or Appellate Court as the case may be accepting the compromise shall conclude the trial from that stage of the case and the accused if in custody, shall be released, shall be discharged from bail bonds if on bail and the warrant of arrest issued upon the accused shall be recalled cancelling it.*

***19. Appeal.-*** *(1) Notwithstanding anything contained to the contrary in the Code of Civil Procedure or the Code of Criminal procedure, no question shall, except in accordance with the provisions of this Act, be raised before any court or other authority on the proceeding, order or decision of, or a decree of compensation passed and penalty imposed by, the Environment Court.*

*(2) A party aggrieved by a judgment or a decree of compensation passed or a penalty imposed by the Environment Appellate Court established under section 20 within thirty days of the of passing the judgment, decree of compensation or penalty, or order of dismissal of a civil suit or an order specified in sub-section (3).*

*(3) An appeal or revision shall lie to the Environment Appellate Court against an order of interim or temporary injunction, an order to maintain status quo, an order granting or refusing bail, and order of framing charge or discharge, and an order of taking cognizance of an offence or refusal thereof passed by an Environment Court, and no other interim order shall be called in question before the Environment Appellate Court or any other court.*

*(4) An appeal or revision shall lie to the Environment Appellate Court against an order of conviction or acquittal, an order granting or refusing bail, and order of framing charge or discharge, and an order of taking cognizance of an offence or refusal thereof passed by a Special Magistrate Court, and on other order shall be appealable nor shall the legality or propriety thereof shall be called in question before the Environment Appellate Court or any other court.*

*(5) Notwithstanding anything contained in the provisions of sub-section (1), a party aggrieved by a judgment or decree passed by an Environment Court in a suit for compensation shall not be entitled to file an appeal against the said judgment or decree without depositing 25% (twenty five percent) of the decreed amount with the court which passed the decree.*

***20. Environment Appellate Court****.-(1) For carrying out the purpose of this Act, the Government shall, by notification in the official Gazette, establish one or more than one Environment Appellate Court.*

*(2) An Environment Appellate Court shall be constituted with one judge and, in consultation with the Supreme Court, the Government shall-*

*(a) appoint an officer of the judicial service of the rank of District Judge to dispose of cases in such court; or*

*(b) if it considers necessary, for a specified area appoint a District and Sessions Judge of a District to act as the judge of an Environment Appellate Court in addition to his ordinary duties.*

*(3) For the purpose of disposal of appeals relating to offences, the Environment Appellate Court may exercise all the powers of a Sessions Court as an Appellate Court under the Code of Criminal Procedure.*

*(4) For the purpose of disposal of an appeal relating to a suit for compensation, the Environment Appellate Court may exercise all the power of an Appellate Court under the Code of Civil Procedure.*

***21. Transfer of Cases.-****An Environment Appellate Court may, on an application or other information-*

*(a) transfer a pending case form one Environment Court to another such court subordinate to it or retransfer a case;*

*(b) transfer a pending case from the court of a Special Magistrate to another such court or to an Environment Court subordinate to it, or retransfer such a case.*

***22. Pending Cases. -*** *A case under an Environment Law pending in any court immediately before the commencement of this Act shall be so continued and disposed of in that Court as if this Act has not been enacted.*

***23. Power to Make Rules. -*** *For carrying out the purpose of this Act, the Government may, by notification in the official Gazette, make rules.*

***24. Repeal and Saving.-****(1) The Environment Court Act, 2000 (Act No. 11 of 2000) is hereby repealed.*

*(2) Notwithstanding such repeal, anything done or any action taken under the repealed Act shall be deemed to have been done under the provisions of this Act.*

Thereafter, the Awami League government under the leadership of the Honourable Prime Minister Sheikh Hasina amended the Social Forestry Rules on 11 January 2010/28 Poush 1416 through S.R.O No. 10/Law 2010 as per the power conferred under section 28A subsection (4) and (5) of the Forest Act 1927 (XVI of 1927).

Thereafter, on 18 December, 2012, the Awami League government under the leadership of the Honourable Prime Minister declared certain areas in the Noakhali district as ‘reserved forest’ which is as follows:

**Bangladesh Gazette**

**Additional Publication**

**Published by the Authorities**

**Tuesday, 18th December, 2012**

**The Government of the People’s Republic of Bangladesh**

**Ministry of Environment and Forests**

**Forest Branch – 1**

**Gazette**

**Date, 19th November, 2012**

**No. PBM (F. B.- 1) 32/2012/530-** As per Section 4 (a) (1) of the Forest Act, 1927, the Government has issued a notification in the Bangladesh Gazette (published in Bangladesh Gazette, 28th September 2008) expressing its desire to declare the following Scheduled Lands (newly emerged chars/ khas land in Noakhali district between 22 ° 55 ' N latitude to 90 ° 50' E longitude and 21 ° 30 ' N latitude to 91 ° 30' E longitude) as **Reserved Forest** lands. Additional Deputy Commissioner (Revenue) of Noakhali has been appointed as the Forest Settlement Officer. If there is any immediate claim on the land that is mentioned in the Act, it should be properly investigated and firmly decided by him as per Chapter II of the said Act, and

As the mentioned Forest Settlement Officer has specified the location and boundaries of the Scheduled Land by a 4 Section Notification (Process No.13/S of his office, dated: 25.08.2011 AD) under Section 6 of the said Act, and has given an explanation of what will be the result if the forest is preserved. If anyone makes any claim on the land, s/he is requested to raise it in writing or orally along with the proof of authentic documents within 4 months from the date of the issuance of such notice.

Since no claim has been filed against the mentioned lands under the above declaration or any such claim has been settled legally after the submission;

Therefore, it has been declared that the land described in the following schedule shall be deemed as Reserved Forest land from the date of issuance of the notification by exercising the power conferred upon by section 20 of the Forest Act, 1927:

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **District** | **Upazila** | **Name of the Range** | **Union** | **Mouza, JL No./Seat No.** | **Spot No./ Name of the Char** | **Boundaries** | **Area of the Forest (in acres)** | **Present Condition** | **Comments** |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Noakhali | Hatia | Nalchira | Char Ishwar Union | Lakshmidia Mouza, JL No- 42 | Seat No Revision- 5, Spot No 9870 – 9877 & 12106 | N- River Hatia  S- The Bay of Bengal  E- Rivar Hatia  W- River Meghna | 201.00 | Old Mangrove Forest | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD,  U/Section: 6 |
| “ | “ | “ | Nalchira Union | No survey | Char Nurul Islam | N- River Meghna  S- The Bay of Bengal  E- River Meghna  W- River Meghna | 2000.00 | Uninhabited and land suitable for afforestation | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | Shukhchar Union | No survey | Char Jonak | N- Char Dhal  S- River Meghna  E- River Meghna  W- River Meghna | 300.00 | Uninhabited and old mangrove forest | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | Char Ishwar Union | No survey | New Oskhali Char | N- River Meghna  S- Garden of Lakshmidia Mouza  E- River Meghna  W- Bangla Bazar | 300.00 | Uninhabited and mangrove forest | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | Char Alexander Range | Horini Union | No survey | New Teli Char | N- Canal of River Meghna  S- The Bay of Bengal  E- River Meghna & Char Ghashia  W- River Meghna | 2000.00 | There is new afforestation with land suitable for afforestation | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Noakhali | Shubarna Char | Habibia | East Charbata Union | J.L. No. 303 | Char Majid Spot No. 2129 Seat No.-2 | N- Embankment  S- Char Majid South  E- Bashkhali Switch  W- Habitat, Khas Land | 1.3 | Garden and office complex with adjacent garden suitable for afforestation | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | No.5 Jublee Char Union | J.L. No. 302 | Char Bagya  Spot No.  40,41,42/6, 7, 8 39, 39/1, 81/68, 69, 70, 71, 73  (Seat No.-1) | N- Embankment  S- Habitat, Khas Land  E- Habitat, Khas Land  W- Habitat, Khas Land | 3.47 | Garden and office | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | Hatia | “ | Horini Union | J.L. No. 2  (Diyara-265) | Char Rashid  Spot No.  101, 102, 103  (Seat No.-1,2) | N- Char Majid S.  S- Char of Baya  E- Char Ajmol  W- Char of Bhuiyan | 70.00 | Non mangrove forest and vacant space suitable for afforestation | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| “ | “ | “ | “ | Seat No. 10 | Char Bhuiyan Spot No.- 5001/234,  5001/235,  5001/245,  5001/246 | N- Char Majid of Bhuiyan  S- Char of Bhuiyan Habitat  E- Road  W- Habitat | 0.27 | Garden & Office | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | Hatia | “ | Not included in any union for being uninhabited till now | No survey | Jaliar Char | N- River, Jahaijjar Char & Sandwip  S- The Bay of Bengal  E- The Bay of Bengal  W- River Meghna & Hatia | 5000.00 | Existing mangrove forest and newly emerged & uninhabited char land suitable for afforestation | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Noakhali | Hatia | Char Alauddin | Chandni | No survey | Char Asiya  (Jahaijjar Char) | N- River Meghna & Char of Uri  S- River Meghna & Char Nurul Islam  E- River Meghna & Sandwip  W- River Meghna | 10000.00 | Mangrove forest and uninhabited land suitable for afforestation | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | Companyganj | Companyganj | Char Elahi  Union | No survey | Char Ramzan,  Char Umed &  Char Balua | N- River Babni  S- Char Elahi  E- Small River Feni  W- Char Balua | 70.00 | Afforested and suitable for afforestation Char area | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | Hatia | Jahajmara | Jahajmara  Union | “ | Char Kalam | N- Char Moktaria, Macparshwan, Mohammadpur, Birbiri, East Birbiri & Kaderia Canal  S- Char Raushan and New Char Kalam  E- Char Aleem & New Char  W- Channel Moktaria | 1528.22 | Old mangrove garden & new garden | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | “ | “ | Char Raushan | N- Char Kalam  S- Char Bahauddin (Domar Char)  E- New Char Kalam  W- Nijhum Dwip Channel | 1500.00 | Old mangrove garden & new garden | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Noakhali | Hatia | Jahajmara | Nijhum Dwip Jahajmara Union | No survey | Char Bahauddin (Domar Char) | N- Char Raushan  S- Char Johan  E- Bazar Char  W- Nijhum Dwip Channel | 360.00 | Old Mangrove Garden and new Char area | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | Nijhum Dwip | “ | Char Kabira & new char | N- Hatia Bay  S- The Bay of Bengal  E- Char Osman & Char Kamala  W- The Bay of Bengal | 2000.00 | Mangrove, afforested and suitable for afforestation Char area | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | “ | “ | Char of Balya | N- Char Osman  S- The Bay of Bengal  E- Nijhum Dwip  W- The Bay of Bengal | 500.00 | Mangrove, afforested and suitable for afforestation Char area | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| “ | “ | “ | Jahajmara Union | “ | New Char Yunus | N- New Char Jonak  S- South Meghna River  E- Sonadia & Jahajmara Union  W- River Monpura | 1500.00 | Mangrove, afforested and suitable for afforestation Char area | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | “ | “ | Char of Khaja | N- Char Kalam  S- Char Johan  E- Char Bahauddin,  Char Aual  W- Char Bahauddin | 500.00 | Afforested and suitable for afforestation Char and new forest area | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | Nijhum Dwip (& Char Osman) | “ | Char Kamala  (Nijhum Dwip) | N- Hatia Bay  S- Char Osman  E- Hatia Bay & Char Aftab  W- The Bay of Bengal &  Char Kabira | 4339.29 | Mangrove forest and national park | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Noakhali | Hatia | Jahajmara | Jahajmara Union | No survey | Char Yunus | N- Jahajmara Border (indefinite)  S- Hatia Bay, Moktaria (indefinite)  E- New char & Char Auwal  W- | 1200.00 | Old mangrove garden area | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | “ | “ | Char Johan | N- Char Bahauddin  S- The Bay of Bengal  E- The Bay of Bengal  W- Nijhum Dwip Channel | 700.00 | Old mangrove garden area | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | “ | “ | Char Mugid | N- Char Osman  S- The Bay of Bengal & Nijhum Dwip Channel  E- Nijhum Dwip Channel  W- Char of Ballya | 300.00 | Old Mangrove garden area | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | Sagoria | Burir Char Union | Shuner Char J.L.No.-45 | Seat No.06  Spot No.7225, 7858 | N- Char Oskhali  S- Behania Mouza  E- River Meghna  W- Agricultural land | 2556.00 | Mangrove Garden | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | Burir Char Union | Burir Char J.L.No.-35 | Spot No.-8841  Seat No.-3 | N- Rehaniya  S- Borodeil Mouza  E- River Meghna  W- Agricultural land | 100.00 | Mangrove Forest | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| Noakhali | Hatia | Sagorika | Burir Char Union | Rehania J.L.No.-46 | Spot No.490, 2038 | N- Shunyer Char Mouza  S- Burir Char  E- River Meghna  W- Katakhali Canal | 36.37 | Mangrove Forest | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
| “ | “ | “ | Burir Char | No survey | Er Deil | N- Burir Char  S- River Meghna  E- The Bay of Bengal  W- Jahajmara Union | 2000.00 | Old mangrove garden and uninhabited char area suitable for afforestation | Memo. No.- 13/S, A  Dated: 25th August, 2011 AD  U/Section: 6 |
|  |  |  |  |  |  | Total | 37165.38 |  |  |

2. This circular has been issued in public interest and shall be effective immediately.

By order of the President

Md. Shafiqur Rahman Patwari

Secretary

Thereafter, the Water bodies Lease Granting Committee, established according to the directions of the Honorable Prime Minister Sheikh Hasina under the Ministry of Land as per the Water bodies Management Policy 2009, in the meeting of 03-10-2010 **reached a decision to conserve the *Hakaluki Haor* (backswamp) as a fish sanctuary** based on the considerations that the conservation of the *Haor* is extremely significant **for preserving environmental equilibrium, protection of egg-laying fish and as a habitat for varieties of fish**, and because leasing out the *Haor* would have adverse impacts on the environment, dangerously harm the reproduction cycle of the fish species, threaten the migration of migratory birds and would pose an increased likeliness in their hunting.

Thereafter, the Awami League Government, under the leadership of the Honorable Prime Minister Sheikh Hasina, added Article 18A titled ***‘Protection and improvement of environment and biodiversity’*** to the Fundamental Principles of State Policy, or Part II of the Constitution of Bangladesh, through Section 12 of the Constitution (Fifteenth Amendment) Act, 2011 (Act No. XIV of 2011). The Article is as follows:

***“18A. The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.”***

And through this, Bangladesh constitutionally adopted the ‘Public Trust Doctrine’

Thereafter, the Ministry of Environment and Forest, under the direction of Honorable Prime Minister, established the ***“National Vulture Recovery Committee”*** through a notification dated 25-07-2013. Later, on 28 January, 2015, safe areas for vultures in Sylhet, Dhaka (partial) and Chittagong were declared in the form of gazette notification dated 23 December, 2011. Thereafter, the Honorable Prime Minister Sheikh Hasina adopted the ***“Bangladesh Vulture Conservation Action Plan 2016-2025”.***

Afterwards, the Awami League government, under the leadership of Honorable Prime Minister Sheikh Hasina, promulgated the Bangladesh Biosafety Rules, 2012 which are as follows:

***Bangladesh Biosafety Rules, 2012***

***Bangladesh Gazette***

***Additional Copy***

***Published by the Authorities***

***Sunday, September 2, 2012***

***Government of the People's Republic of Bangladesh***

***Ministry of Environment and Forests***

***Environment Branch-2***

***Circular***

**Date: 14 Vadra 1419 Bengali Year/29 August**

**2012**

SRO No 302-Act/2012. The Government formulated the following Rules under the authority bestowed to it by the Section 20 of the Bangladesh Environment Conservation Act, 1995 (No. 1 Act of 1995):

**1. Title**- The Rules shall be called "Bangladesh Biosafety Rules, 2012".

**2. Definition**- Unless there is anything repugnant in the subject or context, in the Rules–

(a) ‘Department’ means the Department of Environment established under the Section 3 of the Act;

(b) ‘Act’ means Bangladesh Environment Conservation Act, 1995 (Act No. I of 1995);

(c) ‘Committee’ means National Committee on Biosafety (NCB), Biosafety Core Committee (BCC), Institutional Biosafety Committee (IBC), Field Level Biosafety Committee (FBC) established under the Guidelines;

(d) ‘Genetically Modified Organism (GMO)’ means any organism created through the application of biotechnology;

(e) ‘Genetically Modified Products’ mean a product or products that have been produced from Genetically Modified Organisms;

(f) ‘Guidelines’ means the Biosafety Guidelines of Bangladesh issued by the Ministry of Environment and Forests on 31 December 2007 vide circular no PBM/Environment3/01/CBBD-03/2007/17;

(g) ‘Bio Technology’ means a technology which is applied to implant into an organism (plants or animals or microorganism) new characteristics or gene-carrier or gene obtained from the same organism or its wild variety or a completely different organism in order to create an organism containing new genetic characteristics;

(h) ‘Pollution’ means the pollution as defined in the Section 2 (b) of the Act;

(i) ‘Environment’ means the environment as defined in the Section 2 (d) of the Act;

(j) ‘Director General’ means the Director General of the Department of Environment.

**3. Restrictions on imports or exports on Genetically Modified Organism or products-**

(1) No individual or institution shall import, export, buy, sell or commercially use Genetically Modified Organisms or products without prior approval from the Ministry of Environment and Forests.

Provided that, only in case of carrying out any research or undertaking and implementing a project on Genetically Modified Organism or products, the provisions of the Guidelines shall be applicable.

Provided further that, approval has to be taken from the concerned ministries including the Ministry of Agriculture and Department, if any, in order to market the outcome of the research.

(2) Subject to obtaining approval under the Sub-section (1), application may be filed to the Ministry of Commerce or other concerned authorities to commercially import and export or use commercially under the existing import and export policies of the country.

(3) The Ministry of Environment and Forests shall follow the Act and other concerned rules formulated under the Act, if any, and the provisions of the Guidelines while issuing an approval under Subsection (2).

4. **Application of the Guidelines, etc.-** The provisions of the Guidelines shall be applicable in controlling the Genetically Modified Organisms or products and their harmful and adverse impacts on the environment.

Provided that, if any provision of the Guidelines is in conflict with or is inconsistent with any provision of any concerned Act or the Rules, the concerned Act or the Rules shall prevail.

**5. Identifying or labeling-** Notwithstanding anything contained in any other Act, the box or package carrying the Genetically Modified Organisms or products shall bear the complete information of its identification or bear labelling which states that the product is Genetically Modified Organism or that it has been produced from Genetically Modified Organism.

**6. Taking assistance from organisations, etc.** (1) If any Genetically Modified Organism, or products produced from such organisms, pose threat to the environment, biodiversity and human health, or create dangerous situation, or pollute environment, or cause any accident or is likely to cause any accident, the concerned committee, or the Director General may seek assistance and cooperation from any ministry, agency, department etc. to resolve, or, in some cases, address the problem on an emergency basis.

(2) Under Sub-section (1), the concerned ministry, division, agency or department shall be obligated to extend the assistance or cooperation sought by the concerned committee or the Director General.

**7. Reporting of accident, negligence to responsibility, administrative fine, etc.-** (1) If any Genetically Modified Organism or products produced from the organism pose threat to environment, biodiversity and human health or create dangerous situation or pollute environment or cause any accident, the concerned individual or firm shall take necessary initiatives to control the situation, and inform the Biosafety Core Committee (BBC) and the National Committee on Biosafety (NCB) as soon as possible through detailed report or information about the steps taken.

(2) If any dangerous situation or accident as stated in Sub-section (1) is created due to negligence of the concerned individual or firm, the individual or the firm shall be held responsible for the situation.

(3) The National Committee on Biosafety (NCB) shall be empowered to take any legal measure, including imposing a logical administrative fine, against any individual or firm responsible under the Sub-section (2) upon serving an appropriate show cause notice.

(4) Any logical administrative fine imposed by the National Committee on Biosafety (NCB) on the responsible individual or the firm under Sub-section (3) shall be deposited with the concerned Government office within 30 (Thirty) days of the date of issuance of the order.

**8. Plans to face emergency situation.-** (1) The authorised individual or firm shall prepare a plan to face any potential accident or emergency situation while conducting their activities in the field experiment areas or remote areas and inform the Field-level Biosafety Committee (FBC) about the plan’s implementation and supervision.

(2) While preparing and implementing any plan under sub-section (1), participation of the local residents and their advice shall be ensured

(3) The authorised individual or the firm shall provide the FBC information relating to the on-going management of the Genetically Modified Organism and all other relevant and necessary information, including the type and extent of any potential accident, and any potential impact beyond the experiment field area, in order to enable it to supervise the necessary emergency plans under the Sub-section (1).

**9. Offence of causing environment pollution or harming the ecosystem.-** In case of any environment pollution or harm to the ecosystem management caused by Genetically Modified Organism or products, the firms producing the organism or products, their exporters, importers, hoarders, suppliers and retailers shall be responsible, unless they can prove that they had no direct involvement in causing the pollution.

**10. Offences and punishment-**

(1) In order to achieve the objectives of sub-section 2 of the Act, if any individual or firm violates Rule 3 or 5, or causes pollution as stated in the Rule 9, it shall be considered an offence under the Rules of the Section 15 of the Act, and such offence shall be punishable with imprisonment for a term up to two years or with a fine of Tk 10 (Ten) thousand or both.

(2) If a company is found to be an offender for causing pollution as stated in the Rule 9, the provision under the Section 16 of the Act shall be applicable for that company.

**11. Appeal-** Any person aggrieved by an order under Rule 7 may file for appeal under Section 14 of the Act and Rules 9, 10 and 11 of the Environment Conservation Rules, 1997.

**12. Review-**

(1) Any person aggrieved by an order under Rule 3 may within 30 (Thirty) days of the order –

a. to the Ministry of Environment and Forests in case of not getting approval, or

b. to the concerned authority where applicable

make an application for review.

(2) The Ministry of Environment and Forests, or the concerned authorities shall within 30 days of receiving the review application, settle the review, and inform the regarding the acceptance or rejection of the application.

**13. Report submission-**

(1) A half-yearly report containing the description of the activities performed under the Rules by the Director General or the committees established by the Director General or the Committees established in the Guidelines shall be submitted to the Government every 6 (six) months.

(2) The Government, at any time, if necessary, may seek report from the Director General on the activities or matters performed under the Rules, and the Director General shall be obligated to submit it to the Government.

By the order of the President

Dr. Abu Saleh Mostafa Kamal

Deputy Secretary

Since the Awami League Government, under the leadership of the Honorable Prime Minister Sheikh Hasina, added Article 18A titled ***‘Protection and improvement of environment and biodiversity’*** to the Fundamental Principles of State Policy, or Part II of the Constitution of Bangladesh, through Section 12 of the Constitution (Fifteenth Amendment) Act, 2011 (Act No. XIV of 2011), therefore, in order to make the laws on wildlife conservation and management time-befitting, the Government promulgated the Wildlife (Conservation and Security) Act, 2012 (Act No. XXX of 2012), which is as follows:

**WILDLIFE (CONSERVATION AND SECURITY) ACT, 2012**

(ACT NO. XXX OF 2012)

[10 July, 2012/26 Ashar, 1419]

**An Act to provide for the conservation and safety of biodiversity, forest and wildlife of the country by repealing the existing law relating to conservation and management of wildlife of Bangladesh**

WHEREAS the provision for the conservation and safety of biodiversity, forest and wildlife by the state has been inserted in Article 18A of the Constitution of the People’s Republic of Bangladesh; and

WHEREAS it is expedient and necessary to provide for the conservation and safety of biodiversity, forest and wildlife of the country by repealing the existing law relating to conservation and management of wildlife of Bangladesh;

It is hereby enacted as follows:

**CHAPTER I**  
**PRELIMINARY**

**1.** **Short title and commencement.-** (1) This Act may be called the Wildlife (Conservationand Security) Act, 2012

.(2) It shall come into force at once.

**2. Definitions.-** In this Act, unless there is anything repugnant in the subject or context,

(1) “sanctuary” means an area where capturing, killing, shooting or trapping of wildlife is prohibited and which is managed for the conservation of all natural resources such as vegetation, soil and water mainly for undisturbed breeding of wildlife and declared as such by notification in the official Gazette under section 13 of this Act;

(2) “uncured trophy” means the whole or any part of any dead or captive wildlife which has not been cured or processed and there is an apprehension of being destroyed;

(3) “captive animal” means any animal which breeds in captivity or in confined or captured circumstances;

(4) “ecopark” means an area of natural ecological habitat of flora and fauna with outstanding scenery which is managed for providing recreational facilities for visitors and which is declared as such by notification in the official Gazette under section 19 of this Act;

(5) “ecotourism or nature tourism” means any travel to natural areas without damaging the nature and which conserves and develops the environment of the natural and cultural heritage site and improves the social and economic well-being of local people;

(6) “botanical garden” means an area where different native and exotic plant species are brought from natural habitat and are conserved or managed for education, research and conservation and improvement of gene-pool source and which is declared as such by notification in the official Gazette under section 19 of this Act;

(7) “community conservation area” means any area which is a private or community or government, khas land under management for protection of the plant and wildlife and which is conserved as a site of traditional or cultural heritage and is declared as such by notification in the official Gazette under section 18 of this Act;

(8) “Convention on Biological Diversity” means an international treaty (1992) for conservation of plant and animal diversity of the world, the main objective of which is conservation of biodiversity, sustainable use of its components and ensuring appropriate and equal utilisation of resources derived from it;

(9) “officer” means any officer appointed to carry out all or any of the purposes of this Act or rules made thereunder and includes a forest-officer as defined in section 2(2) of the Forest Act, 1927 (Act No. XVI of 1927);

(10) “corridor” means a passage or area in the margin of a protected area through which wild animal can move from one forest or area to another forest or area and which is declared as corridor by notification in the official Gazette under section 20 of this Act;

(11) “kunjaban” means any specified area enriched with different species of trees, herbs and shrubs, which is rich in biodiversity and bears cultural, social and traditional values to local community and which is declared as kunjaban by notification in the official Gazette under section 23 of this Act;

(12) “core zone” means the most important existing forest area within a protected area, which is rich in biodiversity and where extraction of all kinds of forest product are prohibited for safe reproduction of wildlife and which is managed for regulating the entry of visitors and declared as such by notification in the official Gazette under section 20 of this Act;

(13) “wetland” means an area of low marsh water merged stagnant peat land, or natural or artificial water reservoir with fresh or salt water, which is generally static and such areas where depth of water falls below 6 meters;

(14) “national park” means a comparatively large area of outstanding scenic and natural beauty with the primary object of providing education, research and recreation to the public and managed for conservation of natural environment of plants and wild animals and outstanding charming scenery, and declared as such by notification in the official gazette under section 17 of this Act;

(15) “biodiversity” means genetic and species diversity of all species or sub-species of flora and fauna living in aquatic, terrestrial and marine ecosystems or diversity of their ecosystems;

(16) “trophy” means the whole or any part of any dead or captive wild animal which is kept naturally by curing and processing and includes –

(a)skins, rugs and animals mounted in whole or in part or part of taxidermy; and  
(b)antler and bone of deer, carapace of tortoise, shell of snail and mollusk, tusk, honeycomb, fur, feather, nail, tooth, hoof and eggs;

(17) “schedule” means a schedule appended to this Act;

(18) “specimen” means —

(a) any plant or animal, whether alive or dead; or

(b) any wild animal or part of any animal which is easily recognisable or derivative thereof; or

(c) any plant or any part of it or derivative thereof mentioned in Schedule IV;

(19) “prescribed” means prescribed by rules made under this Act;

(20) “perishable forest product” means any dead wild animal or its part (except bone, tooth, nail and horn) untreated timber, bamboo, cane, fuel wood or its part or any materials made of plants which are perishable by natural;

(21) “sacred tree” means any tree recognised by any religious community or caste as religious sacred plant;

(22) “migratory species” means those wild animals which visit across one or more geographical boundaries in a particular season of the year;

(23) “Chief Warden”, “Additional Chief Warden”, “Warden” means an officer authorised respectively as the Chief Warden, Additional Chief Warden and Warden under section 5 of this Act;

(24) “forest product” means the forest products included in sub-section (4) of section 2 of the Forest Act, 1927;

(25) “wild animals” means different types and species of animals or different stages of their life cycle, the source of which is considered as wild;

(26) “wild animal breeding centre” means a center approved by the Government where rare, vulnerable or critically endangered species of wild animals are rehabilitated after collection or capture for breeding;

(27) “buffer zone” means any forest lying in the margin of protected area or degraded forest area adjoining human habitation, except core zone, where local community people are inclined to harvest forest product and where there is scope for short rotation participatory forestry in harmony with plant species of the protected area and development of which ensures conservation of biodiversity and which is declared as such by notification in the official Gazette under section 20 of this Act;

(28) “rules” means rules made under this Act;

(29) “endangered species” means any species of wild animal or plant considered as critically endangered, vulnerable or rare and which is at risk of extinction;

(30) “vulnerable species” means a species of wild animal or plant which is not critically endangered at present but is facing a risk of extinction in near future;

(31) “Board” means the Wildlife Advisory Board constituted under section 3 ;

(32) “Scientific Committee” means the Scientific Committee constituted under section 4 ;

(33) “vermin” means the animals which are harmful for agriculture mentioned in schedule III;

(34) “critically endangered species” means any species of wild animals or plants which are at high risk in the nature and there is a possibility of whose extinction in near future;

(35) “licence” means a licence issued under section 24;

(36) "landscape zone" means a public or private area outside the boundaries of designated sanctuary, national park and ecopark that regulates the biodiversity of the protected area and which is managed to maintain similar landscape of the protected area to deter the degradation of the protected area and where safe movement of wild animals is ensured and which is declared as landscape zone under section 20;

(37) “hunting” means-

(a) killing, capturing, poisoning of any wild animal or any attempt to do so; or

(b) driving any wildlife for the purpose of sub-clause (a); or

(c) injuring or damaging and taking any part of the body of a wild animal or collecting or destroying of nests or eggs of wild birds or reptiles;

(38) “co-management” means, in case of management of natural resources in an area, to ensure active participation of all the parties for the purpose of management and maintenance of such resources through participation on the basis of consensus amongst all concerned parties and is a co-management system mentioned in section 21;

(39) “safari park” means an area where native-exotic wild animals are protected in an approximation of a natural environment for breeding and grazing openly and which is declared as such by notification in the official Gazette under section 19;

(40) “CITES” means Convention on International Trade in Endangered Species of Wild Fauna and Flora ;

(41) “memorial tree” means such heritage trees with social, cultural and traditional values or old aged native plants or century old trees;

(42) “protected plants” means plants mentioned in schedule IV;

(43) “protected area” means all sanctuaries, national parks, community conservation areas, safari parks, ecoparks, botanical gardens declared by the Government under sections 13, 17, 18 and 19 of Chapter IV and special biodiversity conservation area established under section 22 of Chapter V and national heritage and kunjaban declared under section 23;

(44) “protected wild animal” means the wild animals mentioned in schedules I and II;

(45) “small ethnic-community” means small ethnic-community as defined in section 2(2) of the Small Ethnic-Community Cultural Institute Act, 2010 (Act No. XXIII of 2010).

**CHAPTER II**

**ADVISORY BOARD, SCIENTIFIC COMMITTEE AND AUTHORISED OFFICERS**

**3.** **Wildlife Advisory Board, etc.—** (1) As soon as may be, after the commencement of thisAct, Government shall, by notification in the official Gazette, constitute a Board to be called the Wildlife Advisory Board consisting of a Chairman and necessary number of members from among the persons with expertise in conservation of biodiversity, forests and wildlife.

(2) The duties and functions of the Board constituted under sub-section (1) shall be as follows, namely:

(a) to review and provide directives in the matter of conservation, development and management of biodiversity, wildlife and forests;

(b) to review the activities on conservation, development and management of biodiversity, wildlife and forests under different development project, and to provide necessary directives;

(c) to prepare incentive scheme for increasing awareness among people for the conservation of biodiversity, wildlife and forests, and to give advice for implementation thereof;

(d) to approve any proposal submitted to the Government by the Chief Warden for constitution of technical committee, sub-committee or any other committee, for carrying out the purposes of this Act;

(e) to approve the annual report with recommendations submitted to the Government by the Chief Warden;

(f) to perform such other duties as the Government may assign to it from time to time.

(3) The Advisory Board shall determine the procedure of its meeting.

(4) All meetings of the Advisory Board shall be held at such place and time as the Chairman may determine.

(5) The presence of at least one-third members shall be required to constitute a quorum in the meeting of the Advisory Board.

**4.** **Scientific committee. —** The Government shall, by notification in the official Gazette,constitute a Scientific Committee consisting of not more than 7 (seven) members from among the eminent and famous experts in wild animals and plants working in any institution, government or non-government organisation and may specify the jurisdiction of the committee in such official Gazette.

**5.** **Delegation of duties. —** (1) The overall duties of conservation, development of safetymeasures and management of biodiversity, forests and wildlife of the country shall be delegated to the following officers, namely:

(a) Chief Warden;

(b) Additional Chief Warden;

(c) Warden.

(2) The Chief Conservator of Forests of the Forest Department, the Conservator of Forests in charge of the Wildlife and Nature Conservation Circle and Divisional Forest Officer in charge of Wildlife and Nature Conservation Circle shall, ex-officio, perform duties as the Chief Warden, Additional Chief Warden and Warden respectively.

(3) The duties and functions of the Chief Warden, Additional Chief Warden and Warden shall be prescribed by rules and they shall perform their duties as directed by the Government or the Board, as the case may be.

**CHAPTER III**

**PROTECTION OF WILD ANIMALS AND PLANTS**

**6.** **Prohibition related to wild animals and plants.-** (1) No person shall hunt any wildanimal without a licence, or, as the case may be, obtaining a permit under this Act, or willfully pick, uproot, destroy or collect any plant mentioned in Schedule IV.

(2) The Government may, by notification in the official Gazette, prohibit hunting of any specified or all wild animals in a specific forest area or throughout Bangladesh for a specific period.

**7.** **Determination of vulnerable, endangered and critically endangered species.-**TheChief Warden shall determine which species or sub-species of wild animals mentioned in schedule I, II and III and plants mentioned in schedule IV are vulnerable, endangered or critically endangered according to scientific data and internationally acceptable provisions or customs in consultation with the scientific committee.

**8.** **Removal of wild animals, etc. - (1)** Unless there is anything contrary to any otherlaw, if any wild animal is-

(a) threat to human life and property (domestic animals and crops); or

(b) physically disable or suffering from contagious disease; or

(c) threat to natural equilibrium of any area,

the Chief Warden or Additional Chief Warden or Warden, stating the reasons, shall take effective measures for removal, killing or, as the case may be, rehabilitation of such wild animals and submit the matter to the Advisory Board and the Scientific Committee in the form of a report.

(2) This section shall not be applicable in case of removal of any wild animal for ensuring the safety of aeroplanes in any air field or aerodrome.

**9.** **Release of wild animal. —** Unless there is anything contrary in any other law, necessarymeasures shall be taken to release any caught, rescued or seized wild animal in suitable natural habitat, when its life is at risk to keep in cage or enclosure.

**10.** **Grant of permit.-** (1) The Chief Warden may, in such manner as may be prescribedby rules and on payment of fee, grant a permit to collect any part of body of any wild animal, meat, trophy or uncured trophy and to collect, possess plants mentioned in schedule IV or transport the derivatives thereof from forest or any place in the country, for the following purposes, namely, **—**

(a) education ;

(b) scientific research ;

(c) scientific management;

(d) collection, preservation and display of specimen for any botanical garden, safari park, recognised zoo, museum, herbarium or any other similar institutions;

(e) collection and preservation of plants or snake venom for manufacturing life saving drug; and

(f) reproduction by any person or institution approved by the Government.

**Explanation***:*Inthis section, “scientific management” means –

1. translocation of any wild animal to an alternative suitable habitat ;
2. (ii) management of any wild animal or specified plant species for control of breeding without killing or poisoning or destroying; and
3. (iii) culling in scientific manner :

Provided that culled animal shall be buried for destroying.

**11.** **Registration of wild animals and plants and issue of registration certificate.-** (1)Every warden shall register the wild animal or part of wild animals, trophy, uncured trophy or any specified plant mentioned in schedule IV or part or derivatives thereof in the custody or possession of any person in his jurisdiction within 180 (one hundred and eighty) days from the date of commencement of this Act and put appropriate registration mark and intimate the Chief Warden in detail mentioning the number and location of such stock in the form of a report :

Provided that the provisions of this section shall not apply to any person traditionally possessing any trophy or memorial of wild animal from the past:

Provided further that such person shall declare his possession of any trophy or memorial of wild animal to the Chief Warden or Warden or Upazila Forest Officer.

(2) The officer, upon fixing registration mark under sub-section (1), as a proof of lawful possession of such wild animal, meat, trophy or, as the case may be, plants, shall issue the registration certificate according to the manner prescribed by rules:

Provided that prior to issuing a registration certificate for the wild animal suitable for rearing, it is to be ensured that the applicant is financially solvent and, as the case may be, necessary place, water reservoir, environment, feeding spot and maintenance staff, knowledge and facilities for rearing of such wild animals are available.

**12.** **Transfer. —** (1) No person shall transfer any wild animal, meat, trophy or uncuredtrophy, part of wild animal (except vermin) or any plant or part or derivative thereof mentioned in schedule IV by means of gift, sale or transfer without a registration certificate.

(2) Any person possessing a registration certificate may, with prior approval of the Chief Warden or, as the case may be, Warden, transfer, handover or transport such wild animal or part thereof, trophy, uncured trophy, or any plant mentioned in schedule IV or any part or derivative thereof in his possession or control or custody to any person or institution or others.

(3) The provisions of this section shall not be applicable to exchange of captive animal of zoo.

**CHAPTER IV**

**PROTECTED AREAS**

**13.** **Declaration of sanctuary.-** (1) The Government may, by notification in the officialGazette, in the light of national forest policy and forest master plan, and considering natural, geomorphological features, biodiversity and environmental significance, declare any Government forests or part of such forests or any Government land or wetland or any specified area as sanctuary, specifying the demarcation, for the conservation of forest and habitat of wildlife.

(2) The sanctuary declared under sub-section (1) may be called as wildlife sanctuary, bird sanctuary, elephant sanctuary or wetland dependent animal sanctuary or, as the case may be, marine protected area.

(3) When a wetland is declared as sanctuary, measures shall be taken to protect the occupational, traditional or the right of livelihood of local community of the area such as – fishermen, boatmen, etc.

**14. Prohibitions related to sanctuary.** –(1) In a sanctuary no person shall–

(a) cultivate any land;

(b) establish or undertake any industrial operation;

(c) harvest, destroy or collect any plant;

(d) set any kind of fire;

(e) enter into a sanctuary with any weapon without the permission of the Chief Warden or the officer authorised by him in this behalf;

(f) disturb or threat any wildlife, or use chemicals, explosives or any other weapon or substances which may destroy wildlife habitat;

(g) introduce any exotic animal or plant;

(h) introduce any domestic animal or allow any domestic animal to stray;

(i) dump any materials detrimental to wildlife;

(j) explore or dig for extraction of minerals;

(k) fell any plant or part thereof except silvicultural operations required for natural regeneration of plants;

(l) divert, stop or pollute watercourse; or

(m) introduce any alien and invasive plant species.

(2). Notwithstanding anything contained in sub-section (1), after the commencement of this Act, no person, institution or company shall establish or operate any industrial factory or brick-field within 2 (two) kilometers from the boundary of a sanctuary.

**15.** **Entry in sanctuary, etc. —** (1) No person shall enter or reside in a sanctuary, except thefollowing persons, namely:

(a) an officer on duty under this Act or rules made thereunder;

(b) a person permitted by the Chief Warden or an officer authorised by him in this behalf;

(c) a person nominated by the Forest Department for conservation- work;

(d) a person passing through highway, road and waterway constructed in the sanctuary; and

(e) a person necessary for the purpose of management or conservation thereof, who is permitted by the Chief Warden or an officer authorised by him in this behalf.

(2) Notwithstanding anything contained in sub-section (1), the Chief Warden or an officer authorised by him in this behalf, following the prescribed manner and, as the case may be, subject to payment of entry fees, may permit to enter in sanctuary for the following purposes, namely:

(a) study or investigation on relevant and helpful subject on wildlife;

(b) photography;

(c) research; and

(d) ecotourism.

**16.** **Management of sanctuary. —** (1) The Government may, for each sanctuary, prepare amanagement plan in accordance with the manner prescribed by rules.

(2) The Chief Warden shall bear all responsibilities of implementation and management of management plan and may for this purpose, in limited scale, inside the sanctuary

(a) allow the operation of tourism shop for any commercial purpose, construction of road, bridge, building, boundary or controlled barrier entrance and demarcation or such other work, except construction of tourism shop, cottage or hotel, which is essential for the management of sanctuary;

(b) undertake necessary steps for ensuring the safety of wildlife and its habitat:

(c) improve habitat, protect breeding ground, prevent disturbance during breeding for the protection of wildlife, and raise plantation suitable for wildlife in limited scale for ensuring food security;

(d) take necessary steps, in consultation with the co-management committee, for the protection of fresh water or salt water aquatic animals such as tortoise, crocodile, dolphin, whale, porpoise, etc. through control or prohibition of fishing activities or movement of watercrafts; or

(e) prohibit, after proper identification, the activities detrimental to environment within 2 (two) kilometres from the border of sanctuary area.

**17. Declaration of national park-** (1) The Government may, by notification in the official

Gazette, declare any Government forests or part of such forests or any Government land with natural scenic beauty as national park, specifying the boundary for the conservation of wildlife and their habitat or environmental development.

(2) In case of declaration of national park under sub-section (1), the following matters may be followed or, as the case may be, considered, namely:

(a) national policy or master plan for management of forests and wildlife;

(b) geomorphological features; significance;

(c) ecology;

(d) environment.

(3) The provisions of sections 14, 15 and 16 shall also be applicable to national parks.

**18.** **Declaration of community conservation area. —** (1) Any person or community beingowner of such land or wetland not included in landscape zone may, for protection of traditional or cultural value or use of any animal or plant and for sustainable development of such land or wetland and for the management of wildlife, apply to the Government for declaration as community conservation area.

(2) When an application under sub-section (1) is made, the Government may, by notification in the official Gazette, declare the land or wetland mentioned in the application as community conservation area.

(3) Co-management may be initiated in the area declared under sub-section (2), and the concerned warden shall take necessary steps for the implementation of the decision taken by co-management committee.

(4) The Government may, where applicable, provide compensation for the affected owner of the area declared under sub-section (2).

**19.** **Declaration of safari park, ecopark, botanical garden and wild animal breeding center.-** (1) The Government may, by notification in the official Gazette, declare or establish anygovernment owned forest area as safari park, ecopark or botanical garden or, as the case may be, wild animal breeding centre for the purpose of in-situ or ex-situ conservation of wild animals or for promotion of opportunities for research, public recreation or education.

(2) The provisions of sections 14, 15 and 16 shall also apply to any safari park, ecopark, botanical garden or wild animal breeding center:

Provided that the exotic species of animals may be displayed in the safari park for recreation.

**20.** **Declaration of landscape zone or corridor, buffer zone and core zone.** -(1) TheGovernment may, after receiving consensus of local community, by notification in the official Gazette, declare any public or private area outside the boundaries of protected or reserved forests but adjacent to any declared area as a landscape zone or corridor for the movement of wild animals or for the purpose of special development or abate or control any sorts of damage of such area.

(2) The Government may, by notification in the official Gazette, declare degraded forests area inside or in marginal area of the protected area, except core zone, as a buffer zone for the conservation of biodiversity of protected forest or core zone, reduction of pressure for extraction of forest product and ensuring the participation of the local people in the management of the protected forest.

(3) The Government may, by notification in the official Gazette, declare the most significant natural forests or long rotation plantations at the centre of the protected area as core zone in order to regulate the entrance of public and to stop or control the extraction of forest product and ensuring safe breeding of wild animals enriched with biodiversity.

**21. Co-management system.-** (1) The Government may introduce co-management systemfor proper utilisation, conservation and management of natural resources of the sanctuary involving forest department, minor ethnic-community living in the forests or local community on a participatory basis in order to ensure active participation of all the parties therein.

(2) The Government may, for the purpose of sub-section (1), constitute a committee to be called co-management committee and may also specify the jurisdiction of such committee.

**22.** **Declaration of special biodiversity conservation area.-** (1) The Government may, onits own initiative or on application of any person, by notification in the official Gazette, declare any government land, land or trees under private ownership or reserved forest, khas land, wetland, river, sea, canal, dighi or pond used for special purpose as special biodiversity conservation area subject to the conservation of traditional or cultural values and norms of the area.

(2) The provisions of sections 14, 15 and 16 shall also be applicable to special biodiversity conservation area.

**23.** **Declaration of national heritage, memorial tree, sacred tree and kunjaban.-** (1) TheGovernment may, on application of any owner of land, organisation or person, by notification in the official Gazette, declare any tree or kunjaban standing at any government forest, any land under any organisation, khas land or land owned by any community which is recognised and used as cultural, traditional, religious or memorial purpose and which is known as habitat for wildlife in such area, as national heritage, memorial tree, sacred tree or, as the case may be, kunjaban:

Provided that in case of community or individual, their traditional or cultural values and norms shall be protected.

(2) The provisions of sections 14, 15 and 16 shall also be applicable, in so far as possible, to the national heritage, memorial tree, sacred tree or kunjaban.

**CHAPTER VI**

**LICENCE FOR CAPTIVE ANIMALS, WILD ANIMALS, TROPHIES ETC.**

**24.** **Licence.-** (1) Any person desiring to cultivate, extract, manufacture, rear, export orimport any wild animal or part of its body, meat, trophy, uncured trophy or any plant mentioned in schedule IV, or hunt any wild animal, shall obtain licence from the Chief Warden or any officer authorised by him in this behalf in accordance with the manner prescribed by Rules and subject to realisation of fees.

(2) If any person stocks any wild animal or any part thereof, meat, trophy or uncured trophy or any plant mentioned in schedule IV before the commencement of this Act, after production for commercial purpose, he shall obtain licence under the provision of sub-section (1) within 60 (sixty) days from the date of commencement of this Act.

(3) On an applicable under sub-section (2), if the Chief Warden or any officer authorised by him in this behalf is satisfied after proper inspection and examination, he shall put an identification mark on the stocked wild animals or part thereof, meat, trophy or uncured trophy or any plant mentioned in schedule IV and shall issue a licence according to the manner prescribed by rules.

(4) The licence shall remain valid for 1 (one) year from the date of issue.

(5) The licence shall be renewed according to the manner prescribed by rules and subject to realisation of fees.

**25.** **Suspension or cancellation of licence.-** When a licence holder contravenes anyprovisions of this Act or rules or condition of the licence, the Chief Warden or any officer authorised by him, after giving the licence-holder a reasonable opportunity of being heard, may suspend or cancel the licence.

**26.** **Appeal. –** (1) If any person is aggrieved by an order passed under sections 24 and 25, hemay prefer an appeal to the Government within 30 (thirty) days from the date of such order.

(2) An appeal preferred under sub-section (1) shall be disposed of within 30 (thirty) days, and the order passed in appeal shall be final.

**27.** **Maintenance of records. —** All licence-holders shall keep all records related to licence inprescribed form or register and such form or register shall be produced on demand during inspection.

**CHAPTER VII**

**IMPORT, EXPORT AND RE-EXPORT OF WILD ANIMALS AND PLANTS**

**28.** **Import. —** (1) No person shall import—

(a) through any other route except customs port of entry;

(b) without CITES certificate, where applicable; and

(c) without licence;

any wild animal or parts thereof, trophy, uncured trophy, or plants mentioned in schedule IV or its part or derivative thereof.

(2) The Quarantine certificate issued by the appropriate authority of the country of import, shall be produced for each imported wild animal or plants mentioned in schedule IV or derivative thereof, upon arrival at customs port of entry.

**29.** **Export. —** No person shall export or re-export—

(a) through any other route except custom port of exit;

(b) without CITES certificate, where applicable; and

(c) without licence;

any wild animal or parts thereof, trophy, uncured trophy, or plants mentioned in schedule IV or parts or derivatives thereof.

**30.** **Wildlife Rescue Center.-** The Government may, in order to provide medical service, food,shelter and safety of any injured, seized, confiscated, abandoned or donated wildlife, establish wildlife Rescue Center and also make guidelines for the disposition of wildlife from the Rescue Center to nature.

**31.** **Constitution of wildlife crime control unit.-** (1) The Government may, in order ato ensure strictcompliance and effective implementation of wildlife related international convention, protocol, treaty etc. establish a wildlife crime control unit comprising custom officers, members of law and order enforcing agency at any place in Bangladesh including strategic air, land and seaports

(2) The Government may, by rules, specify the constitution, powers and function of wildlife crime control unit under sub-section (1).

**CHAPTER VIII**

**INVESTIGATION, SEIZURE ETC.**

**32.** **Seizure**.**-** (1) Any Officer, in order to take measures under this Act, may seize the followingarticles or goods, namely: —

(a) hunted, acquired or captured wild animals without licence or animals reproduced from it during captivity;

(b) dead or dying wild animals on account of accident;

(c) such wild animals or parts thereof, trophy or uncured trophy, meat, part of body or any plant mentioned in schedule IV or parts or derivatives thereof, not registered under this Act or for which no licence has been received;

(d) weapons, articles or tools used in committing an offence;

(e) such wild animals or parts thereof, trophy, uncured trophy, meat, part of body or any plant mentioned in schedule IV or parts or derivatives thereof not imported or exported under sections 28 and 29;

Provided that the provisions of this sub-section shall not be applicable in case of trophy of wild animal or memorials used as tradition, heritage or part of daily life of small ethnic-community.

(2) All articles or goods seized under sub-section (1) shall be liable to confiscation in favour of Government.

(3) The seizing officer may take measure to dispose of the articles or goods seized under sub-section (1), which is quickly and naturally perishable, by sale, damage, removal or any other means according to the manner prescribed by rules.

**33.** **Powers of entry, etc**.**-** (1) The Chief Warden or any other officer authorised by him inthis behalf may, enter any place at any time to ensure proper compliance of provisions of this Act or Rules, search or seize any item or collect specimen of any item, examine or inspect any place.

(2) The Code of Criminal Procedure, 1898 (Act V of 1898) shall, apply in case of search, seizure or inspection under this Act, in so far it is not inconsistent with this Act.

(3) All purchasers of forest-product, persons involved with co-management system, members of law enforcement agency, persons working in Public Works Department and Department of Agricultural Extension, chowkidar, dafadar, member of village defense party, village headman, chairman and members of union parishad, kanungo and union land assistant officer shall bound to render full cooperation to the authorised person to perform duties under this Act or rules.

**CHAPTER IX**

**OFFENCE AND PENALTY**

**34. Penalties for certain offences**.If any person—

(a) forges, exchanges or interferes with any other means or alters registered mark and fixed registered mark under section 11; or

(b) purchases, sells, imports or exports any wild animal or parts thereof, meat, trophy or any derivative thereof or forest product or any plant mentioned in schedule IV or derivatives thereof, from any other person without having licence or permit —

He shall be deemed to have committed an offence and shall be punished with imprisonment for a term not exceeding 1 (one) year or with a fine of Taka not exceeding 50 (fifty) thousand or with both and in case of repetition of the same offence, shall be punished with imprisonment for a term not exceeding 3 (three) years or with a fine of Taka not exceeding 2 (two) lac or with both.

**35.** **Penalties for contravention of the provisions of section 14.-** If any person commitsany act prohibited under section 14, he shall be deemed to have committed an offence and shall be non-bailable for such offence and punished with imprisonment for a term not exceeding 2 (two) years or with a fine of Taka not exceeding 1 (one) lac or with both, and in case of repetition of the same offence, shall be punished with imprisonment for a term not exceeding 5 (five) years or with a fine of Taka not exceeding 4 (four) lac or with both.

**36.** **Penalties for killing tiger, elephant, etc.-** (1) If any person kills any tiger or elephantmentioned in schedule I without obtaining a licence under section 24, he shall be deemed to have committed an offence and shall be non-bailable for such offence and, be punished with imprisonment for a term not less than 2 (two) years and not exceeding 7 (seven) years and also with a fine of Taka not less than 1 (one) lac and not exceeding Taka 10 (ten) lac and, in case of repetition of the same offence shall be punished with imprisonment for a term not exceeding 12 (twelve) years and with a fine of Taka not exceeding 15 (fifteen) lac:

Provided that the provisions of this section shall not apply, when a person is attacked by a tiger or elephant causing threat to life of such person and such tiger or elephant is killed for saving life of such person:

Provided further that when questions of filing a case in this respect arise, the station officer may, in consultation with the warden, file a case.

(2) If any person collects, acquires or purchases or sells any trophy, uncured trophy, meat, parts of body of any tiger or elephant mentioned in schedule 1 without obtaining a permit under section 10, he shall be deemed to have committed an offence and for such offence, be punished with imprisonment for a term not exceeding 3 (three) years or with a fine of Taka not exceeding 3 (three) lac or with both and in case of repetition of the same offence shall be punished with imprisonment for a term not exceeding 5 (five) years or with a fine of Taka not exceeding 5 (five) lac or with both.

**37.** **Penalties for killing cheetah, lam cheetah, hoolock, sambar deer, crocodile, gharial, whale or dolphin, etc.-** (1) If any person kills a cheetah, lam cheetah, hoolock,sambar deer, crocodile, gharial, whale or dolphin mentioned in schedule I, he shall be deemed to have committed an offence and for such offence, be punished with imprisonment for a term not exceeding 3 (three) years or with a fine of Taka not exceeding 3 (three) lac or with both, and in case of repetition of the same offence shall be punished with imprisonment for a term not exceeding 5 (five) years or with a fine of Taka not exceeding 5 (five) lac or with both:

Provided that the provisions of this section shall not apply, if a person is attacked by a cheetah or crocodile causing threat to life of such person and the cheetah or crocodile is killed for saving life of such person:

Provided further that when questions of filing a case in this respect arise, the station officer may, in consultation with the warden, file a case.

(2) If any person collects, acquires or purchases, or sells or transports any trophy, uncured trophy, meat, parts of body of cheetah, lam cheetah, hoolock, sambar deer, crocodile, gharial, whale or dolphin mentioned in schedule I, he shall be deemed to have committed an offence and for such offence, be punished with imprisonment for a term not exceeding 2 (two) years or with a fine of Taka not exceeding 1 (one) lac or with both, and in case of repetition of the same offence shall be punished with imprisonment for a term not exceeding 4 (four) years or with a fine of Taka not exceeding 2 (two) lac or with both.

**38.** **Penalties for killing birds or migratory birds, etc.-** (1) If any person kills anybirds or migratory birds mentioned in schedule I and II, he shall be deemed to have committed an offence and for such offence, be punished with imprisonment for a term not exceeding 1 (one) year or with a fine of Taka not exceeding 1 (one) lac or with both, and in case of repetition of the same offence shall be punished with imprisonment for a term not exceeding 2 (two) years or with a fine of Taka not exceeding 2 (two) lac or with both.

(2) If any person collects, acquires or purchases or sells or transports any trophy, uncured trophy, meat, parts of body of birds or migratory birds mentioned in schedule I and II, he shall be deemed to have committed an offence and for such offence, be punished with imprisonment for a term not exceeding 6 (six) months or with a fine of Taka not exceeding 30 (thirty) thousand or with both, and in case of repetition of the same offence shall be punished with imprisonment for a term not exceeding 1 (one) year or with a fine of Taka not exceeding 50 (fifty) thousand or with both.

**39.** **Penalties for contravention of the provisions of sections 6, 10, 11 and 12.-** If anyperson contravenes the provisions of section 6, 10, 11 or 12, he shall be deemed to have committed an offence and for such offence, be punished with imprisonment for a term not exceeding 1 (one) year or with a fine of Taka not exceeding 50 (fifty) thousand or with both, and in case of repetition of the same offence shall be punished with imprisonment for a term not exceeding 2 (two) years or with a fine of Taka not exceeding 1 (one) lac or with both.

**40.** **Penalties for contravention of the provisions of sections 24 and 27.-** If anyperson contravenes the provisions of section 24 or 27, he shall be deemed to have committed an offence and for such offence, be punished with imprisonment for a term not exceeding 1 (one) year or with a fine of Taka not exceeding 50 (fifty) thousand or with both, and in case of repetition of the same offence shall be punished with imprisonment for a term not exceeding 2 (two) years or with a fine of Taka not exceeding 1 (one) lac or with both.

**41.** **Penalties for abetment, instigation, etc.-** If a person abets any person, directly or indirectly, incommitting an offence, or instigates any person to commit an offence under this Act, and if the act abetted or instigated is committed in consequence thereof, he shall be punished with the penalty provided for that offence.

**42.** **Penalties for filing a case of false or harassment or wrongful seizure.-** (1) If anyofficer, authorised under this Act by contravening any provision under this Act seizes any article or material or harasses any person, he shall be deemed to have committed an offence, and for such offence, be punished with imprisonment for a term not exceeding 6 (six) months or with a fine of Taka not exceeding 50 (fifty) thousand.

(2) If the accused is acquitted by a court at the end of hearing and trial of any case filed under this Act and the court mentions it clearly in the judgement that the complaints brought against the accused is false, groundless and harassing, the complainant shall be deemed to have committed an offence and for such offence, be punished with imprisonment for a term not exceeding 1 (one) year or with a fine of Taka not exceeding 1 (one) lac or with both.

**43.** **Cognizibility, non-cognizibility, bailability, non-bailability and compoundability of offences.-** Offences committed under section 36 shall be cognizable and non-bailable and the offences committed under other sections, except the section, shall be non-cognizable, bailable and compoundable subject to compensation.

**44.** **Cognizance and trial of offences.-** (1) No court shall take cognizance of any offencecommitted under this Act without a written complaint by any officer authorised under this Act or any person affected, subject to the provisions of section 43.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law, offences committed under this Act shall be tried by a Judicial Magistrate of the first class or, as the case may be, a Metropolitan Magistrate:

Provided that for carrying out the purposes of this Act, offences committed under this Act shall be triable by any Special Magistrate or any Special Metropolitan Magistrate, as the case may be, authorised under section 12 of the Code of Criminal Procedure, 1898.

(3) Notwithstanding anything contained in sub-section (2) and in the Code of Criminal Procedure, 1898, offences under section 36 shall be tried by the Court of Sessions.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any Judicial Magistrate of the first class, or a Metropolitan Magistrate may impose any fine provided for the offences in this Act upon the persons convicted.

**45.** **Application of Code of Criminal Procedure.-** The provisions of the Code ofCriminal Procedure shall, insofar as they are not inconsistent with the provisions of this Act, be applicable to investigation, trial and appeal of any offence and other related matters under this Act.

**46.** **Offences committed by Companies, etc. —** If a company commits an offence under thisAct, each director, manager, secretary, partner, officer and staff involved directly with committing such offence, shall be deemed to have committed such offence, unless he can prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Explanation*.* **—**In this section,

(a) "company" means any commercial firm, partnership business, society, association and includes any organisation; and

(b) "director", means any partner in the commercial firm or includes any member of the managing board.

**CHAPTER X**

**MISCELLANEOUS**

**47.** **Annual reports.-** The Chief Warden shall submit to the Board an annual report, afterstating the natural state or status and conservation trends of wildlife in the protected areas and, upon approval by the Board, publish it in printed form and online.

**48.** **Scientific research. —** Any person, organisation or institution, desiring to conductresearch on any wildlife or habitat of wildlife shall obtain permission from the Chief Warden or any officer authorised by him in this behalf.

**49.** **Prohibition relating to airgun. —** The Government may, by notification in the officialGazette, prohibit import, sale, use or carrying of airgun for the interest of conservation of wild animal:

Provided that in such notification, prohibition shall exclude any shooting club registered by the National Shooting Federation and the community living adjacent to forests for their safety, daily need and social customs.

**50.** **Protection of action taken in good faith.—** No civil suit or criminal case or any otherlegal measure shall lie against any officer for incurring loss or likely to incur loss to a person in consequence of anything done by such officer in good faith under this Act or rules.

**51.** **Powers to amend schedules. —** The Government may, by notification in the officialGazette, amend the schedules.

**52. Powers to make rules. —** (1) For carrying out the purposes of this Act,the Government may, by notification in the official Gazette, make rules.

(2) Without prejudice to the generality of the powers conferred in sub-section (1), rules may be made to provide for all or any of the following matters, namely:

(a) application form, terms and conditions, fees etc. for licence or permit;

(b) constitution, powers, functions and tenure of co-management committee;

(c) management of sanctuary, national park, buffer zone, core zone, landscape zone or corridor, community conservation area, marine protected area, national heritage, memorial, sacred tree, kunjaban, ecopark, safari park, marine park, wild animal breeding centre, botanical garden, private recreational park, zoo, pet birds, etc.

(d) control of private captive animal breeding farms;

(e) declaration of prize or medal for special contribution in wildlife conservation, wildlife related research, education and creating public awareness;

(f) declaration of prize or medal for informant forest officers and staffs who render help in detection of offences under this Act;

(g) establishment of private wild animal farms and rescue centres;

(h) compensation for life and wealth attacked by wild animals;

(i) constitution, powers and functions of Wildlife Crime Control Unit;

(j) disposal of seized articles or goods by sale, destroy, removal or by any other means.

**53.** **Publication of translated English text. —** (1) The Government shall, by notification inthe official Gazette, publish a translated authentic English text of this Act;

(2) In the event of conflict between the Bangla and the English text, the Bangla text shall prevail.

**54.** **Repeal and savings. —** (1) Bangladesh Wild Life (Preservation) Order, 1973(President’sOrder No. 23 of 1973), hereinafter referred to as the repealed Act, is hereby repealed.

(2) Despite such repeal—

(a) anything done or any action taken or proceeding pending under the repealed Act, shall be disposed of in such a manner under the provisions of the repealed Act as if this Act were not enacted;

(b) all rules, orders, notifications, notices, etc. made or issued under the repealed Act shall, in so far as not inconsistent with the provisions of this Act, have effect until they have been repealed or amended.

In the context of the directions of Father of the Nation Bangabandhu Sheikh Mujibur Rahman in 1973 for the development of *Haors* and wetlands, the *Haor* Development Board was established for the first time in 1977, which was cancelled by the then government in 1982. Afterwards, through the earnest efforts of the Honorable Prime Minister Sheikh Hasina, the *Haor* and Wetland Board was reestablished through a resolution in the year 2000. Afterwards, in a cabinet meeting dated 17 November, 2014 a decision was taken to place this board under the authority of the Ministry of Water Resources. As a result, on 24 July, 2016, a circular was issued establishing Department of Bangladesh Haor and Wetlands Development by the Ministry of Water Resources. In establishing the Department, the Prime Minister’s vision is lasting improvement of the living standard of the population in *Haor* and Wetland areas and her mission is the protection of biodiversity, management of floods and improvement of living standards of the population through infrastructural developments.

Thereafter, under the leadership of Honorable Prime Minister Sheikh Hasina, the Awami League government, in order to prevent water and environmental pollution, building of illegal structures and various other irregularities and to recover the natural flow of the rivers, proper maintenance of rivers and to make rivers suitable for water transports as well as to ensure the multidimensional use of rivers in other socioeconomic development, in order to establish the River established a Commission, enacted the National Conservation Commission Act, 2013 (Act No. XXIX of 2013) which is as follows:

**The National River Conservation Commission Act, 2013**

**Act No. XXIX of 2013**

[Dhaka, 22 July, 2013/07 Shrabon, 1420]

An Act to establish a Commission for preventing illegal occupation of rivers, pollution of water and environment, pollution of rivers caused by industrial factories, industrial factories, illegal constructions and various irregularities and ensuring multidimensional use of rivers for socio-economic development including restoration of the normal flow of rivers, proper maintenance thereof and making them navigable.

WHEREAS, it is expedient and necessary to establish a Commission for preventing illegal occupation of rivers, pollution of water and environment, pollution of rivers caused by industrial factories, illegal constructions and various irregularities and ensuring multidimensional use of rivers for socio-economic development including restoration of the normal flow of rivers, proper maintenance thereof and making them navigable.

THEREFORE, it is hereby enacted as follows:

**Chapter 1**

**Preliminary**

1. **Short title and commencement.** (1) This Act may be called theNational River Conservation Commission Act, 2013.

(2) It shall come into force at once.

1. **Definition.** Unless there is anything repugnant to the subject or context,in this Act
   1. “Commission” means the National River Conservation Commission established under section 3;
   2. “Chairman” means the Chairman of the Commission and shall also include the Member discharging the duties as Chairman;
   3. “regulations” means regulations made under this Act;
   4. “rules” means rules made under this Act; and
   5. “Member” means the Member of the Commission and shall also include the Chairman.

**Chapter 2**

**Establishment of the National River Conservation Commission**

**3. Establishment of the National River Conservation Commission.**

1. As soon as may be, after the commencement of this Act, there shall be established a Commission to be called the National River Conservation Commission for carrying out the purposes of this Act.
2. The Commission shall be a statutory body and have perpetual succession and a common seal, and have, subject to the provisions of this Act, powers to acquire, hold and dispose of property, both movable and immovable and shall by the said name sue and be sue.

1. **The office of the Commission.** The head office of the Commissionshall be at Dhaka and the Commission may, if necessary, with the prior approval of the Government, establish its branch offices.
2. **Constitution of the Commission.** (1) The Commission shall consist ofa Chairman and not more than 05 (five) Members including at least one female Member.
3. The Chairman and Members of the Commission shall be appointed by the Government, and the terms and conditions of their service shall be determined by the Government.
4. The Chairman and Members of the Commission shall be appointed by the Government for a period not more than 03 (three) years:

Provided that no person shall be appointed for more than 02 (two) terms as the Chairman or a Member.

1. The Chairman of the Commission and one of the Members shall be fulltime and others shall be honorary.
2. **Qualifications of the Chairman and the Members, etc.** (1) TheChairman and the members of the Commission shall be appointed from among the persons who have made remarkable contributions to the public administration, law, human rights, river management, river engineering, river survey or environmental activities:

Provided that among the Members of the Commission,

* 1. one shall be a river specialist or a hydrologist recognized nationally and internationally;
  2. one shall be an environment specialist recognised nationally and internationally;
  3. one shall be a river engineer or a river survey specialist or an expert in river management; and
  4. one shall be an activist of human rights or of an environment organisation or a lawyer.

1. The Members mentioned in sub-section (1) shall have at least 12 (twelve) years of experience in the relevant field.

1. **Chief Executive**. (1) The Chairman shall be the Chief Executive of theCommission.
2. If any vacancy occurs in the office of the Chairman or if the Chairman is unable to discharge the functions of his office on account of absence, illness or any other cause, the full-time Member shall act as the Chairman until a newly appointed Chairman holds office or until the Chairman resumes the functions of his office.
3. **Disqualification, removal and resignation of the Chairman and Members**. (1) No person shall be qualified for appointment as or for being,Chairman or Member of the Commission, if he
   1. is declared by any court to be an insolvent or of unsound mind;
   2. in the case of the Chairman and the full-time Member, engages himself any post extraneous to his own duties in consideration of remuneration;
   3. is convicted of any offence involving moral turpitude; or
   4. is directly or indirectly involved with any profession or business related with the interest of river or Commission.
4. The Government may, if it thinks reasonable, remove the Chairman or any Member of the Commission by giving him reasonable opportunity of showing cause.
5. The Chairman or any Member may, at any time resign his office by writing under his hand addressed to the Government.
6. **Vacancies not to invalidate act or proceeding.** No act or proceedingof the Commission shall be invalid or be called in question merely on the ground of any vacancy in, or any defect in the constitution of, the Commission.
7. **Salaries, allowances, etc. of the Members.** (1) The Salaries,allowances and other privileges of the Chairman and full-time Member shall be determined by the Government.
8. The honorary Members shall be entitled to such honorarium and allowances for discharging other duties including attending meeting of the Commission at the rates as may be determined by the Commission with prior approval of the Government.

1. **Meeting of the Commission.** (1) Subject to the provisions of this Act,the Commission shall determine the procedure of its meeting.
2. The Chairman shall preside over all the meetings of the Commission and in his absence, the full-time Members shall preside over the meeting.
3. To constitute a quorum at a meeting of the Commission, the President and at least 02 (two) Members shall be present.
4. There shall be at least one meeting of the Commission in every 03 (three) months.
5. For the purpose of reaching a decision in the meeting of the Commission, each Member shall have one vote, and in the case of equality of votes, the person presiding over the meeting shall have a second or casting vote.

**Chapter 3**

**The functions of the Commission**

1. **The functions of the Commission**.The Commission shallperform all or any of the following functions, namely:
   1. to make recommendation to the Government for coordination of the functions among all concerned Ministries or Divisions related with river;
   2. to make recommendation to the Government to free the rivers from illegal occupation and to prevent reoccupation;
   3. to make recommendation to the Government to evict illegal installations established on the rivers or on the banks of rivers;
   4. to make recommendation to the Government to keep the water of rivers free from pollution;
   5. to make recommendation to the Government regarding excavation of extinct or moribund rivers;
   6. to make recommendation to the Government for developing information store-house relating to rivers;

* 1. to make any recommendation to the Government regarding the matter relating to the development of rivers;
  2. to make recommendation to the Government to ensure environmentally balanced and sustainable management of rivers;
  3. to make recommendation to the Government to take short-term and long-term scheme to conserve rivers;
  4. to make necessary recommendation to the Government for taking actions to increase public awareness;
  5. to make recommendation after monitoring the activities regarding conservation of rivers and regular inspection;
  6. to make recommendation after reviewing practical uses of existing different laws and policies related with the conservation of rivers and if necessary, to amend the Act and policies; and
  7. to make recommendation to the Government to keep the canals, water bodies and coastal areas of the country free from occupation and pollution.

1. **Annual report of the functions of the Commission.** (1) The Commission shall submit an annual report on its affairs of the previous year to the Government by 1st March of each year, wherein, among others, the reasons of not taking necessary actions or measures by the Government or the concerned authority, if no such action or measure is taken in accordance with the advice of the Commission, shall be recorded in writing in so far as it is known to the Commission.
2. On receipt of the report under sub-section (1), the Government shall take step to lay it before the Parliament.

**CHAPTER-4**

**Officers and employees of the Commission, etc.**

1. **Appointment of officers and employees.**-
   1. There shall be a Secretary in the Commission;
   2. The Commission may, subject to the organogram approved by the Government, appoint such number of officers and employees as it considers necessary for the efficient performance of its functions;
   3. The appointment and the terms and conditions of service of the Secretary and other officers and employees shall be prescribed by regulations; and
   4. the Government, at the instance of the Commission, may appoint any officer and employee on deputation engaged in the service of the Republic in the Commission.
2. **Fund.** (1) There shall be a fund of the Commission to be called asthe National River Conservation Commission Fund for carrying out the purposes of this Act and the following money shall be credited to the fund, namely:
   1. grants made by the Government;
   2. grants received from any legal source, subject to the approval of the Government; and
   3. the interest of the money credited to the bank by the Commission.
3. The money of the fund shall be kept in the name of the Commission in any Scheduled Bank and the procedure of withdrawal of such money from the bank shall be prescribed by regulations.
4. The salaries, allowances and the money payable in accordance with the terms and conditions of the service of the Chairman, full-time Member, officers and employees of the Commission shall be paid and all other necessary expenditures of the Commission shall be met from the fund.

**Explanation.** “Scheduled Bank” means the Scheduled Bank as defined inArticle 2(J) of Bangladesh Bank Order, 1972 (P.O No. 127 of 1972).

1. **Maintenance of accounts and audit.** (1) The Commission shallmaintain its accounts properly and prepare annual statement of accounts.
2. The comptroller and Auditor-General of Bangladesh, hereinafter referred to as the Auditor-General, shall audit the accounts of the Commission each year and shall send a copy of the audit report to the Government and the Commission.

1. For the purpose of audit under sub-section (2), the Auditor-General or any person authorised by him in this behalf shall have access to all records, documents, cash or money kept in banks, securities, stores and other properties of the Commission and may examine any Member or any officer or employee of the Commission.
2. Apart from the audit mentioned in sub-section (2), the accounts of the Commission may be audited by any Chartered Accountant Firm as defined in article 2(1)(b) of the Bangladesh Chartered Accountants Order, 1973 (P.O No.2 of 1973) and for this purpose the Commission may appoint Chartered Accountant.
3. **Public servant.** The Chairman, Members, officers and employeeswhile discharging duties of the Commission shall be deemed to be public servant within the meaning of section 21 of the Penal Code, 1860 (Act No. XLV of 1860).
4. **Delegation of powers.** The Commission may, by a written order, onsuch conditions as may be specified therein, delegate all of its powers under this Act to a Member, an officer or any other person of the Commission.
5. **Power to make rules.** The Government may, by notification in theofficial Gazette, make rules for carrying out the purposes of this Act.
6. **Power to make regulations.** The Commission may, with priorapproval of the Government, by notification in the official Gazette, make regulations for carrying out the purposes of this Act.
7. **Publication of English text.** (1) After the commencement of this Act,the Government shall, by notification in the official Gazette, publish an authentic English text of this Act.
8. In the event of conflict between the Bangla and the English text the Bangla text shall prevail.

Thereafter, the Awami League government under the leadership of Honorable Prime Minister Sheikh Hasina promulgated the Bangladesh Water Act, 2013 which is time-befitting. For its significance, the Act has been fully reproduced below:

**BANGLADESH WATER ACT, 2013(ACT NO.14 OF 2013)**An Act to make provisions for integrated development, management, abstraction;distribution, use, protection and conservation of water resources.WHEREAS it its expedient and necessary to make provisions for the integrated development, management, abstraction, distribution, use, protection and conservation, of water resources;THEREFORE it is hereby enacted as follows:**CHAPTER I  
PRELIMINARY1. Short title, commencement and application.-** (1) This Act may be called the Bangladesh Water Act, 2013.(2) This Act shall come into force on such date as the Government may, by notification in the official Gazette, appoint, and different dates may be appointed for different sections of this Act.(3) This Act shall be applicable for such areas as the Government may, by notification in the official Gazette, specify and different areas may be specified for different sections of the Act.

**2. Definitions.-** In this Act, unless there is anything repugnant to the subject or context,(1) **“appropriate authority”** means any organisation or authority, established or formed under any law or any instrument having the force of law, and involved in extracting water, distributing water, rendering service of water, or protecting or conserving any water resources;(2) **“khal”** means any passage of inflow and outflow of water;

(3) **“clearance certificate”** means any certificate issued by the Executive Committee under section 16;

(4) **“water course”** means flow of water from any water source;

(5) **“water source”** means any natural or manmade river, canal, beel, haor, baor, pond,

lake, water-fall or any other similar water source;

(6) **“wetland”** means any land where water remains at the level of surface or close to it and which inundates with shallow water from time to time, and where grows such plants that may usually grow and survive in marsh land;

(7) **“National Water Policy”** means any national water policy adopted as such by the Government from time to time;

(8) **“National Water Resources Plan”** means the water resources plan approved by the Council under section 15;

(9) **“Executive Committee”** means the committee constituted under section 9; '

(10) **“control”** shall also include imposing ban, restrictions, and conditions;

(11) **“inspector”** means any officer or employee authorised as such under section 14;

(12) **“Council”** means the National Water Resources Council constituted under section 4;

(13) **“water”** means any water mentioned in sub-section (1) of section 3;

(14) **“water resources”** means any surface water, ground water and rain water, i.e. water in the atmosphere; and shall also include water of estuary, aquifer, flood-plain, wetland, water source, foreshore, coast, and any other similar reservoirs or places;

(15**) “Water Resource Development Project”** means any activity, program or initiative taken for the development of any water resources, such as: any hydraulic infrastructure for irrigation, flood control management and drainage, protection of river bank, dredging or any other similar activity, program or initiative;

(16) **“Water Resources Planning Organisation”** means the Water Resources Planning Organisation established under Water Resources Planning Act, 1992 (Act No. 12 of 1992);

(17) **“Water Stress Area”** means any area declared as such under section 17;

(18) **“aquifer”** means a layer lying in-between the saturated soil or rock layer beneath

the ground surface which can store and transmit water and from where water can

be pumped;

(19) **“compliance order”** means any order issued under section 12;

(20) **“foreshore”** means any part of land lying in-between the low water mark and high-water mark during ordinary spring tide of a year, and in the case of river or sea-port area as defined in Ports Act, 1908 (Act No. XV of 1908), any part of land thereof which is 50 meters extended from the highest level of water to river bank, and in the case of areas other than river or sea port, any part of land thereof which is 10 meters extended from the highest level of water;

(21) **“Code of Criminal Procedure”** means the Code of Criminal Procedure, 1898 (Act V of 1898);

(22) **“baor”** means any kind of ox-bow shaped lake where water course has become stagnant in course of time;

(23) **“embankment”** means any dam, wall, dyke, protection dam or any other similar embankment made of earth or similar elements.

(24) **“beel”** means any natural low land or round area which gets inundated by rain water or river water, and which remains inundated over the year or partially or entirely remains dry for a certain period of a year;

(25) **“person”** means any natural person, and shall also include any institution, company, association, partnership, firm or statutory institution or any other similar organisation;

(26) **“ground water”** means any water underneath the soil which flows through aquifers and is abstractable onto the surface by natural or artificial process;

(27) **“surface water”** means any water on the surface of water source;

(28) **“land”** means any land as defined under section 2(16) of the State Acquisition and Tenancy Act, 1950 (EB Act No. XXVIII of 1950);

(29) **“Director General”** means the Director General of Water Resources Planning Organisation;

(30) **“estuary”** means a water course which constantly and periodically flows from land towards sea and mixes with sea water, the extent of which is assessable;

(31) **“Government”** means, for the purposes of this Act, the Ministry of Water Resources;

(32) **“conservation”** includes the increase in efficacy of, decrease in misuse of, and damage to, preservation and protection of, any water resources;

(33) **“protection”** means imposition of ban and restrictions or conditions for the conservation of any water Resources;

(34) **“protection order”** means any order issued under section 27; and

(35) **“haor”** means any saucer shaped large shallow depression created naturally in-between two separate rivers.

**3. Right to water and use thereof.-** (1) Notwithstanding anything contained to the contrary in any other law for the time being in force, all rights over the following water within the state territory shall, on behalf of the people, vest upon the State:

(a) surface water,

(b) ground water,

(c) sea water,

(d) rain water; and

(e) water in the atmosphere.

1. Subject to the provisions of this Act, right to potable water, and to water for hygiene and sanitation shall be treated as the highest priority right.
2. Notwithstanding anything contained in sub-section (1), all rights over the surface water on any private land shall remain with the owner of such land, and such rights to use the water shall, subject to the provisions of this Act, continue to be enjoyed:

Provided that the Executive Committee may, to prevent the wastage and misuse of water, and for protection and conservation thereof, issue a protection order to the owner of such private land without discrimination.

1. Nothing of sub-section (1) shall prevent any person from using any water allowed earlier under any Act, rule or regulation, or any custom or ritual having the force of law, of any accord, licence or permit that were in force prior to the commencement of this Act; and such use thereof shall remain uninterrupted until it is restricted or prohibited or controlled or cancelled under this Act:

Provided that, right to such use of water shall not be transferable except the permission of the appropriate authority.

1. For the convenience of the use of water under sub-section (3), every individual shall have easement on any public or private land:

Provided that, no owner of the land near to the bank of any water source shall have any right to its bottom, and foreshore.

**CHAPTER II**

**NATIONAL WATER RESOURCES COUNCIL AND ITS POWERS AND FUNCTIONS**

**4. National Water Resources Council.-** (1) For the purposes of this Act, there shall be a Council to be called the ‘National Water Resources Council’, and the Government may, as soon as possible after the commencement of this Act, by notification in the official Gazette, constitute the Council comprising the following members, namely:

(a) the Prime Minister, who shall also be the Chairperson of the Council;

(b) Minister, Ministry of Finance,

(c) Minister, Ministry of Agriculture; ‘

(d) Minister, Ministry of Planning;

(e) Minister, Ministry of Local Government, Rural Development and

Cooperatives;

(f) Minister, Ministry of Law, Justice and Parliament A ffairs;.

(g) Minister, Ministry of Land;

(h) Minister, Ministry of Water Resources;

(i) Minister, Ministry of Foreign Affairs;

(j) Minister, Ministry of Fisheries and Livestock;

(k) Minister, Ministry of -Shipping & Inland Water Transport;

(1) Minister, Ministry of Environment and Forest;

(m) State Minister, Ministry of Water Resources (if any);

(n) Chairman, Standing Committee for the Ministry of Water Resources;

(o) Cabinet Secretary;

(p) Principal Secretary, Prime Minister’s Office;

(q) one member of Parliament from each of the administrative Divisions, to be

nominated by the Prime Minister;

(r) Senior Secretary or Secretary, Ministry of Land;

(s) Senior Secretary or Secretary, Economic Relation Division;

(t) Senior Secretary or Secretary, Ministry of Fisheries and Livestock;

(u) Senior Secretary or Secretary, Ministry of Agriculture;

(v) Senior Secretary or Secretary, Ministry of Environment and Forest;

(w) Senior Secretary or Secretary, Local Government Division;

(x) Senior Secretary or Secretary, Ministry of Foreign Affairs;

(y) Senior Secretary or Secretary, Legislative and Parliament Affairs Division;

(z) Member, Agriculture, Water Resources and Rural Development Division of

Planning Commission; ‘

(aa) Director General, Bangladesh Water Development Board; ,

(bb) Director General, Water Resources Planning Organisation;

(cc) Member, Joint River Commission;

(dd) President, Institute of Engineers, Bangladesh;

(ee) President, Institute of Diploma Engineers, Bangladesh;

(ff) three Water Resource Experts to be nominated by the Prime Minister;

(gg) one representative from Non-government Organisations (NGO), to be

nominated by the Prime Minister; and

(hh) Senior Secretary or Secretary, Ministry of Water Resources, who shall also be

the Member-secretary of the Council.

(2) The tenure of the nominated members of the Council shall be 2 (two) years, but any nominated member may, at any time before the completion of such tenure, resign from his post writing under his hand addressing to the Prime Minister, and the post shall fall vacant from the day of acceptance of the resignation letter by the Prime Minister.

(3) The Government may, if necessary, by notification in the official Gazette, increase or decrease the number of Members of the Council.

**5. Functions of the Council.-** For the purposes of this Act and subject to its provisions, the Council shall be the highest decision-making body, and in this behalf, the Council shall have the following functions, namely:-

(a) to make policies, and give instructions for integrated development of, proper use of, safe abstraction of, proper distribution of, proper protection of, and proper conservation of water resources;

(b) to give instructions in respect of making National Water Resources Plan, for ensuring integrated development of water Resources;

(c) to approve the National Water Resources Plan, and ensure implementation thereof; and

(d) to perform such other functions as may be determined by the Council.

**6. Meeting of the Council.-** (1) The Council shall, subject to the provision of sub-section (2), determine the working procedure of its own meeting.

(2) The Member-secretary of the Council shall convene every meeting of the Council at such venue and on such time as may be determined by the Chairperson.

(3) The meetings of the Council shall be presided over by the Chairperson or in his absence, the senior-most member of the Council.

(4) No act or proceedings of the Council shall be deemed illegal or called in question, merely on the ground of any vacancy in the office of any member or any defect in the constitution of the Council.

**7. Exchange of international and regional Cooperation**.- (1) Subject to the provisions of this Act and of any other law for the time being in force, the Council may, for giving full effect to the cooperation mentioned under sub-section (2), give advice to the Government to enter into any memorandum of understanding, agreement, convention, treaty or any other similar instrument with any foreign country, government, or international or regional organisation.

(2) The Government may, in consultation with the Council, exchange any of the following cooperation with any foreign country, government, international or regional organisation, namely:

(a) to exchange and assess any information and data in respect of common water resources;

(b) to undertake joint survey, study, and research on international rivers, and joint measures for preventing chemical and organic pollution thereof:

(c) to take measures for the development of water resources, and for the abstraction and distribution of water of international river; or

(d) to organise educational and training program on water resources.

**8. Power to adopt National Water Policy.-** (1) The Government may, from time to time, subject to the provision of sub-section (2), by notification in the official Gazette, adopt a National Water Policy.

(2) The Government may, in order to formulate National Water Policy mentioned in sub-section (1), make arrangement for a public hearing in the manner prescribed by rules, to take opinions of the communities and organisations concerned with water resources, and shall, by taking due consideration of the opinions received in public hearing, finalise the National Water Policy.

(3) The Government may include, in the National Water Policy, the policies of pricing of water to be determined by the appropriate authorities, and in doing so, the Government shall, along with other relevant issues, consider the following issues, namely:

(a) purpose, and sectors of water use;

(b) affordability of the water users;

(c) actual cost of water abstraction and distribution;

(d) financial ability and backwardness of water users or any group thereof:

(e) demand and supply of water: and

(f) any other issues deemed relevant by the Government.

(4) Until a National Water Policy is adopted under sub-section (1), the National Water Policy which was adopted by the Government immediately before the commencement of this Act shall remain in force, insofar as it is not inconsistent with the provisions of this Act.

**CHAPTER III**

**EXECUTIVE COMMITTEE AND ITS DUTIES, RESPONSIBILITIES AND POWERS**

**9. Executive Committee.-** There shall be an Executive Committee of the Council for the efficient performance of its functions, and the Executive Committee shall consist of the

following members, namely:

(a) Minister, Ministry of Water Resources, who shall also be its Chairperson;

(b) Minister, Ministry of Local Government, Rural Development and Cooperatives;

(c) Minister, Ministry of Agriculture;

(d) Minister, Ministry of Environment and Forest;

(e) Minister, Ministry of Fisheries and Livestock;

(f) Minister, Ministry of Land;

(g) State Minister, Ministry of Water Resources (If any);

(h) Member, Agriculture, Water Resources and Rural Development Division of Planning Commission;

(i) Senior Secretary or Secretary, Ministry of Agriculture;

(j) Senior Secretary or Secretary, Local Government Division;

(k) Senior Secretary or Secretary, Legislative and Parliament Affairs Division;

(1) Senior Secretary or Secretary, Ministry of Water Resources;

(m)Senior Secretary or Secretary, Ministry of Fisheries and Livestock;

(n) Senior Secretary or Secretary, Ministry of Environment and Forest;

(o) Senior Secretary or Secretary, Ministry of Land;

(p) Director General, Directorate of Environment;

(q) Director General, Bangladesh Water Development Board;

(r) Chief Engineer, Local Government Engineering Department;

(s) Chief Engineer, Department of Public Health Engineering;

(t) Member, Joint River Commission;

(u) two Water Resource Experts to be nominated by the Government;

(v) one representative from Non-government Organisation (NGO), to be nominated by the Government; and

(w) Director General, Water Resources Planning Organisation, who shall also be its Member-secretary.

**10. Duties and responsibilities of the Executive Committee.-** The Executive Committee shall have the following duties and responsibilities, namely:

(a) to publish, circulate, monitor and evaluate the instructions issued and recommendations made by the Council on water resources;

(b) to publicise, monitor and evaluate the National Water Policy and the National Water Resources Plan;

(c) to take initiatives with regard to any planning, management of and inter-sector coordination on water resources;

(d) to keep the Council periodically informed with regard to the issues on water resource management, and give advice thereto;

(e) to coordinate among the appropriate authorities, to formulate policies regarding inter-sector disputes, and to resolve the disputes thereof and to issue instructions, if necessary; and

(f) to perform such other duty as may be assigned to it by the Council.

**11. Meeting of the Executive Committee.-** (1) The Executive Committee may, subject to the provisions of this section, determine the working procedure of its own meeting.

(2) The member-secretary of the Committee shall, with the consent of the Chairperson of the Committee, convene every meeting of the Committee, and the meeting shall be held at such venue and on such time as may be determined by the Chairperson.

(3) The Chairperson of the Executive Committee shall preside over its meetings.

(4) No act or proceeding of the Executive Committee shall be deemed illegal or called in question merely on the ground of any vacancy in the office of any member, or any defect in the constitution of the Committee.

**12. Power to issue compliance order.-** (1) On the basis of the result of enquiry, scrutiny or survey, if it appears to the Executive Committee that any person or appropriate authority is not complying with, or is violating or attempts to violate any provision of sections 18, 19, 20, 21, 22, 24 and 26, or of any clearance certificate, or of any prohibition or condition of any protection order, the Executive Committee or any officer authorised by it in this behalf, may, notwithstanding anything contained contrary in any other law for the time being in force, issue a compliance order to such person or appropriate authority, to comply with such provisions, or the prohibitions and conditions of the protection order, or the conditions of the clearance certificate within the time specified in the order.

(2) The Executive Committee or any officer authorised by it in this behalf shall, subject to the provisions of section 42, serve the compliance order issued under sub-section (1) in the manner prescribed by rules.

(3) If any appropriate authority (not being an individual) does not comply, in conformity with the compliance order, with any provision of this Act, or any prohibition and condition of the protection order, or any condition of the clearance certificate, the Executive Committee, instead of lodging any judicial process or imposing any compensation under section 29, may, notwithstanding anything contained contrary in any other provisions of this Act, call for the Head of such authority to explain the reasons of not complying with such provisions and conditions, and if such reason is not satisfactory, it may, identifying the person liable thereof, recommend the Council to take necessary action against such person.

(4) The compliance order shall, among other things, contain the following matters,

namely:

(a) full identity, with name and address, of the person violating the provisions or

conditions;

(b) reference of the provisions or conditions violated;

(c) time-limits of compliance; and

(d) any other necessary matters specified by the Executive Committee.

(5) The compliance order shall also contain that, unless there is any reason, abidance of the compliance order is mandatory and non-compliance thereof is an offence punishable with imprisonment, and with compensation.

(6) Before issuing a compliance order, the Executive Committee or any officer authorised by it in this behalf shall give the concerned person or authority a reasonable opportunity of being heard in the manner prescribed by rules, and shall, at the time of taking decision, consider the views received during such hearing.

(7) The issuance of the compliance order may, by general notification, be published and publicised in the electronic and print media in the manner prescribed by rules.

**13. Power to issue removal order.-** (1) If any person or authority makes any construction in violation of any provision of this Act or of any prohibition and condition of any protection order or of any Clearance certificate, or carries on land filling activities on water resources which creates impediments in the normal water course or changes the direction of such water course; the Executive Committee or any officer authorised by it in this behalf, notwithstanding anything contained contrary in any other law for the time being in force, may, to keep such water course natural, issue a removal order to such person or authority for removing the infrastructure, or land filling materials or elements thereof, within the time specified in such order.

(2) The Executive Committee or any officer authorised by it in this behalf shall, subject to the provisions of section 42, serve the removal order under sub-section (1) in the manner prescribed by rules.

(3) Before issuing a removal order, the Executive Committee or any Officer authorised by it in this behalf shall, in such manner as may be prescribed by rules, give the concerned person or authority a reasonable opportunity of being heard, and shall, at the time of taking decision, consider the views received during such hearing.

(4) Within the time specified in the removal order, if the infrastructure is not removed or land filling activities is not stopped without any reasonable ground, the Executive Committee or any officer authorised by it in this behalf, notwithstanding anything contained contrary in any other law for the time being in force, may, to keep the water course natural, remove, by serving a notice in the manner prescribed by rules, such infrastructure or land filling materials from the water source, and may, subject to the provision of section 43, realise all the costs incurred for such removal of infrastructure or land filling materials from the person liable for making such infrastructure or carrying on land filling activities.

(5) The removal order shall, among other things, contain the following matters, namely:

(a) full identity, with name and address, of the person making the infrastructure or carrying on land filling activities;

(b) description of the illegal infrastructure or land filling activities;

(c) time-limits of removal; and

(d) any other matters to be specified by the Executive Committee.

(6) Before taking measures for removal, the actual cost for such removal of the illegal construction or land filling materials shall be fixed after considering the views of the person liable for such illegal construction or land filling activities.

(7) The issuance of the removal order may, by general notification, be published and publicised in the electronic and print media in the manner prescribed by rules.

**14. Secretarial support from the Director General and delegation of power to**

**inspectors.-** (1) For efficient functioning of the Executive Committee, the Director General shall provide all administrative and secretarial support to it.

(2) For the purposes of this Act, the Director General shall have the following duties, namely:

(a) to implement and apply the policies and Strategies adopted by the Council and the Executive Committee;

(b) to prepare all kinds of proposals for placing before the meeting of the Council and the Executive Committee as per the directions thereof;

(c) to pay visit to any site or project area for inspection;

(d) to take necessary steps to build public awareness with regard to this Act; and

(e) to perform such other duties as may be assigned to him by the Council and the Executive Committee, from time to time.

(3) For the purposes of this Act, the Director General may delegate any of his duties mentioned in clause (c) of sub-section (2) to any officer or employee of the Water Resources Planning Organisation or of any other organisation, and the officer or employee so authorised shall be called the inspector for the purpose of this Act.

(4) The inspector shall, with respect to any irregularity, defect or violation of any order found during inspection made under sub-section (3), submit a report thereof to the Director General or any officer authorised by him in this behalf.

**CHAPTER IV**

**CONTROL ON WATER RESOURCES DEVELOPMENT AND MANAGEMENT**

15. Approval of National Water Resources Plan.- (1) As soon as possible, after the commencement of this Act, the Water Resources Planning Organisation shall, through the Executive Committee, place for approval before the Council a draft of the National Water Resources Plan prepared in accordance with the Water Resources Planning Act, 1992 (Act No. XII of 1992).

(2) In addition to the matters mentioned in the Water Resources Planning Act, 1992 (Act No. XII of 1992), the National Water Resources Plan shall contain the following matters, namely:

(a) description of water resources with present geographical location and mouza map;

(b) analysis of economic, natural, social, political, environmental, and ecological and institutional elements, characteristics, and impacts of water resources;

(c) scientific analysis of all data and information on water resources;

(d) development of overall planning, infrastructure for abstraction, distribution, use, protection and conservation of water resources, and formulation of instructions thereof for short, medium and long term;

(e) coordination with concerned Ministries, Divisions and Organisations involved in the management of water resources;

(f) present and future use of water resources;

(g) integrated use of surface and ground water emphasizing the highest possible use of rain water;

(h) assessment of availability of water;

(i) determination of water quality standard;

(j) basin-wise development plan; and

(k) fixation of priority of water use.

(3) Before submitting a National Water Resources Plan to the Council for approval under sub-section (1), the Executive Committee shall, through inter-ministerial discussion and exchange of views, make sure that such plan is appropriate and is consistent with this Act, and the National Water Policy.

(4) The Executive Committee shall, after taking necessary measures under sub-section (3), pre-publish a draft of the plan in the official Gazette for eliciting public opinion, and shall also take necessary steps for extensive publicity thereof through digital, electronic and print

media.

(5) Any person may, within 90 (Ninety) days from the date of pre-publication of the draft in the official Gazette under sub-section (4), submit or send any remark or suggestion on the National Water Resources Plan to the Executive Committee or to any officer or organisation authorised in this behalf by it, in writing or through digital or any other means.

(6) The Executive Committee shall, upon analysis and consideration of the remarks and suggestions, if any, received under sub-section (5), recast the National Water Resources Plan, and shall place it before the Council for approval.

(7) The Council may, after having been satisfied with the rationales of the plan upon discussion in its meeting, approve it or make necessary changes in it or direct the Executive Committee to make necessary changes therein.

(8) Upon approval by the Council, the Executive Committee shall publish the National Water Resources Plan in the official Gazette, and upload a copy thereof in the website of the Ministry of Water Resources.

(9) Until National Water Resources Plan is adopted under sub-section (7), the National Water Management Plan made by the Water Resources Planning Organisation immediately before the commencement of this Act, shall, subject to being consistent with this Act and with the National Water Policy, continue to have effect, mutatis mutandis.

(10) The Executive Committee shall send a copy of the finalized National Water Resources Plan to all the organisations or appropriate authorities or local government institutions that are involved in undertaking, making or implementing Water Resource Development Project, and request them to undertake or implement such project, in furtherance of this Act, and of the National Water Policy, and to remain within the limits of the National Water Resources Plan.

(11) The request-letter made under sub-section (10) shall also contain among other contents that compliance with the provisions of this Act, or with the condition of a clearance certificate, or with the prohibition and condition of a protection order is mandatory, and non-compliance thereof without any reasonable ground is an offence punishable with imprisonment, and compensation.

(12) On finalization of the National Water Resources Plan under this Act, it shall create a binding obligation upon all the organisations or appropriate authorities or local government institutions to undertake, make or implement Water Resource Development Projects in accordance with the National Water Resources Plan.

Explanation: In this section, “basin” means the region across which water course created out of rain, ice or snow, flows and falls into any water source.

**16. Issuance of clearance certificate on Water Resource Development Projects.-**

(1) Notwithstanding anything contained contrary in any other law for the time being in force, all organisations or appropriate authorities or local government institutions that are involved in undertaking, making or implementing a Water Resource Development Project shall, for ensuring the consistency of such project with the National Water Resources Plan, require to submit, in such manner and on such condition as may be prescribed by rules, an application to the Executive Committee, prior to initiating such project.

(2) After receiving an application under sub-section (1), the Executive Committee shall, upon examining the application and relevant project documents, make sure as to the consistency of the project with the National Water Resources Plan, and shall, after granting the application, issue a clearance certificate in such manner and on such condition as may be prescribed by rules, or if the application is rejected, shall inform the reason thereof.

(3) If any organisation or appropriate authority or local government institution, that is involved in undertaking, making or implementing any Water Resource Development Project, violates any condition of the clearance certificate or of any provision of this Act; the Executive Committee may, after ensuring itself about such violation through necessary enquiry and after giving the concerned person a reasonable opportunity of being heard in the manner prescribed by rules, withdraw the clearance certificate issued in favour of such project, and may publish and publicise the fact of such withdrawal widely in the print and electronic media.

**CHAPTER V**

**CONTROL ON WATER USE AND PROTECTION AND CONSERVATION OF WATER RESOURCES**

**17. Declaration of Water Stress Area and management thereof.-** (1) To protect any water source or any aquifer, the Government may, on the recommendation of the Executive Committee made upon the results of necessary enquiry or scrutiny or survey, declare, by notification in the official Gazette, any area or any part thereof or any land connected thereto with such water resources as Water Stress Area for a period specified therein.

(2) In the notification issued under sub-section (1), the boundary of the Water Stress Area shall be specified by referring the mouza map and plot numbers thereof.

(3) For efficient management of the Water Stress Area, the Executive Committee may, subject to the provisions of this Act, impose restrictions by issuing a protection order.

**18. Preferential use of water in the Water Stress Area and exemption thereof.-**

(1) Notwithstanding anything contained contrary in any other law for the time being in force, abstraction and use of water from any Water Stress Area shall, subject to the availability of water therein, be made in accordance with the following order for the national interest and the interest of the local communities, namely:

(a) use of water as potable;

(b) use of water in household;

(c) use of water in agriculture;

(d) use of water in aquaculture;

(e) use of water for balancing eco-system;

(f) use of water for wild life;

(g) use of water for natural river flow;

(h) use of water in industry;

(i) use of water for salinity control;

(j) use of water for power generation;

(k) use of water for amusement; and

(1) use of water for other purposes.

(2) Depending on the socio-economic condition and the opinion of the general people, the Executive Committee may, by a notification in the official Gazette, change the order made in sub-section (1).

(3) For the purposes of this section, availability of water in the Water Stress Area shall, by issuing a public notice in digital, print and electronic media, be widely published and publicised among the mass in the manner prescribed by rules.

**19. Fixing the lowest safe yield level of aquifer and restrictions on abstracting ground water**.- (1) Notwithstanding anything contained to the contrary in any other law for the time being in force, the Executive Committee, on the basis of the results of necessary enquiry, scrutiny or survey, may, by notification in the official Gazette, fix the lowest safe yield level of any aquifer of any area.

(2) The boundary of the area to which lowest safe yield level applies shall be specified in the notification issued under sub-section (1) by referring the mouza map and plot numbers thereof.

(3) Any person or appropriate authority may, subject to the lowest safe yield level, and the provisions of this Act or any other law for the time being in force, sink shallow or deep tube-well, in the manner prescribed by rules, into the ground for abstracting groundwater.

(4) To ensure safe abstraction of water from aquifers, the Executive Committee may, subject to the provisions of this Act, impose restrictions by issuing a protection order.

Explanation: In this section “safe yield level” means the amount of abstraction of water that keeps the aquifer safe and protective.

**20. Ensuring normal flow of water course.-** (1) No person or organisation shall, without the permission of appropriate authority, stop natural flow of any water course or, create obstacles to such flow or divert or attempt to divert the direction of any water course by constructing any structure, whether it is on the bank or not, of any water source, or by filling any water source or by extracting sand or mud from any water source:

Provided that for the interest of the development of a water source or of the prevention of erosion of bank thereof, any kind of structure on such water source may be constructed, or any water source may be fully or partly filled on the basis of the result of necessary survey and with the permission of appropriate authority:

Provided further that, without prejudice to the generality of section 21, any flood control embankment may, with the permission of the appropriate authority, be built in a water source to save the people and their properties from natural flood.

(2) In order to keep flow of water course normal, the Executive Committee may, subject to the provisions of this Act, impose any restriction by issuing a protection order.

**21. Protection of flood control embankment.-** (1) To ensure the sustainability of the flood control embankment, no person shall, without the permission of the appropriate authority, be allowed to construct any house, establishment or any other structure on, or on the slope of such embankment.

(2) Notwithstanding anything contained in sub-section (1), to make the flood control embankment strong and to materialize the tree plantation program of the government, suitable trees may, subject to the existing guidelines, be planted alongside the embankment in a well-organised and planned manner.

(3) Notwithstanding anything contained in sub-section (1), a flood control embankment may, with the permission of appropriate authority, be used as a street or road for the best use of land thereof.

(4) In violation of the provision of sub-section (1), if any person, without the permission of the appropriate authority, constructs any house, establishment or other structure on the flood control embankment, the Executive Committee may, notwithstanding anything contained in any other law for the time being in force, issue a removal order in the manner prescribed by rules.

(5) To ensure the sustainability of the flood control embankment, the Executive Committee may, subject to the provisions of this Act, impose any restrictions by issuing a protection order.

**22. Conservation of water source and management thereof.-** (1) Notwithstanding anything contained contrary in any other law for the time being in force, if it appears to the Executive Committee from the results of any enquiry, scrutiny or survey,-

(a) that it is an urgent necessity to conserve the water of a dighi, pond, or any other similar water source as a source of potable water due to severe scarcity of such potable water for natural or other reason; or

(b) that it is an urgent necessity to conserve a haor, baor or any other similar water source for migratory birds to inhabit or to move safely and to keep their sanctuary safe;

the Executive Committee may, by demarcating the boundary of the water source, issue a protection order to the owner or appropriate authority for the conservation of such water source as a source of potable water.

(2) In the order issued under sub-section (1), the boundary of the water source shall be specified by referring the mouza map and plot numbers thereof.

(3) The Executive Committee may, subject to the provisions of this Act, impose any restriction by issuing a protection order for ensuring the proper management of the water source.

**23. Water zone demarcation and management thereof.-** (1) Depending upon the results of necessary enquiry, the Executive Committee may, in consultation and coordination with relevant Ministries, Divisions, and organisations, demarcate, by notification in the official Gazette, any area into the following water zones, namely:

(a) industrial water zone;

(b) agricultural water zone;

(c) brackish water aquaculture zone; and

(d) hatchery water zone.

(2) The Executive Committee may, subject to the provisions of this Act, impose restrictions by issuing a protection order for ensuring efficient management of the water zones mentioned in sub-section (1).

24, Restrictions on water storing.- (1) No person shall, without the permission of the appropriate authority, and without complying with the provisions of this Act, store water of any water source in any natural or artificial reservoir.

(2) The Executive Committee may, subject to the provisions of this Act, impose restrictions by issuing a protection order to control the activities of storing water.

**25. Declaration of flood control zone and management thereof**.- (1) Depending on the results of necessary enquiry or survey, the Executive Committee, may, in public interest, by a notification in the official Gazette, declare any wetland as flood control zone to ensure easy passage of the flow of flood water.

(2) In the notification issued under sub-section (1), the boundary of the flood control zone shall be specified by referring to the mouza map and plot number thereof

(3) For the protection of flood control zones declared under sub-section (1), the Executive Committee may, by rules in general cases or by order in special cases, impose prohibition or condition on any activity that obstructs or diverts the flow of flood water through such zones.

**26. Restriction on abstraction of total water from any water source.-**Notwithstanding anything contained contrary in any other law for the time being in force, nowater of any water source shall be allowed to to be exhausted completely by abstraction:

Provided that the provision of this section shall not apply to abstraction of water from any private owned water source, subject to the provisions of this Act.

**27, Power to issue protection order and impose restrictions by it.-** (1) Notwithstanding anything contained to the contrary in any other law for the time being in force, the Executive Committee may, in the manner prescribed by rules, issue and promulgate a protection order, subject to the provision of section 42.

(2) Before issuing a protection order, the opinion of the local people of the concerned area shall be taken into account by providing them an opportunity of being heard in the manner prescribed by rules.

(3) The protection order shall, among other contents, also contain that, without reasonable ground, compliance of the protection order is mandatory, and non-compliance thereof is an offence punishable with imprisonment, and with compensation.

(4) For the purposes of this section, the fact of the issuance of the protection order shall, by a public notice, be published and publicised widely for general people through digital, electronic and print media in the manner prescribed by rules.

**28. Water pollution control.-** In the case of the prevention of water pollution, the Bangladesh Environment Conservation Act, 1995 (Act No.1 of 1995) shall apply.

Explanation: In this section, “water pollution” means direct or indirect harmful changes of physical, chemical and organic properties of water.

**CHAPTER VI**

**OFFENCE, PUNISHMENT AND TRIAL**

**29. Punishment, fine and compensation for violating compliance order and protection order.-** (1) Whoever willingly violates or ignores any compliance order or protection order issued under this Act, shall, subject to the provision of sub-section (2), be punished with imprisonment of either description for a term which may extend to 5 (five) years or with fine which may extend to Taka 10 (ten) thousand or with both.

(2) If any person willingly violates or ignores a compliance order or protection order for the first time, the Executive Committee or any officer authorised by it in this behalf may, notwithstanding anything contained in sub-section (1), exonerate the offender from the charges of first offence by imposing compensation on such ground or limit, and in such a manner as may be prescribed by rules, and the second or subsequent violation thereof shall be deemed to be an offence under sub-section (1).

(3) Before imposing compensation under sub-section (2), the Executive Committee or any officer authorised by it in this behalf shall give the concerned person a reasonable opportunity of being heard by giving notice in the manner prescribed by rules.

Explanation: In this section “compensation” shall not include the fine imposed by any court.

**30. Punishment of obstructions.-** (1) Whoever willingly obstructs any officer or employee while discharging his duty under this Act, or willingly ignores or denies to provide such officer or employee a reasonable opportunity of inspection in any institution, premises or project area, shall be punished with imprisonment of either description for a term which may extend to 5 (five) years or with a fine which may extend to Taka 10 (ten) thousand or with both.

(2) Whoever willingly fails or denies to present any register, file, or document to any officer discharging his duty under sub-section (1), or obstructs any person from appearing before or from giving depositions before such officer on duty, shall be punished with imprisonment of either description for a term which may extend to 3 (three) years or with fine which may extend to Taka 2 (two) thousand or with both.

Explanation: In this section “obstruct” shall also include giving a threat. |

**31. Punishment for providing false information.-** Whoever intentionally and knowingly provides any false or distorted information or conceals any information, shall be punished with imprisonment of either description for a term which may extend to | (one) year or with fine which may extend to Taka 3 (three) thousand or with both.

**52. Trial of offence, cognizability, ete.-** (1) Notwithstanding anything contained contrary in any other law for the time being in force, the offences punishable under this Act shall be triable by the Judicial Magistrate of the first class or Metropolitan Magistrate.

(2) The offences punishable under this Act shall be bailable and non-cognizable.

(3) The offences punishable under this Act shall be triable in accordance with summary trail process.

**33. Application of the Code of Criminal Procedure.-** Subject to the provisions of this Act, the Code of Criminal Procedure shall be applicable for the investigation, trial, appeal and other relevant matters of any offences punishable under this Act.

**34. Commission of offence by company or institution.-** If an offence under this Act is committed, or any provision thereof is contravened by any company or institution, every director, executive, manager, secretary or any other officer or employee or representative of such company or institution involved with such offence or contravention shall be deemed to have committed such offence or made such contravention, unless he proves that such offence was committed or contravention was made without his knowledge or he exercised his due diligence to prevent the commission of such offence or contravention.

Explanation: In this section-

(a) “company or institution” shall include, whether incorporated or not, registered or not, any company, corporation, institution, partnership business, association, body of persons or organisations; and

(b) “director” shall include partner or any member of the board of directors.

**35. Abetment of offence**.- Whoever abets, or excites or instigates or provides assistance in committing an offence punishable under this Act shall be deemed to be guilty of the same offence like the offender, and shall be liable to the offence like the offender.

**36. To take cognizance of offence.-** No court shall take cognizance of any offence punishable under this Act without a written complaint made by the Director General or any officer authorised by him in this behalf.

CHAPTER VII

MISCELLANEOUS

**37, Power to exempt the price of water.-** Notwithstanding anything contained to the contrary in any other law for the time being in force, the Government may, in consultation with the appropriate authority, for the national and local interest, without discrimination, exempt, by notification in the official Gazette, any class of person or community, for a particular time or area, from paying the price of water used in household or normal agriculture.

**38. Use of information technology.-** Subject to the provisions of the Information and Communication Technology Act, 2006 (Act No. 39 of 2006), the information technology as defined therein may, in addition to the procedure laid down in this Act, be used in respect of anything to be done or power to be exercised or duty to be discharged thereunder.

**39. Delegation of power.-** The Council may, by general or special order, delegate any of its power or function, if necessary and subject to the conditions fixed by it, to the Executive Committee or the Chairperson of the Executive Committee or the Director General or an inspector or to any other officer.

**40. Power of entry, calling for records, interrogation, etc.-** For the purposes of this Act. the Council, or the Executive Committee or any officer or inspector authorised in this behalf either by general or special order may exercise any one of the following powers, namely:

(a) to enter into any public or private land or project area, and to interrogate any person, or call for or scrutinize any record or any information,

(b) to inspect such land or area or anything on the land or area; and

(c) to inquire into or take sample of anything, or to conduct any survey on such land or area.

**41. Obligation to render cooperation to Water Resources Planning Organisation.-** The Water Resources Planning Organisation or any person authorised by it in this behalf may make a request to any public or private organisation or statutory body or to any officer or employee thereof for rendering any cooperation in the performance of any function, or exercising any power under this Act, and the officer or employee of such organisation or body shall, if so requested, render such cooperation.

**42. Service of order.-** If any notice or order issued under this Act requires to be served upon any person, it shall be deemed to be properly served on such person, if —

(a) it is received by such person personally or by his agent;

(b) it is sent by registered post to the last known abode or business address in Bangladesh of such person;

(c) it is sent through or uploaded in electronic media; and

(d) it is published and publicised in widely circulated national dailies.

**43. Mode of realizing money.-** (1) If any compensation or any other money becomes due from any person under this Act, the Executive Committee may, subject to the provision of sub-section (2), realize such money in the manner prescribed by rules.

(2) For the purpose of realizing any money due under this Act from any person, the Executive Committee may, notwithstanding anything contained to the contrary in any other law for the time being in force, make a request to any scheduled bank to freeze the bank account of such person.

**44, Right to information.-** Subject to the provisions of the Right to Information Act, 2009 (Act No. 20 of 2009), every person shall be entitled to have such information as defined therein, with respect to anything done or any power exercised or any duty discharged or any action taken or any order passed by the Council or Executive Committee or by any officer so authorised under this Act.

**45. Power to make rules.-** The Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

**46. Publication of English Authentic Text.-** (1) After the commencement of this Act, the Government may, by notification in the official Gazette, publish an Authentic English Text of this Act.

(2) In the event of any conflict between the Bangla text and the English text, the Bangla text shall prevail.

**47, Repeal and savings**.- (1) As soon as the National Water Resources Council and the Executive Committee are constituted under sections 4 and 9 respectively, all the notifications issued earlier relating to the formation of the National Water Resources Council and the Executive Committee shall be repealed, and the National Water Resources Council and the Executive Committee constituted by such notifications shall be dissolved.

1. Notwithstanding such dissolution under sub-section (1), anything done or any action taken by such dissolved National Water Resources Council or, as the case may be, by such Executive Committee shall be deemed to have been done and taken under this Act, and shall, subject to being consistent with this Act, continue to be in force.

The Honorable Prime Minister of Bangladesh, Sheikh Hasina has codified the aforementioned environmental and climate change strategy and action plan within the Constitution and laws of Bangladesh and accordingly, in 2009, for her continuous role as an exemplary Head of State in the matter of Environment and Climate, was awarded the prestigious “United Nations Champions of the Earth Award”. The headline of the UN website (news.un.org) on 14 September, 2015 was

“Prime Minister Sheikh Hasina of Bangladesh has been announced as one of the winners of the United Nations Champions of the Earth award in recognition of her country’s initiatives to address climate change”

The report of the abovementioned headline of 14 September, 2015 is as follows:

“Serving as Prime Minister of Bangladesh- one of the world’s least-developed countries- Sheikh Hasina has proven that investing in climate change is conducive to achieving social and economic development,” said the announcement issued by the UN Environment Programme (UNEP), which confers awards.

UNEP noted that Bangladesh is one of the world’s most populated countries, with over 159 million people. It is also one of the most vulnerable to the impacts of climate change. Cyclones, floods and droughts have long been part of the country’s history, but they have intensified in recent years.

“Through a number of forward-looking policy initiatives and investments, Bangladesh has placed confronting the challenge of climate change at the core of its development,” said UNEP Executive Director Achim Steiner.

“These initiatives, from climate change adaptation measures to ecosystem preservation legislation, mean that current and future generations of Bangladesh are better prepared to address climate change risks and reverse the impacts of environmental degradation.”

He added that Sheikh Hasina has demonstrated “ leadership and vision” in both making climate change an issue of national priority and advocating for an ambitious global response.

“As an early adopter and advocate of climate change adaptation policy, she continues to be an example to follow as world leaders seek to take action on climate change as part of the Sustainable Development Goals and the Paris climate conference in December.”

The award cites, among other initiatives, the progressive Bangladesh Climate Change Strategy and Action Plan of 2009, which made the South Asian nation the first developing country to frame such a coordinated action plan.

Bangladesh is also the first country to set up its own Climate Change Trust Fund, supported by nearly $300 million of domestic resources from 2009 -2012.

Also noted is the fact that the Government currently earmarks 6 to 7 per cent of its annual budget – some $ 1 billion- on climate change adaptation, with only 25 per cent of this coming from international donors. In addition, under her leadership, the Bangladesh Constitution was amended in 2011 to include a constitutional directive to the State to protect the environment and natural resources for current and future generations.

“As one of the most disaster-prone countries in the world, Bangladesh understands the importance of addressing the impact of climate change. The country is already experiencing its detrimental effects, and it is often the poorest and marginalized who feel it most,” said Robert Watkins, Un Resident Coordinator in Bangladesh.

He noted that by 2050 it is estimated that one in every seven people in Bangladesh is likely to be displaced by climate change, and they are also likely to move to urban centres already burdened with meeting the needs of a dense population.

“I congratulate the Government of Bangladesh for being proactive in tackling climate change as a priority of the country. It is also a clarion call for the global community to take action today and to realize that climate change is not a problem of the future, it is already happening in our lifetime.”

The awards will be handed out at a special ceremony on 27 September in New York at the close of the Sustainable Development Summit. In addition to Sheikh Hasina, the other winners announced so far are the National Geographic Society (Science and Innovation); Brazilian cosmetics firm Natura (Entrepreneurial Vision); and South Afica’s Black Mamba Anti Poaching Unit (Inspiration and Action).

In 2016, Honourable Prime Minister Sheikh Hasina, at the Executive Committee of the National Economic Council (Ecnec) Meeting, constituted a taskforce for the protection of rivers by preventing pollution and bringing the navigability of the rivers around Dhaka and the karnaphuli river of Chattogram and continued the eviction drive.

Thereafter, under the leadership of Honourable Prime Minister Sheikh Hasina, the Government of Awami League formulated the Ecologically Critical Areas (ECA) Management Rules, 2016 which is given below:

**Bangladesh Gazette**

**Sunday, September 25, 2016**

**The Government of the People’s Republic of Bangladesh**

**Ministry of Environment and Forest**

**Gazette**

**Date: 7 Ashin 1423 Bongabdo, 22 September, 2016**

S.R.O. No. 291-Law/2016— In exercise of the powers conferred by section 20, read with section 5 of the Bangladesh Environment Conservation Act, 1995 (Act 1 of 1995), the Government is pleased to formulate the following Rules:- Such as-

1. **Short Title and Commencement:** (1) These Rules may be called the Ecologically Critical Areas (ECA) Management Rules, 2016.
2. It shall become effective immediately.
3. **Definition.** (1) In these Rules, unless there is anything contrary to the subject or context—
4. ‘’Act” means Bangladesh Environment Conservation Act, 1995 (Act I of 1995);
5. ‘’Union Coordination Committee’’ means Union Coordination Committee established under rule 12;
6. Upazila Committee means Upazila Committee established under rule 9;
7. Village Conservation Group means Village Conservation Group established under rule 13;
8. National Committee means National Committee established under rule 3;
9. District Committee means District Committee established under rule 6; and
10. Fund means Fund established rule 23.

(2) Oher words and expressions used herein but not defined in these rules shall have the same meanings assigned to them in the Act.

3. **National Committee:** (1) To fulfill the purpose of these Rules, there shall be a National Committee consisting of the following members:

(a) Secretary, Ministry of Environment and Forest, who shall also be the Chairperson.

(b) Director General, Department of Environment

(c ) Chief Conservator of Forests

(d) Nominated Officer from Ministry of Land, not below the rank of Joint Secretary

( e) Nominated officer from Ministry of Fisheries and Livestock, not below the rank

of Joint Secretary

(f) Nominated officer from Ministry of Agriculture, not below the rank of Joint

Secretary

(g) Nominated officer from Ministry of Water Resources, not below the rank of

Joint Secretary

1. Nominated officer from Ministry of Civil Aviation and Tourism, not below the rank of Joint Secretary
2. Nominated officer from Local Government Division, not below the rank of Joint Secretary
3. Nominated officer from Ministry of Housing and Public works, not below the rank of Joint Secretary
4. Nominated officer from Ministry of Home, not below the rank of Joint Secretary
5. Nominated officer from Legislative and Parliamentary Affairs Division, not below the rank of Joint Secretary
6. Nominated officer from Rural Development and Co-operative Division, not below the rank of Joint Secretary
7. Nominated officer from Ministry of Disaster Management and Relief, not below the rank of Joint Secretary
8. Chief Information Officer, Department of Information
9. Representative from Federation of Chamber of Commerce and Industries, not below the rank of Director
10. Representatives from Department of Zoology and Department of Botany of a Public University, not below the rank of Associated Professors to be nominated by The Government and
11. Two representatives from Non-Government Organizations relating to Environmental Protection to be nominated by the Director General.

(2) The members, nominated under sub-section (q) and (r) shall hold his office for a period of 4 (four) years from the date of his nomination.

Provided that the government or in case, the Director General shall exempt, before the expiry of his tenure, such nominated members without showing any reason:

Provided also that any such member may resign from his office by a letter in writing under his signature addressed to the Government or in case, the Director General.

1. The Department shall provide secretariat support to the National Committee.

**4. Functions and responsibilities of National Committee:** (1) If the National Committee by its own initiative or by any information is satisfied that due to environmental degradation the eco-system of an area is in critical situation or is threatened to be in such situation, then the National Committee, in order to fulfill the purpose of the Section 5 of the Act, will recommend the government to declare such area as an ecologically critical area.

(2) In recommending under sub-rule (1), the National Committee shall consider the following matters concerning any relevant and adjacent areas:

(a) existing natural conditions and biodiversity, reserve forest with wildlife habitat and protected areas, rivers, canals, haor-baor, flood-plain, lake, wetland, birds’ habitat, wetland sanctuaries including fisheries sanctuary, swamp forest, mangrove and depletion of coastal areas;

(b) causes for ecological degradation and possible threats;

(c) causes of being affected the native and migratory birds and animals and preventive measures;

(d) conditions for declaring this area as special area under any other law;

(e) lives-livelihoods, religious and social culture of local inhabitants;

(f) special artistic establishment, ancient monument, archeological site etc.

(g) any other matters relating to abovementioned issues.

Explanation: Biodiversity, under clause (a), means the variability among living organisms, which is overall part of the environment and also includes species diversity, genetic diversity and ecosystem diversity in the terrestrial, marine, and other aquatic ecosystems.

(3) The National Committee will recommend the government to generate alternative livelihoods for the people dependent on Ecologically Critical Area.

(4) The National Committee will supervise the development projects undertaken by the Government in any Ecologically Critical Area and may give necessary directions.

**(5) Meeting of the National Committee:** (1) The National Committee will meet once in a year.

(2) The meeting of the National Committee shall be held at as such times, dates and places as may be determined by the Chairman.

(3) Notices, records and proceedings of the Meeting may be circulated through email.

(4) All the meetings of the National Committee shall be presided over by the

Chairman of National Committee.

(5) To constitute a quorum at a meeting of the National Committee, the presence of one thirds of the total members shall be required,

Provided in case of adjourned meeting, quorum is not required.

(6) No act or proceeding of the Committee shall be invalid or be called in question merely on the ground of any vacancy in, or any defect in the constitution of the National Committee.

**6. District Committee:** (1) Subject to sub-rule (2), a District Committee shall be formed, consisting of the following members, in the district where the particular Ecologically Critical Area is situated:

(a) Deputy Commissioner, Who shall also be the Chairman of the Committee.

(b) Superintendent of Police

(c) Additional Deputy Commissioner (Revenue)

(d) Deputy Director, Department of Agricultural Extension

(e) Executive Engineer, Bangladesh Water Development Board

(f) Executive Engineer, Local Government Engineering Department

(g) District Fisheries Officer

(h) District level Officer from Forest Department

(i) Deputy Director, Social Welfare Department

(j) Relevant Upazila Nirbahi Officers

(k) District Level Officer from Bangladesh Agricultural Development Corporation

(l) District Ansar and VDP officer

(m) District Women Affairs Officer

(o) President, District Lawyers Association

(p) President, District Press Club

(q) Deputy Director, Bangladesh Rural Development Board

(r) District Cooperative Officer

(s) Non-Government Organizations, Professional associations if any relating to Environmental Promotion at the relevant District and not more than seven representatives from Civil Society Members to be nominated by the Deputy Commissioner; and

(t) District Level Officer from the Department of Environment, if any, or any officer to be nominated by the Chairman, who shall also be the member secretary of the Committee.

(2) If the Ecologically Critical Area is located in the District, Deputy Commissioner shall perform the duties of the chairman of the District Committee.

**7. Functions of the District Committee:** The functions of District Committee shall be as follows:

(a) give advice and directions to the Upazila Committee regarding any development plan and necessary measures suggested by the Department of Environment to overcome such critical situation;

(b) send the recommendations to the Department of Environment on the basis of the proposals given by the Upazila Committee regarding activities or processes, which cannot be initiated or continued in an Ecologically Critical Area;

(c) visit the concerned Ecologically Critical Area and monitor the progress of implementation of development plans and measures taken by the DoE;

(d) generate alternative livelihoods if for any protective measures livelihood option of locals is being limited;

(e) encourage the people to protect the Ecologically Critical Area;

(f) observe and assess the activities of Upazila Committee, Union Coordination Committee and Village Conservation Groups and provide directions if necessary;

(g) take necessary legal measures against any person who has committed or attempted to commit any prohibited activities in an Ecologically Critical Area; and

(h) perform all other activities directed by the Government /National Committee.

**8. Meeting of the District Committee:** (1) The District Committee will meet thrice in a year.

(2) The meeting of the District Committee shall be held at as such times, dates and places as may be determined by the Chairman.

(3) Notices, records and proceedings of the Meeting may be circulated through email.

(4) All the meetings of the District Committee shall be presided over by the Chairman of the District Committee.

(5) To constitute a quorum at a meeting of the District Committee, the presence of one thirds of the total members shall be required,

Provided in case of adjourned meeting, quorum is not required.

(6) No act or proceeding of the Committee shall be invalid or be called in question merely on the ground of any vacancy in, or any defect in the constitution of the District Committee.

**9. Upazila Committee:** An Upazila Committee shall be formed, consisting of the following members, in the Upazila where the particular Ecologically Critical Area is situated:

(a) Upazila Nirbahi Officer, Who shall also be the Chairman of the Committee.

(b) Assistant Commissioner (Land)

(c) Upazila Agricultural Extension Officer

(d) Upazila Fisheries Officer

(e) Upazila Livestock Officer

(f) Upazila Social Services Officer

(g) Range Officer, Forest Department, if any

(h) Officer in-charge of the Police Station

(i) Upazila Ansar and VDP officer

(j) Upazila Primary Education Officer

(k) Upazila Cooperative Officer

(l) Upazila Rural Development Officer

(m) Relevant Union Parishad Chairman

(n) President or Secretary of each Cooperative Societies consisting of Village Conservation Groups

(o) Non-Government Organizations, Professional associations if any relating to Environmental Promotion at the relevant Upazila and not more than five representatives from Civil Society Members to be nominated by the Upazila Nirbahi Officer; and

(p) Upazila Level Officer from the Department of Environment, if any, or any officer to be nominated by the Chairman, who shall also be the member secretary of the Committee.

**10. Functions of Upazila Committee:** The functions of Upazila Committee shall be as follows:

(a) give advice and directions to the Union Coordination Committee and Village Conservation Groups regarding any development plan and necessary measures suggested by the Department of Environment and to send recommendations on such issues to the District Committee

(b) send the recommendations to the District Committee on the basis of the proposals given by Union Coordination Committee and Village Conservation Groups regarding activities or processes, which cannot be initiated or continued in an Ecologically Critical Area;

(c) visit the concerned Ecologically Critical Area and monitor the progress of implementation of development plans and measures taken by the DoE;

(d) generate alternative livelihoods if for any protective measures livelihood option of locals is being limited;

(e) encourage the people to protect the Ecologically Critical Area;

(f) observe and assess the activities of Union Coordination Committee and Village Conservation Groups and provide directions if necessary;

(g) take necessary legal measures against any person who has committed or attempted to commit any prohibited activities in an Ecologically Critical Area;

(h) assist to register the Village Conservation Groups and to form cooperative society;

(i) take necessary measures to resolve disputes among different stakeholders dependent on Ecologically Critical Area;

(j) maintain the proper accounts of money received from the Ecology Management Fund; and

(h) perform all other activities directed by the Government /National Committee or District Committee.

**11. Meeting of the Upazila Committee:** (1) The Upazila Committee will meet thrice in a year.

(2) The meeting of the Upazila Committee shall be held at as such times, dates and places as may be determined by the Chairman.

(3) All the meetings of the Upazila Committee shall be presided over by the Chairman of the Upazila Committee.

(5) To constitute a quorum at a meeting of the Upazlia Committee, the presence of one thirds of the total members shall be required,

Provided in case of adjourned meeting, quorum is not required.

(6) No act or proceeding of the Committee shall be invalid or be called in question merely on the ground of any vacancy in, or any defect in the constitution of the Upazila Committee.

**12. Union Coordination Committee: (1)** An Union Coordination Committee shall be formed in the Upazila where the particular Ecologically Critical Area is situated.

(2) Union Coordination Committee shall be formed consisting of the following members:

(a) Chariman, Union Council, Who shall also be the Chairman of the Committee.

(b) Deputy-Assistant Agricultural Officer;

(c) Union Assistant Land Officer;

(d) Union Ansar and VDP officer;

(e) Forester, Forest Department (Officer from nearby office);

(f) Concerned member from Union Council;

(g) President or Secretary of each Cooperative Societies consisting of Village Conservation Groups

(h) Non-Government Organizations, Professional associations if any relating to Environmental Promotion at the relevant Union Council and not more than five representatives from Civil Society Members to be nominated by the Chairman, Union Council; and

(p) Officer nominated by the Department of Environment, if any, or any officer to be nominated by the Chairman, who shall also be the member secretary of the Committee.

**13. Village Conservation Group: (1)** For the purpose of conservation and development of an Ecologically Critical Area, one or more Village Conservation Group may be formed in that area by the locals or people dependent on that area.

(2) Village Conservation Group should be registered as a cooperative society under the Cooperative Societies Act, 2001.

(3) If any Village Conservation Group is registered, before the commencement of these Rules, for the purpose of conservation and development of an Ecologically Critical Area under the Cooperative Societies Act, 2001, that Group shall be treated to be registered under these Rules.

**14. Functions of Village Conservation Group:** The functions of Village Conservation Group shall be as follows:

(a) implementation of development plan and undertaking necessary measures to overcome the ecologically critical situation;

(b) create mass awareness regarding activities or processes mentioned in the relevant notification, which cannot be initiated or continued in an ECA;

(c) encourage the people to protect the Ecologically Critical Area;

(d) inform the proper authority to take necessary legal measures against any person who has committed or attempted to commit any prohibited activities in an Ecologically Critical Area;

(e) preserve the Fund as directed by the Department

(f) maintain the proper accounts of money received from the Fund; and

(g) perform other functions as directed by the National Committee, District Committee or Upazila Committee.

**15. Undertaking Scheme, etc.** For the purpose of conservation and development of an Ecologically Critical Area, a Village Conservation Group can initiate a scheme or project with the permission of Upazila Committee and approval of the Department of Environment.

**16. Maintenance and Management of Infrastructure and facilities: (1)** Any infrastructure or facility in an Ecologically Critical Area or in its vicinity can be vested, by the government or any authority, to the Village Conservation Group for use, maintenance and management.

(2) If any infrastructure or facility is vested to the Village Conservation Group under sub-rule (1), concerned Village Conservation Group shall use, maintain and manage them.

**17. Procedure of declaring an area as Ecologically Critical Area, etc.** (1) Before declaring an area as ECA, draft notification should be published before 60 days in the website of the Ministry of Environment and Forest (MoEF) and Department of Environment and in two Bangla daily newspapers to seek opinions from stakeholders and interested persons.

(2) Opinions obtained under sub-rule (1) has to be presented for consideration in the meeting of National Committee.

(3) In the Gazette notification–declaring an ECA, the followings shall be mentioned:

(a) the name of relevant Mouja[[48]](#footnote-48) and JL number[[49]](#footnote-49);

(b) If any ECA is not the whole Mouja rather included within its one or more Dag[[50]](#footnote-50) number then the concerned name of Mouja, JL number, Dag number

(c) If any ECA is not the whole dag under any Mouja but part of it, then the concerned name of Mouja, JL number, and concerned part of Dag number;

(d) Concerned Upazila and District name

(e) If the ECA or any part of it is beyond land survey then its latitude and longitude.

4. The notification declaring ECA shall be published in the website of different Ministries and the Department of Environment and in the local newspaper of the concerned area, if any, and it shall be circulated affixing in the noticeable places including bazar, educational institutions and religious prayer halls of the concerned area and it’s cope shall be sent to concerned Deputy Commissioner, Upazila Nirbahi Officer, Mayor or Chief Executive Officer of City Corporation or Pourashava, Divisional Forest Officer, Assistant Commissioner (land), Officer in-charge of the Police Station, Officer of the Sub-Registrar, Union Council Chairman and Union land office or in cases, Tahsil office.

**18. Prohibited activities in Ecologically Critical Area.** (1) In order to fulfill the purpose of subsection 4 of Section 5 of the Environment Conservation Act, while issuing Gazette notification on prohibiting the activities or processes, which cannot be initiated or continued in an ecologically critical area, following matters shall be taken into consideration:

(a) existing natural conditions and biodiversity, reserve forest with wildlife habitat and protected areas, rivers, canals, haor-baor, flood-plain, lake, wetland, birds’ habitat, wetland sanctuaries including fisheries sanctuary, swamp forest, mangrove and depletion of coastal areas;

(b) pollution and degradation of environment and ecology;

(c) dependency on natural resources

(d) causes for ecological degradation and possible threats;

(e) causes of being affected the native and migratory birds and animals and preventive measures;

(f) lives-livelihoods, religious and social culture of local inhabitants;

(g) special artistic establishment, ancient monument, archeological site etc.

(h) any other matters relating to abovementioned issues.

(2) The Government shall, in accordance with the standards referred to in rules 12 and 13 of the Environment Conservation Rules, 1997, specify the activities or processes which cannot be continued or initiated in an ECA.

**19.** **Changing class of land in ECA, etc.** Notwithstanding anything contained in any other law, Rules, Regulations, Notifications or legal documents, class of land of any ECA cannot be changed without permission of the Department of Environment.

**20**. **Managemnt of *sayrat mahals*[[51]](#footnote-51) in ECA-** (1) To manage the *sayrat mahals* in an ECA, the Ministry of Land in consultation with Ministry of Environment and Forest and other concerned ministries and departments will issue necessary directions in this behalf.

(2) *Sayrat mahals* shall be managed on the basis of the direction circulated under sub-rule (1).

**21. Management and formulation of development plan of ECA-** After issuing a notification–declaring an ECA, the Department of Environment, as soon as practicable, will issue site specific plan for that particular ECA for the purpose of management and development of that ECA.

**22. Management through coordination of Public-Private Organizations**-(1) To fulfill the purposes of these Rules, any ECA can be conserved and managed by way of public-private joint initiative.

(2) If any registered and non-profit non-government organization interested to participate in the management of any ECA or part thereof, it can apply to the Director General (DG) of Department of Environment.

(3) After having request under sub-rule (2), if the DG, after conducting necessary inquiry, is satisfied that such organizations or institutions are fit for the management of ECA, then he will request through letter to such organisations to submit draft contract including, among others, the following matters:

(a) conservation and development proposal to overcome such ecological critical situation;

(b) The amount and procedure of finance by the organization or institution;

(c) necessary training, health and education services; and

(d) commitment to implement government’s management and development plan.

(4) The Director General or any authorized person by him, will visit the area and will monitor and assess the progress of implementation of management and development plans.

**23. Establishment of Fund, management and Use-(1)** To preserve and develop ECA, there shall be a Fund called Ecology Management Fund.

(2) From the following sources money shall be deposited to the Fund:

(a) money received from the government as donation;

(b) subject to the approval of the government, money obtained from foreign individual or government, any international organization or institution;

(c) money obtained from native individual or authority;

(d) money obtained from profits or interests of deposited money;

(e ) money obtained from any fees under this Rules; and

(f) money obtained from any other source/s.

(3) Money from this Fund shall be deposited in any schedule Bank.

(4) Money from this Fund shall be governed by combined signature of Director General and Director (natural resource management and research) of the Department of Environment.

(5) For the purpose of management and development of ECA, money form this fund-

(a) may be utilized for preparing, processing, implementing, monitoring and assessing the plans and for incentives; and

(b) may be allocated to the Upazila Committees and Village Conservation Groups.

(6) For allocation and disbursement of Fund under sub-rule (5) (b), relevant directives issued by the Government shall be followed.

(7) If any fund is allocated for the conservation and development of ECA before the commencement of these Rules, such fund shall be considered to be allocated under these Rules.

**24. Accounts and Audit-(1)** The Department of Environment shall keep its appropriate account of income-expenditure.

(2) The Comptroller and Auditor General of Bangladesh shall audit accounts of Fund in every year.

(3) Besides the audit mentioned in sub-rule (2), the Department may get its account audited by Chartered Accountants as defined in the Article 2(1)(b) of the Bangladesh Chartered Accountants Order, 1973(P.O. No. 2 of 1973), and the Department may appoint one or more Chartered Accountants in this behalf.

(4) For the purpose of audit of the Accounts under sub-rule (2) (3), the Auditor General or any person empowered by him in this behalf, or Chartered Accountant shall examine all records, documents, annual balance sheet, cash or deposit in the banks.

(5) A copy audit report completed under sub-rule (3) shall be submitted to the Government and Department of Environment.

**25. Evaluation of Village Conservation Group:** Within six months after the completion of every year, the Department of Environment will prepare and publish an annual assessment report on the performance and achievement of Village Conservation Groups and on that basis it may give incentives to those Groups.

**26. Survey, Research, Investigation etc. in ECA-** Whoever wants to do any survey, research or investigation in an ECA on biodiversity, natural or mineral resources has to take permission from Department of Environment**;**

Provided that in case of the investigation, survey or research in ECA for business purpose by profitable organization, prescribed fees should be given.

**27. Offence and Punishment-** Whoever violates any provision of these Rules, that shall be considered as an offence which will be punishable with imprisonment up-to 2 (two) years or with fine up-to BDT 2 (two) lac or with both.

**28. Report-** (1)The Department of Environment shall submit following reports to the Government:

(a) Annual assessment report on ECAs within 90 days of the completion of every year.

(b) An ecological report on ECAs after every five years to the Government.

(2) The Department of Environment shall follow the directions given by the Government on the basis of the reports submitted under sub-rule (1).

**29. Publication of English text.** (1) After the commencement of these Rules, the Government shall, by notification in the official Gazette, publish an authentic English text of these Rules.

(2) In the event of conflict between the Bangla and the English text the Bangla text shall prevail.

By the order of the President

Khursheda Yeasmin

Deputy Secretary

Thereafter, the Awami League government, under the leadership of the Honorable Prime Minister Sheikh Hasina, enacted Bangladesh Biodiversity Act, 2017 which is as follows:

***Bangladesh Biodiversity Act 2017***

***Bangladesh Gazette***

***Additional Issue***

***Published by the Authority***

***Sunday, February 19, 2017***

***Bangladesh Jatiya Sangsad[[52]](#footnote-52)***

***Act No. 02 of 2017***

***Chapter I***

***Preliminary***

*1. Short title and commencement-**(1) This Act may be called Bangladesh Biodiversity Act, 2017.*

*(2) The Act shall come into force from the date fixed by the Government through notification in the official Gazette.*

*2. Definitions.-* *Unless there is anything contrary to the subject or context, in this Act-*

*(1) "Non-resident" means a non-resident as defined in section 2 (42) of the Income Tax Ordinance, 1984 (Ordinance No. XXXVI of 1984);*

*(2) "Union Committee" means the Union Biodiversity Management and Supervision Committee constituted under section 25*

*(3) "Upazila Committee" means the Upazila Biodiversity Management and Supervision Committee constituted under section 19;*

*(4) "Committee" means, as the case may be, a national committee, a technical committee, a city corporation committee, a district committee, an upazila committee, a municipal committee, a union committee, a party, an association or a sub-committee;*

*(5) "Cultivator" means a type of plant which has evolved and survived through cultivation, and whose offspring are being propagated in need of cultivation;*

*(6) "Technical Committee" means the Technical Committee on Biodiversity constituted under section 11;*

*(7) "Research" means the study or systematic research on living resources or the study of an organism or its by-products or the ecosystem;*

*(8) "National Committee" means the National Committee on Biodiversity constituted under section 7;*

*(9) "National Biodiversity Strategy and Action Plan" means the National Biodiversity Strategy and Action Plan formulated under section 31;   
(10) "District Committee" means the District Biodiversity Management and Supervision Committee constituted under section 18;*

*(11) “Biodiversity" means the diversity that exists in the biosphere, which is part of the environment as a whole and includes species diversity, genetic diversity and ecosystem diversity in terrestrial, aquatic or marine environments;*

*(12) "Heritage sites rich in biodiversity" means any area declared as a heritage sites rich in biodiversity under section 32;*

*(13) "Biological resources" means the genetic resources of plants, animals and micro-organisms or parts of them, genetic material and by-products (excluding the originally added product or material) or any such biological component of any ecosystem. Human beings who have actual or potential use or practical value, but will not include human genetic material;*

*(14) "Bio-survey" or "bio-use" means the work of collecting, determining or conducting scientific research on any component, extract, genetic trait or cellular or tissue trait of biological resources, regardless of their species or sub-species;*

*(15) "Sustainable use" means the use of biodiversity components that meet the needs of current and future generations without endangering the long-term sustainability of biodiversity;*

*(18) "Fund" means the Biodiversity Conservation Fund constituted under section 36;*

*(17) "Fair and equitable benefit sharing" means sharing of biodiversity resources in accordance with the provisions of section 30;*

*(18) "Municipal Committee" means the Municipal Biodiversity Management and Supervision Committee constituted under section 22;*

*(19) "Commercial use" means the manufacture or production of various products through the use of livestock for commercial purposes such as: medicine, enzymes used in industries, food flavourings, perfumes and cosmetics for human body, dyes, emulsifiers, oleoresins, etc., as well as collecting extracts or genes from other organisms for the purpose of genetic modification of microorganisms, grains, fish and livestock;*

*(20) "Rule" means rules made under this Act;*

*(21) "Threatened species" means those species or their species or subspecies which are not endangered but whose existence is under threat and which are likely to be extinct in the near future;*

*(22) "Person" means any type of company, union, association, partnership, institution or organization and their representatives;*

*(23) "Land race" means the primitive cultivar, which has been developed from the wild for domestic purposes by farmers and their descendants since ancient times;*

*(24) "City Corporation Committee" means the City Corporation Biodiversity Management and Supervision Committee constituted under section 13; And*

*(25) "Organization" means any kind of company, institution, partnership or association, association, organizsation or body consisting of more than one person or group.*

*3. Overriding effect of the law. Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall prevail.*

***Chapter Two***

*Prohibition, acceptance and rejection of application for undertaking activities related to biodiversity and transfer of results of research*

*4. Prohibition on taking activities related to biodiversity and handing over the researched results. Without the prior approval of the National Committee-*

*(a) Any non-resident citizen of Bangladesh;*

*(b) Any person who is not a citizen of Bangladesh;*

*(c) Any organization which is not registered in Bangladesh under any existing law;*

*(i) Shall not collect or take possession of any biodiversity or biological resources or traditional knowledge; or*

*(ii) Shall not direct or conduct any research on biodiversity or commercial use of biodiversity, bio-survey, bio-use or bio-testing activities; or*

*(iii) Shall not be associated with any activities related to biodiversity or extraction of biodiversity; or*

*(iv) No other person or organization shall transfer to them the results of any research relating to biodiversity or biological resources.*

*5. Publication of research articles. If a research paper is published in accordance with government regulations, it may be presented or disseminated in a seminar or workshop and the results or opinions obtained therein may be taken into consideration by the National Committee while carrying out its functions.*

*6. Restrictions on application for intellectual property rights in biodiversity.*

*(1) No person shall, without the prior approval of the National Committee, apply for Intellectual Property Rights over any object obtained from research conducted on biological resources in Bangladesh or outside Bangladesh.*

*(2) The National Committee may, in the manner prescribed by the rules, impose necessary conditions, such as a benefit sharing fee or royalty or both, ensuring fair share of the financial dividend arising out of the commercial use of the right.*

*7. Approval, rejection, etc. of the application.- (1) In order to obtain the approval of the National Committee on any matter under Sections 4 and 6 of this Act, an application shall be made in the manner prescribed by the rules and with the payment of a fee.*

*(2) The National Committee, upon receipt of any application under sub-section (1), may, in the manner prescribed by rules, verify, select, approve or reject it;*

*However, the National Committee may seek the advice of the Technical Committee or any other government department or body in reaching a decision regarding the application received.*

*(3) The approval or rejection of every application received under this section shall be notified in writing within 90 (ninety) days from the date of its receipt.*

*(4) If any application under this section is rejected, the aggrieved person may apply for review under section 48.*

*(5) The National Committee shall consult with the concerned committee or committees in reaching a decision on any application for the right to use the biodiversity or related resources and related knowledge, etc. under the jurisdiction of the concerned committee.*

*(6) The National Committee may, in the case of approval of any application under this section, impose fees or royalties in the manner prescribed by the rules, under certain conditions and, where applicable.*

*(7) The National Committee, if it approves any application under this section, shall take necessary steps to inform the public about the matter.*

***Chapter Three****Formation and functions of the Committee on Biodiversity*

*8. Formation of National Committee on Biodiversity.-**(1) For the purpose of this Act, a committee called the "National Committee on Biodiversity" shall be constituted comprising the following members, namely: -*

*(a) The Minister, State Minister or Deputy Minister in charge of the Ministry of Environment and Forests, who shall also be its Chairman;  
Provided that, if all the Ministers, State Minister or Deputy Ministers are present, the Minister shall be the President, and where applicable, the other two or one of them shall be the Vice Chair.*

*(b) The Senior Secretary or Secretary of the Ministry of Environment and Forests;*

*(c) One officer not below the rank of Joint Secretary nominated by the Ministry of Home Affairs;*

*(d) One officer not below the rank of Joint Secretary nominated by the Ministry of Disaster Management and Relief;*

*(e) One officer not below the rank of Joint Secretary nominated by the Ministry of Agriculture;*

*(f) One officer not below the rank of Joint Secretary nominated by the Ministry of Fisheries and Livestock;*

*(g) One officer not below the rank of Joint Secretary nominated by the Ministry of Land;*

*(h) One officer not below the rank of Joint Secretary nominated by the Ministry of Commerce;*

*(i) One officer not below the rank of Joint Secretary nominated by the Ministry of Culture;*

*(j) One officer not below the rank of Joint Secretary nominated by the Ministry of Chittagong Hill Tracts;*

*(k) One officer not below the rank of Joint Secretary nominated by the Ministry of Science and Technology;*

*(l) One officer not below the rank of Joint Secretary nominated by the Ministry of Industries;*

*(m) Heads of the following departments or institutions:*

*(i) The Forest Department;*

*(ii) National Institute of Biotechnology;*

*(iii) Bangladesh National Herbarium;*

*(iv) Bangladesh Agricultural Research Council;*

*(v) Science and Industry Research Council;*

*(vi) Bangladesh Fisheries Research Institute;*

*(vii) Livestock Research Institute;*

*(viii) Forest Research Institute;*

*(n) The Director General of the Department of Environment, who shall also be its Member-Secretary;*

*(o) The Ministry of Environment and Forests shall perform the secretarial duties of the Committee.*

*(2) The National Committee may, if it deems necessary and appropriate, co-opt a representative of any person or organization experienced in the field of biodiversity as its member.*

***9. Meeting of the National Committee on Biodiversity, etc.***

*(1) Subject to the provisions of this section, the National Committee may determine the procedure of its meetings.*

*(2) At least two meetings of the National Committee shall be held every year, at the place and time fixed by the Chairman of the said Committee.*

*(3) The Chairman of the National Committee shall preside over all its meetings, but in his absence the Vice-Chair and the members who are at the top among the members present at the meeting may preside over such meeting.*

*(4) The quorum of the meeting shall be formed in the presence of the general majority members.*

*(5) The decision of the meeting shall be taken by majority vote of the members present and in case of equality of votes, the person presiding shall have the power to cast a second or deciding vote.*

*(6) No act or proceeding of the National Committee shall be invalid merely on the ground of vacancy or any defect in the constitution of the Committee and no question may be raised in that regard in a court or elsewhere.*

*(7) The Member-Secretary of the National Committee shall convene a meeting with the prior permission of the Chairman of the said Committee and shall prepare and record the minutes of the meeting.*

*(8) The National Committee may, if necessary, constitute an expert committee consisting of one or more experts in the field of biodiversity to assist it in a particular matter or to invite them to attend its meetings or to seek their views.*

*10. Functions of the National Committee on Biodiversity****.*** *For the purpose of this Act the functions of the National Committee on Biodiversity, shall be as follows, namely:*

*(a) To decide on any application received under this Act;*

*(b) To prepare and preserve the National Biodiversity Register, through the Department of Environment, in conjunction with the registers prepared and maintained by the District Committee;*

*(c) To ensure fair distribution of benefits derived from genetic resources or biological resources;*

*(d) To identify areas important for their biodiversity and to advise the Government to declare the area as a biodiversity rich heritage site;*

*(e) To advise the Government on the management of areas declared as biodiversity rich heritage sites;*

*(f) To advise the Government to make rules for ensuring a fair share of the benefits derived from cow resources or livestock;*

*(g) To advise the Government in preparing guidelines for the management and conservation of biodiversity rich heritage areas;*

*(h) To display due respect to and recognise the traditional knowledge of the local community about biodiversity and to advise the Government to preserve such knowledge;*

*(i) To advise the Government in nominating or assigning responsibilities to appropriate governmental or non-governmental organizations for the conservation of various categories of biodiversity;*

*(j) To advise the Government in exempting any livestock which is generally marketed as a daily necessity from the scope of this Act;*

*(k) To monitor and supervise the functions of the Committees and, if necessary, to provide directions to them; And*

*(l) To perform any other functions necessary for the proper implementation of this Act.*

***11. Formation of the Technical Committee on Biodiversity, etc.***

*(1) For the purpose of this Act, if any matter relating to biodiversity is on the agenda of any ministry or department, that ministry or division shall constitute a committee called "Technical Committee on Biodiversity".*

*(2) The Technical Committee shall consist of the following members, namely: -*

*(a) One Joint-Secretary level officer of the concerned ministry or the division, who shall also be its Chairman;*

*(b) An expert representative on various issues relating to biodiversity, being related to the agenda of the concerned ministry or department;*

*(c) A suitable representative nominated by the Department of Environment;*

*(d) An officer not below the rank of Senior Assistant Secretary of the concerned Ministry or Division, who shall also be its Member-Secretary.*

*(3) The Technical Committee itself shall determine the procedure of its meeting and other incidental matters.*

***12. Functions of the Technical Committee on Biodiversity.*** *The functions of the Technical Committee on Biodiversity shall be as follows, namely:*

*(a) To provide advice and technical assistance to the concerned ministry or department in conservation of biodiversity and in the formulation of related strategies and action plans;*

*(b) To provide necessary advice and technical assistance to the National Committee for the implementation of its functions;*

*(c) If any application is sent by the National Committee, it will evaluate it and send recommendations to that committee; And*

*(d) To perform other duties as directed by the Government or the National Committee.*

*13. Formation of City Corporation Biodiversity Management and Supervision Committee.*

*(1) For the purpose of this Act, each city corporation shall have a committee called "City Corporation Biodiversity Management and Supervision Committee" consisting of the following members, namely:*

*(a) The Mayor of the City Corporation, who shall also be its President;*

*(b) The Chief Executive Officer of the City Corporation;*

*(c) The representative of the Divisional Commissioner;*

*(d) The representative of the Metropolitan Police Commissioner;*

*(e) The Chief Waste Management Officer of the City Corporation;*

*(f) The Chief Urban Development Officer of the City Corporation;*

*(g) The Chief Health Officer of the City Corporation;*

*(h) Divisional Forest Officer;*

*(i) District Fisheries Officer;*

*(j) The Deputy Director, Department of Agricultural Extension;*

*(k) The District Livestock Officer;*

*(l) The Deputy Director, Office of Social Services;*

*(m) The District Cooperative Officer;*

*(n) A representative of a non-governmental organization (NGO) with activities in environmental development nominated by the mayor; and*

*(o) The concerned director or senior officer of the Department of Environment, who shall also be its member-secretary.*

*(2) The City Corporation Committee may, if it deems necessary and appropriate, co-opt a representative of any person or organization interested in biodiversity conservation activities as its member.*

***14. Meeting of City Corporation Biodiversity Management and Supervision Committee, etc.***

*(1) Subject to the provisions of this section, the City Corporation Committee may determine the procedure of its meetings.*

*(2) Every year at least two meetings of the City Corporation Committee shall be held at the place and time fixed by the Chairman of the said Committee.*

*(3) The Chairman of the City Corporation Committee shall preside over all its meetings, but in his absence any other newly appointed Committee nominated by him may preside over the meeting.*

*(4) The Member-Secretary of the City Corporation Committee shall convene its meeting with the prior permission of the Chairman of the said Committee and shall prepare and preserve the minutes of the meeting.*

*(5) The City Corporation Committee may, if necessary, invite a representative of any person or organization to attend its meetings to assist it in any particular matter or to seek the opinion of any person or organization.*

*(6) The quorum of the meeting shall be formed in the presence of the general majority members.*

*(7) The decision of the meeting shall be taken by a majority vote of the members present and in case of equality of votes, the person presiding shall have the power to cast a second or casting vote.*

*15. Duties and Functions of City Corporation Biodiversity Management and Supervision Committee****.*** *The responsibilities and functions of the City Corporation Committee shall be as follows, namely:*

*(a) To prepare and maintain a register of biodiversity in the City Corporation area;*

*(b) To assist the Government in the implementation of the National Biodiversity Strategy and Action Plan;*

*(c) To create awareness among the local people about the need for conservation of biodiversity by the City Corporation;*

*(d) To send recommendations to the National Committee if it appears appropriate to take action on any other matter related to the National Biodiversity Strategy and Action Plan for the conservation of biodiversity in the City Corporation area;*

*(e) To inspect the biodiversity areas of the City Corporation area from time to time, on the spot and to monitor the implementation and progress of the National Strategy and Action Plan;*

*(f) To oversee the activities of the Biodiversity Management Teams or Associations under the City Corporation, including the Ward Biodiversity Management Committee, and, if necessary, to provide them with guidance;*

*(g) To keep a watchful eye on any activity that may harm the biodiversity of the City Corporation and to take appropriate administrative and legal action to stop it immediately if anyone does or takes the initiative to do so; and*

*(h) To carry out any other functions as directed by the Government and the National Committee.*

*16. Formation of District Biodiversity Management and Supervision Committee.*

*(1) For the purpose of this Act, a committee called "District Biodiversity Management and Supervision Committee" shall be constituted in each district with the following members, namely:*

*(a) The Deputy Commissioner, who shall also be its President;*

*(b) The Superintendent of Police;*

*(c) The senior officer of the forest department of the district;*

*(d) The District Fisheries Officer;*

*(e) The District Livestock Officer;*

*(f) The District Relief and Rehabilitation Officer;*

*(g) The Deputy Director, District Social Services Office;*

*(h) The District Cooperative Officer;*

*(i) The Deputy Director, District Agricultural Extension Department;*

*(j) An educationist or social worker nominated by the Deputy Commissioner;*

*(k) A representative of the farming and fishing community nominated by the Deputy Commissioner;*

*(l) A representative of a non-governmental organization (NGO) which has activities in environmental development nominated by the Deputy Commissioner;*

*(m) A senior officer of the Department of Environment working in the district, who shall also be its member-secretary.*

*(2) The District Committee may, if it deems it necessary and appropriate, co-opt a representative of any person or organization interested in biodiversity conservation activities as its member.*

*(3) Members of Parliament of the District shall be advisors to the District committee.*

*17. District Biodiversity Management and Supervision Committee Meeting, etc.*

*(1) Subject to the provisions of this section, the District Committee may determine the procedure of its meetings.*

*(2) At least three meetings of the District Committee shall be held every year, which shall be held at the place and time fixed by the Chairman of the said Committee.*

*(3) The chairman of the District committee shall preside at all its meetings, but in his absence any other member of the said committee nominated by him may preside.*

*(4) The member-secretary of the District committee shall convene its meeting with the prior permission of the chairman of the committee and shall prepare and save the minutes of the meeting.*

*(5) The District Committee may, if necessary, invite a representative of any person or organization to attend its meetings or to seek the opinion of any person or organization to assist it in any particular matter.*

*(6) The quorum of the meeting shall be in the presence of the general majority members.*

*(7) The decision of the meeting shall be taken by a majority vote of the members present and in case of equality of votes, the person presiding shall have the power to cast a second or casting vote.*

***18. Duties and functions of the District Biodiversity Management and Supervision Committee.*** *The responsibilities and functions of the District Biodiversity Management and Supervision Committee shall be as follows, namely: -*

*(a) To prepare and maintain the Biodiversity Register of the district, consisting of the Register of Upazila Biodiversity prepared and maintained by the Upazila Committee;*

*(b) To assist the Government in the implementation of the National Biodiversity Strategy and Action Plan;*

*(c) To create awareness among the local people about the need to conserve the biodiversity of the district;*

*(d) To send recommendations to the National Committee if it appears appropriate to take action on any other matter related to the National Biodiversity Strategy and Action Plan for the conservation of biodiversity in the district;*

*(e) To inspect the biodiversity areas of the district from time to time, on the spot and monitor the implementation and progress of the national strategy and action plan;*

*(f) To supervise the activities of the Biodiversity Management Teams or Associations under the District, including the Upazila, Municipality and Union Biodiversity Management Committees, and, if necessary, to provide guidance to them;*

*(g) To keep a watchful eye on any activity which is detrimental to the biodiversity of the district and to take appropriate administrative and legal action to stop it immediately if anyone does or takes the initiative to do so; And*

*(h) To carry out other functions as directed by the Government and the National Committee.*

***19. Formation of Upazila Biodiversity Management and Supervision Committee.***

*(1) For the purpose of this Act, a committee called "Upazila Biodiversity Management and Supervision Committee" consisting of the following members shall be constituted in each Upazila, namely:*

*(a) The Upazila Nirbahi Officer, who shall also be its Chairman;*

*(b) The Assistant Commissioner (Land);*

*(c) Upazila Agriculture Officer;*

*(d) Upazila Fisheries Officer;*

*(e) Upazila Livestock Officer;*

*(f) Upazila Social Service Officer;*

*(g) Range Officer (Forest), if any;*

*(h) The officers in charge of the police station under the upazila;*

*(i) Upazila Ansar and VDP officers;*

*(j) Upazila Secondary Education Officer;*

*(k) Upazila Primary Education Officer;*

*(l) Upazila Cooperative Officer;*

*(m) Upazila Rural Development Officer;*

*(n) Upazila Project Implementation Officer;*

*(o) A councilor nominated by the mayor of the municipality under the upazila;*

*(p) The chairmen of the Union Parishads under the Upazila;*

*(q) A representative nominated by the chairman of the upazila;*

*(r) One Kariya representative of the local farming and fishing community nominated by the Upazila Nirbahi Officer;*

*(s) Nominated by the Upazila Nirbahi Officer, a representative of a non-governmental organization (NGO) with activities in environmental development;*

*(t) An officer of the Department of Environment working in the Upazila or, in his absence, any officer nominated by the Upazila Nirbahi Officer, who shall also be its member-secretary.*

*(2) The Upazila Committee may, if it deems necessary and appropriate, co-opt any person or organization interested in biodiversity conservation activities as its member.*

*(3) The Member of Parliament shall be an advisor to the Upazila Committee.*

*20. Meeting of Upazila Biodiversity Management and Supervision Committee, etc. (1) Subject to the provisions of this section, the Upazila Committee may determine the procedure of its meetings.*

*(2) At least three meetings of the Upazila Committee shall be held every year, which shall be held at the place and time fixed by the President of the said Committee.*

*(3) The Chairman of the upazila committee shall preside over all its meetings, but in his absence any other member of the said committee nominated by him may preside.*

*(4) The Member-Secretary of the Upazila Committee shall convene its meeting with the prior permission of the President of the said Committee and shall prepare and preserve the minutes of the meeting.*

*(5) The Upazila Committee may, if necessary, invite a representative of any person or organization to assist in its meeting or to seek the opinion of any person or organization for assistance in any particular matter.*

*(6) The quorum of the meeting shall be in the presence of the general majority members.*

*(7) The decision of the meeting shall be taken by a majority vote of the members present and in case of equality of votes, the person presiding shall have the power to cast a second or casting vote.*

*21. Duties and functions of Upazila Biodiversity Management and Supervision Committee.**The responsibilities and functions of the Upazila Biodiversity Management and Supervision Committee shall be as follows, namely:*

*(a) To prepare and preserve the Biodiversity Register of the Upazila, consisting of the Biodiversity Register of the Union and the Municipality prepared and maintained by the Union Committee and the Municipal Committee;*

*(b) To assist the Government in the implementation of the National Biodiversity Strategy and Action Plan;*

*(c) To create awareness among the local people about the need to conserve the biodiversity of the upazila;*

*(d) To inspect the biodiversity areas of the upazila from time to time, on the spot and to monitor the implementation and progress of the national strategy and action plan;*

*(e) To send recommendations to the District Committee in this regard if it appears appropriate to take any other action related to the National Biodiversity Strategy and Action Plan for the conservation of the biodiversity of the Upazila;*

*(f) To inform the people of the area concerned about the benefits of the National Biodiversity Strategy and Action Plan and to motivate them to assist in the implementation of such plans;*

*(g) To supervise and monitor the activities of the municipality and the Union Biodiversity Management Committee and other biodiversity management groups or associations in the upazila, if any, and, if necessary, to give them direction;*

*(h) To keep a watchful eye on any activity that may harm the biodiversity of the upazila and to take appropriate administrative and legal action to stop it immediately if anyone does or takes the initiative to do so; And*

*(i) To perform any other functions as directed by the Government, National Committee and District Committee from time to time.*

*22. Formation of Biodiversity Management and Supervision Committee of the Municipality.*

*(1) For the purpose of this Act, a committee shall be constituted in each municipality consisting of the following members, namely, “Municipal Biodiversity Management and Supervision Committee,” namely:*

*(a) The mayor of the municipality, who shall also be its Chairman;*

*(b) Upazila Fisheries Officer;*

*(c) Upazila Livestock Officer;*

*(d) A representative of the Range Officer (Forest), if any;*

*(e) A representative of the officer-in-charge of the police station under the municipality;*

*(f) Upazila Ansar and VDP officers;*

*(g) Upazila Secondary Education Officer;*

*(h) Upazila Primary Education Officer;*

*(i) Upazila Cooperative Officer;*

*(j) Municipal councilors;*

*(k) An imam[[53]](#footnote-53) and a priest or any other religious leader nominated by the mayor of the municipality;*

*(l) A local social worker nominated by the Upazila Chairman;*

*(m) A representative of a non-governmental organization (NGO) nominated by the mayor of the municipality who has activities in environmental development;*

*(n) The chief executive officer or secretary of the municipality, who shall also be its member-secretary.*

*(2) The Municipal Committee may, if it deems it necessary and appropriate, co-opt a representative of any person or organization interested in biodiversity conservation activities as its member.*

*(3) The Member of Parliament shall be an advisor to the Municipality Committee.*

***23. Meeting of Municipal Biodiversity Management and Supervision Committee, etc.***

*(1) Subject to the provisions of this section, the Municipal Committee may determine the procedure of its meetings.*

*(2) At least three meetings of the Municipal Committee shall be held every year, which shall be held at the place and time fixed by the Chairman of the said Committee.*

*(3) The chairman of the municipality committee shall preside at all its meetings, but in his absence any other member of the said committee nominated by him may preside at the meeting.*

*(4) The Member-Secretary of the Municipality Committee shall convene a meeting with the prior approval of the Chairman of the said Committee and shall prepare and preserve the minutes of the meeting.*

*(5) The Municipal Committee may, if necessary, invite a person to attend its meetings to assist it in a particular matter or to seek the opinion of any person or organization.*

*(6) The quorum of the meeting shall be in the presence of the general majority members.*

*(7) The decision of the meeting shall be taken by a majority vote of the members present and in case of equality of votes, the person presiding shall have the power to cast a second or casting vote.*

*24. Functions of the Municipality Biodiversity Management and Supervision Committee. The responsibilities and functions of the Municipal Biodiversity Management and Supervision Committee shall be as follows, namely: -*

*(a) To prepare and maintain of biodiversity registers in municipal areas;*

*(b) To encourage the local people on the following issues, namely: -*

*(i) Conservation and sustainable use of biodiversity;*

*(ii) Conservation of ecosystems, cultivators and land races; And*

*(iii) Conservation of domestic stocks and breeds of animals, native fish species and microorganisms; and*

*(iv) Knowledge documentation of biodiversity;*

*(c) To create awareness among the locals about the consequences of biodiversity and environmental degradation in the municipal area;*

*(d) To implement of national biodiversity strategies and action plans;*

*(e) To inform the locals about the benefits of the National Biodiversity Strategy and Action Plan for overcoming the biodiversity crisis and to motivate them to assist in the implementation of the plan;*

*(f) To send recommendations to the Upazila Committee if it appears appropriate to take any other action for the conservation of biodiversity in the area concerned besides the National Biodiversity Strategy and Action Plan;*

*(g) To create public awareness about the conservation of biodiversity in municipal areas which are generally do's and don'ts;*

*(h) To conduct periodic, on-spot inspections of the biodiversity areas under the municipality and monitoring the progress of implementation of the National Biodiversity Strategy and Action Plan;*

*(i) To formulate alternative means of livelihood for the people of the area whose livelihood has been blocked due to prohibition of any activity in the municipal area due to conservation of biodiversity;*

*(j) To supervise the functions of the party or association constituted under section 26 and, if necessary, to provide directions where necessary;*

*(k) To keep a watchful eye on any activity that may harm the environment in the municipal area and to take appropriate administrative and legal action to stop it immediately if anyone does or takes the initiative to do so; And*

*(l) Other functions as directed by the Government, National Committee, District Committee and Upazila Committee.*

*25. Union Biodiversity Management Committee.*

*(1) For the purpose of this Act, each union shall have a committee called "Union Biodiversity Management Committee" consisting of the following members, namely:*

*(a) The Chairman of the Union Parishad, who shall also be its Chairman;*

*(b) The Deputy Assistant Agricultural Officer;*

*(c) Union Land Assistant Officer;*

*(d) A Union Ansar and VDP team leader nominated by the Upazila Ansar and VDP officer;*

*(e) A representative of the Range Officer (Forest), if any;*

*(f) Members of the Union Parishad;*

*(g) A Veterinary Field Assistant nominated by the Upazila Livestock Officer, if any;*

*(h) A teacher of a school, madrasa or college, nominated by the Chairman of the Union Parishad, interested in environmental development activities;*

*(i) An Imam and a priest or any other religious leader nominated by the Chairman of the Union Parishad;*

*(j) A representative of the local farming and fishing community nominated by the Chairman of the Union Parishad;*

*(k) A representative of a non-governmental organization (NGO) nominated by the Chairman of the Union Parishad for activities in environmental development;*

*(l) The Secretary of the Union Parishad, who shall also be its Member-Secretary.*

*(2) The Union Committee may, if it deems it necessary and appropriate, co-opt a representative of any person or organization interested in biodiversity conservation activities as its member.*

*26. Meeting of the Union Biodiversity Management Committee, etc.*

*(1) Subject to the provisions of this section, the Union Committee may determine the procedure of its meetings.*

*(2) At least three meetings of the Union Committee shall be held every year, which shall be held at the place and time fixed by the Chairman of the said Committee.*

*(3) The Chairman of the Union Committee shall preside over all its meetings, but in his absence any other member of the said Committee nominated by him may preside at the meetings.*

*(4) The Member-Secretary of the Union Committee shall convene its meeting with the prior approval of the Chairman of the said Committee and shall prepare and preserve the minutes of the meeting.*

*(5) The Union Committee may, if necessary, invite a person to participate in its meeting to assist it in a particular matter or to seek the opinion of any person or organization.*

*(6) The quorum of the meeting shall be formed in the presence of the general majority members.*

*(7) The decision of the meeting shall be taken by a majority vote of the members present and in case of equality of votes, the person presiding shall have the power to cast a second or casting vote.*

***27. Functions of Union Biodiversity Management Committee.*** *The responsibilities and functions of the Union Biodiversity Management Committee shall be as follows, namely:*

*(a) To prepare and maintain the register of biodiversity of the Union;*

*(b) To encourage the local public on the following issues, namely:*

*(i) Conservation and sustainable use of biodiversity;*

*(ii) Conservation of ecosystems, cultivators and land races;*

*(iii) Conservation of domestic stocks and breeds of animals, native fish species and microorganisms; And*

*(iv) Knowledge documentation of biodiversity;*

*(c) To create awareness among the locals about the consequences of biodiversity and environmental degradation in the Union;*

*(d) To implement of national biodiversity strategy and action plan and monitoring of its progress;*

*(e) To inform the locals about the benefits of the National Biodiversity Strategy and Action Plan for overcoming the biodiversity crisis and to motivate them to assist in the implementation of the plan;*

*(f) To send recommendations to the Upazila Committee if it appears appropriate to take any other action for the conservation of biodiversity in the area concerned besides the National Biodiversity Strategy and Action Plan;*

*(g) To create public awareness in the Union on issues which are not generally to be done and not to be done in the conservation of biodiversity;*

*(h) To inspect the biodiversity-rich areas under the Union Territory from time to time;*

*(i) To formulate alternative means of livelihood for the people of the area whose livelihood has been blocked due to prohibition of any activity in the Union due to conservation of biodiversity;*

*(j) To observe the functions of the party or association constituted under section 26, if any, and to give directions where necessary;*

*(k) To keep a watchful eye on any work which may harm the environment in the Union Territory and to take appropriate administrative and legal action to stop it immediately if anyone does or takes the initiative to do so; And*

*(l) To perform any other functions as directed by the Government, National Committee, District Committee and Upazila Committee.*

***Chapter Four***

***Formation of biodiversity management teams, associations and sub-committees, etc.***

*28. Formation of biodiversity management team or association at grassroots level, etc.*

*(1) City Corporation Committees, Municipal Committees and Union Committees may, for the purpose of conserving biodiversity at the grassroots level, form village, region, occupation or community based biodiversity management teams or societies consisting of persons capable and interested in the development of the environment.*

*(2) The activities of the party or association constituted under sub-section (1) may be conducted as a co-operative society and for that purpose it shall be registered as a co-operative society in accordance with the provisions of the Co-operative Societies Act, 2001 (Act No. 46 of 2001).*

*(3) In order to improve the life and livelihood of the members of the party or association formed under sub-section (1), small capital grant may be allocated from the fund in their favor and the National Committee shall, from time to time, give necessary instructions as to how the grant money shall be used and managed. Will provide.*

*(4) A society constituted under sub-section (1) may undertake projects or programs for the economic, education, health, social and cultural development of its members and can re-invest part or all of the profits earned from such projects or programs at the end of the year or redistribute it among themselves.*

*(5) The composition of the party or association constituted under sub-section (1) and the matters relating thereto shall be determined by rules.*

*(6) The functions of the party or association constituted under sub-section (1) shall be as follows, namely:*

*(a) To prepare and maintain the biodiversity register of the village or region concerned;*

*(b) To create awareness among the locals about the consequences of biodiversity and environmental degradation in the respective villages or areas;*

*(c) To inform the people of the villages or regions concerned about the benefits of the National Biodiversity Strategy and Action Plan for overcoming the biodiversity crisis and to motivate the concerned authorities to assist in the implementation of such plans;*

*(d) To send recommendations to the City Corporation Committee or the Municipal Committee or the Union Committee, as the case may be, if it appears appropriate to take any other action for the conservation of the biodiversity of the area concerned in addition to the National Biodiversity Strategy and Action Plan;*

*(e) To create public awareness on the issues of conservation of biodiversity that are not generally to be done by the people of the villages or regions concerned;*

*(f) To monitor the progress of the implementation of the National Biodiversity Strategy and Action Plan in the respective areas, from time to time, on the spot;*

*(g) To formulate alternative means of livelihood for the people of the area whose livelihood has been blocked due to prohibition of any activity in the villages or areas concerned with the conservation of biodiversity;*

*(h) To keep a watchful eye on any work that may harm the environment in the area and to take appropriate administrative and legal action to stop it immediately if anyone does or takes the initiative to do so; And*

*(i) To perform any other functions as directed by the Government, National Committee, City Corporation Committee, District Committee, Upazila Committee and Municipality Committee or Union Committee.*

*29. Formation of sub-committee, etc****.*** *The City Corporation Committee, District Committee, Upazila Committee, Union Committee and Municipal Committee may form sub-committees and determine its modus operandi to assist it in decision-making, implementation and related matters.*

*Chapter Five*

*Fair distribution of genetic or biological resources*

***30. Distribution of a fair share of the profits received from the genetic or biological resources.***

*(1) The National Committee shall, in approving any application under this Act, ensure the fair and equitable distribution of the benefits derived from the following genetic or biological resources by following all or any of the following procedures, namely: -*

*(a) Ensuring equitable sharing of benefits arising out of the use of accessed biological resources, their by-products, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with prior-informed consent (PIC) and mutually agreed terms (MAT) and conditions between the person applying for such approval, local bodies concerned and the benefit claimers;*

*(b) Granting the ownership of IPRs to such benefit claimers where benefit claimers are identified; or granting the joint ownership of IPRs where benefit claimers are not identified.*

*(c) Ensuring transfer of technology relating to the development of biological diversity in favour of benefit claimers of local communities or people;*

*(d) Ensuring the location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;*

*(e) Engaging Bangladeshi scientists or their organizations, benefit claimers and the local communities with research and development in biological resources, bio-survey or bio-utilization; or*

*(f) To provide monetary compenzation and non-monetary benefits to the conservator of biodiversity, holder and inventor of biological knowledge as the National Committee may deem fit.*

*(2) In the case of distribution of a fair share of the benefits, the National Committee may issue an order for recovery of any money from the person or authority applying.*

*(3) The Government, in consultation with the National Committee, may, if necessary, make rules for the purpose of this section.*

*Chapter Six*

*Formulation of biodiversity strategies and action plans, declaration of heritage sites and prohibition of activities that adversely affect biodiversity, etc.*

***31. Formulation of National Action Strategy and Action Plan on Biodiversity, etc.****- (1) To ensure conservation, development and sustainable use of biodiversity, the Government shall formulate and update the National Biodiversity Strategy and Action Plan from time to time.*

*(2) The National Biodiversity Strategy and Action Plan prepared under sub-section (1) shall include, among others, the following matters, namely: -*

*(a) Identification and monitoring of areas rich in biodiversity resources;*

*(b) Guidelines and regulations for in-situ and ex-situ conservation measures; And*

*(c) Research and educational awareness activities on biodiversity.*

*(3) In any area rich in biodiversity, if the Government has reasonable and precise evidence to the effect that the extraction, misuse or neglect of such resources is leading to depletion or extinction, the Government may direct the person or organization concerned to prevent such depletion or extinction.*

*(4) The Government shall take steps to coordinate its plans, activities and policies for the conservation, development and sustainable use of the resources.*

*(5) If there is a possibility of loss of biodiversity in an area due to any development project, in order to reduce or avoid such loss, the project adopting authority shall conduct environmental impact assessment or advance investigation by involving the people of that area.*

*(6) The Government shall take initiatives to recognize and preserve the conventional knowledge of the local community about biodiversity.*

*Explanation. In this section:*

*(a) "In-Situ" conservation means the conservation of the ecosystem and natural habitat and the conservation of the species living in the natural environment, so that the species may acquire the ability to survive and in the case of domesticated or cultivated species, to preserve or recover the environment in which the animal has acquired its distinctive features; And*

*(b) "Ex-Situ" conservation means the conservation of biodiversity resources or parts of them away from their natural habitat.*

***32. Declaration of heritage sites rich in biodiversity, etc. 32.-*** *(1) The Government may, considering the traditional importance of biodiversity of any place or area, declare such a place or area as a heritage site rich in biodiversity by notification in the Official Gazette.*

*(2) Prior to the declaration under sub-section (1), discussions shall be held with the local people and authorities and coordination with the concerned ministry or department.*

*(3) If any person or institution in any place or area is financially damaged due to any declaration made under sub-section (1), the Government may undertake a special project or scheme for the purpose of providing appropriate compensation or rehabilitation to them.*

*(4) The Government may formulate guidelines for the management, conservation and development of traditional places rich in biodiversity.*

***33. Prohibition of carrying out activities that adversely affect endangered animals or biological resources etc.****- (1) The Government may, by notification in the Official Gazette, declare any biological resources of the country or any of its species as endangered species without violating the provisions of any other existing law.*

*(2) The Government may take steps to stop the procurement of endangered species declared under sub-section (1) and to preserve them properly.*

*(3) No person shall take any such action that -*

*(a) Create or will create adverse effect on endangered species;*

*(b) May adversely affect the ecological characteristics of the endangered or endangered ecological community; Or*

*(c) May adversely affect the environment and ecological features of the areas declared as wetlands in accordance with the Ramsar Convention.*

*(4) For the purpose of sub-section (3), the Government shall, by rules, prescribe a list of acts which may adversely affect it.*

*Explanation. In this section:*

*(a) "Environmental features" means the ecological character mentioned in the Ramsar Convention; And*

*(b) "Ramsar Convention" means the Convention on Wetlands of International Importance adopted in Ramsar, Iran in 1981, especially as Waterfowl Habitat.*

***34. Assigning responsibilities to government and non-government organizations for the protection of biodiversity related resources.***

*(1) The Government, in consultation with the National Committee, may, by notification in the Official Gazette, assign responsibilities to various Governmental and Non-Governmental Organizations for the conservation of various classes of biodiversity resources.*

*(2) Institutions in charge under sub-section (1) shall collect biodiversity resources and preserve the sample species in safe custody.*

*(3) In case of discovery of any new species of any livestock, the concerned discoverer shall inform the responsible authority under sub-section (1) and the concerned committee and send a sample of the discovered species to the responsible body for conservation.*

***35. Exemption of certain biological resource from the scope of this Act.*** *Notwithstanding anything to the contrary in the other sections of this Act, the Government, in consultation with the National Committee, may, by notification in the Official Gazette, exempt from the scope of this Act any such commodity which is normally marketed as a necessity.*

***Chapter Seven***

***Fundraising, accounting and auditing and annual reporting***

***36. Formation of Biodiversity Conservation Fund, etc.***

*(1) The Government shall set up a fund called "Biodiversity Conservation Fund" to ensure the conservation of biodiversity and its sustainable use.*

*(2) Funds received from the following sources shall be deposited in the Biodiversity Conservation Fund, namely: -*

*(a) Grants made by the Government;*

*(b) Money received from any other lawful source with the prior approval of the Government.*

*(3) The funds shall be deposited in a state-owned bank in the name of the National Committee and shall be managed in the manner prescribed by rules:*

*Provided, however, that until the rules are enacted, the funds may be managed in accordance with orders or directions given by the Government.*

*(4) The funds may be spent for the following purposes, namely:*

*(a) Management and conservation of heritage sites rich in biodiversity resources;*

*(b) Compensating or rehabilitating persons or persons who have suffered financially due to the declaration of a biodiversity rich heritage site;*

*(c) Expenditure on other biodiversity conservation with the approval of the Government.*

*(5) The National Committee may, in the light of the demands of the Committees on Biodiversity, allocate necessary funds from the funds to the Committee concerned.*

*(6) The National Committee may, as the case may be, on the recommendation of the City Corporation Committee or the Municipal Committee or the Union Committee, with the prior approval of the Government, make small capital grants from the fund to the party or association constituted under section 26.*

*37. Accounting and auditing. (1) The National Committee shall properly prepare the accounts of the Fund and prepare the annual statement of accounts.*

*(2) The Auditor General and the Comptroller of Bangladesh, hereinafter referred to as the "Auditor General", shall audit the accounts of the fund every year and shall submit a copy of the audit report to the Government and the Committee.*

*(3) In addition to the audit referred to in sub-section (2), audit of funds by "Chartered Accountant" as defined in Article 2 (1) (b) of the Bangladesh Chartered Accountants Order, 1973 (PO No. 2 of 1973). The committee may appoint one or more chartered accountants for this purpose.*

*(4) A chartered accountant appointed under sub-section (3) shall be entitled to a reward fixed by the Government.*

*(5) For the purpose of auditing the accounts as provided in sub-section (2) or (3), the Auditor General or any person authorized by him for that purpose or, as the case may be, the chartered accountant, may examine all the records, documents, cash or money kept in the bank, Bail, treasury and other assets and interrogate any member of the committee or any officer or employee concerned .*

*38. Annual Report.**The National Committee shall, by December of each year, prepare an annual report containing the full details of the activities carried out by the said committee in the previous financial year and shall submit a copy thereof to the Government.*

*Chapter VIII*

***Offence, investigation, trial and punishment***

***39. Penalty for undertaking activities related to biodiversity and transfer of research results without prior approval.*** *If any person or organization referred to in section 4, without the prior approval of the National Committee, acquires indigenous knowledge of any biodiversity or biodiversity available in Bangladesh or conducts its commercial use, bio-survey or bio-testing activities, If he engages in activities or transfers or delivers researched results from the Biodiversity or biological resources of Bangladesh, it will be an offense under this Act and he shall be punished with imprisonment for a term not exceeding 5 (five) years or a fine not exceeding 10 lac taka or with both; However, if the amount of damage to biodiversity exceeds 10 (ten) lac taka, the amount of fine will be increased accordingly.*

***40. Penalty for application for intellectual property rights in biodiversity without approval.*** *If any person, without the prior approval of the National Committee, applies for Intellectual Property Rights in Bangladesh or outside Bangladesh, he shall be guilty of an offense under this Act and shall be liable for a term not exceeding 5 (five) years imprisonment or fine not exceeding 10 (ten) lac taka or both.*

***41. Penalty for committing acts which adversely affects endangered animals or livestock.*** *If a person undertakes any such activities, which:*

*(a) May or may not adversely affect endangered species;*

*(b) May adversely affect the ecological characteristics of the endangered or endangered ecological community; Or*

*(c) Wetlands may adversely affect the environment and ecological features of the area declared in accordance with the Ramsar Convention,*

*In that case, such act under this Act shall be an offense and he shall be punished with imprisonment for a term not exceeding 5 (five) years or with a fine not exceeding 10 (ten) lac taka or with both.*

***42. Penalty for violating or disobeying any instruction or order given by the government or any committee.*** *If any person violates or disobeys any instruction or order given by the Government or any committee for which no separate punishment is provided in this Act, then violation of such instruction or order shall be an offense and he shall be punished with a fine not exceeding 1 (one) lac taka. And for the second or subsequent offense of the same offense he shall be punished with a fine not exceeding 2 (two) lac taka.*

***43. Cognizance of offence, bail-ability and Compoundable aspects of offence.*** *The offences committed under section 42 shall be non-cognizable, bailable and compoundable subject to compensation and the offences committed under other sections other than that section shall be cognizable, non-bailable and non-compoundable.*

*44. Penalty for filing false or vexatious cases. In any case filed under this Act, if the court acquits the accused at the hearing and trial and the court clearly states in its judgment that the allegations made against the accused are false, baseless and vexatious, then the plaintiff will be deemed to have committed an offence and  
for the offence he shall be punished with imprisonment for a term not exceeding 1 (one) year or with fine not exceeding 1 (one) lac taka or with both.*

*45. Trial of offence, etc.**No court shall take cognizance of any offence committed under this Act, unless-*

*(a) The Government or any officer authorized by the Government for this purpose file the case; or*

*(b) A benefit claimant files the case:*

*Provided, however, that the person shall, within 30 (thirty) days of the commission of the offense, give notice to the Government or the authorized officer for the purpose of filing a case in respect of the offence concerned.*

*46. ​​Application of Criminal Procedure Code (Act No. V of 1898). Subject to the other provisions of this Act, the Code of Criminal Procedure, 1898 (Act No. V of 1898) shall be applicable to all investigations, trials, appeals and matters ancillary therewith.*

*47. Offence committed by the institution. If any offence committed under this Act or any rule of it is violated by any institution which has direct involvement with that offence or violation, then it is considered that every director, executive, manager, secretary or any other officer or agent of that institution has violated the provision, unless he proves that the violation was beyond his knowledge or that he exercised due diligence to prevent such violation.*

*Explanation. Under this section, ‘****’Director’****’ means any of its partner and member of board of directors.*

*Chapter IX*

*Miscellaneous*

*46. Review*

*(1) If any person is offended by any decision made by the National Committee under this Act, he may, within not more than 30 (thirty) days from the date of notification of such decision, apply to the said Committee for review of the decision in the manner prescribed by rules.*

*(2) An application submitted under this section shall be disposed of within 30 (thirty) days from the date of its submission, in the manner prescribed by rules.*

*(3) The decision given by the National Committee on the application for review under this section shall be deemed as final.*

*49. Power to make rules. The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.*

*50. Removal of difficulties.**In the event of any ambiguity or difficulty in the execution of any provision of this Act, the Government may, by notification in the Official Gazette, remove such ambiguity or difficulty, subject to compatibility with the provisions of this Act.*

*51. Publication of translated text in English.*

*(1) After this Act comes into effect, the Government, by Government gazette notification, may publish an Authentic English Text translated from original Bengali text of this Act.*

*(2) In case of any dispute between English and Bangla texts, Bangla text shall prevail.*

***Dr. Md. Abdur Rab Howlader***

*Senior Secretary.*

Thereafter, the complete and partial Mouza of the Ecologically Critical Areas of Sundarbans was published which is as follows:

***Bangladesh Gazette  
Additional Issue  
Published by the Authority  
Tuesday, June 06, 2017  
Government of the People’s Republic of Bangladesh  
Ministry of Environment and Forest  
Environment Branch- 2  
Notification  
Date 10 Jaishtha, 1424 Bengali year/ 24 May, 2017***

***No. 22.00.0000.073.13.2014.136-*** *Under the power conferred by section 5(1) of the Bangladesh Environment Conservation Act 1995 enacted with the objective of conservation of the natural environment, improvement of the quality of environment, and control and reduction of environmental pollution and sustainable management of environment, 10 kilometers surrounding the reserve forest of Sundarbans was declared as Ecologically Critical Area (ECA) in 1999. Subsequently, a notification incorporating all the names of Mouzas[[54]](#footnote-54) within the Ecologically Critical Area was published on 13 January, 2015. The notification No. 22.00.0000.073.13.2014/13 of 13 January, 2015 has been substituted with the present notification. The complete and partial Mouzas within the Ecologically Critical Areas of Sundarbans have been incorporated in this amended notification. If the name of any Mouza completely or partially falling within the 10 kilometer of surrounding areas of the Sundarban reserve forest included in the ECA is left out, they shall be considered as a part of the Ecologically Critical Area. The following activities shall be prohibited in the listed Mouzas:*

1. *Extraction of natural plants and forests;*
2. *All kinds of hunting and killing of wild animals;*
3. *Catching and collection of any wild animals;*
4. *All kinds of activities that destroy or purport to destroy the natural habitat of plants and animals;*
5. *Any activities that may destroy or affect the quality of the soil or water;*
6. *Any activity that is harmful to fishes or other aquatic organisms.*

Lastly, on the occasion of ‘World Water Day 2018’, Honorable Prime Minister Sheikh Hasina delivered a speech at the Bangabandhu International Convention Center, undoubtedly supporting the Public Trust Doctrine. The speech delivered by the Honorable Prime Minister on the occasion of World Water Day 2018 is as follows:

***‘World Water Day, 2018’***

***Speech by HE Sheikh Hasina***

***Prime Minister***

***Government of the People’s Republic of Bangladesh***

***Bangabandhu International Conference Center, Dhaka, Tuesday, 13 Chaitra 1424, 27 March 2018***

***Bismillahir Rahmanir Rahim***

*The Honorable Chairperson,*

*Dear Colleagues,*

*Distinguished guests and*

*Ladies and Gentlemen.*

*Assalamu Alaikum and a very good morning to all,*

*I welcome you all at the inaugural ceremony of the ‘World Water Day, 2018’.*

*I pay deep homage to the greatest Bangalee of all times, Father of the Nation Bangabandhu Sheikh Mujibur Rahman. I recall with gratitude the four national leaders, 3 million martyrs and 200 thousand women, who sacrificed their modesty for the cause of independence. I pay deep sympathy to the wounded freedom fighters and martyrs family members.*

*The United Nations adopted “Nature for Water” as the theme for World Water Day 2018 to encourage nature-based solutions for water problems. Importance of water is immense for environmental balance. Because, without water there will be no existence of living being.*

*Water, nature, environment and natural eco-system are dependent on each other. We know that any developmental activity has negative impact on environment. For this, formulation and implementation of environment-friendly development projects are required to preserve our nature and ecosystem. Therefore, investigation of the nature-based solutions for different kind of water problems is the demand of the present time and it must be encouraged. It is also required to maintain balance among water, nature and environment to meet the demand of present generation and to preserve the water and environment for future generation.*

*Potable water is not only essential for human being but also for the entire animal kingdom. Less than 1% water resource of the earth is considered as safe for drinking. As a result, the accessibility to drinkable water could not be ensured for about one billion people of the world till now. The form of water usage has been changed due to the increase of population, fast urbanization and technological differences. About 40 percent people of the world are suffering more or less from the problem of safe drinking water.*

*Our government has already made remarkable success in ensuring safe water for the people. As per MDG, 84% people were set to bring under safe water by 2015. But 87% people were brought under safe water supply in Bangladesh by the stipulated timeframe. At present, 98% urban population of Bangladesh is getting safe water.*

*Ladies and Gentlemen,*

*Bangladesh is a land of rivers. One-third of its total area is water resources. There are 405 small and big rivers, and 57 Trans-boundary rivers in our country. Bangladesh is also the lower riparian of the Ganges, Brahmaputra and Meghna river. The water resources management of the country largely depends on the upstream countries.*

*The Father of the Nation, Bangabandhu Sheikh Mujibur Rahman established ‘Bangladesh Water Development Board’ as a separate organization for sustainable management of water resources and to accelerate the food production, land reclamation, poverty alleviation and employment generation. He also instructed to purchase 11 dredgers considering the importance of dredging for the maintenance of the river system.*

*In 1972, Bangabandhu formed ‘Indo-Bangladesh Joint Rivers Commission (JRC)’ on a permanent basis for trans-boundary water management.*

*As a follow up, the Awami League Government with its utmost sincerity was able to sign the historic 30-year ‘Ganges Water Treaty, in December, 1996 between Bangladesh and India to share the dry season flows of the Ganges.*

*Present government has almost finalized the “Bangladesh Delta Plan 2100” an environment-friendly, integrated and strategic water management Plan. The sustainable planning and development of water resources of Bangladesh actually depends on the equitable sharing and basin-wide management of the trans-boundary rivers- the Ganges, the Brahmaputra and the Barak/Meghna river basins. Our Government is perusing for regional cooperation for basin-wide water management of trans-boundary river waters.*

*A few significant programs among many such ones being implemented by our government in the water management are listed below:*

* *Formulation of National Water Policy 1999;*
* *Bangladesh Water Act-2013 Formulation;*
* *Formulation of the Environment Conservation Rules-1997;*
* *National Policy for Safe Water Supply and Sanitation- 1998 formulation;*
* *‘Framework Agreement on Cooperation for Development’ with India in 2011 to ensure the sustainable use of the water resources.*
* *Bangladesh Water Development Board has completed 825 projects since inception which has brought about 64 lac hectare area under the facilities of flood control, drainage and irrigation.*
* *Additional 10 million metric tons of food grain is being produced annually which ensure the food-self –sufficiency of the country.*
* *In addition, 1030 sq. kilometer of land has been reclaimed from estuaries and rivers.*
* *We have constructed 139 polders in the coastal areas.*
* *For this, 133 Upazillas under 19 districts have been protected from the intrusion of saline water which provides favorable environment for crop production in the coastal areas of Bangladesh.  Restoration of rivers and navigation route by dredging, prevention of river bank erosion.*
* *Protecting the lives and properties of the people of coastal areas from cyclone and storm surges by constructing coastal embankment.*
* *17 polders have been brought under rehabilitation program in the first phase.*
* *Conserving environment, improving rural socio-economic conditions by arranging livelihood opportunities for the destitute people through ‘char’ development.*
* *The government has invested BDT 15250 crore in the Annual Development program of water sector in last 5 years, a total of 57 projects have been completed in last fiscal year.*
* *The government has allocated BDT 4663 crore in the current fiscal year.  Government has increased allocation for water resource development.*

*Ladies and Gentlemen,*

*There are no alternatives to nature-based solutions for facing the mounting challenges of water resources management.*

*We must not waste water. Ground water is limited. So, the use of ground water should be reduced for sustainable development. Irrigation in agriculture should be done by surface water.*

*The government since taking over has given special emphasis on the restoration and development of natural wetlands, revival of the river and navigation through dredging, strengthening the coastal embankments considering the consequences of climate change, maintaining the connectivity between the river and floodplain, creating buffer zone along the riverbank for the protection of environment and ecosystem.*

*A concept paper has been finalized for preparing ‘dredging master plan’ in order to dredge rivers,* ***haors, baors,[[55]](#footnote-55)*** *canals, ponds and wetlands of the whole country in a comprehensive manner.*

*The plan mandated Bangladesh Inland Water Transport Authority to dredge all the rivers dedicated for navigation except the Ganges-Padma, Brahmaputra-Jamuna and Meghna. Bangladesh Water Development Board to dredge all the rivers except the rivers related to navigation route and Local Government Engineering Department to dredge all the canals, ponds and wetlands.*

*Ladies and Gentlemen,*

*The mighty Jamuna and Padma Rivers have engulfed about 1600 sq. kilometer of land in last 50 years. The width has been increased from 6-7 kilometers to 12-18 kilometers during this time.*

*There is no fixed boundary between river and floodplain. Defining the river course, boundary between land and river, plane form and buffer zones are essential for the management of the major rivers. The government has almost finalized a long-term plan for channelization and stabilization of the major rivers which will enable to reclaim about 1600 sq. kilometer of land the rivers. It will ensure safe and secure environment for economic activities, live and livelihood along the both banks, conserve water in the river for dry season, ensure adequate flow to the tributaries and distributaries, prevent riverbank erosion and protect water dependent environment and ecosystem.*

*We should introduce innovative nature-based solutions for water resources developments and management in addition to the conventional solutions. Water pollution and misuse should be prevented. We should conserve natural water reserves and rain water for daily use. I call you all to keep our natural water free pesticides, garbage and industrial byproducts.*

*I have been selected a member of the United Nations SDG affairs ‘High Level Panel on Water’ from the Asian countries for the outstanding performance in achieving the millennium Development Goals (MDG) by Bangladesh. This is a great honor for the country that enhanced our responsibility as well.*

*Ladies and Gentlemen,*

*Bangladesh is now a developing country. Our per capita income increased to USD 1610. Electricity Production Increased up to 16600 MW. We are providing electricity facilities to 90% of the people. GDP growth rate increased up to 7.28%. Padma Bridge is being built with our own resources. Metro rail and tunnel under the river Karnaphuli are under construction.*

*We intend to celebrate our fiftieth anniversary of independence by emerging as middle-income country by 2021 and a developed one by 2041.*

*The government desires for an integrated and sustainable development of water resources to supply safe water to all people along with the target of achieving ‘ Sustainable Development Goals 2030’ before the SDG’s timeframe 2030. By implementing Vision-2021, we shall ensure safer water supply for all within 2021.*

*With these few words, I declare open the programs of ‘World Water Day 2018’.*

*Thank you all.*

*Khoda Hafez*

*Joi Bangla, Joi Bangabandhu*

*May Bangladesh Live Forever.*

***The Executive Director of the United Nations Environment Programme, Achim Steiner, declared the ‘Bangladesh Climate Change Strategy and Action Plan 2009’ adopted by the Honorable Prime Minister Sheikh Hasina as the first integrated plan of action in South Asia and further stated that it has amazed the world.***

***Achim Steiner also stated that Bangladesh is the first country in the world to form its own Climate Change trust fund and initiate its programmes with 300 Million Dollars from its own sources, which is a rare initiative. This is why Honorable Prime Minister Sheikh Hasina is now an exemplary head of State to the rest of the world. As a result, the United Nations rightfully declared Honorable Prime Minister Sheikh Hasina as the United Nations Champion of the Earth.***

***On the basis of the prize awarded by the United Nations as well as the aforementioned argument, it is crystal clear that the Honorable Prime Minister Sheikh Hasina has maintained the establishment and practice of the Public Trust Doctrine for the conservation and development of the environment, natural resources, biodiversity, waterbodies such as the seas, rivers, lakes, canals, marshes, wetlands, waterfalls, drains, and other open waterbodies, sea-shores, river-banks, forests, hills, mountains and wildlife. She is possibly the only head of government in the world who has taken revolutionary steps for the protection of the environment and has worked relentlessly for the protection and development of the environment by adopting the Public Trust Doctrine nationally. She is currently the top-ranking leader of the Public Trust Doctrine. She is the world leader of the Public Trust Doctrine.[[56]](#footnote-56) No other leaders even come close to her. Rather, we observe that countries knowingly destroy the nature, environment and climate and promote themselves as a developed country by only improving their defense, which is nothing but laughable. This is extremely unfortunate.***

***It is a matter of great pride and happiness for Bangladeshi citizens that our Honorable Prime Minister effectively and successfully ended the 25-year long civil war through the Chittagong Hill Tracts Peace Treaty, as a result of which the nature, environment and climate, and the public trust property of the Chittagong Hill Tracts have been saved from destruction. The Honorable Prime Minister Sheikh Hasina has been awarded with the Félix Houphouët-Boigny Peace Prize by UNESCO for ending the 25-year long civil war. On the other hand, we see that developed countries, instead of establishing peace, are destroying the global environment, nature and climate and creating new war zones around the world for their commercial interests. For her contributions to the environment, nature and climate, the United Nations declared the Honorable Prime Minister as the ‘Champion of the Earth’ in 2015. In September, 2017, she was presented as the ‘Mother of the Humanity’ for the noble action of providing shelters to Rohingyas by the British Channel 4 news. For the abovementioned actions, courageous initiatives and relentless efforts, Honorable Prime Minister Sheikh Hasina is now the ‘Mother of the Earth’ to the people of the world.***

However, the path to governance, welfare of the Bangladeshi people, establishing peace in the world and development of the public trust doctrine for the protection of the environment and climate was not smooth for the Honorable Prime Minister Sheikh Hasina. She had to face 19 (nineteen) armed attacks in her lifetime, was jailed 9 (nine) times and has been subjected to national and international conspiracies countless times. Cruel, heart-breaking, inhumane, terrible false criticisms of a few of this nation’s journalists and intellectuals have wounded her heart. But the Honorable Prime Minister has progressed towards protecting public trust property with an indomitable speed and have been victorious against all armed attacks, imprisonment, criticisms and conspiracies.

Considering its importance, the life description of the Honorable Prime Minister Sheikh Hasina has been exactly reproduced below from the ‘Bangladesh National Information Window’ of the government website of the Prime Minister’s Office of the Government of the People’s Republic of Bangladesh (pmo.gov.bd):

**Biography of Prime Minister**

Sheikh Hasina

Hon'ble Prime Minister of the Government of the People's Republic of Bangladesh

*Sheikh Hasina, the Prime Minister of the Government of the People's Republic of Bangladesh, assumed the office on 07 January 2019 for the fourth time after her party Awami League-led grand alliance won the December 30, 2018 11th Parliamentary elections.*

*Sheikh Hasina, the Prime Minister of the Government of the People’s Republic of Bangladesh, assumed office on January 12, 2014 for the third time after the grand alliance led by her party Bangladesh Awami League won parliamentary election on 5th of January.*

*She became Prime Minister for the first time on June 23, 1996 when her party, the Bangladesh Awami League, acquired a majority in the general election held on June 12, 1996.After the term, conspiracy designed by the then caretaker government led Bangladesh Awami League to lose the general election in 2001 and Sheikh Hasina became the leader of the opposition again.*

*A military-backed caretaker government took over the office in 2007 as the BNP-Jamaat government failed to hand over power in a peaceful manner in 2006. After two years in the office, the caretaker government organized the 9th general election on December 29, 2008. Sheikh Hasina’s party earned a landslide victory with a two-third majority in the widely acclaimed free and fair election leading her taking over the office of the prime minister for the second time on January 6, 2009.*

*Earlier, Sheikh Hasina played crucial role in establishing democracy in the country when she won from three constituencies in the parliamentary election in 1986 and was elected leader of the opposition. Following the election of 1986, a constitutional process began in the country ending the martial law.She led the historic mass movement in 1990 that toppled the government of Ershad who resigned on December 6, 1990.Following the election in 1991, Sheikh Hasina became leader of the opposition in the country's 5th parliament. She steered all the political parties towards changing the presidential system of government into a parliamentary one.Sheikh Hasina initiated a mass movement against the voter-less election by BNP in 1996 and forced the government of Khaleda Zia to quit power on March 30, 1996.Sheikh Hasina is a staunch crusader against fundamentalism, militancy and terrorism.*

*Assuming the office on January 6 in 2009, her government enacted laws leading to constitute the International Crimes Tribunal (ICT) for the trial of crimes against humanity done during the liberation war of Bangladesh in 1971. The tribunal began the investigation and prosecution of the suspected war criminals and a number of verdicts has been given and executed.Sheikh Hasina, the eldest of five children of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman, was born on 28 September 1947 at Tungipara in Gopalganj district. She graduated from the University of Dhaka in 1973. She has a checkered political career. She was elected vice president of the Students Union of the Government Intermediate Girl's College when she contested as a candidate from Students League. Later, she served as secretary and then as president of college unit of Student League. She was also a member of Students League in Dhaka University and became the secretary of Rokeya Hall unit. She actively participated in all mass movements from her student life.*

*Father of the Nation Bangabandhu Sheikh Mujibur Rahman along with the members of his family was brutally assassinated on the fateful night of August 15, 1975. Sheikh Hasina and her younger sister Sheikh Rehana were the only survivors as they were in West Germany at that time. Later, she went to the United Kingdom from where she started movement against the autocratic rule in 1980. Sheikh Hasina was unanimously elected as president of Bangladesh Awami League in 1981 in her absence while she was in forced exile. She finally returned home on May 17, 1981 ending her six years in exile. Sheikh Hasina faced the wrath of the rulers on her return as she launched movement to restore democracy in the country. She was detained time and again, and at least 19 attempts were made on her life so far. The military government interned her for 15 days after arresting on February 15, 1983. She was under house arrest twice in February and November in 1984. Sheikh Hasina was arrested again on March 2, 1985 and was confined for three months. She was again arrested on October 15, 1986 and left under house arrest for 15 days. Later, police arrested her on November 11, 1987 and interned for a month. She was detained again on February 27, 1989 and November 27, 1990.*

*The military backed caretaker government arrested Sheikh Hasina on July 16, 2007 and confined her at a sub-jail set up on the parliament premises. She was released on June 11, nearly after a year. Notable attempts to assassinate Sheikh Hasina include firing by police on November 10, 1987 during a ‘gherao’ programme of the Secretariat. Juba League leaders Nur Hossain, Babul and Fattah were killed in the incident. An attempt was made to lift the car with a crane along with Sheikh Hasina in front of the National Press Club. Police opened fire targeting Sheikh Hasina and charged batons in front of Chittagong Court Building on January 24, 1988 during rule of president Ershad. At least 30 leaders and workers of Awami League were killed in that incident. Twice she was targeted with gunfire while delivering speech at Laldighi Maidan. Her car was come under gunfire while returning from the public meeting at Laldighi Maidan. During BNP’s regime, Sheikh Hasina repeatedly confronted gun attacks.*

*Miscreants fired on September 11, 1991 while she was visiting a polling centre in the capital’s Kalabagan area. A series of gunshots hit her carriage at Ishwardi railway station while she was traveling by train in 1994. In 2000, two bombs weighing 76 kgs and 84 kgs were planted at Kotalipara helipad, and at her place for public meeting in a bid to kill her. She survived as the bombs were detected prior to her arrival. The gravest attempt made on Sheikh Hasina’s life was on August 21, 2004. On the day, a dozen of Arges grenades were charged on her rally at Bangabandhu Avenue. Although Sheikh Hasina narrowly escaped, the gruesome attack left 22 leaders and workers of Awami League dead, including central leader Ivy Rahman. As a consequence, Sheikh Hasina’s hearing capability was impaired.*

*Sheikh Hasina continued her struggle and remained undaunted to ensure people’s right to food, vote and other fundamental rights ignoring numerous obstacles, including threat on her life. Under her leadership, people of Bangladesh achieved democracy and freedom of speech. Bangladesh earned the dignity of a lower middle-income country. The country achieved tremendous success in socio-economic fronts during her tenure. In 1996-2001 term, Sheikh Hasina’s government achieved laudable successes in many fields, the most significant being the 30-year Ganges Water Sharing Treaty with India; the Peace Accord on Chittagong Hill Tracts; construction of Bangabandhu Bridge; and ensuring food security. She also introduced beneficial programme for farmers, and social safety nets for the distressed, landless and deprived people. These include allowances for distressed women, widows, disabled and freedom fighters; Ashrayan for the homeless and “One house-One farm” scheme.*

*During her term in 2009–13, Sheikh Hasina’s government’s achievements included increased power production capacity to 13,260 MW; GDP growth over 6%; elevation of 5 crore people to middle-income group; resolving maritime boundary dispute with Myanmar and India, digital centers at all union parishads; distribution of free text books among the students up to secondary level, distribution of agri-cards and scope to open bank accounts with Tk 10 only for farmers, slump in poverty level to 24.3 percent in 2013-14 which was 38.4 in 2006; and adoption of her peace model by UN resolution.*

*Since 2014, her government’s landmark achievements include the following: elevating the country to lower middle-income status, adoption of Land Boundary Agreement by Indian parliament resolving the 68 years long border dispute; raising per capita income to USD 1,602; decreasing poverty rate to 22.4 percent, raising forex reserve over USD 32 billion. Different reputed universities and institutions across the world conferred various degrees upon her for the outstanding contribution to peace building, upholding democracy and socio-economic development. She was conferred honorary doctorate by Boston University, Bridgeport University, Barry University in the USA; Waseda University in Japan; University of Abertay in Scotland; Vishwa-Bharati University and Tripura University in India; Australian National University; Catholic University of Brussels; People’s Friendship University and State University of Petersburg in Russia; Dhaka University and Bangabandhu Sheikh Mujibur Rahman Agriculture University. The University of Dauphine in France conferred diploma on her for her outstanding contribution to strengthen democratic process and empowerment of women. Sheikh Hasina was also honoured with awards for her outstanding contributions to social work, peace and stability. These include: UNESCO’s Houphouet-Boigny Peace Prize 1998; Pearl S Buck Award 1999; CERES Medal by FAO; Mother Teresa Award; MK Gandhi Award; Paul Harris Fellow; Indira Gandhi Peace Award 2009; Indira Gandhi Gold Plaque in Kolkata; Paul Haris Fellow by the Rotary Foundation of Rotary International, Medal of Distinction in 1996-97 and 1998-99 and Head of State Medal in 1996-97 by the International Association of Lions Clubs, Global Diversity Award in the UK; and two South-South Awards.*

*UNESCO honoured her with "Tree of Peace" in recognition of her outstanding contribution to promotion of girls' and women's education on September 8, 2014, Award for Regional Leadership in Women’s Political Empowerment by Women in Parliaments Global Forum and Visionary Award by Global South-South Development Expo-2014.She was conferred on the United Nation’s highest environmental accolade ‘Champion of the Earth Award 2015’ in policy leadership category for her forefront role at home and abroad to face the adverse impacts of climate change.*

*The International Telecommunication Union gave her the ‘ICTs in Sustainable Development Award 2015’ for her outstanding contributions in spreading information technology in the country. Sheikh Hasina has authored several books, including Sheikh Mujib is my Father, Why are they Street Children, The Origin of Autocracy, Miles to go, The Quest for Vision 2021 (two volumes), Elimination of Poverty and Some Thoughts, People and Democracy, My Dream My Struggle, Development for the Masses, Sada Kalo (Black and White) and Sabuj Math Periye (Crossing the Green Field).Sheikh Hasina is the Chairperson of ‘The Father of the Nation Bangabandhu Sheikh Mujibur Rahman Memorial Trust.’ She believes in democracy, secularism, inclusive growth and progress, and dedicated her life to eliminate poverty and barriers that marginalize people.’’*

It is most unfortunate that, despite the planning and execution by the Honorable Prime Minister Sheikh Hasina on nature, environment, climate and public trust property, the laws enacted and the measures taken to implement them, not a single research paper has been published on this by the hundreds of public and private universities in this country. They have failed to hold any meeting or seminar in collaboration with the domestic or international environment societies and not a single columnist who write about environmental issues has published anything on this particular matter. If any research, writing, meetings or seminars had been held on the ground breaking actions taken by the Honorable Prime Minister Sheikh Hasina on nature, environment, climate and public trust property, then the whole world would have been better informed of the aforementioned actions taken by the Honorable Prime Minister and would have been benefited thereof. Thus, the respective nations would have been able to take correct and appropriate decisions for the development of their nature, environment and climate issues.

***Nature, Environment and Public Trust Doctrine:***

**The law of nature is the supreme law of the world. Any law enacted by any nation in opposition to the law of nature, is void ab initio.**

**Rivers, streams, canals, ponds, seas, forests, wildlife, hills, mountains and bio-diversity make up our world. No human being has created the rivers, lakes, seas, forests, wildlife and birds. This beautiful world of ours has been governed by the law of nature since time immemorial. The air, water, climate and environment are not governed by the laws made by man.**

**All over the world, it is a well-established principle that no independent and sovereign state has the right to tamper with the atmosphere and climate. On the other hand, every establishment in Bangladesh is committed to prevent any tampering with the climate and atmosphere.**

**Despite the existence of laws on environment, mankind has arbitrarily exploited and destroyed all of nature’s assets; even though the survival of mankind depends on the environment. Recognizing all of nature’s legal rights as a part of our legal system is an obligation we must fulfill.**

**For centuries, numerous indigenous people from all over the world have recognized nature as a relevant part of customary law.**

**According to Newton’s Third Law “For every action, there is an equal and opposite reaction.” This means that every action has an equivalent and counter consequence. If we encroach upon and pollute nature arbitrarily, nature will not hold back in retaliation. Due to the unlawful actions by mankind on nature, that is to say the unethical exploitation of nature, nature replies to mankind with tsunami, storms, cyclones, floods, earthquakes and landslides. No one deserves unlawful behavior, not even nature. Nature expects lawful behavior from mankind and it deserves it as well. This means that nature has a legal right to sustain itself. If we act unlawfully with nature, nature will not hold back when it retaliates. Nature will show its wrath, after which the end of mankind will be inevitable.**

**Nature is not bound to, nor does it need to abide by the laws created by mankind. Rather, mankind is definitely bound to abide by all the laws and rules of nature.**

**As a result, we must remember that ‘Being blind will not delay our destruction’. It cannot be expected that we can continue to commit our crimes and nature will stay silent. Nature will punish in proportion to the crime mankind commits against it. Thus, if we want to preserve mankind, we will soon have to give nature its due respect and offer it its legal rights.**

**By acknowledging the rights of nature, we are not showing nature any kindness, rather we are protecting mankind. The sooner that we give nature its due rights and respect, the better it will be for the prosperity of mankind.**

The Public Trust Doctrine is a very powerful legal tool for protecting nature from various forms of exploitation. Even though the Public Trust Doctrine has not yet been fully or clearly defined anywhere, it is not possible nor is it even necessary to do so. This is because in the future, by the latest decisions of the Court and by enacting new laws passed by Parliament, this Doctrine will be laid out in further detail; which will be an ongoing process.

***Public Trust Property is handed over to the State in order to meet the needs of the masses. By this Doctrine, all such property that is for the public benefit, is handed over to the State to merely manage, monitor and take care of. Merely due to this handover, the State cannot abandon the rights of the people - this is a significant aspect of this Doctrine.***

***The environment, natural resources, bio-diversity, seas and their coasts, rivers and their banks, streams, ponds, canals, haors, all wetlands, lakes, hills, mountains, forests and air are all very important to humans and all of mankind. For this reason, handing over such property to private owners is contrary to the Public Trust Doctrine. The environment, natural resources, bio-diversity, seas and their coasts, rivers and their banks, streams, ponds, canals, haors, forests and air are all a gift of and a blessing from nature. All of these must be freely accessible to all. All such property must either be accessible to all, or to none at all.***

***The State is merely entrusted as a Trustee to the environment, natural resources, bio-diversity, seas and their coasts, rivers and their banks, streams, ponds, canals, haors, all wetlands, hills, mountains, forests and wildlife. Here, the State is merely a recipient of what the people have deposited to it. By no means can the State betray the people of what they have deposited.***

***The environment, natural resources, bio-diversity, (rivers and their banks, streams, seas and their banks, ponds, canals, haors, lakes and all wetlands, hills and mountains, forests, wildlife etc.) are for the enjoyment and use of the people, and this is determined by nature itself. In this regard, the State is a Trustee of all the natural resources or a protector of the property. As a Trustee, the duty of the State is to protect these natural resources. Since natural resources are determined to be used by the public, they cannot be transferred to private owners or handed over to a commercial institution.***

***The Public Trust Doctrine bestows upon the State such a responsibility, it is unable to transfer the property to a private owner, or hand it over to a commercial institution.***

***The environment, natural resources, bio-diversity, seas and their coasts, rivers and their banks, streams, ponds, canals, haors, all wetlands, hills, mountains, forests and air are all free for the masses, and the State shall make arrangements or preserve them so that they may be freely accessible to all. Here, the State is a defender of justice, a trustee, a legal guardian or an administrator to the aforementioned environment, natural resources, bio-diversity, all wetlands, forests, hills, mountains, wildlife and all such Public Trust Property. They have the duty to ensure its protection, preserve and develop them. Here, the people have entrusted the State by giving the Public Trust Property to them.***

***Under the control of the State, the public trust property is protected and made freely accessible to all. The duty of the Court is to see and make sure that all the aforementioned public trust property is not allowed by the government, to be used in any form whatsoever in favour of any private person or commercial institution.***

**The Constitution, Public Trust Doctrine and the Responsibility of the Executive Authority:**

Since the Public Trust Doctrine is a part of our Constitution, the executive authority shall perform all its functions while abiding this Doctrine. The State shall not evade its responsibility to protect the natural resources, and transfer them for the use of private or commercial entities.

**Legal Responsibility of all Public Officials and Employees to Protect and Preserve Natural Resources i.e. Public Trust Property:**

Every public official and employee must keep in mind that, they are appointed for the people and they have been appointed by the people with the aid of the government. As a result, each and every public official and employee are bound to take care of the public property; any deviation from this would leave them accountable to the public. At all times, the public has the right to obtain this explanation via the government, the court or even directly.

**Environment, Climate and Sustainable Development**

From ancient times, to preserve and protect water and water-related resources from the growing pressure of rapid development, changing technology and population expansion, the Public Trust Doctrine had played a vital role worldwide. In the name of economic development, the environment, natural resources, bio-diversity (rivers and their banks, streams, seas and their coasts, ponds, canals, haors, lakes, all wetlands, hills, mountains, forests and wildlife) cannot be harmed or destroyed in any way.

The meeting of the needs of future generations without compromising on the ability of meeting the needs of those of the present-day - such development is known as sustainable development i.e. development while maintaining balance with nature. In all regards, we must follow the Principle of Sustainable Development, and must find a balance between the needs of development and environmental pollution.

Due to its significance, The Stockholm Declaration being accepted at the UN Conference on Human Environment on 16 June, 1972 is quoted verbatim below:

***Declaration of the United Nations Conference on the Human Environment***

*The United Nations Conference on the Human Environment, having met at Stockholm from 5 to 16 June 1972, having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment, Proclaims that:*

*1. Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.*

*2. The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments.*

*3. Man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In our time, man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment.*

*4. In the developing countries most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment. For the same purpose, the industrialized countries should make efforts to reduce the gap themselves and the developing countries. In the industrialized countries, environmental problems are generally related to industrialization and technological development.*

*5. The natural growth of population continuously presents problems for the preservation of the environment, and adequate policies and measures should be adopted, as appropriate, to face these problems. Of all things in the world, people are the most precious. It is the people that propel social progress, create social wealth, develop science and technology and, through their hard work, continuously transform the human environment. Along with social progress and the advance of production, science and technology, the capability of man to improve the environment increases with each passing day.*

*6. A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes. There are broad vistas for the enhancement of environmental quality and the creation of a good life. What is needed is an enthusiastic but calm state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with nature, a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind-a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development.*

*7. To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future.*

*Local and national governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions. International cooperation is also needed in order to raise resources to support the developing countries in carrying out their responsibilities in this field. A growing class of environmental problems, because they are regional or global in extent or because they affect the common international realm, will require extensive cooperation among nations and action by international organizations in the common interest.*

*The Conference calls upon Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity*

*.* ***Principles***

*States the common conviction that:*

***Principle 1***

*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.*

***Principle 2***

*The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.*

***Principle 3***

*The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.*

***Principle 4***

*Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.*

***Principle 5***

*The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.*

***Principle 6***

*The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of ill countries against pollution should be supported.*

***Principle 7***

*States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.*

***Principle 8***

*Economic and social development is essential for ensuring a favorable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.*

***Principle 9***

*Environmental deficiencies generated by the conditions of underdevelopment and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required.*

***Principle 10***

*For the developing countries, stability of prices and adequate earnings for primary commodities and raw materials are essential to environmental management, since economic factors as well as ecological processes must be taken into account.*

***Principle 11***

*The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.*

***Principle 12***

*Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate- from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial assistance for this purpose.*

***Principle 13***

*In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.*

***Principle 14***

*Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.*

***Principle 15***

*Planning must be applied to human settlements and urbanization with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all. In this respect projects which are designed for colonialist and racist domination must be abandoned.*

***Principle 16***

*Demographic policies which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment of the human environment and impede development.*

***Principle 17***

*Appropriate national institutions must be entrusted with the task of planning, managing or controlling the 9 environmental resources of States with a view to enhancing environmental quality.*

***Principle 18***

*Science and technology, as part of their contribution to economic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind.*

***Principle 19***

*Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminates information of an educational nature on the need to project and improve the environment in order to enable mal to develop in every respect.*

***Principle 20***

*Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connection, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries.*

***Principle 21***

*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

***Principle 22***

*States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.*

***Principle 23***

*Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.*

***Principle 24***

*International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.*

***Principle 25***

*States shall ensure that international organizations play a coordinated, efficient and dynamic role for the protection and improvement of the environment.*

***Principle 26***

*Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.*

*21st plenary meeting 16 June 1972 Chapter 11.*

Due to its significance, the UN Rio Declaration on Environment and Development of 1992 is quoted verbatim below:

***THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT (1992)***

*PREAMBLE*

*The United Nations Conference on Environment and Development,*

*Having met at Rio de Janeiro from 3 to 14 June 1992,*

*Reaffirming the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972, and seeking to build upon it,*

*With the goal of establishing a new and equitable global partnership through the creation of new levels of co-operation among States, key sectors of societies and people,*

*Working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system,*

*Recognizing the integral and interdependent nature of the Earth, our home,*

*Proclaims that:*

***PRINCIPLE 1***

*Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.*

***PRINCIPLE 2***

*States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.*

***PRINCIPLE 3***

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

***PRINCIPLE 4***

*In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.*

***PRINCIPLE 5***

*All States and all people shall co-operate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.*

***PRINCIPLE 6***

*The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.*

***PRINCIPLE 7***

*States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.*

***PRINCIPLE 8***

*To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.*

***PRINCIPLE 9***

*States should co-operate to strengthen endogenous capacity building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.*

***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. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.*

***PRINCIPLE 11***

*States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.*

***PRINCIPLE 12***

*States should co-operate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.*

***PRINCIPLE 13***

*States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also co-operate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.*

***PRINCIPLE 14***

*States should effectively co-operate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.*

***PRINCIPLE 15***

*In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.*

***PRINCIPLE 16***

*National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.*

***PRINCIPLE 17***

*Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.*

***PRINCIPLE 18***

*States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.*

***PRINCIPLE 19***

*States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.*

***PRINCIPLE 20***

*Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.*

***PRINCIPLE 21***

*The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.*

***PRINCIPLE 22***

*Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.*

***PRINCIPLE 23***

*The environment and natural resources of people under oppression, domination and occupation shall be protected.*

***PRINCIPLE 24***

*Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and co-operate in its further development, as necessary.*

***PRINCIPLE 25***

*Peace, development and environmental protection are interdependent and indivisible.*

***PRINCIPLE 26***

*States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.*

***PRINCIPLE 27***

*States and people shall co-operate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.*

***Both environmental protection and economic development must be concurrent; both shall go together being complementary to each other. The necessity of protecting the environment should not in any way disrupt the economy and development. Likewise development should not be at the cost of the environment.***

As per Principle 1 of the Rio Declaration on Environment and Development, Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. On the other hand, as per Principle 4 of the Rio Declaration, in order to achieve sustainable development, environmental protection shall be considered as an integral part of the development process.

The World Commission on Environment and Development (WCED) 1987 had their first meeting on October, 1984 and 900 days later, the Commission published its historic report on April, 1987. In the WCED report titled ‘Our Common Future’, paragraph 27 from subtitle, ‘3. Sustainable Development’ has defined sustainable development as follows:

*“27. Humanity has the ability to make development sustainable to ensure that* ***it meets the needs of the present without compromising the ability of future generations to meet their own needs.*** *The concept of sustainable development does imply limits- not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities. But technology and social organization can be both managed and improved to make way for a new era of economic growth. The Commission believes that widespread poverty is no longer inevitable. Poverty is not only an evil in itself, but sustainable development requires meeting the basic needs of all and extending to all the opportunity to fulfil their aspirations for a better life. A world in which poverty is endemic will always be prone to ecological and other catastrophes.”*

**The precautionary principle**

The State shall take recourse to the precautionary principle in order to protect the natural resources. While endeavoring in any of its development projects, the State shall adopt the precautionary principle. According to ‘Principle 15’ of the Rio Declaration on Environment and Development, *“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainly shall not be used as a reason for postponing cost- effective measures to prevent environmental degradation.”*

**Polluter’s Pay Principle**

Will the massive amount of money necessary for the restoration from the massive amount of pollution and encroachment of the Turag River be financed by the hard-earned money of the masses? Or will the restoration of the polluted and encroached areas be financed by the polluters and encroacher themselves? Any individual, institution or organization which causes environmental pollution, causes pollution to or encroaches upon the rivers and streams, shall be liable to pay for the environmental pollution, river and lake encroachment and pollution.

This means that in order to restore them back to their original state, all forms of expenses shall be paid by the polluters and encroachers themselves. As per ‘Principle-16’ of the Rio Declaration: “*National authorities should endeavor to promote the internationalization of environmental costs and the use of economic instruments, taking into account the application that* ***the polluter should in principle bear the cost of pollution with due regard to the public interest*** *and without distorting international trade and investment.”*

As per Article 18A of the Constitution of the People’s Republic of Bangladesh, **“*The State shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.”***

***This means that the*** ***environment, natural resources, bio-diversity, wetlands such as seas and their coasts, rivers and their coasts, streams, ponds, canals, channels, haors, lakes and all other wetlands, forests and wildlife are preserved for all present and future citizens. These properties belong to the present and future citizens of Bangladesh. This ownership by the citizens is declared and preserved by the Constitution.***

On the other hand, according to Article 21 of the Constitution, it is the duty of every citizen to protect ***Public Property.*** This means that every citizen is covenanted to protect the Public Property. ***Public Property*** and ***Public Trust Property*** are synonymous. What is deemed to be the National Property is the Public Trust Property and vice versa. With regard to the ***Public Property*** i.e. ***Public Trust Property,*** the State is merely a guardian or a trustee, not an owner. The owner of the ***Public Property*** i.e. ***Public Trust Property*** is the public itself. The role of the State with regard to the ***Public Property*** i.e. ***Public Trust Property*** is that of a guardian or trustee for the sake of the public. The ***Public Property*** i.e. ***Public Trust Property*** includes the environment, climate, wetlands such as seas and their coasts, rivers and their banks, streams, ponds and their banks, canals, channels, haors, lakes and all other wetlands, hills, mountains, forests, wildlife, the air and all other such properties which are a gift from nature. All such properties belong to the people and every citizen has an equal right against it. This means that all present and future citizens of Bangladesh are the owners of this property.

According to Article 21 clause (2), every person in the service of the Republic has a duty to strive at all times to serve the people. This means that the protection, preservation and development of the ***Public Property*** or the Public Trust Property is a part of the public service, and a duty of all those who are in the service of the people. This means that they have a definite duty to protect, preserve and develop the ***Public Property*** or Public Trust Property.

According to Article 31 of the Constitution, *“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.”*

Therefore, Article 31 of the Constitution says that no detriment can be caused to the property of any person. Every citizen has the fundamental right to use the National Property i.e. Public Trust Property. No one can deprive them of this right. If anyone ever deprives them of their right, the citizens can file a Writ Petition at once under Article 102 of the Constitution before the High Court Division to claim or enforce their aforementioned right. Whenever the Public Property, National Property or Public Trust Property is transferred to any individual or commercial institution for its use, every citizen, all public officials and employees, public representatives and the courts have a constitutional duty and responsibility to provide protection and preservation to such property.

***After reading together Articles 18A, 21, 31 and 32 of the Constitution, it becomes crystal clear that, the environment, natural resources, bio-diversity, all wetlands, seas and their coasts, rivers and their coasts, streams, ponds, canals, haors, lakes, hills, mountains, forests, air and all other Public Trust Properties are preserved for the present and future citizens of Bangladesh. Thus, it is established that the people have a fundamental right over all the aforementioned properties.***

***Depriving any citizen of the*** ***environment, natural resources, bio-diversity, wetlands, seas and their coasts, rivers and their coasts, streams, ponds, canals, haors, lakes, hills, mountains, forests, air and all other Public Trust Properties is depriving the citizens of their fundamental right and is in contravention to Articles 31 and 32 of the Constitution.***

***Since all rights in relation to the environment, natural resources, bio-diversity, all wetlands, seas and their coasts, rivers and their coasts, streams, ponds, canals, haors, lakes, hills, mountains, forests, air and all other Public Trust Properties are the property of the citizens, in the event of any deprivation or loss of such rights, following Article 31 of the Constitution, every citizen has the right to enjoy the protection of the law. In order to enforce the aforementioned right, such citizen has the right to file an application under Article 102, clause (1) of the Constitution before the High Court Division. Such enforceable right of the citizen has been assured according to Article 44 of the Constitution.***

Public representatives, all the public officials and employees, officers and soldiers of the Army, Navy and Air Force, all the judges of the Judiciary and all the citizen of Bangladesh have the definite duty to protect such National Property or Public Trust Property from being used by any individual or commercial institution, and to preserve and develop such property so that it can equally be used by all citizens.

The life i.e. the right to life of every person has been constitutionally safeguarded. According to Article 32 of the Constitution, ***“No person shall be deprived of life or personal liberty save in accordance with law.”*** This means that no person can be deprived of their right to life. In other words, the right to life is a fundamental right bestowed upon every citizen by the Constitution.

In environmental law, ‘Life’ has been given a widened definition which includes the environment in its ambit. Thus, urged by necessity, the definition of ‘Life’ in environmental law has been widened. According to Principle 1 of the Stockholm Declaration-

*“Man has the fundamental right to freedom, equality and adequate conditions of life; in an environment of a quality that permits a life of dignity and well-being.”*

**This means that ‘Life’ does not merely mean a soul within a body. ‘Life’ includes the right to live with dignity in a healthy, beautiful and developed environment.**

According to paragraph 2.9 of the Asian Human Rights Charter (A Peoples’ Charter Declared in Kwangju, South Korea on 17 May 1998),

*“2.9 Economic development must be sustainable. We must protect the environment against the avarice and depredations of commercial enterprises* ***to ensure that the quality of life does not decline just as the gross national product increases.*** *Technology must liberate, not enslave human beings. Natural resources must be used in a manner consistent with our obligation to future generations.* ***We must never forget that we are merely temporary custodians of the resources of nature.*** *Nor should we forget that these resources are given to all human kind, and consequently we have a joint responsibility for their responsible, fair and equitable use.”*

**In reality, we humans are the guardians of nature. Just like a guardian who always seeks to protect and develop their children, mankind must also always seek to protect and develop the environment as its guardian. It must also be kept in mind that, in the pursuit of extensive development, mankind, for whom such development is made, is not deprived of the enjoyment of a peaceful and healthy environment.**

On the other hand, upon reviewing ‘Principle 1’ of the ‘Rio Declaration’, the evidence is crystal clear that life and the environment are inseparable parts of one another, and the meaning of ‘life’ is far wider than just the body and soul.

The rivers and streams will disappear if they are polluted and encroached upon. Without rivers and streams, there would be no water. Without water, the fisheries would cease to exist and so would agriculture; because of which mankind would not be able to survive. Put simply, without water there would be no life. As a result, a person would be deprived of their constitutional and fundamental right.

Therefore, it can be said that humans cannot survive without a pollution free environment, assurance of potable water, preservation and development of rivers, streams, ponds, canals, haors, channels, lakes, wetlands, forests, wildlife, air and bio-diversity. The mere absence of just one of these would be a threat to human survival. Thus, without all of these, they cannot survive. Being quintessential to human survival, it is established that each and every citizen has the constitutional and fundamental right to all of them.

***The environment, natural resources, bio-diversity, seas and their coasts, rivers and their banks, streams, ponds, canals, haors, lakes, all wetlands, hills, mountains, forests and wildlife, including leading a life with dignity in a beautiful, peaceful and developed environment, are the core necessities of life i.e. right to life, which has been ensured under Article 32 of the Constitution. As a result, any action to destroy the environment, natural resources, bio-diversity, all wetlands, seas and their coasts, rivers and their coasts, streams, ponds, canals, haors, lakes, hills, mountains, forests and the air, all of which are Public Trust Properties, is in conflict with the fundamental rights ensured under ‘Part-III’ of the Constitution, which means it is in direct contravention of Article 32 of the Constitution.***

***According to Article 32 of the Constitution, no person shall be deprived of life or personal liberty save in accordance with law. Environmental pollution and destruction of the environment, natural resources, bio-diversity, all wetlands, seas and their coasts, rivers and their coasts, streams, ponds, canals, haors, lakes, hills, mountains, forests, the air and all other Public Trust Properties, has been deteriorating the life of the citizens i.e. human beings on a daily basis. Thus, a healthy environment is the fundamental right of every citizen. Due to the need of a healthy environment, every citizen has the constitutional right to enjoy*** ***the environment, natural resources, bio-diversity, all wetlands, seas and their coasts, rivers and their coasts, streams, ponds, canals, haors, lakes, hills, mountains, forests, the air and all other Public Trust Properties.***

It is the duty of the State to preserve and develop the environment, natural resources, bio-diversity, wetlands, seas and their coasts, rivers and their coasts, streams, ponds, canals, haors, lakes, hills, mountains, forests and wildlife. This is now a well-established theory that has been accepted by all nations worldwide. Read jointly, Articles 18A and 21 of the Constitution have recognized the Public Trust Doctrine. According to Articles 31 and 32 of the Constitution, the people have the enforceable right to protect the National Property, Public Property or Public Trust Property.

**The Court which declares the River as a Legal Person and a Living Entity:**

In 2016, for the first time in world history, a river was declared as an autonomous entity by the Constitutional Court of Columbia. Considering the important role of the Atrato River in protecting the indigenous agriculture and culture of the Choco Province, in order to protect this river, the Constitutional Court of Columbia declared the Atrato River as an autonomous entity.

In its judgement, the Constitutional Court of Colombia declared the river as a living entity in the official language of the Colombian Court, which is Spanish. Afterwards, in 2018 the Constitutional Court of Colombia started to publish the key verdict of their landmark judgement in English, which is ongoing to this day. As it is important in this regards, the Court’s decision on the Atrato River is quoted verbatim below:

***“DECISION T-622/2016***

**THE ATRATO RIVER AS A “ SUBJECT OF RIGHTS”**

**“In this decision, the Colombian Constitutional Court ordered to protect the Atrato River as an autonomous entity subject to rights**. Following an eco-centric approach, the Court started from a basic premise: the earth does not belong to man but, on the contrary, man and all other species belong to the earth.

“According to this view, the human species are just one more event within a long evolutionary chain that has endured for thousands of years and, therefore, they are in no way the owners of the other species, neither of the biodiversity or the natural resources, and they cannot determine the fate of the planet. Thus, this view sees nature as a real subject of rights that have to be recognized by the States and exercised under the supervision of its legal representatives, e. g. the communities who live in it or the communities who have a special relationship with it”. On the basis of this reasoning, the protection of nature and environment constitutes a veritable constitutional challenge, because, as the Constitutional Court says, Colombia is the fifth most biologically diverse country on Earth. 54.871 species of animals live in this country.

After a long discussion about the importance of water throughout the history of humanity, starting with the civilizations settled in Mesopotamia, on the shores to the Tigris and Euphrates Rivers, the River Nile in Egypt, the River Ganges in India or the River Huang He in China, the ruling takes into account the foundational myth that is embodied by water. With this information, and returning to the domestic setting, the Court explained: “ While the right to water is not expressly stated in the Constitution as a fundamental human right, the Constitutional Court regards it as such because it is part of the right to life under humanly dignified conditions not only when it is intended for human consumption but also because it is an essential part of the environment and it is necessary for the survival of multiple organisms and species that inhabit this planet. ”

According to the Court, “ the importance of the Nation’s biological and cultural diversity for future generations and the survival of the planet creates in the states the need to adopt comprehensive public policies about conservation, preservation and cultural diversity.” For this reason, the Atrato River constitutes an important factor of cultural identity in the Choco Province. However, the mining tradition in this area has been maintained for more than 500 years. It started with the establishment of Spanish mining colonies in Santa Maria la Antigua del Darien, a colonial town located in northern Choco province. Over the years, the area became synonymous with gold and wealth, as revealed through oral narrative made by great black inhabitants born in this area. These narratives spread quickly the legend of the land of gold. Today this is a no-man’s land, or in other words, a disputed land.”

(Source: Internet site- English.Corteconstitucional.gov.co)

**The second court in the world history which declared the river as legal person is the High Court of Uttararkhand province of India. In the suit between Mohd. Salim –v- State of Uttararkhand and others, (Writ Petition (PIL) No. 126 of 2014), Justice Rajiv Sharma of Uttarakhand high court opined that:**

*“16. With the development of the society where the interaction of individuals fell short to upsurge the social development, the concept of juristic person was devised and created by human laws for the purposes of the society. A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law. In other words, the entity acts like a natural person buy only through a designated person, as their Lordships have held in the judgments cited hereinabove, that for a bigger thrust of socio-political-scientific development, evolution of a fictional personality to be a juristic person becomes inevitable. This may be any entity, living inanimate, objects or things. It may be a religious institution or any such useful unit which may impel the Courts to recognize it. This recognition is for subserving the needs and faith of the society. Corpus Juris Secundum, vol. 6, page 778 explains the concept of juristic persons/ artificial persons thus: “Artificial persons. Such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic.” A juristic person can be any subject matter other than a human being to which the law attributes personality for good and sufficient reasons. Juristic persons being the arbitrary creations of law, as many kinds of juristic persons have been created by law as the society require for its development. (See salmond on Jurisprudence 12th Edition pages 305 and 306). Thus, to protect the recognition and the faith of society, Rivers Ganga and Yamuna are required to be declared as the legal persons/ living persons.*

*17. All the Hindus have deep Astha in rivers Ganga and Yamuna and they collectively connect with these rivers. Rivers Ganga and Yamuna are central to the existence of half of Indian population and their health and well being. The rivers have provided both physical and spiritual sustenance to all of us from time immemorial. Rivers Ganga and Yamuna have spiritual and physical sustenance. They support and assist both the life and natural resources and health and well-being of the entire community. Rivers Ganga and Yamuna are breathing, living and sustaining the communities from mountains to sea.*

*18. The constitution of Ganga Management Board is necessary for the purpose of irrigation, rural and urban water supply, hydro power generation, navigation, industries. There is utmost expediency to give legal status as a living person/ legal entity to Rivers Ganga and Yamuna r/w Articles 48-A and 51A(g) of the Constitution of India.*

*19. Accordingly, while exercising the parens patrie jurisdiction,* ***the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/ legal persons/ living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve river Ganga and Yamuna.*** *The Director NAMAMI Gange, the Chief Secretary of the State of Uttarakhand and the Advocate General of the State of Uttarakhand are hereby declared persons in loco parentis as the human face to protect, conserve and preserve Rivers Ganga and Yamuna and their tributaries. These Officers are bound to uphold the status of Rivers Ganges and Yamuna and also to promote the health and well being of these rivers.*

*20. The Advocate General shall represent at all legal proceedings to protect the interest of Rivers Ganges and Yamuna.*

*21. The presence of the Secretary, Ministry of Water Resources, River Development & Ganga Rejuvination is dispensed with.”*

*Our judgement has declared the Turag River as living entity which is the third declaration in the world that considers river as legal person.*

On the other hand, till the date of this judgement, the first and the only parliament till now that declares river as legal person is the parliament of New Zealand. The law passed by the parliament of New Zealand is as follows:

*The Parliament of New Zealand enacts as follow:*

***1. Title***

***This Act is the Te-Awa Tupua (Whanganui River Claims Settlement) Act 2017.***

***2. Commencement***

*This Act comes into force on the day after the date on which it receives the Royal assent.*

***Part 1***

***Nga Panui Whakamarama –Preliminary provisions***

***3. Purpose***

*The purpose of this Act is-*

*(a) To record the acknowledgements and apology given by the Crown to Whanganui Iwi in Ruruku Whakatupua – Te Mana to Te Iwi o Whanganui; and*

*(b) To give effect to the provisions of the deed of settlement that establish Te Pa Auroa na Te Awa Tupua; and*

*(c) To give effect to the provisions of the deed of settlement that settle the historical claims of Whanganui Iwi as those claims relate to the Whanganui River.*

*4.---------*

*5.---------*

*6.--------*

*7.---------*

*8.---------*

*9.---------*

*10.--------*

*11.------------*

***Subpart-2 Te Awa Tupua***

***Te Awa Tupua and Tupua te Kawa***

***12. Te Awa Tupua recognition***

***Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements.***

***13. Tupua te Kawa***

*Tupua te Kawa comprises the intrinsic values that represent the essence of Te Awa Tupua, namely-*

***Ko Te Kawa Tuatahi***

*(a) Ko te Awa te matapuna o te ora: the River is the source of spiritual and physical sustenance: Te Awa Tupua is a spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and well-being of the iwi, hapu, and other communities of the River.*

***Ko Te Kawa Tuarua***

*(b) E rere kau mai I te Awa mui mai i te Kahui Maunga ki Tangaroa: the great River flows from the mountains to the sea: Te Awa Tupua is an indivisible and living whole from the mountains to the sea, incorporating the Whanganui River and all of its physical and metaphysical elements.*

***Ko Te Kawa Tuatoru***

*(c) Ko au te Awa, ko te Awa ko au: I am the River and the River is me: The iwi and hapu of the Whanganui River have an inalienable connection with and responsibility to, Te Awa Tupua and its health and well-being.*

***Ko Te Kawa Tuawha***

*(d) Nga manga iti, nga manga nui e honohono kau ana, ka tupu hei Awa Tupua: the small and large streams that flow into one another form one River:*

*Te Awa Tupua is a singular entity comprised of many elements and communities, working collaboratively for the common purpose of the health and well-being of Te Awa Tupua.*

***Legal status of Te Awa Tupua***

***14. Te Awa Tupua declared to be legal person***

***(1) Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person.***

*(2) The rights, powers, and duties of Te Awa Tupua must be exercised or performed, and responsibility for its liabilities must be taken, by Te Pou Tupua on behalf of, and in the name of, Te Awa Tupua, in the manner provided for in this Part and in Ruruku Whakatupua- Te Mana o Te Awa Tupua.*

The declaration of river as a living entity by the two above-mentioned courts is true innovative thinking. It is evident from the analysis of the two above-mentioned judgements and the law that river pollution has expanded around the world to such astonishing levels that parliaments and courts are obligated to declare the river as a legal person.   
  
**Why is it necessary to declare the Turag as a living entity?**

The Bangladeshi people are seeing on different print and electronic media how large corporations, commercial institutions and influential people are polluting the Turag and other rivers, lakes, seashores, riverbanks, marshes, wetlands, canals and open waterbodies and illegally encroaching them to build illegal structures, and such pollution, encroachment and illegal construction are still ongoing. Currently, the Turag River has turned more or less into a canal. In the future, it will turn into a drain. Thereafter, due to our inaction, the housing companies will possibly fill-up the river and undertake residential plans there. The Turag River will remain in the pages of history, or poetry. Maybe some poets will write, ‘*once there was a toxic Turag river.’*

Where the Honorable Prime Minister Sheikh Hasina, from 1997 to 2001 and from 2009 up to the present time, has continuously enacted laws, made constitutional amendments and undertaken effective measures for the protection of the Public Trust, and has become a imitable and praiseworthy personality globally, and has been declared as a ***‘Champion of the Earth’*** by the United Nations formed with the nations of the world, all the actions and attempts of the Prime Minister are dulled due to a few anti-state, illegal polluters, encroachers and some selected representatives, government officials and law enforcement members who assist them.

In the riverine Bangladesh, lifestyle and economy is entirely dependent on water. Most of our communication system is dependent on seas, rivers, canals etc. The most cost-effective means of transportation is the waterway. Civilizsations have grown up on the banks of rivers and seas. Destroying the rivers is, after all, the same as our collective suicide. Destroying the rivers is like destroying our present and future generations. River polluters and encroachers are the enemies of our country, our independence and of humanity. River polluters are the killers of the human race. They are the killers of civilizsation.

The clean and pristine water of the Turag River, the navigability of its waters, the riverine wind blowing over it, its scenic and incomparable beauty, the unrestricted movement and growth of its fishes, the control of pollution in Turag river and its conservation are all valuable and protected by the Constitution, laws and the Public Trust Doctrine. All rivers including the Turag must be made free of pollution and encroachment and must be made for transportation.

If ‘special measures’ are not undertaken in ‘specially important circumstances’, there is a possibility of irreparable harm which will be impossible to mitigate. The current matter is so significant, our existence is at the risk of extinction. The pollution and encroachment in the Turag River has reached such terrifying levels, that, as the last option of protecting the River, we are declaring it as a legal person.

Therefore, the court orders that the current Rule is finalized without any cost as to expenses.

The ‘inaction’ of the Respondents with regard to the protection of the Turag River from pollution and encroachment have been undertaken without lawful authority thus, it is declared that such ‘inaction’ have no legal authority, and it is directed that the respondents ensure that the illegal structures, encroachment and pollution in the Turag River shall be removed at the expenses of the encroachers, as is their duty. We, therefore, issue the following orders and directions:

1. The broad explanation, analysis and description of the Public Trust Doctrine made in the present judgment is a part of the law of Bangladesh.
2. Turag river has been declared as a legal person/legal entity/living entity. All rivers flowing within and across Bangladesh shall be granted with the same status.
3. The River Conservation Commission has been declared as the legal guardian (person in loco parentis) with regard to the conservation, protection and development of and removal of pollution and encroachment from Turag and other rivers. The National River Conservation Commission, with the coperation of concerned organizations, departments and ministries shall be bound to remove all pollution and encroachment from rivers and make it fit for navigation, and protect, conserve and develop the rivers. All the concerned organizations, department and ministries shall be bound to provide all necessary assistance.
4. The ‘Precautionary Principle’ and ‘Polluter Pay Principle’ are declared as parts of our laws.
5. The Planning Commission, LGED, Water Development Board, BIWTA, BADC and other concerned officials shall notify the National River Conservation Commission regarding any new programme regarding the Turag and other rivers and shall obtain a no-objection certificate from the same.
6. Respondents No. 10 to 23 shall remove their encroachments from the concerned rivers within the next 30 (thirty) days. Otherwise, the National River Conservation Commission, with the assistance of concerned authority, shall evict the respondents at the cost of the Respondents themselves. The encroachers shall pay for the removal of the encroachment and for the return of the river to its earlier condition.
7. Respondent No. 1 shall make necessary amendments to the National River Conservation Commission Act 2013, declaring river encroachment and river pollution criminal offences, imposing strict penalties for the offences and laying out the procedure for filing, investigating and trying such cases, and shall notify the court regarding the steps it has undertaken in that regard by submitting an affidavit within the next 6 (six) months.
8. The SPA, RRSO satellite with the help of RS/GIS developed technology shall be used for the preparation of the digital database and the determination of the geographical location of rivers, lakes, canals and waterbodies; and maps of all Unions, Upazila and Districts are to be prepared and displayed as billboards in open spaces by the concerned departments and the upazila and district administrative office shall take steps to ensure that any citizen, upon payment of a fixed fee, shall be able to collect such map.
9. Respondent No. 1 shall undertake all necessary measures to make the River Conservation Commission an effective and independent body.
10. All the public and private schools, colleges, schools and colleges, colleges, madrasas, vocational training institutions, public and private institutions of Bangladesh shall, in every two months, conduct a one-hour awareness session on the importance of rivers and their conservation and protection from pollution in every class and shall conduct regular field visits to the rivers in the nearby areas. Apart from this, all educational institutions are directed to take measures to display local and international documentaries on the importance of rivers, nature and environment on large-screens. The Ministry of Education is directed to supervise whether all educational institutions are conducting classes as per these directions.
11. All small, medium, large, public and private industries and factories shall, in every two months, conduct one *‘discussion’* on river with the participation of all its workers. The Ministry of Industries is directed to supervise whether the industries are undertaking necessary measures in this regard.
12. All Union Parishad Chairmen, Upazila Chairmen, Paurashava Mayors, and District Parishad is directed to conduct a day-long rally related to rivers, art exhibition, and other competitions, discussions and seminars once every three months in all Unions, Upazilas, Paurashavas and Districts.
13. Every Union, Upazila, and District shall prepare a list of polluting individuals and corporations and encroachers in rivers within their territory and all chairmen and district administrators are directed to hang such list in an open place as a billboard for the awareness of the people within 6 (six) months.
14. Since the environment, climate and waterbodies, i.e seas, rivers, seashores, riverbanks, lakes, canals, marshes, wetlands, drains, waterfalls and open waterbodies, hills, mountains, wildlife, air are public trust properties, or public property, therefore, any person or corporation against whom complaints of such land grabbing or pollution exists shall be ineligible for any loans, and such necessary directions as may be necessary shall be issued by circulars and notices by the Bangladesh Bank to all its scheduled banks. The Governor of Bangladesh Bank is directed to submit an affidavit regarding the progress in the realization of these directions to notify the court in that regard.
15. Since the environment, climate and waterbodies, i.e seas, rivers, seashores, riverbanks, lakes, canals, marshes, wetlands, drains, waterfalls and open waterbodies, hills, mountains, wildlife, air are public trust properties, or public property, therefore, any person or corporation against whom complaints of such grabbing or pollution exists shall be ineligible for nomination as a candidate for all Union, Upazila, Paurashava, district and national elections and the Election Commission is directed l incorporate these directions and notify the court with an affidavit within the next 6 (six) months.
16. Secretary, Ministry of Education is directed to include subjects related to river conservation and pollution in the curriculum of schools, colleges and universities with the aim of raising awareness about rivers.
17. The Director General, Bangladesh Television is directed to broadcast documentaries prepared in the country and abroad on rivers, nature and environment every Friday for one hour on Bangladesh Television. Further, private television channels are directed to broadcast documentaries made in the country and abroad on rivers, nature and environment for one hour, one day every week.

The current writ petition shall continue in the form of a ***Continuing Mandamus.***

It is further ordered that in case of any doubts arising out of the directions issued in the present judgment, the applicants, respondents, National River Conservation Commission, Election Commission, Bangladesh Bank, Ministry of Labour and Employment, Ministry of Education and other concerned ministries, government and non-governmental organizations and any citizen of Bangladesh can file an application requesting the directions of the High Court Division.

The advocate appearing on behalf of the petitioner, Advocate Manzill Morshed along with Advocate Md. Sarwar Ahad Chowdhury, Advocate Ripon Baroi, Advocate Sanjay Mondal and on behalf of the respondents, Advocate Syed Mafizur Rahman (On behalf of Respondent No. 2) Advocate Imam Hasan with Advocate Shahinul Islam (On behalf of Respondent No. 3) Advocate Khandoker Shahriar Shakir (On behalf of Respondent No. 4) Advocate Harun-ur-Rashid (On behalf of Respondent No. 10) Advocate Md. Asaduzzaman (On behalf of Respondent No. 12) Advocate Md Mahbub Uddin with Advocate Saqeb Mahbub (On behalf of Respondents No. 13 to 21) Advocate Mohammad Mehedi Hasan Chowdhury Advocate Sheikh Fazle Noor Taposh, Advocate Apurbo Kumar Biswas, Advocate Josna Parvin, Advocate Upama Biswas, Advocate Swapnil Bhattacharya (On behalf of Respondents No. 22, 23) Advocate Md Ekramul Hoque, Deputy Attorney General with Advocate Purabi Rani Sharma, Assistant Attorney General Advocate Purabi Saha, Assistant Attorney General (On behalf of Respondent No. 5) are thanked for assisting the court in the present petition.

The Judicial Inquiry Officer for the Identification of Illegal Constructions on the Turag river, Chief Judicial Magistrate, Gazipur, Mr. Aslam Joglul Hossain and all governmental and non-governmental who provided assistance to him are especially thanked.

The Daily Star newspaper and its reporters are thanked for publishing the time-befitting reports on the terrifying condition of the Turag River. The active role the print and electronic media are playing in river conservation is, in a word, incomparable. They are congratulated through the present judgment.

A copy of the present judgment is directed to be sent to the Chairpersons of Law Departments of all public and private universities.

The Registrar General is directed to send a copy of the present judgment to all judges of subordinate courts via e-mail.

The Registrar General is directed to send a copy of the present judgment to the Judicial Administration Training Institute (JATI).

The Registrar General is directed to send a copy of the present judgment to the Honorable Chairman of the Law Commission.

All responding parties, the Minister for Education, the Chief Election Commissioner, National River Conservation Commission. Governor of Bangladesh Bank, Secretary of Ministry of Education, all members of the Parliament, Divisional Commissioner, District Administrator, Paura Mayor, all Upazila Chairmen, all Upazila Nirbahi Officer, all Union Parishad Chairmen are to be immediately notified with a copy of the judgment to undertake necessary measures.

A copy of the present judgment shall be directly sent to the Honorable Prime Minister Sheikh Hasina in order to attract her attention, so that she may undertake emergency measures for the protection of the Turag and other rivers upon her personal initiative, and so that the government under the leadership of the Honorable Prime Minister Sheikh Hasina may undertake exemplary steps against the enemies of the state and humanity encroachers and polluters of rivers, who have contravened the globally praised legal provisions regarding river conservation and those government officials who assisted them. The Registrar General shall physically appear and present a signed and sealed in front of the Honorable Prime Minister.

The existence of Bangladesh depends on whether the rivers will survive. Therefore, the realization of the present judgment is crucial for the nation. If all the concerned parties, evoked by a sense of patriotism, perform their duties with honesty and sincerity, then surely, our country will grow up to be a happy and enriched, that is, the ‘Sonar Bangla’ as envisioned by the Greatest Bangali of All Time, Bangabandhu Sheikh Mujibur Rahman and will become the developed country as envisioned by Honorable Prime Minister Sheikh Hasina.

**Postscript:**

*May the rivers flow free. May we see the different images of the rivers in their tides and ebbs. May the boatmen again pick the happy tune and sing the Bhatiyali [[57]](#footnote-57) songs. May the naughty youths again leap around the heart of the rivers. May the smiles of contentment return on the faces of the fishermen. May the boatmen fall asleep to the rhythmic sound of the splashes of river tides. May the people of Bangladesh roam around the beautiful Bangladesh on a sailing boat instead of spending money going on ship voyages abroad. In conclusion, I shall say*

*If the rivers survive, the country will survive  
Our dearest Bangladesh will survive.*

**Justice Moyeenul Islam Chowdhury:**

I agree.

1. A *Haor*, is a wetland ecosystem in the north eastern part of Bangladesh which physically is a bowl or saucer shaped shallow depression, also known as a Back swamp. [↑](#footnote-ref-1)
2. *“Khatiyan”* is a Persian word commonly used in Bangladesh to mean the document or records of rights which is prepared through survey for the purpose of determining possession, ownership and assessing Land Development Tax. [↑](#footnote-ref-2)
3. ibid [↑](#footnote-ref-3)
4. ibid [↑](#footnote-ref-4)
5. *Saf-Kabala Deed* means the outright sale of a land property. [↑](#footnote-ref-5)
6. Mutation *Khatiyan* is a type of *khatiyan* that is done through mutation or proceedings of the transfer of ownership of a land property. [↑](#footnote-ref-6)
7. Ssupra note 2 [↑](#footnote-ref-7)
8. supra note 5 [↑](#footnote-ref-8)
9. supra note 6 [↑](#footnote-ref-9)
10. supra note 2 [↑](#footnote-ref-10)
11. Supra note 5 [↑](#footnote-ref-11)
12. supra note 6 [↑](#footnote-ref-12)
13. supra note 2 [↑](#footnote-ref-13)
14. supra note 5 [↑](#footnote-ref-14)
15. supra note 6 [↑](#footnote-ref-15)
16. supra note 2 [↑](#footnote-ref-16)
17. supra note 5 [↑](#footnote-ref-17)
18. supra note 6 [↑](#footnote-ref-18)
19. supra note 2 [↑](#footnote-ref-19)
20. supra note 5 [↑](#footnote-ref-20)
21. supra note 6 [↑](#footnote-ref-21)
22. supra note 2 [↑](#footnote-ref-22)
23. supra note 5 [↑](#footnote-ref-23)
24. supra note 6 [↑](#footnote-ref-24)
25. supra note 2 [↑](#footnote-ref-25)
26. In Bangladesh, Pakistan and parts of India a Mouza or Mauza is a type of administrative district, corresponding to a specific land area within which there may be one or more settlements. Before the 20th century, the term referred to a revenue collection unit in a pargana or revenue district. Here Nagar Mouza meant the land administrative district/unit set in a city area. [↑](#footnote-ref-26)
27. ibid [↑](#footnote-ref-27)
28. Bil or Beel is a large surface waterbody that accumulates surface runoff water through internal drainage channels; these depressions are mostly topographic lows produced by erosions and are seen all over Bangladesh. [↑](#footnote-ref-28)
29. supra note 1 [↑](#footnote-ref-29)
30. supra note 28 [↑](#footnote-ref-30)
31. ibid [↑](#footnote-ref-31)
32. It is a renowned publishing house in Bangladesh. [↑](#footnote-ref-32)
33. Here “Ghat” means harbour or the steps or road leading towards a body of water or wharf. "Ghat" and "Ghata" is also a suffix used in several place names across the subcontinent as it is used here for Lalghat and Takerghat. [↑](#footnote-ref-33)
34. It indicates the northern region of Bangladesh. [↑](#footnote-ref-34)
35. Here *Nod* means Male River and *Nodi* Means Female River. This Gender construction has special meaning here and that’s why we kept the word Nod and Nodi in the translated version. [↑](#footnote-ref-35)
36. Here *Na* indicates a Bangla letter which is used to write Bangla word *Nod/Nodi.* [↑](#footnote-ref-36)
37. Sanskrit is an Old Indo-Aryan language. As one of the oldest documented members of the Indo-European family of languages, and as many of the religious texts of this sub-continent are written in this language, Sanskrit holds a prominent position in Indo-European studies. [↑](#footnote-ref-37)
38. Aush is the rice-harvesting season in between the months of July to August [↑](#footnote-ref-38)
39. Amon is the rice-harvesting season in between the months of November to January [↑](#footnote-ref-39)
40. Boro is the rive harvesting season in between the months of May to June [↑](#footnote-ref-40)
41. Baul is a mendicant folk sect, generally inhabiting the districts of Kushtia, Meherpur, Chuadanga, Jhenaidah, Faridpur, Jessore, and Pabna and associated with devotional songs known as Baul songs. [↑](#footnote-ref-41)
42. Bhatiali or bhatiyali, is a form of folk music in both Bangladesh and West Bengal. Bhatiali is a river song mostly sung by boatmen while going down streams of the river. The word bhatiyali comes from bhata meaning "ebb" or downstream. [↑](#footnote-ref-42)
43. supra note 38 [↑](#footnote-ref-43)
44. ibid [↑](#footnote-ref-44)
45. *Saccharum spontaneum*, also known as Wild Sugarcane or Kans Grass is a type of perennial grass native to the Indian Sub-continent. [↑](#footnote-ref-45)
46. Tamarisk plants [↑](#footnote-ref-46)
47. “Kuthibari” means Country House [↑](#footnote-ref-47)
48. Mouza was used as a revenue unit in the revenue surveys. Similarly, the subsequent cadastral surveys of Bengal districts also used mouza as the lowest revenue unit. A mouza was identified in the local revenue map with its Jurisdiction List (JL) and Revenue Survey (RS) numbers. [↑](#footnote-ref-48)
49. Ibid [↑](#footnote-ref-49)
50. Dag is an identification number used to obtain the details of a piece of land such as its area, ownership, location, type, details of adjacent lands etc. [↑](#footnote-ref-50)
51. Some places used by common people and managed or leased by the government. [↑](#footnote-ref-51)
52. National Parliament [↑](#footnote-ref-52)
53. Religious head of Mosque who lead prayers for the Muslims [↑](#footnote-ref-53)
54. In Bangladesh, Pakistan and parts of India a Mouza or Mauza is a type of administrative district, corresponding to a specific land area within which there may be one or more settlements. Before the 20th century, the term referred to a revenue collection unit in a pargana or revenue district. [↑](#footnote-ref-54)
55. A Haor, is a wetland ecosystem in the north eastern part of Bangladesh which physically is a bowl or saucer shaped shallow depression, also known as a Back swamp. In other words, Haor means seasonal wetland and baor means oxbow lake. [↑](#footnote-ref-55)
56. Repetition included in the original Bangla text. [↑](#footnote-ref-56)
57. A form of folk music in both Bangladesh and West Bengal. Bhatiali is a river song mostly sung by boatmen while going down streams of the river. [↑](#footnote-ref-57)