Climate Change and Migration: Finding a Solution through Public Interest Litigation

by

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Submitted in fulfilment of the requirements for the degree of

Masters by Research

Deakin University

May 2017
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Abstract

The rationale behind undertaking this research is to examine the possibilities of addressing the problems faced by climate migrants through Public Interest Environmental Litigation (PIEL) in Bangladesh, India and Pakistan. The research aims to answer two questions: first, can PIEL be an effective tool to remedy the plight of climate migrants? Second, if so, how can it be used to achieve this goal? To answer these questions, this thesis examines some decided PIEL cases of Bangladesh and the laws that can be used by climate migrants to obtain justice. The necessity for this research lies in the potential threat of producing a large number of climate migrants from these three South Asian countries as a result of climate change. This research is also necessary because of the need to address their situation efficiently in the absence of legislation regarding the management of the problem of climate change-induced migration.

The thesis propounds that the judiciaries of these three South Asian countries have been proactive in providing environmental justice through the relaxation of the rule of standing, the liberal interpretation of the right to life, and the willingness to entertain class actions in public interest litigation. The thesis discusses selected PIEL cases in Bangladesh where the petitioners faced situations likely to be experienced by climate migrants or potential climate migrants. An analysis of the relevant cases suggests that the concluded PIELs can be used by other climate migrants in similar cases, and that the courts’ liberal interpretation of the right to life can cover most of their claims in the absence of any specific protective or remedial legislation. These findings offer climate migrants an incentive to initiate proceedings by filing a PIEL in order to address their situation.
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<td>AIR</td>
<td>All India Report</td>
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<td>AD</td>
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<td>ALRD</td>
<td>Association for Land Reforms and Development</td>
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<td>BCCSAP</td>
<td>Bangladesh Climate Change Strategy and Action Plan</td>
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<td>BSEHR</td>
<td>Bangladesh Society for the Enforcement of Human Rights</td>
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<td>CLR</td>
<td>Commonwealth Law Reports</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>DLR</td>
<td>Dhaka Law Report</td>
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<td>ECA</td>
<td>Ecologically Critical Area</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>IPCC</td>
<td>Intergovernmental Panel on Climate Change</td>
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<td>LECZ</td>
<td>Low Elevation Coastal Zone</td>
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<td>OHCHR</td>
<td>Office of the High Commissioner on Human Rights</td>
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<td>Public Interest Environmental Litigation</td>
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1.1 Introduction

Industrial advancement is a double-edged sword: on the one hand, it has conferred numerous benefits on humanity, while on the other it has produced the potential for catastrophic consequences, such as climate change. In its Fourth Assessment Report, the Intergovernmental Panel on Climate Change (IPCC) states that it is unequivocal that the climate system of the world is warming, and that this is causing changes in the climate.\(^1\) Nevertheless, there remain deniers\(^2\) who argue that human activity has nothing to do with climate change. While the subject of this thesis is climate change-induced migration and the potential legal solutions to the problems such migrants face, rather than climate change per se, the issues are clearly inseparable. More specifically, this thesis will consider the plight of climate migrants and the potential legal redress available to them in the three South Asian countries of Bangladesh, India and Pakistan.\(^3\) These three countries have been selected because they share common environmental problems with similar causes, having each experienced, and being under the continuous threat of serious degradation of their environments (due to climate change). For example, the prospect of vast areas being submerged under water or being affected by drought. These countries also demonstrate the political and executive unwillingness to address these problems because their governments are more concerned with pursuing a ‘no holds barred’ approach to development.\(^4\) These countries share a common legal history and comparable legal systems as well, and

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\(^2\) Despite the international scientific community’s consensus on climate change, a small number of critics continue to deny that climate change exists or that humans are causing it. Widely known as climate change “deniers”. These individuals are generally not climate scientists and their claim is not based on any scientific evidence. The fossil fuel industry and certain companies also promote such denial of science and tends to confuse the public. Haydn Washington, John Cook, Climate Change Denial: Heads in the Sand (Routledge, 2011).

\(^3\) Bangladesh, India and Pakistan will be referred to as South Asia in this thesis. Though the term South Asia has been used by different authors to refer to different sets of countries, authors such as Jona Razzaque (Public Interest Environment Litigation in India, Pakistan and Bangladesh; Kluwer Law International, 2004) and Gilbert Etienne (Rural Change in South Asia: India, Pakistan and Bangladesh; Vikas, New Delhi, 1995) refer to India, Pakistan and Bangladesh as South Asia.

public interest litigation (PIL) has undergone interrelated development in these three countries both historically and conceptually.  

1.2 **Global Warming and Climate Change**

The realisation that the CO₂ emitted by human and other activity could accumulate in the earth’s atmosphere and create a ‘greenhouse effect’ that increases the temperature of the planet emerged in the 19th century. Emissions of greenhouse gases is one of the costs of the modern industrial economy, causing ‘global warming’, a closely studied and well understood phenomenon in the 21st century. Greenhouse gases like carbon dioxide (CO₂) cause global temperatures to rise because they trap heat in the earth’s atmosphere (the ‘greenhouse effect’). Since the beginning of industrialisation, human activities—like the burning of fossil fuels on a far greater scale than ever before—have increased the amount of these gases in the earth’s atmosphere, thereby causing both direct and indirect problems. Direct problems include the melting of the glacial ice caps, thermal expansion (which causes the sea level to rise) and desertification, while indirect consequences include extreme weather patterns resulting from climate change. Since the start of the industrial revolution in 1760, emissions of CO₂ have risen. Scientific evidence shows that the global-average temperature might increase 2-4.5 degrees Celsius during the course of the 21st century if the CO₂ concentration in the atmosphere increases. As Atapattu says, ‘While climate change was once considered an environmental problem, it now impinges on every aspect of human life, including the international economy, public health, migration, employment and ultimately international peace and security’.  

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7 Ibid, 34-51.
8 IPCC, 4th Assessment Report, above n 1, 1.
human rights are thereby violated due to climate change, as they intersect with each of these areas.

1.3 Definition of Climate Migrants

Before climate migrants can be recognised in law and afforded legal protection, the phenomenon must be understood. That being the case, it is necessary to understand the various situations of climate migrants. Then, the terminology used to define them must be developed in order to determine whether they should be called refugees, migrants or environmentally displaced persons, as even that lacks consensus. In an effort to classify climate migrants or ‘environmental refugees' Bates defines them as ‘people who migrate from their usual residence due to changes in their ambient non-human environment’. At the same time, she states that the definition leaves out important features like ‘the transformation of the environment to one less suitable for human occupation and the acknowledgement that this causes migration’. According to Bates, the choice or intention to migrate is also very important in identifying environmental refugees.

Efforts have been made to define climate migrants. El-Hinnawi defined climate migrants for the first time in his research for UNEP. He referred to them as ‘environmental refugees’ and defined them as: ‘those people who have been forced to leave their traditional habitat, temporarily or permanently, because of a marked environmental disruption (natural and/or triggered by people) that jeopardised their existence and/or seriously affected the quality of their life’.

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13Ibid.
14Ibid 468–469.
15Ibid.
16Essam El-Hinnawi, ‘Environmental Refugees’, (United Nations Environmental Programme 1985) 4. The author describes environmental disruption as any physical, chemical and/or biological changes in the ecosystem (or resource base) that render it temporarily or permanently unsuitable to support human life.
This definition, according to Bates, is vague as it does not distinguish between different types of environmental refugees nor does it distinguish environmental refugees from other types of migrants.17

Myers defines climate refugees as:

People who can no longer gain a secure livelihood in their homelands because of drought, soil erosion, desertification, deforestation and other environmental problems. In their desperation, they feel they have no alternative but to seek sanctuary elsewhere, however hazardous the attempt. Not all of them have fled their countries, many being internally displaced. But all have abandoned their homelands with little hope of a foreseeable return.18

This definition shows the human security dimension and it has been widely quoted.19 Human security ‘means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people’s strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity’.20

Both El-Hinnawi and Myers have produced statements establishing a straightforward linkage between environmental changes and migration but have not provided evidence of the existence of this link.21 Moreover, they have failed to mention the existence of other factors (such as economic, political and social factors) that contribute towards such migration.22 In addition, there has been significant debate regarding the use of the term ‘climate refugee’.

17Bates, above n 12, 466.
21Assan and Rosenfeld, above n 19.
The latest definition of climate migrants has been offered by the International Organization for Migration (IOM). They use the term climate migrant and define them as:

Persons or groups of persons who, for compelling reasons of sudden or progressive change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently and who move either within their country or abroad.23

1.3 Climate-Induced Displacement and the Violation of the Human Rights of the Displaced

After the IPCC’s prediction in 1990 that the effects of climate change, like shoreline erosion, coastal flooding and agricultural disruption, could cause millions of people to be displaced, various analysts have forecast that the most likely event is that climate change would cause 200 million people to be displaced by 2050.24The three South Asian countries, Bangladesh, India and Pakistan share the same coastline. About 130 million people in this area live in the Low Elevation Coastal Zone (LECZ).25 These people are vulnerable to, and would be seriously affected by inundation and coastal erosion caused by sea level rise. Problems like sea level rise could cause millions of people to migrate from this region. Problems of this nature are not merely future possibilities, but are already a reality. For example, millions of Bangladeshis are migrating internally or to neighbouring India as a result of a number of socio-economic factors, and because of the climate change-induced worsening of normal environmental events, like

floods affecting the livelihoods of landless and poor farmers in this region. This situation will grow worse as the temperature of the earth—and along with it, climate-induced calamities—increase.

Victims of sudden onset disasters receive attention and aid while the victims of slow onset disasters are generally not noticed. However, the latter are most likely to become climate migrants. The people of an area hit by sudden disasters frequently also decide to migrate, but they are more often than not repatriated once the threat has abated. One example of such a group is the victims of Cyclone Sidr of 2007. The cyclone formed in the central Bay of Bengal and struck the south west coast of Bangladesh. The cyclone swept over Bangladesh from the Northern Bay of Bengal with strong winds of up to 260 kilometres per hour and high tidal surges. The cyclone affected 30 districts and 2,566,857 people, who suffered loss of life, loss of livestock, crops, fishing equipment, houses and other devastating effects. The cyclone caused its victims to undertake permanent and temporary migration. The government, with the help of aid agencies, planned to rebuild the damaged houses in a way that would be able to withstand the effects of cyclones in the future. However, because of the time the process took, some of those people were forced to migrate temporarily.

The response to the cyclone was to adopt adaptation and mitigation strategies in the affected areas. The situation did not call for a need to file PIL. However, if the government failed to execute those plans, cyclone victims could have been forced to go to the High Court to file a PIL. This again demonstrates that the victims of sudden onset disasters attract a certain amount of attention and assistance, while

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27 IPCC, 4th Assessment report, above n 1.
30 Ibid, 95.
31 One major reason for this was the lack of co-ordination amongst different government and aid agencies. In order to address such matters The Disaster Management Act has been enacted in the year 2012. The Act aims to make the activities about disaster management coordinated, object oriented and strengthened among other things.
the victims of slow onset disasters simply go unnoticed—yet they are most in need of the help of the highest court to obtain the attention of the government.

People who become migrants due to climate change suffer from the violation of basic human rights, such as the right to life, housing, clothing, shelter and livelihood.\textsuperscript{32} Climate migrants do not receive any special assistance from either government or non-governmental organisations (NGOs) and cannot claim any assistance as a right since there is no legislation under which the conditions causing their migration can be made a litigable matter. Hence, the aim of this thesis is to explore the legal arguments through which climate migrants can seek relief from the courts.\textsuperscript{33}

1.4 International Environmental Regime The scientific community, and then government technocrats and policy-makers, and the general population were very slow to realise the devastating effects of climate change and the necessity of preventing or even reducing greenhouse gas emissions. Still, we find that the world community has done little to prevent or mitigate this problem. One of the earliest efforts in this regard was the 1972 Stockholm Conference of the United Nations on the Environment and the 1992 United Nations Conference on the Environment and Development in Rio De Janeiro (Brazil), which produced the Rio Declaration on Environment and Development in 1992. The Rio Declaration provided that ‘human well-being is a central feature of efforts aimed to ensure sustainable development. People have the right to a healthy and fruitful environment in harmony with nature’.\textsuperscript{34}

\textsuperscript{32}For detailed discussion see below Chapter 3: Climate Change and Violation of Human Rights, 30.
\textsuperscript{33}For detailed discussion see below Chapter 5: Public Interest Environmental Litigation in the Aid of Climate Migrants, 64.
\textsuperscript{34}Rocca Salcedo Mesa, ‘Environmental Degradation and Human Rights Abuses: Does the Refugee Convention Conferring Protection to Environmental Refugees?’ (2007) International Law Review 75, 94.

Earlier efforts in addressing the problem of climate change included: The Universal Conference on Human Rights (Vienna, 1993), the International Conference on Population and Development (Cairo, 1994), the Conference on Human Settlements (Habitat II, Istanbul, 1996) and the 2002 World Conference on Sustainable Development also deal with human rights and environmental concerns.
The most effective step taken so far is the United Nations Framework Convention on Climate Change (UNFCC) 1992 and its Kyoto Protocol, which set emission reduction targets for industrialised countries. There are now 197 parties to the convention and 192 parties to the protocol. However, with countries such as the United States (US), China and India not being party to the protocol, it is unlikely that it will go very far towards mitigating climate problems. India and China currently emit about 6.6 and 30 percent of global greenhouse gases respectively, the US and the European Union jointly emit about 24.6 per cent (US 15 percent and EU 9.6 percent). China has already surpassed the US and EU while India’s emission rate, given that the country is an emerging economy with a large population, is expected to go much higher. Under the protocol, schemes like carbon trading are preferred by countries with a high rate of emission, but this is less friendly to the environment, since under this scheme high carbon-emitting countries are simply able to shift production to low emitting countries through direct trade. The use of such economic instruments does not give countries incentives to implement technologies to reduce emissions and thereby stimulate global efforts to reduce carbon emissions to fail.

The initial period of emission reduction under the Kyoto Protocol ended in 2012. In December 2012, a UN climate conference in Doha agreed to a new commitment period for the Kyoto Protocol and affirmed a previous decision to adopt a new global climate pact by 2015. According to the findings of IPCC, it might be too late to reach the goal of limiting global temperature rise to

35United Nations, Climate Change
37Institute for Energy Research (IER), India Can Triple CO2 Emissions Under New Climate Commitment (2015)
39United Nations, above n 35.
40IPCC, 4th Assessment Report, above n.1.
IPCC, in its fifth assessment report states that if carbon emissions continue at the present rate, the global temperature might rise about 1.5-2.5 degrees Celsius (above the pre-industrial level) by the end of this century. The then UN Secretary-General, Ban Ki-moon, remarked at the Council on Foreign Relations in February 2013 that:

Too many leaders seem content to keep climate change at arm’s length, and in its policy silo. Too few grasp the need to bring the threat to the centre of global security, economic and financial management. It is time to move beyond spending enormous sums addressing the damage, and to make the investments that will repay themselves many times over.

The Secretary-General’s determination to link climate change to human rights, security and economic development reflected several key instruments. In 1994, the UN drafted the first ever Declaration of Principles on Human Rights and the Environment. The declaration lays down in art 2 of Part I that:

All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.

This Article recognises the right to a healthy environment, andrecognises the link between environmental rights and other human rights. The Declaration of Principles on Human Rights and the Environment also focuses on the needs of indigenous people and vulnerable groups. However, as a draft, the Declaration of Principles on Human Rights and the Environment has no binding effect. Boyle states that the declaration was ‘premature and overly ambitious and made no

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41The goal set by the parties to the Paris Conference—COP 21: Conference of the Parties, United Nations Framework Convention on Climate Change, Report of the Conference of the Parties on its Twenty—First Session, Held in Paris from 30 November to 13 December 2015-Addendum-Part 2: Action Taken by the Conference of the Parties at its Twenty-first Session, UN Doc FCCC/CP/2015/10/Add.3 (29 January 2016).
43United Nations, above n 35.
headway in the UN’. Nevertheless, it represents a positive step towards a legally binding treaty.

In its Resolution No. 7/23, 28 March 2008, the United Nations Human Rights Council (UNHRC) expressed concern that ‘climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights’. In its Resolution on 10/4, 2009, the Council also affirmed ‘that human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes’ and called for continuing study and discussion of the relationship between human rights and climate change.

The United Nations Environment Programme (UNEP) held a high-level expert meeting, ‘The New Future of Human Rights and Environment: Moving the Global Agenda Forward in Nairobi in 2009’. The goal of the meeting was to examine the present link between human rights and environmental agendas and to provide guidelines to UNEP, the Office of the High Commissioner on Human Rights (OHCHR) and other institutions for developing strategies on human rights and the environment. In March 2012, the UNHRC decided to establish a mandate on human rights and the environment. Among other tasks, this would study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and promote best practices relating to the use of human rights in environmental policy-making.

48 United Nations Environment Programme, Outcome Document of the High Level Expert Meeting on the New Future of Human Rights and Environment: An Agenda for Moving Forward (2009), cited in Boyle, above n 45, 615. This draft declaration was completed in 2010 but has not been published. The author was co-rapporteur together with Prof. Dinah Shelton.
49 Ibid.
As a result, the office of the first Independent Expert on Human Rights Obligations (Now the Special Rapporteur on Human Rights and the Environment) was created in August 2012.\textsuperscript{50} UNHRC Resolution 2005/60 also recognised the link between human rights, environmental protection and sustainable development.\textsuperscript{51} Article 29(1) of the United Nations Declaration on the Rights of Indigenous Peoples states that ‘Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination’.\textsuperscript{52}

Most importantly, reports of the OHCHR and comments of the General Assembly have strongly suggested on several occasions that the UN recognises the nexus between human rights and the environment. The Council asked the OHCHR to conduct a study of the relationship between climate change and human rights, and the OHCHR submitted its study to the Council in March 2009. The Council then issued another resolution:

\begin{quote}
Noting that climate change related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights including, inter alia, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination and human rights obligations related to access to safe drinking water and sanitation, and recalling that in no case may a people be deprived of its own means of subsistence.\textsuperscript{53}
\end{quote}

This resolution recognises the negative impacts of climate change on human rights and the need to help the people who are suffering from it.


\textsuperscript{51}Boyle, above n 45, 618.


\textsuperscript{53}UNHRC, above n 47.
1.5 Scope of the Research

This research is about climate change-induced migration and finding a legal solution for climate migrants through public interest litigation (PIL). The scope of the study is restricted to research into the legal avenues available to climate migrants from the three South Asian countries Bangladesh, India and Pakistan. The reasons behind this selection are outlined in the following sections.

1.5.1 The common environmental problems of South Asia

Rapid population growth, large-scale urbanisation, unplanned or poorly planned industrialisation, and the exploitation of natural resources have caused serious degradation of the overall environment in South Asia. This includes problems such as waterlogging, a decline in water quality, ingress of saline water from the sea into coastal fresh water aquifers, decline of groundwater tables and deterioration of traditional water harvesting techniques. The development processes of these countries have caused the mishandling of dangerous goods and noxious substances, resulting in serious land and water pollution.

Further, the overall increase in the temperature of the earth’s atmosphere is also causing a serious threat to these countries. The melting of the polar ice caps due to the increased temperature of the earth is causing the sea level to rise and may have an impact on the formation, increased frequency and intensity of tropical cyclones. According to the IPCC, the warming will continue and an increase of 2.0–4.5 degrees Celsius in the earth’s atmosphere is expected by the end of the century. According to the IPCC 5th assessment report, by the end of this century the sea level might rise 24-30 centimetres. This would cause the South Asian region to face a wave of migrants displaced by the impact of climate change,

54 As the research focuses on PIL, the climate migrants in issue can also be termed as internally displaced persons (IDPs). But the term climate migrants has been used throughout the research in order to specifically identify them (as IDPs also include people displaced by armed conflicts, situations of generalized violence, violations of human rights or human-made disasters).
55 Hassan and Azfar, above n 4, 218.
56 Razzaque, above n 5, 5.
57 Sarker and Azam, above n 29, 92.
58 IPCC, 4th Assessment Report, above n 1.
59 IPCC, 5th Assessment Report, above n 42.
including the rise in sea levels and drought associated with shrinking water
supplies and monsoon variability.\footnote{IPCC, 3\textsuperscript{rd} Assessment Report, above n 24.}

1.5.2 The legal background and the legislature of South Asia

Bangladesh, India and Pakistan were ruled by the British for two hundred years. One of the legacies of British rule was the legal system, with most of the legislation these three countries follow being formulated during the period of British rule.\footnote{Example: the Civil Procedure Code 1908, the Criminal Procedure Code 1898 and the Penal Code 1860, with some amendments; they also share the same common law root; Razzaque, above n 5.} The constitutions of the South Asian countries in this study are of a similar pattern. They are each inspired by the United Kingdom (UK) and the US constitutions.\footnote{Ibid 66.} They all contain provisions regarding the fundamental rights and the directive principles of state policy. The fundamental rights comprise of civil and political rights,\footnote{Civil and political rights are characterized as negative rights, in the sense that they generally restrict the powers of the government in respect of actions affecting civil and political rights of the individual. These rights are readily justiciable and susceptible to enforcement. Philip Alston, Gerard Quinn, ‘The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights’ (1987)9(2) Human Rights Quarterly, 156, 159-160.} such as the right to life and liberty, freedom of association, freedom of movement and equality before the law. These fundamental rights are laid down in pt III of the \textit{Bangladesh Constitution}, as they are in pt III of the \textit{Indian Constitution}, while they appear in pt II ch1 of the \textit{Pakistan Constitution}.

The directive principles of state policy contain the economic, social and cultural rights\footnote{Economic, social and cultural rights are socio-economic human rights, such as the right to education, the right to housing, the right to an adequate standard of living, the right to health and the right to science and culture. These rights are enshrined in the Universal Declaration of Human Rights and also in the International Covenant on Economic Social and Cultural Rights. Member states to the Covenant have a legal obligation to recognise the economic, social and cultural rights and are expected to take ‘progressive action’ towards their implementation. For details see Scott Davidson, \textit{Human Rights} (Open University Press, 1995)14.} of citizens. They consist of provisions regarding (inclusively) democracy, human rights, basic necessities and education. Only India and Bangladesh have
incorporated the right to the environment\textsuperscript{65} in the principles of state policy. The \textit{Pakistan Constitution} does not recognise any right to the environment.

The fundamental principles are guiding principles in the governance of these countries, and in the framing of laws and policies of the respective countries. However, they do not have the force of law. In the \textit{Bangladesh Constitution}, these principles are called the Fundamental Principles of State Policy and are laid down in pt II of the \textit{Constitution}.\textsuperscript{66} They are referred to as the Directive Principles of State Policy in the \textit{Indian Constitution} and are laid down in pt IV of the \textit{Constitution},\textsuperscript{67} and in the \textit{Pakistan Constitution} they are enshrined in pt II, ch 2 as Principles of State Policy.\textsuperscript{68} An aggrieved person cannot seek relief in the courts for the infringement of any of the Fundamental Principles of State Policy in any of the three countries.

In all three South Asian countries, in the case of a breach of a fundamental right, an aggrieved person may seek relief in the High Court (Bangladesh and Pakistan) or the Supreme Court (India) of the country. Article 44 of the \textit{Bangladesh Constitution} contains the provision to move the High Court under art102 for breach of fundamental rights, while art 32 of the \textit{Indian Constitution} and art184 of the \textit{Pakistan Constitution} contain similar provisions. The provision empowering the High Court to issue writs is contained respectively in art 102 of the \textit{Bangladesh Constitution}, art 226 of the \textit{Indian Constitution} and art 199 of the \textit{Pakistan Constitution}.\textsuperscript{69}

The South Asian countries have progressed from fragmented and general environmental legislation to mature national legislation that integrates a regulatory framework with environment-specific national councils and agencies,

\textsuperscript{65}Article 48A of the \textit{Indian Constitution}: Protection and improvement of the environment and safeguarding of forests and wildlife: The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

\textsuperscript{66}\textit{Constitution of the People’s Republic of Bangladesh}.

\textsuperscript{67}\textit{Constitution of India}.

\textsuperscript{68}\textit{Constitution of the Islamic Republic of Pakistan}.

\textsuperscript{69}\textsuperscript{Razzaque, above n 5, 190–197.}
commonly referred to as ‘framework legislation’. The *Environment Conservation Act 1995*, the *Environment Protection Act 1986* and the *Environment Protection Act 1997* are the framework laws of Bangladesh, India and Pakistan, respectively. The framework laws of the South Asian countries were created in the aftermath of the Stockholm Convention 1972. The framework laws and other environment-related legislation of these countries contain numerous environment-friendly provisions. These countries are also signatories to a number of important international environment conventions, such as the United Nations Convention on the Law of the Seas (UNCLOS) 1982, the Basel Convention 1989 and the United Nations Framework Convention on Climate Change 1992.

Different government agencies and departments have been established under the framework law and other laws in Bangladesh, India and Pakistan to manage environmental standards and to deal with environmental problems, including Environment Impact Assessments (EIA). All three framework laws authorise an executive body to implement the provisions of the framework law. Different committees have been established to implement the other laws and policies regarding the environment and its conservation. However, the effectiveness of these agencies and departments may be impeded by a number of factors. For example, the authorities are sometimes staffed by personnel who are not highly or well enough trained or, more simply, are not willing to implement the laws. Their lack of competence results in poor administration of the environmental regulatory mechanisms. Amid a culture of corruption and dishonesty, many are easily won over by the environmental offenders they are supposed to control. These countries also frequently lack the proper implementation of the provisions and penal mechanisms to protect the environment, one of the reasons being their lack of focus on the end goal of the laws they are supposed to implement.

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70 Hassan and Azfar, above n 4, 220.
71 Razzaque, above n 5, 129.
72 Hassan and Azfar, above n 4, 220.
74 Razzaque, *Public Interest Environmental Litigation*, above n 5, 11.
75 Hassan and Azfar, above n 4, 220–223.
76 Razzaque, *Public Interest Environmental Litigation in India*, above n 5, 425.
different government bodies created to implement the environmental laws and policies lack communication and understanding between each other, which results in a failure to coordinate their actions under different legislations.\(^{77}\) Despite this, albeit in very limited cases, citizens have access to justice through environmental legislation.\(^{78}\) For example, three Environment Courts were established in Bangladesh in accordance with the *Environment Court Act 2000*. However, only the Department of Environment can bring legal actions to court; no individual can bring any direct legal action, and neither has the court any *suo motu* power to take up any case.\(^{79}\)

### 1.5.3 The need for public interest litigation (PIL) and judicial activism in South Asian countries

As discussed above, the state mechanisms of the South Asian countries are not effective enough to deal with environmental problems. The victims of environmental harm cannot always go to the lower courts either. For example, a complaint for environmental injury under the *Environment Conservation Act 1995* (Bangladesh) has to be made to the Director General of the Department of Environment. However, a person or group of persons can go to the Civil Court seeking a declaration or an injunction, or to the Criminal Court claiming nuisance or negligence.\(^{80}\) The problems that applicants may face include that the lower courts are overburdened with cases, and procedures are also complicated and time consuming,\(^{81}\) as well as the expense that is incurred through the process and the low level of monetary compensation that is received.\(^{82}\)

Under such circumstances, PIL provides a means of obtaining an effective remedy for environmental harms. In the words of Razzaque, the Judiciary of the South Asian jurisdictions has:


\(^{78}\)Razzaque, *Public Interest Environmental Litigation*, above n 5, 426.

\(^{79}\)Faruque, above n 77, 59.

\(^{80}\)For detailed discussion see below Chapter 5 (5.2.3. The Limitations of Environmental Courts) 68.


\(^{82}\)Faruque, above n 77, 59.
developed the PIEL (Public Interest Environmental Litigation) with the help of numerous methods such as the relaxing of standing, *suo motu* actions, interpreting the law in a manner congenial to environmental protection, framing various remedies and applying international environmental law in the national legal system. In addition the public in India, Pakistan and Bangladesh, play a greater role in taking these environmental concerns to the court and dealing with environmental issues.83

Along with the citizens, the NGOs have played a significant role in voicing environmental concerns, especially in Bangladesh. Going to the highest court, the victims of environmental harm have certainly found redress through the process of PIL. Environmentally displaced persons have a good chance of finding redress through this process in the absence of any specific law to address their situation. Judicial activism can provide them with redress by interpreting the constitutional ‘right to life’ liberally.

**1.6 Methodology**

The methodology is to discuss relevant PIL cases and find out the use of PIL in vindicating the rights of climate migrants. In doing so appropriate cases had to be found in order to analyse how the court responded to petitions by climate migrants and how the cases were presented before the court as well as the situations of the petitioners. The ideal plan of action should have been to go through all the PIELs filed in the High Court of Bangladesh, India and Pakistan. And select cases that were connected to climate migration (i.e. petitioners being climate migrants or under threat of being climate migrants). But that would have been a mammoth task. Hence only Bangladesh was selected as the study area.

There being no specific database of PIELS filed in Bangladesh High Court Division all the PIELS could not be studied. Instead only PIELS filed by Bangladesh Environmental Lawyers Association (BELA) were studied, as most of the PIELS in Bangladesh are filed by BELA. After going through the PIELs,

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83Razzaque, *Public Interest Environmental Litigation*, above n 5, 12.
cases that can be related to climate change induce migration were selected. The criteria for selection of the cases were

1. The status of the petitioners: The petitioners had migrated due to climate change or where the petitioners were under threat of such migration.
2. Maintainability of the petition: The petitions were maintainable in the court.
3. The action of the court after hearing: The court provided effective remedy to the petitioners either through final or interlocutory order.

The Source for case selection was the compilation of PIELS filed by BELA in the Book *Law of Writs: Constitutional Remedies*. The website of BELA, Blast, and Supreme Court of Bangladesh were consulted for detailed facts, orders and current status of the cases. Some detailed judgments were also collected from internet sources.

After analysing the cases, the facts and orders were presented in brief in the thesis with focus on the action of the court after hearing and the laws and principles used by the petitioners in seeking remedy.

1.7 Outline of the Thesis and Scope of the Chapters

The purpose and focus of this thesis is to find legal solutions for the present and potential future climate migrants of the South Asian countries under existing legislation and legal systems. Chapter 1 deals with the rationale behind the work and provides a brief statement of the existing national legislation and international instruments. It also states the scope of the research and the rationale behind choosing Bangladesh, India and Pakistan for the research.

Chapter 2 discusses the existing work on PIEL that relates to this thesis, and relevant case laws and legislation.

Chapter 3 discusses the negative effects of climate change on human rights, focusing on the violation of the most basic human rights, including the right to

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life from the perspective of international law and the laws of the South Asian countries.

Chapter 4 discusses the historical development of PIL in South Asia and explores how it can work as a tool to obtain environmental justice. It puts forward important instances where such relief has been given by the court. The chapter also discusses the development of environmental PIL or PIEL in the region.

Chapter 5 attempts to find a solution for environmental migrants through the mechanism of PIEL. In doing so, some decided PIEL cases of the Bangladeshi courts are discussed, as are the uses climate migrants can make of those cases as precedents to obtain environmental justice.

Chapter 6, the concluding chapter, summarises the thesis and its findings and contains some concluding recommendations.
Chapter 2 Literature Review

2.1 Context: Climate Change

The IPCC has produced five assessment reports, all of which provide scientific data and evidence that the temperature of the world’s atmosphere is increasing and that this is having devastating effects on the world’s weather. The reports also predict the future outcome of global warming based on the data in hand. The scientific consensus is that human activities arguably are responsible for worsening the effects of global warming; at the same time, climate change has devastating effects on human rights. As Puraite and Deviatnikovaite observe, ‘Human rights and the environment have become increasingly interconnected’.

The large-scale climactic effects of climate change have caused flooding, drought, cyclones and other events that resulted in catastrophic long-term suffering for numerous people. These effects have included permanent displacement from their homes and cases of temporary, but recurrent, displacement. Catastrophic weather events are often followed by periods of adjustment and redevelopment of the affected area, while slow onset disasters such as sea level rises, growing water scarcity and the salinisation of agricultural land cause permanent internal or even international displacement of people. The people subject to such displacement are climate migrants who currently lack recognition in international legal instruments, let alone any domestic legislation regarding their protection and assistance.

This thesis focuses on the climate migrants of the three South Asian countries: Bangladesh, India and Pakistan. These South Asian countries are of particular interest because they are at risk of producing a large number of climate migrants.

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85IPCC, 5th Assessment Report, above n 42
87Brown, above n. 24.
due to rising sea levels and other natural calamities caused by climate change. Bangladesh, India and Pakistan currently lack legislation regarding climate migrants. Climate migrants and potential climate migrants from these countries are, and will be, in need of expensive and complex assistance. The absence of any legislation recognising or relating to their condition is a significant obstacle to their seeking aid, and to governmental and non-governmental bodies rendering them assistance.

It is the argument of this thesis that Bangladesh, India and Pakistan have come a long way in providing environmental justice through PIL. Further, this thesis aims to determine whether climate migrants can avail themselves of government assistance through the implementation of PIL. The most relevant literature on which this research was conducted is discussed below.

2.2 Literature Review

The literature review is divided into two parts. The first part lays down the primary documents, being the case law and legislation. The second part reviews the secondary documents, which are books and articles.

2.2.1 Primary documents

The relevant case law and legislation are discussed in this section.

Case law

The case laws that have been discussed in this thesis are, the three *Nijera Kori v Bangladesh* writ petitions (Writ Petition Nos. 1162/1998, 7248/2003,5194/2004), *Bangladesh Environmental Lawyers Association (BELA) v Secretary, Ministry of Environment & Forest* (Writ Petition No. 4286/2003), *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh* (Writ Petition No. 3336 of 2002), and *Bangladesh Environment Lawyers Association (BELA) v Metro Makers & Developers Ltd (‘Modhumoti Model Town Case’) (Writ Petition No. 4604 of 2004, Judgement on 27 July 2005, unreported).*

These are all public interest litigations where the petitioners’ situations are to similar to that of climate migrants/potential climate migrants. In these cases the petitioners have been able to get remedies from the court in the form of directions. The judges have been liberal in entertaining the cases of the petitioners and also have been pro-active in providing remedies to them.

**Legislation**

*Constitution of the Peoples Republic of Bangladesh*

The *Constitution* of the Peoples Republic of Bangladesh contains a preamble and 11 parts. The parts of the *Constitution* that are relevant to this thesis are outlined below.

Part II: Fundamental Principles of State Policy (arts 8–25): The constitutional provision regarding the right to environment is enshrined in the Fundamental Principles of State Policy. Hence, it is important to understand what the fundamental principles are and why they are not justiciable in the courts. Article 8 states that the principles laid down in this part are fundamental to the governance of Bangladesh; they are applied by the state in the making of laws. These principles are a guide to the interpretation of the *Constitution* and of other laws of Bangladesh. These principles form the basis of the work of the state and of its citizens, but are not judicially enforceable. Secularism and freedom of religion, the separation of the judiciary from the executive, the provision of basic necessities, the protection and improvement of the environment and biodiversity, and equal opportunity are among the principles of state policy. The *Bangladesh Constitution* contains a provision regarding protection and improvement of the environment and biodiversity in art18A. However, as the provision is a fundamental principle it is not justiciable in the courts.

Part III: Fundamental Rights (arts 26–47A): This part contains the fundamental right to life; by invoking this fundamental right to life, climate migrants might be able to seek relief in the Supreme Court. The fundamental rights include equality before the law, the right to protection of the law, the right to property, freedom of religion, freedom of assembly and freedom of movement. Article 44 provides that
the fundamental rights are judicially enforceable. Article 26 provides that no law should be inconsistent with the fundamental rights and that any law that is inconsistent with the fundamental rights is void to the extent of such inconsistency. Together, arts 31 and 32 of the *Bangladesh Constitution* constitute the right to life.89 This right is a fundamental right and is justiciable in the courts. A writ petition can be filed in the High Court for violation of this right under Section 102 of the *Bangladesh Constitution*.

Part VI: The Judiciary (arts 94–117): This part consists of three chapters, of which ch 1 contains the provision regarding the filing of PIL and the establishment of the Supreme Court.

Chapter 1. The Supreme Court:90 Art 102 describes the writ jurisdiction of the High Court division. PILs are filed as writ petitions under art 102 of the *Bangladesh Constitution*.

**Bangladesh Environment Conservation Act 1995 (Amended by Act No. 50 of 2010)**

The *Environment Conservation Act* was enacted for the improvement of environmental standards, the conservation of the environment and for mitigation and control of environmental pollution. This legislation is the framework environmental legislation of Bangladesh. In case of any environmental injury, a person may seek relief in the Department of Environment based on this law. In relevant cases, the Supreme Court also takes the provisions of this law into consideration.

The Act contains provisions such as the declaration of an ECA (s 5), the restriction of the operation of any vehicle emitting hazardous pollutants to the

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90 Contains provisions regarding the establishment of the Supreme Court, the tenure and appointment of judges, the temporary appointment of the Chief Justice, the superintendence and control of the Supreme Court over other courts, the binding effect of Supreme Court judgments. This chapter contains Articles 94–113. Article 94 provides that the Supreme Court shall consist of the High Court Division and the Appellate Division. It also states that only the chief justice and the judges appointed to the Appellate Division shall sit in the Appellate Division and the other judges of the Supreme Court shall sit in the High Court Division.
environment (s 6), the conservation of water bodies and flood flow zones (s 6e), restrictions regarding ship breaking that is likely to cause harm to the environment, and the health of workers (s 6d). This Act establishes the Department of Environment headed by the Director General (s 3) and provides the functions and power of the Director General (s 4). The powers and functions of the Director General include issuing Environment Clearance Certificates (s 12); the prevention of probable accidents that may cause environmental pollution; undertaking research on conservation, improvement and pollution of the environment [s 4(2)(b)]; the collection and publication of information regarding environmental pollution [s 4(2)(f)]; and, the determination of compensation or other remedial measures for causing injury to the environment to any person. This Act also provides for penalties for violations of the provisions of this Act (s 15). On the application of any person aggrieved or likely to suffer due to environmental degradation or pollution, the Director General may hold a public hearing and dispose of the matter (s 8). The Director General may file a suit for violation of any provision of this Act in the Environmental Court on behalf of an aggrieved person or group of persons (s 17).


This law contains the provisions regarding the conservation of flood flow zones and other natural reservoirs. These provisions are important in conserving natural reservoirs like the flood flow zones, and are useful in claiming environmental remedies in the Supreme Court. This law has been promulgated in order to protect and preserve the open spaces and natural reservoirs situated in the cities of Bangladesh. This law, and the rules made thereunder, have overriding effect over the laws already in force regarding natural reservoirs and open spaces (s3). This Act prohibits the use or lease of the open spaces and natural reservoirs for any purpose; it also prohibits any kind of change to their existing conditions (s5). Even the owners of natural reservoirs need permission from the government for making any change to such reservoirs (s6). In case of violation of the provisions of this Act, any person (or persons) is liable to be punished according to s 8 of the Act.

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Dhaka Metropolitan Development Plan

The DMDP earmarks natural reservoirs, flood plains, rivers, flood flow zones and sub-flood flow zones of Dhaka city. These areas are marked and protected to ensure uninterrupted drainage systems and to preserve the natural balance. It also ensures the health and wellbeing of the common people from the devastating effects of nature. Any interference with these water flows might result in negative impacts upon nature and the surrounding populations. As a result, any such interference is prohibited by the DMDP. This provision is applicable in courts of law. Even though the DMDP is not a law, the Supreme Court might consider its importance while passing judgements, as has been done in a number of environmental PILs, the precedent of which climate migrants might use.

Section 73 of the *Town Improvement Act 1953* empowers RAJUK to prepare a master plan of the city, which would describe the manner in which the land should be used, propose sites for roads, public and other buildings and residential areas. The plan should include a map and other descriptive matters needed to illustrate the plan. Accordingly, RAJUK prepared the DMDP, consisting of a Structure Plan, an Urban Area Plan and a Detailed Area Plan. The areas through which floodwater passes to the rivers have been identified as ‘flood flow zones’ and ‘sub-flood flow zones’ in the Structure Plan. The Detailed Area Plan of RAJUK discourages all types of physical development in these zones. The practice of agriculture is allowed in the flood flow zones in summer, but changing the character of the land, such as by elevation, earth filling activities and changes of high and low terrain, is not permitted. Construction is permitted in the sub-flood flow zones, but must be undertaken by building on pillars or land raised above designed flood levels that do not obstruct the flood flow. According to Section 74 of the *Town Improvement Act 1953*, the plans were published by gazette notifications by the Ministry of Housing and Works, Bangladesh. According to Section 74 of the *Town Improvement Act*, any use of land other than for the purposes laid down in the plans is prohibited.
2.2.2 Secondary documents


However, the field of PIEL has not attracted the same degree of scholarly attention or investigation. Razzaque’s *Public Interest Environment Litigation in India, Pakistan and Bangladesh*—based on the author’s PhD thesis—discusses the historical development of PIL and PIEL, and broadly examines three aspects of PIEL. First, it identifies the constitutional provisions regarding environmental protection and the environmental legislations of the three eponymous South Asian countries. Second, the work discusses the issue of standing in Bangladesh, India and Pakistan in detail, and examines the judiciary’s role in relaxing the standing rules, as well as the application of international environmental law in domestic cases, and the court’s directions and orders on costs and expenses. Third, the study suggests ways to strengthen the scope of PIEL through public participation in environmental decision-making, public access to environmental information, and the establishment of separate environmental fora. Analysing the judiciary’s role in providing environmental justice, the author states that the Indian judiciary has been particularly proactive in providing substantive as well as procedural remedies, whereas the Bangladeshi and Pakistani judiciary has only provided procedural remedies when it comes to PIELs. Razzaque’s work gives a very good understanding of the historical growth and development of PIEL and has been very useful in the overall writing of this thesis.

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911997, Orient Longman, Delhi.
921999, BLAST, Dhaka.
931985, Sweet and Maxwell, London.
95Razzaque, *Public Interest Environmental Litigation*, above n 5.
In the same field, Hassan and Azfar’s article, *Securing Environmental Rights through Public Interest Litigation in South Asia*, deals with the historical development of PIL and PIEL in South Asia, with emphasis on the *Shehla Zia* case. This was the first successful environmental PIL in Pakistan, where the Pakistan Supreme Court extended the fundamental ‘right to life’ to include the right to a healthy environment. The article also analyses the executive and legislative failure in providing environmental justice to aggrieved citizens in the South Asian countries. It concludes by suggesting that the executive and the legislative organs need to be strengthened to respond to emerging environmental problems. Pakistan’s PIEL development is well discussed in this writing while majority of writings in this field mostly discusses the Indian case laws, as India is the pioneer when it comes to providing environmental justice through PIL.

Gill’s paper, *Human Rights and the Environment in India: Access through Public Interest Litigation*, discusses the concept and development of PIL in India and in particular, two Indian environmental PIL cases that demonstrate the limitations of PIL. The article states that environmental PIL is not a ‘magic bullet’ with which to fix all environmental problems. The writing contains a negative tone to the proactive role of the judges. As the writer states that the judges often transgress to the realm of legislature and the directions given by them sometimes can be unrealistic or overly ambitious. Though it is true in some cases and the judges have to keep them in mind, PIL should never be underestimated as being an effective tool in providing environmental justice.

The *Law of Writs: Constitutional Remedies* by Md. Zakir Hossain, compiles a number of essential cases of environmental PIL in Bangladesh. The chapter also discusses in detail the historical background of PILs, the concept of PILs generally and their particular relevance to Bangladesh. This chapter presents a clear idea of the background of PIL and its present conceptual situation in

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96 Hassan and Azfar, above n 4.
97 Hassan and Azfar, above n 4, 247.
99 Hossain, above n 84.
100 Ibid, Chapter XVI: *Writ of Public Interest Litigation*.

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Bangladesh. The compilation of cases have been of particular significance to the formation of this thesis as it gives an overall idea about the PIELs filed by BELA, the leading NGO in this field. And thereby helped to determine which cases can be used by climate migrants for claiming relief.

Faruque’s paper, *Protection of Environment through Judicial Activism in Bangladesh*,¹⁰¹ discusses the activist role the judiciary has played in promoting environmental justice in Bangladesh. Faruque’s paper analyses some leading PIL cases where judges of the Supreme Court have passed decisions for the protection and improvement of the environment applying national laws and interpreting the constitutional provisions in a liberal way, and examines the inadequacy of the existing mechanisms. The paper concludes that though PIL has been useful in real and concrete terms in providing environmental justice, it should not be seen as a substitute for environmental rules and regulations, and that the judiciary alone cannot tackle the large and complex problem of environmental degradation. The paper also expresses a note of caution stating that PIL should not be overused and that the greatest care and vigilance should be exercised when the extraordinary jurisdiction of the court is invoked so that the court does not make any order or give any direction that either is not feasible or transgresses into the realm of legislation. It is a well written article, providing a well-informed picture of the environmental justice system in Bangladesh. It clearly points out the lacking in the existing mechanism and the role the judiciary has played in providing environmental justice through PIL.

This thesis aims to directly address a topic that the literature on PIEL has not yet considered, focusing specifically on climate migrants and the issue of providing them with remedies and relief through PIL. It exploits the advances made in the literature on PIEL; in particular, the courts’ relaxation of the rule of standing and ensuring public access to the highest courts through PIL. The writing also explores how the courts have interpreted the right to life to include the right to environment. However, it cautiously accepts that litigation-based solutions represent remedies to harms already suffered, and that carefully drafted, executed

¹⁰¹Faruque, above n 77.
and enforced laws represent a more promising solution to the environmental consequences of climate change.

2.3 Conclusion

Despite continuing fringe arguments against the human contribution to global warming and climate change, the findings of scientific institutes like the IPCC strongly suggest that since the beginning of the industrial era, human activity has played a significant role in the devastating effects of climate change. Though South Asian countries are slowly taking steps to find a solution to the global problem of climate change, they appear to have done so as a late response to the problems each of those countries have experienced. A large number of people from the South Asian region are under threat of being seriously injured and forced to flee from their normal homes due to the effects of climate changes, such as sea level rise, devastating cyclones and other weather events like desertification. This thesis proposes to examine the possibility that, even if seeking remedies from courts represents a post hoc solution to an environmental harm, the victims of climate change, and especially climate migrants, may, at least, seek redress in the courts for the losses they have sustained based on the infringement of their human rights.
Chapter 3 Climate Change and Violation of Human Rights

3.1 Introduction

Without any specific law to define climate migrants and to address their situation, people displaced by environmental disasters have no legal basis for seeking redress and refuge. These peoples’ plight continues largely unrecognised and mostly devoid of support by the international community.¹⁰²

According to the IPCC, an increase in the earth’s atmospheric temperature is unavoidable. Therefore, the world must prepare for the consequences of global warming: that is, the increasing incidence and intensity of sudden natural disasters like flooding and cyclones, and slow onset disasters like sea level rising and desertification, that will cause both the temporary and permanent displacement of people from their homes.¹⁰³ Such displacement will affect the basic human rights of the displaced people, such as the right to food, shelter, safe drinking water and health.¹⁰⁴ Problems of the kind referred to are already a reality and will grow worse as the temperature of the earth and, along with it, climate-induced calamities increase.¹⁰⁵

3.2 The Complex Situation of Climate-induced Displacement and the Call for a New Global Governance Architecture

Red Cross research shows that environmental disasters displace more people than war and that the number of displaced people may surpass that of recognised

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¹⁰⁵IPCC, 4th Assessment Report, above n 1, 2.
refugees in the near future.\textsuperscript{106} This will create an enormous humanitarian crisis. Climate migrants are not yet recognised by international law. Part of the reason for this is the complexity and difficulty involved in distinguishing them from economic migrants.\textsuperscript{107} For instance, gradual degradation of the environment first affects the local economy (e.g., decline of harvests and the income that comes from them) and then causes migration.\textsuperscript{108} Hence, the complexity arises as the climate migrants’ situation cannot be directly linked to environmental degradation. Further, climate migrants flee their homes for a variety of reasons, the causes of which are usually complex; for example, when natural disasters interact with anthropogenic disruptions (i.e., disruptions resulting from the influence of human beings on nature) and cause displacement of people.\textsuperscript{109} In such cases, the effects of natural disasters are amplified by human activity and people might not recognise the migrants as climate migrants because of the anthropogenic contribution to such disruption.

The situation calls for a new global governance architecture for the protection and resettlement of climate refugees,\textsuperscript{110} that is, new legal instruments need to be introduced that would define, classify, and most importantly, recognise the climate migrants. Such instruments should also contain protection and resettlement mechanisms. Biermann and Boas have suggested a ‘Protocol on Recognition, Protection and Resettlement of Climate Refugees to the United Nations Framework Convention on Climate Change’, as well as a separate funding mechanism, the ‘Climate Refugee Protection and Resettlement Fund’.\textsuperscript{111} Efforts have to be made to resettle these displaced persons so that they can live a secure and healthy life with a choice of livelihood. Along with that, adaptation strategies need to be developed so that people do not have to leave their place of residence as a result of climate change. The best policy would be to keep people

\textsuperscript{108} Bates, above n 12, 473.
\textsuperscript{110} Frank Biermann and Ingrid Boas, ‘Preparing for a Warmer World: Towards a Global Governance System to Protect Climate Refugees’ (2010) 10(1) \textit{Global Environmental Politics} 60, 75.
\textsuperscript{111} Ibid 75–82.
in their own place, which of course no one would want to abandon unless they are compelled to. However, first, the international community needs to recognise that this is a serious humanitarian crisis before any further action can follow.

3.3 Climate Change and Human Rights Violation

To understand the need to resettle climate migrants and to give them proper remedy, it is important to comprehend which human rights of climate migrants are violated, and how they are violated. This is also important to present their case in the court of law, and to make a valid argument on their behalf. The most important human rights of the climate migrants that are violated are described below.

The right to health

The right to health is a human right guaranteed in basic human rights instruments, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). Article 12 of the ICESCR recognises the right of every individual ‘to enjoy [the] highest attainable standard of physical and mental health’ and, further, elaborates in art 12.1 that ‘states can achieve this standard by improving all aspects of environment and industrial hygiene, and preventing, treating and controlling diseases’. However, when the air, water and the overall environment is polluted by the emission of greenhouse gases and toxic materials, the health of the inhabitants living in polluted regions becomes endangered and states have failed to perform their obligations in accordance with the ICESCR. Because

the reference in article 12.1 of the Covenant to ‘the highest attainable standard of physical and mental health’ is not confined to the right to health care...


economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and portable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.\textsuperscript{114}

General comments and decisions from both the UN and regional treaty bodies and domestic courts have recognised the need for states to address environmental problems affecting health.\textsuperscript{115} For instance, General Comment No. 14 on ‘The right to the highest attainable standard on health’, a document issued by the United Nations Committee on Economic, Social and Cultural Rights, provides a legally binding interpretation of the human right to health.\textsuperscript{116}

The CRC elaborates the right of the child to the enjoyment of the highest attainable standard of health (art 24 of the CRC) through its General Comment No. 15.\textsuperscript{117} The Committee lists a variety of factors affecting children’s health … including structural determinants, such as the global economic and financial situation, poverty, unemployment, migration and population displacements, war and civil unrest. Other factors identified by the Committee include macro-drivers such as climate change and rapid urbanization, and the development of new technologies (vaccines and pharmaceuticals).\textsuperscript{118}

Moreover, children’s right to health as defined in art 24 has been interpreted by the Committee as an inclusive right, which extends not only to timely and appropriate prevention, health promotion, curative, rehabilitative and palliative services, but also includes the right to grow and develop to their full potential. The Committee also states that childrens’ right to health includes living conditions that enable them to attain the highest standard of health where programmes are implemented to address the underlying determinants of health.

\textsuperscript{116}\textit{General Comment No. 14}, above n 114.
The Committee thus proposes a holistic approach to health that places the realisation of children’s right to health within the broader framework of international human rights obligations.\textsuperscript{119}

**The right to an adequate standard of living**

Article 25(1) of the Universal Declaration of Human Rights provides that an adequate standard of living means:

The right to a standard of living adequate for the health and well-being of a person and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.\textsuperscript{120}

This right includes all the basic necessities of life, as it includes the right to food, clothing, shelter and medical care. Further, the Article attempts to ensure that everyone receives these by including social services and the right to security from lack of livelihood, unemployment, sickness and disability. The aim is to ensure that everyone enjoys their basic needs without shame or unreasonable obstacles, including being forced into intolerable and degrading behaviour such as begging.\textsuperscript{121} This Article thereby illustrates how the state can provide this right to its citizens, for instance by ensuring the access to the basic necessities of life either through employment or through social services. For that reason, the state also needs to ensure a safe and secure environment where access to material rights is not interfered with.

The right to an adequate standard of living is an economic, social and cultural right guaranteed in art 11(1) of the ICESCR. It includes the right to food, clothing, housing and continuous improvement of living standards.\textsuperscript{122} General

\textsuperscript{119}CRIN, above n 117.

\textsuperscript{120}Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3\textsuperscript{rd} sess, 183\textsuperscript{rd} plen mtg, Un Doc A/810 (10 December 1948) (‘UDHR’).


\textsuperscript{122}Lewis, above n 112, 67.
Comment no. 12 of the United Nations Committee on Economic Social and Cultural Rights affirms that the right is ‘indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights’. This right is also guaranteed to children in art 27 of the CRC. Where environmental degradation, such as pollution, deforestation and desertification, affects the availability of clean and secure water supplies, limits a community’s ability to provide adequate food and nourishment, or even uproots them from their homes because their place of residence simply becomes uninhabitable, then the right to an adequate standard of living is violated.

The above two rights, that is, the right to health and the right to an adequate standard of living, are socio-economic rights. These rights are expected to be fulfilled progressively by the member states of the Universal Declaration of Human Rights and the ICESCR. They impose upon the government the duty to respect and promote and fulfil these rights, but this depends on the availability of resources, which is why the term ‘progressively’ has been used. Developing countries may determine to what extent they would guarantee the economic rights guaranteed in the covenant to non-nationals. As international law is soft law, the states are ‘expected’ to fulfil these rights when they have the means. No one has the direct right to housing and right to education. These rights are given such status because all the member states might not have the financial ability or resources to ensure the enjoyment of economic social and cultural rights.

**Constitutional provisions of the right to health and the right to an adequate standard of living in South Asia**

In the three South Asian countries, the subject of this thesis (India, Pakistan and Bangladesh), these rights are enshrined in the guiding principles of state policy of the Constitution. In the *Indian Constitution*, they are called the directive

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123Final Report, above n 115.
124Lewis, above n 112, 67.
125ICESCR art 2(1).
126Ibid.
127ICESCR art 2(3).
128In South Africa, for instance, the right is not, per se, to housing, but rather ‘to have access to adequate housing’, realised on a progressive basis: *Constitution of the Republic of South Africa*. 35
principles of state policy, while they are called the Fundamental Principles of State Policy and Principles of State Policy in the Bangladesh and Pakistan Constitutions, respectively. The right to health and an adequate standard of living can be found in art 47 of the Indian Constitution; in the Pakistan Constitution they are enshrined in art 38, and in the Bangladesh Constitution they are found in arts 15 and 18.

The guiding principles are supposed to be kept in mind while making laws, but a person cannot go to court for infringement of the rights enshrined in the guiding principles of state policy; that is, they are not judicially enforceable. In the Indian Constitution, art 37 clearly states that the directive principles ‘shall not be

129 Contained in pt IV of the Indian Constitution and elaborated in arts 37–51.
130 Contained in pt II of the Bangladesh Constitution and elaborated in arts 8–25.
131 Contained in pt II, ch 2 of the Pakistan Constitution and elaborated in arts 29–40.
132 Article 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.
133 Article 38. Promotion of social and economic well-being of the people. The State shall—
(a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;
(d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment;
(e) reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan.
134 Article 15. It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens—
(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;
(b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;
(c) the right to reasonable rest, recreation and leisure; and
(d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.
135 Article 18. (1) The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.
136 Article 37. Application of the principles contained in this Part. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.
enforced by any court’. The Bangladesh Constitution also states in art 8(2)\(^{138}\) that the Fundamental Principles of State Policy are not judicially enforceable.\(^{139}\) Art 30(2)\(^{140}\) of the Pakistan Constitution states that no action can be brought against the state or any organ or authority of the state or any person on the ground that the action of any such entity has not been in conformity with the Fundamental Principles of State Policy. As a result, when any of the rights contained in the guiding principles of state policy are infringed due to environmental degradation, a person cannot go to the court claiming the violation of such rights.

**The right to property**

Art 17 of the Universal Declaration of Human Rights provides that everyone has a right to own property and no one should be deprived of their property without compensation.\(^{141}\) However, this right is not absolute and is subject to limitations\(^{142}\): states, for example, can interfere with this right in the public interest. This right is generally regarded as a civil right but it also has the characteristics of a socio-economic right in the sense that it has implications for the distribution of social goods and wealth, such as the right to work, the right to adequate housing, the right to education and the right to enjoy the benefits of scientific progress.\(^{143}\)

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\(^{137}\) Constitution of India, art 37.

\(^{138}\) Article 8(2). The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable.

\(^{139}\) Constitution of Bangladesh, above n 50.

\(^{140}\) Article 30(2). The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and on action shall lie against the State, any organ or authority of the State or any person on such ground Government of Pakistan.

\(^{141}\) Final Report, above n 115.

\(^{142}\) UDHR, Un Doc A/810, art 29(2).

Constitutional provision of the right to property in South Asia

In the Bangladesh and the Pakistan Constitutions, the right to property is enshrined under the fundamental rights in arts 42 \(^{144}\) and 24 \(^{145}\) respectively. Initially, the Indian Constitution also contained this right under the fundamental rights but it was repealed through the 44\(^{th}\) amendment, and art 300A \(^{146}\) regarding the right to property was inserted.

Because of climate change, and because of the effects of events such as submersion of land and salinisation of cultivable land, people will inevitably be deprived of this right as their property becomes submerged or unusable. In such situations, a person is also not able to attend court to seek redress because the loss of property is due to climate change and is not directly attributable to the actions or conduct, or the inaction, of any person or legal entity. This can be contrasted with the cases of direct human activities like development projects, for which people are uprooted without proper relocation or compensation, or mining, which makes the surrounding areas uninhabitable. In those cases, redress may be sought against the person or company responsible for violation of people’s right to property or right to own property (which is an integral part of the right to property according to art17 of the Universal Declaration of Human Rights) \(^{147}\).

Indigenous rights

According to art 1(b) of the International Labour Organisation (ILO) Convention 169 of 1989, Indigenous people are those people, who

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\(^{144}\) Article 42. (1) Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law.

\(^{145}\) Article 24. (1) No person shall be deprived of his property save in accordance with law.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

\(^{146}\) Article 300A. No one shall be deprived of his property saved by authority of law. According to s 13(1) of the General Clauses Act 1897 ‘words importing the masculine gender shall be taken to include females’

\(^{147}\) UDHR, Un Doc A/810, art 17.
on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

The environment and habitat play a vital role in indigenous cultures and are therefore central to their human rights. Indigenous communities have a profound cultural, social and spiritual relationship with their lands and territories, which is therefore fundamental to their survival. Special Rapporteur José R Martinez Cobo stated in Volume V of the *Study of the Problem of Discrimination against Indigenous Populations*:

> For such peoples, the land is not merely a possession and a means of production. The entire relationship between the spiritual life of indigenous peoples and Mother Earth, and their land, has a great many deep-seated implications. Their land is not a commodity which can be acquired, but a material element to be enjoyed freely.

Article 27 of the International Covenant on Civil and Political Rights (ICCPR) states that indigenous people ‘shall not be denied the right to enjoy their culture, to profess and practice their own religion, or to use their own language’.

The attachment of indigenous peoples to their lands and their traditional ownership has been recognised by the High Court of Australia in the *Mabo* case. The case was filed by Eddie Mabo and others claiming the ownership of their land on the island of Mer, or Murray Island, in the Torres Strait. The defendants argued that the plaintiffs’ property was automatically vested in the

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151 Lewis, above n 112, 67.
152 *Mabo v Queensland (No. 2)* [1992] 1 CLR 175 (High Court of Australia).
Crown after Captain Cook’s discovery and through several pronouncements taking possession in the name of His Majesty,\textsuperscript{154} and that the land was \textit{terra nullius}, that is, it belonged to no one prior to the discovery.

The High Court held that the Crown’s title to Mer Island was held subject to the rights and interests of the Mer Islanders possessed under the traditional laws acknowledged and the traditional customs observed by the indigenous inhabitants. The Court also noted that, because native title is held in accordance with the local native system, it is only capable of entitlement and enjoyment within that system and, hence, it is not capable of alienation or assignment; it does not constitute a legal or beneficial estate or interest in the land.\textsuperscript{155}

In recognition of this special relatedness to their traditional lands, indigenous peoples are afforded specific protections. The United Nations Declaration on the Rights of the Indigenous Peoples, adopted on 13 September 2007, contains specific protections against environmental harms that would threaten the traditional way of life of indigenous people.\textsuperscript{156} The ILO Convention 169 (\textit{Convention Concerning Indigenous and Tribal Peoples in Independent Countries}) includes measures to protect the environment and indigenous territories, as well as traditional activities such as hunting, fishing, trapping and gathering.\textsuperscript{157} Clearly, these rights would be threatened by environmental harm that affects indigenous lands and resources.\textsuperscript{158} The human rights that are guaranteed to all individuals also apply to indigenous peoples; they are complementary to indigenous rights. Indigenous peoples enjoy human rights as human beings, and they enjoy indigenous rights because of their special circumstances (i.e., indigenous cultures and beliefs and attachment to their land). All these rights (i.e., human rights and indigenous rights) are dependent upon the environment. When the environment is subject to deterioration, the full realisation of the rights of indigenous peoples is threatened.

\begin{footnotesize}
\textsuperscript{154}\textit{Mabo (No. 2)} [1992] 1 CLR 175.
\textsuperscript{155}AIATSIS, above n 153, 4.
\textsuperscript{157}ILO Convention 169, above n 148.
\textsuperscript{158}Lewis, above n 112, 68.
\end{footnotesize}
Constitutional provision of indigenous rights in South Asia

The Bangladesh Constitution contains art23A regarding the culture of tribes, minor races, ethnic sects and communities. The Article states: ‘The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities’.\(^{159}\) This right also falls under the Fundamental Principles of State Policy. Hence, it has no legal force or judicial enforceability.

The indigenous people of Pakistan have no constitutional recognition. The Pakistan Constitution does not contain any express provision regarding the rights of the indigenous people. There is only art36 regarding the protection of minorities, which states: ‘The State shall safeguard the legitimate rights and interests of minorities, including their due representation in the Federal and Provincial services’.\(^{160}\) This Article can be interpreted to include the indigenous population of Pakistan. However, such interpretation is not very effective as this Article also falls under the Principles of Policy. The indigenous people of India are recognised in the Constitution as ‘scheduled tribes’.\(^{161}\) In India, 461 ethnic groups are recognised as scheduled tribes and are considered India’s indigenous peoples.\(^{162}\) Article 46 of the Indian Constitution contains provisions regarding the indigenous peoples which states: ‘The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation’.\(^{163}\)

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\(^{159}\)Constitution of Bangladesh.

\(^{160}\)Constitution of Pakistan.


\(^{163}\)Constitution of India.
The right to self-determination

The right to self-determination is enshrined both in the ICCPR and in ICESCR as art 1. The Charter of the United Nations also refers to this right in art 1, para 2. According to the provisions of the ICCPR and ICESCR, all peoples have the right to dispose of their natural resources and to be protected against deprivation of their means of subsistence. Hence, when the environment is damaged, the components of self-determination, especially of indigenous people, are damaged. Further, when the adverse effects of climate change precludes or prevents a state from existing, the right of its people to self-determination is denied.

The word ‘peoples’ in international law is yet to be clearly defined. It has variously been used to refer to a group of people of a particular country (as in the case of the people of a state which has submerged); or, to refer to a group of people having the same language, ethnicity, or history; or, to people who are tied by mutual affection or sentiment, as is the case for indigenous communities. Hence, a reference to a peoples’ environmental rights does not necessarily refer to the environmental rights of the citizens of a state.

The right to life

The human right to life is considered an absolute right, or otherwise the highest right an individual can enjoy because without this right, other human rights would be meaningless. Further, this right includes all other basic human rights along with the human right to environment. In his separate opinion in the Gabcikovo—Nagymaros Case before the International Court of Justice, Weeramantry J recognised this link and stated that:

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165Lewis, above n, 112, 68.
166Wewerinke and Doebbler, above n 164, 157.
168Wewerinke and Doebbler, above n 164, 147.
The protection of the environment ...is a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the *Universal Declaration of Human Rights* and in other human rights instruments.\footnote{Gabcikovo-Nagymaros (Hungary v. Slovakia) (Judgment, separate opinion of Justice Weeramantry), [1997] ICJ Rep. 6, 91-92 <http://www.icj-cij.org/icjwww/docket/ihpanels/ih75judgement/>.}

The right to life belongs to every individual. As art 6(1) of the *ICCPR* states, ‘Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.’\footnote{International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (‘ICCPR’).}

The Final Report: Reference on Human Rights and the Environment states:

> The right to life should be interpreted broadly and not in a narrow sense. It includes all other basic human rights like the right to food, shelter and health. For example, the Inter-American Court for Human Rights have stated that ‘the fundamental right to life includes not only the right of every human being not to be deprived of life arbitrarily, but also the right that s/he will not be prevented from accessing conditions of life that guarantee a dignified existence’.\footnote{Final Report, above n 115.}

In some areas of the world, an increase in natural disasters and extreme weather events, such as tropical cyclones, hurricanes, other storms and heat waves, directly affect the right to life of vulnerable people.\footnote{Wewerinke and Doebbler, above n 169, 149.} Moreover, slow onset disasters, such as sea level rises, drought and desertification, caused by climate change hinder the enjoyment of the basic rights of the people (rights that are needed to secure a full and dignified life) and thereby violate the human right to life. The human right to life means and includes
not only the right to life itself but also the right to live a full and dignified life with all the basic needs.

The right to life, therefore, is not a separate right to live; rather it is a right that includes all other basic human rights that are needed for a full and dignified life. This includes the right to live in an environment that is suitable for human habitat. This link was recognised in South Asia for the first time in the case of *Sahu v Union* of India\(^{173}\) by a constitutional bench of the Indian Supreme Court.\(^{174}\)

The right to life has been liberally interpreted in several cases by the Indian Supreme Court. In the case of *Gaur v State of Haryana*,\(^{175}\) the Indian Supreme Court held that:

Article 21 protects the right to life as a fundamental right. Enjoyment to life … including the right to live with human dignity encompasses within its ambit, the protection and preservation of the 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. Environmental, ecological, air and water pollution etc. should be regarded as amounting to violation of Article 21.\(^{176}\)

Following in the footsteps of the Indian judiciary, the Bangladesh and Pakistan Supreme Courts also interpreted the right to live in a healthy environment as being a part of the fundamental human right to life.\(^{177}\)

As such, government agencies can be held liable for not taking measures for the preservation and protection of the environment. *Mehta v Union of India*\(^{178}\) is an instance of such a case: the petitioner claimed that the government has a duty under the Constitution to ensure a better quality of environment.\(^{179}\) The Court decided in favour.

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\(^{173}\)[1990] AIR 1480, 1495 (Supreme Court of India).

\(^{174}\)Razzaque, *Public Interest Environmental Litigation*, above n 5, 98.

\(^{175}\)(1995) 2 SCC 577, 580 (Indian Supreme Court).

\(^{176}\)Gill, above n 98, 204.

\(^{177}\)Razzaque, *Public Interest Environmental Litigation*, above n 5, 87.

\(^{178}\)(1998) 9 SCC 589 (Supreme Court of India).

of the petitioner. The Court noted that the insertion of art 48A in the Indian Constitution regarding protection and improvement of the environment and enactment of the Environment (Protection) Act 1986 as an aftermath of the Stockholm Conference 1972, imposes a duty upon the state to protect the environment and a decline in the environmental quality (that existed at the time of enactment of the Act) is not permissible at all. In the words of the Court ‘Any further decline in the environmental quality at least after the enactment of the Act is undoubtedly a failure to perform this obligation by the State, contrary to the constitutional scheme.’

Constitutional provision of the right to life in South Asia

The right to live in a healthy environment has been inserted in the Bangladesh and Indian constitutions through amendments inside the fundamental principles or directive principles. In the Bangladesh Constitution, art18A has been inserted regarding protection and improvement of the environment, and states:

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.

In the Indian Constitution the protection and improvement of the environment has been enshrined art 48 A, which states:

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

As stated above, both the Bangladesh and the Indian Constitutions contain the provisions regarding the protection of the environment inside the guiding principles of state policy and hence they are not judicially

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180 Mehta v Union Of India (1998) 9 SCC 589,607 (Supreme Court of India).
181 For detailed discussion see above ‘Constitutional provisions of the right to health and the right to an adequate standard of living in South-Asia’, 45.
182 Constitution of Bangladesh.
183 Constitution of India.
enforceable or justiciable. The *Pakistan Constitution* does not contain any provision regarding the environment. This being the case, the liberal interpretation of the right to life as to include the right to live in a healthy environment has been very useful in protecting the rights of the victims of environmental harm.
Chapter 4 Public Interest Litigation and Environmental Justice in South-Asia

4.1 Introduction

Current international law and the domestic law of many countries do not specifically recognise the right to the environment; a victim of environmental harm cannot seek redress in domestic or international fora claiming that his or her right to a particular kind of environment has been infringed. However, if the victim of environmental harm goes to the court claiming that one of his or her basic human rights has been violated as a result of environmental degradation, the court may pay heed to such claim. This approach requires expertise from lawyers, as well as a liberal approach to interpretation and dynamism from the courts and commissions, and such is not always the case. The right to life, if liberally interpreted, can include most of the cases of environmental injustice, but the most important thing for the plaintiff in such a case is to frame the case in the right manner; that is, with a human rights approach. In the subcontinent, these types of cases are filed as PIL based on the constitutional right to life, invoking the writ jurisdiction of the High Court.

4.2 The Concept of Public Interest Litigation

In the words of Hoque ‘PIL refers to that activist jurisprudence that allows any person without being actually aggrieved to activate the judicial method to pursue a public cause or the rule of law, and allows the court to provide unorthodox remedies’.184 PIL indicates legal actions brought to protect or enforce the rights enjoyed by members of the public or large parts of it.185 To trigger a PIL action, three things must exist: (1) sufficient interest of the plaintiff, (2) existence of a public injury, and (3) a bonafide action;186 that is, there should be no malafide intention behind the filing of the litigation. As far as climate migrants are concerned, the most important or helpful feature of PIL is that a person can seek a

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185 Hossain, Law of Writs, above n 84, 335.
186 Ibid 320.
remedy from the court against public injury without being directly aggrieved. The judges have lowered the threshold of standing in order to ensure social justice.

4.3 Public Interest Litigation Procedure

The process of filing a PIL and its proceedings in Bangladesh, India and Pakistan are the same. The process of filing a PIL is like filing any other writ in the Supreme Court or the High Court. That is, it involves:

1. filing of a petition
2. issue of notice
3. filing a reply/replies by opposition
4. joinder of parties (if needed)
5. final hearing
6. pronunciation of the decision

In the case of PIL, the court can appoint experts or other commissions in order to examine the allegations in between the proceedings, and the court can pass interlocutory orders if it finds it necessary. To understand the PIL procedures properly, it is necessary to know how the regime of public interest litigation is organised in these individual countries.

4.3.1 Public interest litigation procedure in Bangladesh

Constitutional provisions

In Bangladesh, arts 44 and 102 provide that litigants or applicants must file writ petitions in the form of PIL in the High Court Division of the Supreme Court when they claim that any of their fundamental rights have been violated.

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188 Article 44. Enforcement of fundamental rights:
(1) The right to move the High Court Division in accordance with Clause (1) of Article 102, for the enforcement of the rights conferred by this Part is guaranteed.
(2) Without prejudice to the powers of the High Court Division under Article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.
189 Article 102. Powers of High Court Division to issue certain orders and directions, etc:
**Hierarchy of courts in Bangladesh**

The Supreme Court is the highest court of Bangladesh, and consists of the High Court Division and the Appellate Division. Under the Supreme Court, there are subordinate courts: 1) the District Civil Courts, 2) the District and Metropolitan Criminal Courts, and 3) the Special Courts and Tribunals. These Courts are of the same level and headed by a District Judge. Except for the special Courts and Tribunals there are subordinate courts under the District Judge’s Court. The writs fall within the original jurisdiction of the High Court division. The High Court can issue orders in the nature of certiorari, mandamus or prohibition to enforce

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

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

(a) on the application of any person aggrieved, make an order-

(i) directing a person performing any functions in connection with the affairs of the Republic or of a local authority, to refrain from doing that which he is not permitted by law to do or to do that which he is required by law to do; or

(ii) declaring that any act done or proceeding taken by a person performing functions in connection with the affairs of the Republic or of a local authority, has been done or taken without lawful authority and is of no legal effect; or

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

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

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

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

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

(a) prejudicing or interfering with any measure designed to implement any development programme, or any development work; or

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

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

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fundamental rights and can order injunction or cost (art102). The Appellate
Division has the power to review its own judgments (art105). 191

Filing of PIL

The Government of Bangladesh funds a legal aid programme, but it does not
include PIL. The fee payable in filing a writ petition is nominal (Tk. 100 per
respondent192) but it is the lawyers’ fees that are expensive and prohibitive for the
general public. It is for this reason that mostly NGOs file PILs; this is also
because the poor and vulnerable persons do not have the knowledge to be able to
go to the court to seek remedies for infringement of their fundamental rights.
Usually, private parties or NGOs file writs for the infringement of fundamental
rights. The Supreme Court judges can suo motu take notice of violations of
fundamental rights from newspaper articles or letters written to them, but such an
action is rarely seen.

4.3.2 Public interest litigation procedure in India

Constitutional provisions

In India, PIL can be filed in the High Court division under art 226 of the Indian
Constitution, and it can be filed in the Supreme Court under art 32. However, for
the infringement of fundamental rights the PIL must be filed in the Supreme
Court under art 32 of the Constitution.

Hierarchy of courts in India

The Supreme Court is the highest court of India that has jurisdiction over the
entire nation. It has original, appellate (arts 132(1), 133(1) and 134) and advisory
jurisdictions (art 143). 193 Under the Supreme Court are the High Courts of each
state; there are 24 High Courts in India. 194 Lower in the hierarchy are the

191 Constitution of Bangladesh.
192 Hossain, above n. 84, 340.
193 Supreme Court of India, Jurisdiction of the Supreme Court
<http://supremecourtofindia.nic.in/jurisdiction.htm>.
194 Ibid.
subordinate courts at the district level, comprising the Civil Courts and Criminal Courts.  

**Filing PIL**

Any person aggrieved, and anyone on behalf of the aggrieved person or group of persons, can file a PIL. The Court can also *suo motu* take up a case by taking notice of newspaper articles or a letter written to the chief justice if it thinks fit. The Supreme Court of India has formulated some guidelines when it comes to taking notice of a letter. They are:

(i) the letter has to be addressed by an aggrieved person or a public spirited individual or a social action group

(ii) and it has to be regarding a constitutional or other legal right

(iii) of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress.

A court fee of RS. 50 per respondent (i.e., for each number of opposite party, court fees of RS. 50) must be affixed to the petition. No legal aid is available when it comes to filing a PIL in India.

**4.3.3 Public interest litigation procedure in Pakistan**

**Constitutional provisions**

In Pakistan, PIL is filed in the Supreme Court of Pakistan under art 184(3) and in the High Courts under art 199 of the *Pakistan Constitution*.  

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197 Article 184(3). Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved, have the power to make an order of the nature mentioned in the said Article.  

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Hierarchy of courts

The Pakistan judiciary consists of the superior judiciary and the subordinate judiciary. At the top of the superior judiciary, there is the Supreme Court, under which there are the High Courts of each province and the High Court for the capital territory; a total of five High Courts. There are Separate Administrative Courts and Tribunals. There is also a Special Federal Shariat Court in Pakistan, and its decisions can be reviewed by the Shariat Appellate Bench of the Supreme Court. The Shariat Court scrutinises all Pakistani laws and determines whether they are repugnant to the Islamic injunctions. Then, there are the subordinate courts, consisting of the District and Session judges’ courts.

Filing PIL in Pakistan

A court fee of Rs. 500 is payable with each petition for PIL. PIL filed in the Supreme Court is not specifically covered by a government legal aid programme but the Destitute Litigant Fund Rules 1974 provide for legal assistance in constitutional matters to destitute litigants. The Rules define a destitute person as ‘one who has no means to pay the court fee or other charges in respect of a writ petition’. As such, a destitute person can file a PIL with the help of this fund. However, no instance of such a filing can be found. The reasons behind this are identified by the Pakistan Institute of Legislative Development and Transparency as:


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198 Article 199. Jurisdiction of High Court.
199 Constitution of Pakistan.
201 Ibid. 21.
Anyone who has suffered violation of his or her fundamental rights can file a PIL in Pakistan. Like its Indian counterparts, the judges of the Pakistan Supreme Court can take notice of a matter of public importance and can initiate a PIL, either from newspaper articles or from a letter written to the chief justice.

4.4 The Development of Public Interest Litigation and Public Interest Environmental Litigation in South Asia

4.4.1 Historical development

The story of PIL in South Asia is one of judicial activism. In the South Asian region, where corruption and institutional weaknesses are crippling society, the poor, disadvantaged and illiterate population has obtained access to justice because the courts of the subcontinent have relaxed the concept of *locus standi* and have been entertaining class action in PIL cases. The writ procedure is preferred over the conventional suit because it is speedy, relatively inexpensive and offers direct access to the highest courts of the land. The social conditions of the South Asian region are such that relaxing the requirement of standing is very much needed. While critics are often of the opinion that such an action would overburden the courts with litigation from parties filing false and frivolous claims, the Indian Supreme Court in *SP Gupta v Union of India*206 held that this fear was totally unfounded. The Court quoted Scott by stating ‘the idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the court room’.207 The transformation from an individual-centric adversarial system to a public interest-based justice system in the form of PIL first began in India208 in the early 1980s.209 The Supreme Court of India

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203Ibid.
204 Hassan and Azfar, above n 4, 226.
205 Faruque, above n 77, 59.
206 [1982] AIR 149, 188 (Indian Supreme Court).
208 Hoque, above n 184, 399.
provided the cultural orientation of these cases in this region in the case of A B S
K Songh (Railway) v Union of India.\textsuperscript{210} The decisive case in this regard is Gupta v
Union of India.\textsuperscript{211} In that case, Bhagwati J stated that:

A person who has suffered a legal injury by reason of violation of his legal right
…, by the impugned action of the State or a public authority or any other
person... This is a rule of ancient vintage and it arose during an era when private
law dominated the legal scene and public law had not yet been born … It may
therefore now be taken as well established that where a legal wrong or a legal
injury is caused to a person or to a determinate class of persons by reason of
violation of any constitutional or legal right or any burden is imposed in
contravention of any constitutional or legal provision or without authority of law
…and such person or determinate class of persons is by reason of poverty,
helplessness or disability or socially or economically disadvantaged position,
unable to approach the court of relief, any member of the public can maintain an
application for an appropriate direction, order or writ...\textsuperscript{212}

The Supreme Court of India, through this significant judgement, opened up its
doors to public-spirited citizens to bring actions against the violation of the right
of the poor and the oppressed, and for actions to enforce the performance of
public duties.\textsuperscript{213} The liberal interpretation of ‘the right to life’ has played a
significant role by allowing access to people in a number of cases, providing
environmental justice. In the case of Gaur v State of Haryana,\textsuperscript{214} the Indian
Supreme Court not only recognised the right live in a healthy environment as
being a part of the right to life but also acknowledged the duty of the state to
safeguard the environment. The Court held:

……a hygienic environment is an integral facet of the right to a healthy life and it
would be impossible to live with human dignity without a human and healthy
environment … There is a constitutional imperative on the State Government and
the municipalities, not only to ensure and safeguard a proper environment but

\textsuperscript{210}(1981) AIR 298 (Indian Supreme Court).
\textsuperscript{211}[1982] AIR 149 (Indian Supreme Court).
\textsuperscript{212}Gupta v Union of India [1982] AIR 149, 185 (Indian Supreme Court).
\textsuperscript{213}Lavanya Rajamani, ‘Public Interest Environmental Litigation in India: Exploring Issues of
Access, Participation, Equity, Effectiveness and Sustainability’ (2007) 19(3) Journal of
Environmental Law 293, 293.
\textsuperscript{214}(1995) 2 SCC 577 (Indian Supreme Court).
also an imperative duty to take adequate measures to promote, protect and improve both the man made and the natural environment.\textsuperscript{215}

The landmark PIL in Bangladesh is \textit{Farooque v Bangladesh},\textsuperscript{216} where the Supreme Court of Bangladesh was receptive to environmental litigants for the first time by liberally interpreting the \textit{locus standi} and the right to life, including environmental rights within the ambit of the right to life.\textsuperscript{217} The applicant filed the case contending that a flood action plan undertaken by the government would have an adverse effect on the environment, affecting the right to life, property and the environmental wellbeing of the people of the district of Tangail, Bangladesh.\textsuperscript{218} The court in this case held:

\begin{quote}
Although we do not have any provision like Article 48-A of the Indian Constitution for protection and improvement of environment, Articles 31 and 32 of our Constitution protect the right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, and sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.\textsuperscript{219}
\end{quote}

It is pertinent to mention here that art 48-A of the \textit{Indian Constitution}, as stated in the above judgement, is only a directive principle and, as a result, no suit can be brought on the basis of the said Article and environmental claims are sought as violations of the right to life, which is enshrined in art 21 of \textit{Indian Constitution}.\textsuperscript{220} Now, the \textit{Bangladesh Constitution} has a similar provision regarding the environment in art 18A since its insertion in 2011.

\textsuperscript{216}(1997) 17 BLD, AD, 1 (\textit{FAP 20 Case}).
\textsuperscript{217}Razzaque, \textit{Public Interest Environmental Litigation}, above n 5, 106.
\textsuperscript{218}\textit{Fap 20 Case} (1997) 17 BLD, AD, 1.
\textsuperscript{219}Ibid, 46 [101].
\textsuperscript{220}For detailed discussion see above Chapter 3(Constitutional provision of the right to life in South Asia) 45-46.
In another case, *Farooque v Bangladesh* 221 (radioactive milk case), the judiciary, while deciding on a case involving the importation of radiated milk attached broader meaning to the constitutional ‘right to life’ and held:

The right to life ......extends to the protection of health and strength of workers, their means of livelihood, enjoyment of pollution free water and air, bare necessities of life, facilities for education, development of children, maternity benefit, free movement, maintenance and improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent with human dignity.222

However, the Supreme Court of Bangladesh was not always so liberal, and lacked the willingness to break away from colonial legal thinking and constitutional textualism, and refused to interpret the term ‘aggrieved person’ liberally for quite some time.223 Their adherence to the text and unwillingness to be flexible in interpretation of the constitutional provisions demonstrate that their jurisprudence reflected that of the colonial era, wherein the judges were bound by the decisions of the Privy Council and a literalist interpretation of the law prevailed. Moreover, even years after liberation, though the country was free, the judges were still heavily reliant on British case law and the inherited legal methodology. This was reflected in the case of *Bangladesh Sangbadpatra Parishad v Bangladesh*,224 where the Court refused to interpret the term ‘aggrieved person’ liberally and stated:

In England, various tests were applied. Sometimes it was said that a person must be ‘aggrieved’ or he must have a ‘specific legal right’ or he must have a ‘sufficient interest’.

The Court further observed:

In our constitution the petitioner seeking enforcement of a fundamental right … must be a ‘person aggrieved’…The emergence in India of a *pro bono publico*

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221 (1996) 48 DLR 438 (‘Radioactive Milk Case’) (High Court Division).
222Ibid, 442.
223Hoque, above n 184, 401.
litigation … has been facilitated by the absence of any constitutional provisions as to who can apply for a writ.\textsuperscript{225}

After several failed attempts, like \textit{State v Deputy Commissioner Satkhira},\textsuperscript{226} the Court formally accepted PIL in 1996 in the \textit{Fap 20 case}.\textsuperscript{227}

In Pakistan, too, the courts refused to break away from the traditional approach.\textsuperscript{228} For example, in the case of \textit{Province of East Pakistan v Khan}\textsuperscript{229}, the Pakistan Supreme Court held that:

Any person who challenges the constitutionality of a law must raise a case in the decision of which he has real and personal interest, in the sense that as an individual he would be adversely affected if the law which operates against him is not found and declared to be unconstitutional. He cannot move the court as \textit{pro bono publico} or merely as a ‘tax payer’...\textsuperscript{230}

After a long battle, the Pakistani courts finally embraced the concept of PIL in 1988 in the case of \textit{Bhutto v Federation of Pakistan}.\textsuperscript{231} In this case, Ms Benazir Bhutto filed a direct petition as the co-chairperson of the Pakistan Peoples’ Party challenging the amendments made in the \textit{Political Parties Act 1962}.\textsuperscript{232} The amendment in the Pakistan \textit{Political Parties Act (III of 1962)} meant that political parties would have to register with the election commission before the election, after fulfilling certain conditions.\textsuperscript{233} The petitioner contended that such an amendment was violative of arts17 and 25 of the \textit{Constitution of Pakistan}.\textsuperscript{234} The vires of the \textit{Freedom of Association Order, 1978 (President’s Order No.20 of 1978)}, was also challenged as being unconstitutional.\textsuperscript{235} She further challenged the constitutionality of art 270A, as affirmed, as purportedly validated by the

\begin{itemize}
\item \textsuperscript{225}Ibid, 127-128.
\item \textsuperscript{226}(1993) 45 DLR 643 (High Court Division).
\item \textsuperscript{227}\textit{Fap 20 Case} (1997), 17 BLD, 1(Appellate Division).
\item \textsuperscript{228} Hassan and Azfar, above n 4, 231–232.
\item \textsuperscript{229}(1959) PLD 387 (Pakistan Supreme Court).
\item \textsuperscript{230}Ibid, 480.
\item \textsuperscript{231}[1988] PLD 416 (Pakistan Supreme Court).
\item \textsuperscript{232}Ibid, 483.
\item \textsuperscript{233}Razzaque, \textit{Public Interest Environmental Litigation}, above n 5, 46.
\item \textsuperscript{234}\textit{Bhutto v Federation of Pakistan} [1988] PLD 416, 474-75 (Pakistan Supreme Court).
\item \textsuperscript{235} \textit{Bhutto v Federation of Pakistan} [1988] PLD 416, 474-475 (Pakistan Supreme Court).
\end{itemize}
Constitution Eighth Amendment Act 1985, in so far as it curtailed the power to judicially review its content and restricted the jurisdiction of the superior courts to protect the fundamental rights of the citizens, including the right to form or be a member of a political party guaranteed under art 17(3) of the Constitution.\textsuperscript{236} It was further contended that the provisions of art 270A were repugnant to the provisions of art 2A of the Constitution, which relate to the concept of legal sovereignty in Pakistan and the independence of the judiciary.\textsuperscript{237} The state objected to the contentions of the petitioner stating that the petitioner has no \textit{locus standi}, as the political party was not in fact an aggrieved party. The Pakistan Supreme Court rejected the state’s argument, drawing the analogy of the ‘next friend’ provision of the Code of Civil Procedure 1908. The Court also used the concept of ‘sufficient interest’ (which was relied upon by the Indian courts in the case of \textit{Gupta v Union of India}\textsuperscript{238} and on many other instances). The court stated that:

After all the law is not a closed shop and even in the adversary procedure, it is permissible for the next friend to move the court on behalf of a minor or a person under disability … why not then a person if he were to act \textit{bona fide activise} a court for the enforcement of Fundamental Rights of a group or a class of persons who are unable to seek relief from the court for several reasons. This is what the public interest litigation/class action, seeks to achieve as it goes further to relax the rule on \textit{locus standi} … \textsuperscript{239}

The Bhutto case opened the gate for PILs in Pakistan, though it lacked some of the fundamental elements of a PIL, such as the financial and social position of the petitioner. The first case where the court addressed the situation of socially and economically disadvantaged people was \textit{Masih v State},\textsuperscript{240} where the court took \textit{suo motu} action on the basis of a telegram of a group of brick kiln bonded labourers and their families.\textsuperscript{241}

\begin{itemize}
  \item \textsuperscript{236} Ibid.
  \item \textsuperscript{237} Ibid.
  \item \textsuperscript{238} [1982] AIR 149 (Indian Supreme Court).
  \item \textsuperscript{239} \textit{Bhutto v Federation of Pakistan} [1988] PLD 416, 490 (Pakistan Supreme Court).
  \item \textsuperscript{240} [1990] PLD 513 (Pakistan Supreme Court).
  \item \textsuperscript{241} Ibid, 519.
\end{itemize}
However, the first environmental PIL or PIEL in Pakistan had to await the case of *Zia v WAPDA* (Water and Power Development Authority), where the court held that the right to life enshrined in art 9 of the *Pakistan Constitution* includes the right to a healthy environment, and thereby the Supreme Court of Pakistan gave environmental rights constitutional legitimacy. This is the first case in which the court expanded the definition of the right to life. This case also is an example of the Pakistan Supreme Court taking up a PIL from a letter written to it.

**Facts of the case**

The residents of an area in the Pakistan’s capital city of Islamabad wrote a letter to the Supreme Court challenging the construction of an electricity grid station in their neighbourhood by the Water and Power Development Authority (WAPDA) of Pakistan. They claimed that an electricity grid would pose a serious threat to their health and wellbeing, as it would generate electromagnetic radiation. They also challenged the construction of the grid station because they were concerned about the violation of Islamabad’s ‘green belt’ regulation.

The issues raised by the litigation were, firstly, whether any government agency had the right to endanger the life of citizens by its actions without the latter’s consent; and, secondly, whether zoning laws vested rights in citizens that cannot be withdrawn or altered without the citizens’ consent.

The court determined the matter on the basis of its interpretation of arts 184(3), 9 and 14 of the *Pakistan Constitution*. The Court heard the matter as a human rights case, as art 184(3) of the *Pakistan Constitution* provides original jurisdiction to the Supreme Court to take up and determine any matter concerning the

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242 [1994] PLD 693 (Pakistan Supreme Court).
243 Hassan and Azfar, above n 4, 216.
244 Zia v WAPDA [1994] PLD 693 (Pakistan Supreme Court).
245 Green belt is part of the rural and green area zone of the City of Islamabad. The city is divided into eight basic zones. Which are, administrative, diplomatic enclave, residential areas, educational sectors, industrial sectors, commercial areas, and rural and green areas. Available at, City of Islamabad, *History of Islamabad* (2017) <http://www.visitislamabad.net/islamabad/files/file-detail.asp?var=history-of-islamabad>.
246 Hassan and Azfar, above n 4, 236.
247 Zia v WAPDA [1994] PLD 693 (Pakistan Supreme Court).
enforcement of fundamental rights of public importance. The Court considered the case maintainable under art 184(3) since the danger and encroachment alleged were such as to violate the constitutional right to life when interpreted expansively.

Despite the absence of any conclusive scientific evidence on the adverse effects of electromagnetic radiation the court accepted the petitioner’s argument that it should adopt the precautionary principle set out in the 1992 Rio Declaration on the Environment and Development. This was the first international instrument that linked environment protection with human rights, whereby the lack of full scientific certainty should not be used as a reason to prevent environmental degradation. Thus, it was held that the right to a healthy environment was part of the fundamental right to life and right to dignity, under arts 9 and 14 of the Pakistan Constitution, respectively.\(^{248}\) The Court held that:

> The word ‘life’ has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person in a free country is entitled to enjoy with dignity, legally and constitutionally.\(^{249}\)

The Court passed an interim order staying the construction of the electricity grid station. The Court appointed the National Engineering Services of Pakistan to examine the plan and the proposals of the Authority (i.e. WAPDA) in the light of the complaint made by the citizens, and directed it to submit its report and suggest any alteration or addition that may be economically possible in relation to the construction and location of the grid station.\(^{250}\) The Court further directed the government of Pakistan to establish a commission of internationally recognised scientists to study the technical dimensions of the project and to submit a report based on the study.\(^{251}\) In addition, the court ordered WAPDA to immediately

\(^{248}\)Ibid.

\(^{249}\) Zia v WAPDA [1994] PLD 693(Pakistan Supreme Court).

\(^{250}\) Zia v WAPDA [1994] PLD 693, 710-11(Pakistan Supreme Court).

\(^{251}\) Ibid, 711.
institute public consultation and objection procedures for all projects concerning grid stations and power lines prior to its installation.252

This is the first case where right to life was liberally interpreted by the Pakistan Supreme Court, and it opened the gate for future PIEL. In the same year, the court again interpreted the right to life in a broad way in West Pakistan Salt Miners Labor Union v The Director, Industries and Mineral Development, Punjab, Lahore (‘the Salt Miners case’).253 In this case, the petitioner claimed that the mining activities that were carried on in the suit land, which extended into the water catchment area, the watercourse, reservoir and the pipelines, would contaminate the water supply of the area if they were allowed to continue.254 The case was decided in favour of the petitioners and the Court stated that, ‘the right to have water free from pollution and contamination is a right to life itself.’255 Thus, PIL in South Asia has provided a suitable forum for seeking environmental justice and it has become such a widespread practice that such cases are now termed as PIEL.

4.4.2 Class actions

In PIL cases, especially in environmental matters, it is convenient for people to be able to bring class actions or suits in representative character since numerous people are affected by environmental degradation. According to the Code of Civil Procedure 1908 (which is followed by all three countries), class actions can be brought under Order I Rule 1256 where several plaintiffs can be joined together. It requires there to be a common question of law and fact and the relief has to arise from the same transaction. There is also the option of bringing representative suits under Order I Rule 8257 of the Code where a person or persons can sue or be sued

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252Ibid.
253[1994] SCMR 2061 (Pakistan Supreme Court) (‘Salt Miners Case’).
255Salt Miners Case [1994] SCMR 2061 (Pakistan Supreme Court).
256Who may be joined as plaintiffs: All persons may be joined in one suit as plaintiffs where— (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and (b) if such persons brought separate suits, any common question of law or fact would arise.
257One person may sue or defend on behalf of all in same interest. (1) Where there are numerous persons having the same interest in one suit,—
on behalf of a group of persons with the permission of the court. In such a case, the suit does not have to arise from the same cause of action, it is enough if all the plaintiffs have the same interest, and many class actions were brought before the court in the form of PIL.

Before considering the facts of such petitions, the rule of standing had to be accommodative for bringing class actions, which was done in Bangladesh in the FAP 20 case (Farooque v Bangladesh).258 Taking the spirit of the Constitution of Bangladesh into consideration, where the people are at the centre of all concerns, groups instead of individuals were allowed to come before the court in class actions.259 In this regard, A.T.M. Afzal J commented:

… in case of violation of any fundamental rights of the citizens affecting particularly the weak, downtrodden or deprived section of the community or that there is a public cause involving public wrong or public injury, any member of the public organisation, whether being a sufferer himself/itself or not may become a person aggrieved if it is for the realisation of any of the objectives and purposes of the Constitution.260

The Indian judiciary has been quite proactive in regards to class actions and representative suits. In Mehta v Union of India (River Ganges pollution case261) the court treated the petition of Mr M.C. Mehta as a representative suit.262 The petitioner prayed for the respondents to be restrained from polluting the river until they adopt measures to treat the trade effluents to save the river from being polluted.263 The Court in this case published the gist of the petition in the newspapers in circulation in North India along with an order to show cause as to

(a) one or more of such persons may, with the permission of the court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;
(b) the court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

258 Fap 20 Case (1997)17 BLD 1 (Appellate Division).
259 Hoque, above n 184, 401–402.
261 (1987) 4 SCC 463 (Supreme Court of India)(‘River Ganges pollution case’).
262 Razzaque, Public Interest Environmental Litigation, above n 5, 220.
263 River Ganges Pollution Case (1987) 4 SCC 463 (Supreme Court of India).
why the defendants should not be restrained as prayed for by the petitioner.\(^\text{264}\) Pursuant to the notice, a large number of industrialists and the municipal corporations and town municipal councils appeared before the court and filed counter-affidavits explaining the steps taken by them to treat the effluents before discharging them into the river.\(^\text{265}\) Order I Rule 8 not only allows plaintiffs to be joined together, but defendants can be joined as well.

### 4.6 Conclusion

Fundamental human rights are inalienable, and this also applies to the right to a healthy environment.\(^\text{266}\) However, this still lacks the necessary sanction of law. As a result, the avenue of using the well-recognised right to life has proved to be very effective in environmental cases. The PIL in South Asia has brought the courts within the access of the poor and vulnerable, who cannot fend for themselves. In addition, people who are displaced due to climate change can find redress through PIL. This is discussed in Chapter 5.

\(^{264}\) Razzaque, *Public Interest Environmental Litigation*, above n 5, 220.

\(^{265}\) River Ganges Pollution Case (1987) 4 SCC 463 (Supreme Court of India).

\(^{266}\) Lucretia Dogaru, ‘Preserving The Right to a Healthy Environment in the ECHR Jurisprudence’ (2011) 47 Curental Juridic, 137, 144.
Chapter 5 Public Interest Environmental Litigation in the Aid of Climate Migrants

5.1 Introduction

Among the worst affected victims of environmental harm are those groups of people who have been uprooted from their homes due to the effects of climate change, and who have consequently become climate migrants. These people need to be resettled and in a proper manner: that is, in a place where there are opportunities for starting a new life under circumstances where their wellbeing is secure and they are provided with adequate opportunities for income. However, in many cases, proper resettlement is ignored, or climate migrants simply go altogether unnoticed: for example, the victims of slow onset disasters who have lost their livelihoods because their agricultural land is no longer usable following increased soil salinity.\(^{267}\) It is the argument of this thesis that these victims of climate change should be recognised by legislative instruments and receive government assistance. Considering the scale and complexity of the problem, government is the best-placed institution to assist these victims of climate change. The assistance that can, and should, be provided by NGOs and international organisations like the World Bank and the UN needs to be organised by an institution like the government. Moreover, the assistance provided to climate migrants must be based on effective research and long-term planning, and so necessarily requires government policies to be put in place. Assistance programmes may also involve the use of government land and internal and even international migration, which can only be dealt with by the government of the country,\(^{268}\) or coordinated at a government-to-government level. As such, it is argued in this thesis that the assistance provided to climate migrants should be government-led and based.


The possible solutions to the problem of climate change-induced migration are twofold:

1. Prevention and mitigation; and

2. Adaptation and resettlement.269

Government is the best-placed institution to assist victims of climate change. Government can help either by providing for adaptation or resettlement, and where that is not possible, through information and assistance regarding adaptation and mitigation. The governments of India, Pakistan and Bangladesh have started taking steps to deal with climate change; however, no government has focused specifically on climate migrants.

Legislation must be specifically drafted to assist climate migrants. In the absence of such legislation—as is currently the case—climate migrants are unable to approach the local government to access relief. Under circumstances where no legislation exists and climate migrants are not legally recognised, people who have become migrants due to climate change, or who are under threat of becoming such migrants, are able to file a writ petition in the form of PIL270 in the High Court or the Supreme Court. They may claim that their ‘right to life’ has been threatened or violated, and claim in relief that the government should be ordered to take measures to resettle them, or to assist them in adaptation, or that the government should take measures to prevent such catastrophes wherever possible. It is pertinent to mention here that no such PIL has yet been brought to the High Court where the petitioners claimed to be climate migrants. It is the argument of this thesis that such claims can be made based on the facts that pertain in situations that climate migrants might have faced in the past, are currently facing and will continue to face, probably with increasing frequency.

269 BCCSAP, above n 268.
270 PIL or public interest litigation means legal actions initiated in a Court of Law for protection or enforcement of rights enjoyed by members of the public or large part of it. Hossain, above n 84, 335.
The aim of this research is to examine whether PIL can be an effective tool for providing climate migrants with remedies. This chapter analyses the possibilities of seeking such remedies for climate migrants of the subcontinent: Bangladesh, India and Pakistan. In these three countries, the courts have been quite flexible in entertaining PILs by relaxing the rules of standing and have helpfully interpreted the ‘right to life’ to include other fundamental rights like the right to housing and livelihood.271

This chapter analyses cases argued before the Supreme Court of Bangladesh (one of the low-lying countries that is predicted to be the worst affected272), in order to examine the effectiveness of PIL in providing justice to climate migrants.273 However, before commencing this discussion it is helpful to consider the requirements for filing a PIL by climate migrants in Bangladesh.

5.2 Instrumentality of PIL in mitigating the sufferings of climate migrants

The existing legal framework and legislation of Bangladesh has hurdles that is not easy for a climate migrant to overcome when it comes to achieving appropriate remedies through Court. Such problems are discussed below

5.2.1 Inadequate legislation

Bangladesh currently does not have legislation regarding climate migrants: that is, there is no legal recognition of climate-induced migration. Considering the urgency of dealing with the effects of climate change, the Bangladesh Climate Change Strategy and Action Plan (BCCSAP) was formulated in 2009. The BCCSAP covers:

1) food security, social protection and health

2) comprehensive disaster management

271 For detail discussion see above Chapter 4(4.3: Public Interest Litigation Procedure) 48.
272 Sarker and Azam, above n 29, 95.
273 Only cases from Bangladesh are discussed to narrow the scope of the research and provide a more detailed case analysis.
3) infrastructure to deal with climate change impacts

4) research and knowledge management

5) mitigation and low-carbon development, and

6) capacity building and institutional strengthening. 274

The BCCSAP recognises climate migrants 275 and states that they should be trained and educated so that they can migrate to different countries as skilled migrants and integrate into new societies. However, the BCCSAP does not lay down a detailed plan for them. Moreover, the BCCSAP is only a plan, lacking the force of law. To achieve the goals of the BCCSAP, the Government of Bangladesh established the Climate Change Trust in 2013 with retrospective effect from 13 October 2010, as provided by the direction of the Climate Change Trust Act, 2010. The establishment of the Climate Change Trust is a promising government initiative. The aim and objective of the trust according to the Act, includes initiating and implementing projects that involves capacity building and improvement of life and livelihood of the people affected by climate change. And also to initiate research and action plans in mitigating and adapting with climate change.

5.2.2 Inaccessible domestic courts

Under the Code of Civil Procedure 1908, a person can seek relief for himself or herself or on behalf of another person or other persons in a representative capacity to ensure a defendant’s compliance with the law or to claim compensation for any environmental injury. 276 However, in the absence of any legislation, climate migrants cannot apply to domestic courts to seek a remedy.

274BCCSAP, above n 268.
275The text of the BCCSAP refers to them as ‘climate refugees’ on pages 1, 2, 3, 14, 17 and 29.
276Faruque, above n 77, 59.
5.2.3 The limitations of environmental courts

The Environment Court Act 2000 (the Act) established three Environment Courts in Bangladesh in the three districts of Dhaka, Chittagong and Sylhet. Section 4 of the Act provides that the Environment Courts consist of one judicial officer of the rank of a Joint District Judge. The Department of Environment brings cases or suits to the Environment Court after due investigation. The court may also directly take cognisance of a complaint if the Inspector of the Department of Environment or any other person so authorised fails to take action about a complaint within 60 days, provided that the court offered a reasonable opportunity to the aforementioned authority to be heard before taking cognisance of the complaint, and the matter is worth taking cognisance of [Section 5(3) of the Act]. However, the court has no *suo motu* power to take cognisance.

This dependence of the Environment Court upon the Department of Environment is a major impediment to its proper functioning:

i. first, because an aggrieved individual cannot directly come to the court;

ii. second, because the Department of Environment has only been established relatively recently, and it is not widely known that matters of environmental injury can be taken to, and taken up by, that department; and,

iii. third, a complaint by an individual is inquired into by a person authorised by the Director General of the Department of Environment, and only if that person thinks it fit, is the matter taken to the Environment Court. Moreover, the person so authorised by the Director General might not always be competent enough (compared with a judicial officer) to properly assess whether or not the matter should be taken to the court.

The Environment Court has other major administrative and procedural problems. The administrative problems include:

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277Environment Court Act, s 5(3).
278Faruque, above n 77, 59.
The major procedural problem for climate migrants accessing the Environment Court is that the complaint has to be filed in relation to an offence or for compensation under 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; and these laws do not contain any special provision regarding climate change migrants. Owing to these factors, filing a PIL appears to be a narrow gateway for climate migrants to access the court.

5.3 Some Useful Precedents for Climate Migrants

Most of the modern rights-based PILs in Bangladesh relate to environmental justice, which is one of the central features of the Bangladeshi PIL jurisprudence. This chapter will argue that there are real opportunities for climate migrants to use PIL as a tool to compel the government, through the directions of the courts, to take measures to resettle climate migrants, or to formulate and implement policies to help them adapt to the changing environment, or to take preventive measures where possible.

PIL litigation enables people who were forced to migrate permanently and who are living in impoverished conditions as a result of this to file a writ petition in the form of PIL in the High Court division in relation to why the government should

279 Environment Court Act 2000, s 4.
280 Faruque, above n 77, 59.
281 Hoque, above n 184, 403.
not be asked to take measures to resettle them properly. Climate migrants can seek the assistance of some decided cases while lodging their application. Taking the following precedents into account, the courts of the subcontinent may be able to hold the state liable when people lose their homes due to climate change, if it is found that the state did not take any measure to mitigate or prevent the effects of climate change, or did not inform the affected people beforehand about the devastating effects climate change might have on them. Useful instances for climate migrants are available in the domestic cases of Bangladesh, of which the following cases are particularly pertinent examples.

5.3.1 The three *Nijera Kori v Bangladesh* writ petitions (Writ Petition Nos. 1162/1998, 7248/2003, 5194/2004)

Writ Petition No. 1162/1998

**Facts of the case**

Three writ petitions were filed by Bangladesh Environment Lawyers Association (BELA) on behalf of ‘Nijera Kori’, a cooperative society of landless people who were the victims of climate-induced river erosion. The three writs were filed regarding the same matter. The first writ petition (No. 1162/1998)\(^{282}\) was filed in 1998 regarding the allotment of government ‘khas’ land\(^{283}\) for shrimp cultivation in the area of Sudharam of the Noakhali district, where a number of landless people were living.\(^{284}\)

Around 40,000 landless people were evicted from various islands in the rivers of the district of Noakhali, Bangladesh, who had been living there for many years, paying government taxes. On the application of 147 people, the Deputy Commissioner of Noakhali proposed that 11,955.59 acres of land be made available for shrimp cultivation, of which 2,039.77 acres was already occupied by

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\(^{282}\) *Nijera Kori v Bangladesh*, (Unreported, High Court Division, Writ Petition no. 1162/1998).

\(^{283}\)”Khas” land means state-owned land, the rights of which is vested in the government and only the Government can make settlements of such lands according to its policies. Provided that in making settlement of agricultural khas lands the families having less than three acres of land and who cultivate the land by themselves, should be given priority. Section 76 of the *State Acquisition and Tenancy Act*, 1950.

\(^{284}\) Hossain, above n 84, 368.
landless people. The proposal was approved by the Ministry of Land under the Shrimp Mohal Management Policy, 1992.\textsuperscript{285} No intimation was given to the Divisional Commissioner, as required by law. It was alleged that this declaration was made at the behest of the vested interests and that the lease was not granted to any particular entrepreneur but to land grabbers, who then started to evict people forcefully.\textsuperscript{286}

**Submissions**

It was argued on behalf of the petitioners that the landless people were entitled to priority settlement of the char land, or river island land, in accordance with Chapters IV and V of the *Land Administration Manual 1990* read with Chapter V of the *Land Reforms Ordinance 1984* Bangladesh.\textsuperscript{287} The petitioners also argued that the allotment was given in contravention of the rights to the basic necessities of life, to equal opportunity, to equality of treatment, to be treated in accordance with law and to life and occupation, as guaranteed by arts 15,\textsuperscript{288} 19,\textsuperscript{289} 31\textsuperscript{290} and 32,\textsuperscript{291} respectively, of the *Constitution of Bangladesh*.\textsuperscript{292}

\textsuperscript{285}A ‘Shrimp Mohal’ is a ‘Shrimp estate’, which is an area designated for shrimp cultivation.

\textsuperscript{286}Noakhali Char Eviction Case or Shrimp Farming Case (Unreported, High Court Division, Writ Petition no. 5194/2004).

\textsuperscript{287}Ibid.

\textsuperscript{288}Article 15. It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens—(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;(b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;(c) the right to reasonable rest, recreation and leisure; and(d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.

\textsuperscript{289}Article 19. (1) The State shall endeavour to ensure equality of opportunity to all citizens.(2) The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic. (3) The State shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life.

\textsuperscript{290}Article 31. To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

\textsuperscript{291}Article 32. No person shall be deprived of life or personal liberty save in accordance with law.

\textsuperscript{292}Constitution of Bangladesh.
**Decision of the court**

After hearing the submissions, the Court issued an interim order for a temporary injunction in terms restraining the authorities from disturbing the possession of the landless people.

**Writ Petition No. 7248/2003**

In 2003, another writ petition (No. 7248/2003)\(^{293}\) was filed regarding the matter claiming that the allotment of the ‘khas’ land for shrimp cultivation depriving the landless people of their homes was contrary to the provision of the *Land Administration Manual 1990* and arts 15, 19, 31 and 32 of the *Constitution of Bangladesh*.

The Court granted an injunction for two weeks at first and later passed an order of injunction for maintaining the *status quo*. In this case, the Learned Assistant Attorney-General submitted that the government decided not to evict the landless people from the suit land until they were resettled in due course. Considering the decision of the government, the learned counsel on behalf of the petitioner did not press the petition and the Court disposed of the writ petition without any order as to cost.

**Writ Petition No. 5194/2004**

The government memo dated 6 May 2003 declared that 11,955.59 acres of island land in the islands of the Noakhali district would be used for shrimp cultivation caused unrest, disputes and conflicts in the locality. Hence, another writ petition was filed in 2004 (Writ Petition No. 5194/2004)\(^{294}\) regarding the same matter by NijeraKori along with BELA, Bangladesh Legal Aid and Services Trust (BLAST), Ain-o-Salish Kendro, Association for Land Reforms and Development (ALRD) and the BSEHR (Bangladesh Society for the Enforcement of Human Rights).

\(^{293}\)Nijera Kori v Bangladesh, (Unreported, High Court Division, Writ Petition no. 7248/2003).

\(^{294}\)Noakhali Char Eviction Case or Shrimp Farming Case (Unreported, High Court Division, Writ Petition no. 5194/2004).
The petitioners argued that in accordance with Chapters IV and V of the *Land Administration Manual 1990* read with Chapter V and the *Land Reforms Ordinance 1984* the landless people were entitled to priority settlement of the char land, or land on the river islands. The petitioners further submitted that the allocation at issue was made in violation of established principles of law, and that the area included land settled by landless people and areas given to the Forest Department. The petitioners also argued that the administration had failed to protect the landless people from abuses of power by vested interests and from illegal actions amounting to violations of their rights to the basic necessities of life, to equal opportunity, to equality, to be treated in accordance with law, and to life and occupation as guaranteed by arts 15, 19, 27, 31, 32 and 42** of the Constitution,** respectively.

In this instance, the Division Bench of the High Court issued a Rule Nisi on 1 September 2004 ordering the respondents to show cause why they should not be directed to protect the landless people living on the 11,955.59 acres of island lands declared as shrimp ‘mohal’ in Noakhali. The bench also directed them to compensate the affected people for unlawful harassment, intimidation and eviction by the land grabbers and so-called shrimp cultivators. The Court also stayed the operation of the impugned government memo that declared the 11,955.59 acres of land as shrimp ‘mohal’ where 40,000 landless people (the petitioners) lived.

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295 Article 27: All citizens are equal before law and are entitled to equal protection of law.
296 Article 42: (1) Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law, (2) A law made under Clause (1) of this Article shall provide for the acquisition, nationalisation or requisition with compensation and shall fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be assessed and paid; but no such law shall be called in question in any court on the ground that any provision of the law in respect of such compensation is not adequate.
297 Noakhali Char Eviction Case or Shrimp Farming Case (Unreported, High Court Division, Writ Petition no. 5194/2004).
298 Hossain, above n 84, 388.
5.3.2 Bangladesh Environmental Lawyers Association (BELA) v Secretary, Ministry of Environment & Forest (Writ Petition No. 4286/2003)

The Government of Bangladesh, to mitigate the effects of natural calamities, has taken measures, such as declaring 4,916 hectares of land in Sonadia Island an ECA, as this area has special ecological significance in protecting and conserving Sonadia Island from erosion, and preventing the people living nearby from being inundated and swept away by tidal bores. The 4,916 hectares of land on Sonadia Island, along with six other areas, were declared ECAs by gazette notification dated 19 April 1999. The said gazette listed certain activities, such as the clearing of natural forest or trees, destroying the habitats of animals and plants, and activities that can change the nature of the land, water and other features of the environment as prohibited. Such measures would shield people from environmental effects that might cause them to become climate migrants, because if the said ECA were destroyed, the people living in the vicinity would be required to move or risk being constantly hit by tidal bores. Their lands would be submerged for long periods, resulting ultimately in the loss of their lands and homes due to the effects of erosion.

However, the Ministry of Environment withdrew the declaration from 2,121.96 acres of land, stating that the said area was declared a reserve prior to its declaration as an ECA. As a result, the declaration of the above-mentioned gazette was no longer applicable to these 2,121.96 acres of land. The withdrawal of the declaration removed those protections from the activities that would endanger the ecology of the island. Consequently, a number of locally influential people, taking undue advantage of their social status, took leases from the government and began clearing parts of the forest for shrimp cultivation. BELA

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299 Ecologically Critical Areas (ECAs) are ecologically defined areas or ecosystems affected adversely by the changes brought about through human activities. The Bangladesh Environment Conservation Act (BECA) 1995 has provision for ECA declarations by the Director General of the Department of Environment in certain cases where the ecosystem is considered to be critically threatened. If the government is satisfied that, because of degradation of the environment, the ecosystem of any area has reached or is threatened to reach a critical state, the government may by notification in the official gazette declare such areas as ECAs. The government shall specify through notifications which of the operations or processes cannot be initiated or continued in the ECA, above n 78.

300 Bangladesh Environmental Lawyers Association (BELA) v Secretary, Ministry of Environment & Forest, (Unreported, High Court Division, Writ Petition No. 4286/2003).
conducted an investigation and found that the ecological state of the island had deteriorated. BELA’s investigation also revealed that the forest was never declared a reserve, as claimed by the Ministry of Environment.\footnote{Hence, the writ petition \textit{Bangladesh Environmental Lawyers Association (BELA) v Secretary, Ministry of Environment & Forest}\footnote{Unreported, High Court Division, Writ Petition No. 4286/2003.} was filed opposing the withdrawal of the declaration and seeking special protective measures to protect and conserve the 4,916 hectares of land of Sonadia Island as an ECA.}

\textbf{Submissions}

The petitioners claimed that the withdrawal of part of the forest land from the ECA was unlawful and that the failure of the first, second and fourth respondents to protect the ecosystem and properly manage public property resulted in the violation of the rights of the petitioner and the local residents, as guaranteed in arts 31,\footnote{Right to protection of law.} 32\footnote{Protection of right to life and personal liberty.} and 42\footnote{Right to property.} of the \textit{Bangladesh Constitution}. The petitioner also claimed that the clearing of forests had caused the deterioration of the ecological state of Sonadia Island and left the local people under threat of inundation and river erosion.

\textbf{High Court’s decision}

After hearing submissions, the High Court division found the allegations of the petitioner to be correct and called upon the defendants to show cause ‘as to why they should not be directed to undertake special protective measures as required under Section 5\footnote{Section 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. (2) The Government shall, in the notification published under subsection (1) or in a separate notification, specify the activities or processes that cannot be initiated or continued in an ecologically critical area.} of the \textit{Environment Conservation Act 1995} to protect and conserve the 4,916 hectares of Sonadia Island as an ECA, as declared by gazette notification dated 19 April 1999 under Section 5 of the \textit{Environment Conservation Act 1995}.}
Conservation Act’. \(^{307}\) Any further granting of leases or otherwise tampering with the said forestland was also stayed by the court.

### 5.3.3 Bangladesh Environmental Lawyers Association (BELA) v Bangladesh (Writ Petition No. 3336 of 2002)

**Facts of the case**

Bangladesh is subject to annual flooding because most of the country is situated in the delta of the Brahmaputra, the Ganges and the Meghna.\(^{308}\) There is heavy rainfall in the monsoon season and the rain waters flow through the rivers into Bangladesh from India, Nepal, Bhutan and China, resulting in inundation of one quarter of the country, on average.\(^{309}\) Because 80 per cent of Bangladesh is floodplain, the heavy rainfall and melting of snow in the high Himalayas causes widespread flooding in the country.\(^{310}\) The monsoon rain, the tectonic uplift of the Himalayas, the deforestation of the Himalayas, and the melting of the glaciers in the Himalayas are some of the major causes of flooding.\(^{311}\) Once every four to five years severe flooding occurs and about 60 per cent of the country is submerged.\(^{312}\) It is predicted that global warming will worsen the situation as a result of phenomena like sea level rise.\(^{313}\)

RAJUK—the Capital (Dhaka) Development Authority—has prepared a master plan (the DMDP) to develop Dhaka City, and to address the issue of flood damage therein. DMDP launched a three-tier grand project (from 1995 to 2015, extended to 2035) consisting of a Structure Plan, an Urban Area Plan and a Detailed Area Plan.\(^{314}\) The areas through which floodwater passes to the rivers have been identified as ‘flood flow zones’ in the Structure Plan. The Detailed Area Plan of RAJUK discourages all types of physical development in this zone.

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\(^{307}\) Hossain, above n 84, 582.

\(^{308}\) BCCSAP, above n, 268.

\(^{309}\) Ibid.


\(^{311}\) Coolgeography.co.uk, *Bangladesh* (2012) <http://coolgeography.co.uk/A-level/AQA/Year%202012/Rivers_Floods/Flooding/Bangladesh/Bangladesh.htm>.

\(^{312}\) BCCSAP, above n 268.

\(^{313}\) Jacobson, above n 109, 258.

However, as the Detailed Area Plan is a policy, it uses exhortatory terms, such as ‘discourages’, instead of mandatory language such as ‘restricts’ or ‘disallows’. Agriculture is only possible in the summer, but only if the character of the land (such as elevation, earth filling activities and changes of high and low terrain) is not changed.315

Floodwater passes through these flood flow zones and permanent developments like earth filling and construction may block these flood flow zones, causing floodwater levels to rise and changes in flow direction. As a result, floodwater might flow through establishments, destroying people’s homes or may even result in waterlogging in various residential areas, making hundreds or even thousands of people homeless either temporarily or permanently. Land grabbers have tried on occasion to fill these low-lying lands with earth and start development in these areas for building residential areas. In 2002, the construction company Jamuna Builders Ltd and some other developers started a development in one of the said flood flow zones in the area of Ashulia. As a result, BELA brought a PIL against the construction company in the High Court division: Bangladesh Environmental Lawyers Association (BELA) v Bangladesh.316

**Submissions**

BELA claimed that Jamuna Builders Ltd and other developers were in-filling 5,000 acres of flood flow zone of an area called Ashulia and branches of the river Turag. That they did not get any approval from RAJUK. The petitioners also claimed that the respondents are acting in gross violation of the Master Plan of the City of Dhaka prepared by RAJUK and Act XXXVI of 2000, and that the government had failed to prevent such activities.

**The Court’s decision**

Upon hearing, the High Court found the claims made by BELA to be true and directed the respondents to demonstrate why the unlawful filling of the Ashulia

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315Rajdhani Unnayan Kartripakkha, *Final Report: Preparation of Detailed Area Plan (DAP) for DMDP Area: Location-3, RAJUK.*
316Unreported, High Court Division, Writ Petition No. 3336 of 2002.
flood flow zone and branches of the Turag River by Jamuna Builders Ltd should not be declared illegal under Act XXXVI of 2000, the Town Improvement Act 1953 and the Environment Conservation Act 1995. The Court further directed that all kinds of earth filling in the Ashulia flood flow zone should stop immediately.

5.3.4 The Modhumoti Model Town Case (Writ Petition No. 4604 of 2004, Judgement on 27 July 2005, unreported)

Facts of the case

The background facts of this case are that a sub-flood flow zone was being filled by Metro Makers and Developers Ltd for the construction of Modhumoti Model Town. Again, BELA filed a PIL against such activity on 14 August 2004. On 15 August, the court issued an injunction for six months preventing all kinds of activities regarding the project, including the advertising of housing plots. The case was disposed of by the High Court Division after being sent to it by the Appellate Division for a hearing on the merits. The Court held the operations in relation to the construction of Modhumoti Model Town to be in violation of the Town Improvement Act 1953 and DMDP of Dhaka City prepared by RAJUK; without having obtained any permission from RAJUK, the same was declared to be unauthorised, illegal, without lawful authority and against the public interest. The Court also directed RAJUK to protect the said sub-flood flow zone. However, the Court directed that the third-party interest of the purchasers of the plot should not be affected by the order. The respondents preferred an appeal against the decision. The Appellate Division of the Supreme Court upheld the judgement of the High Court Division, except for the fact that the Appellate Division did not consider the third-party purchasers to be bona fide purchasers for value. The Appellate Division stated that the third-party purchasers were only entitled to receive the money they transferred to Metro Makers Development Company along with such compensation as may appear to be just and proper.

5.4 Principles

A number of principles can be extracted from the cases discussed above.

1. **Right Against Arbitrary Eviction:** In the three Nijera Kori writs, the landless people settling on government property were under threat of being uprooted from their homes. However, the Supreme Court directed the government not to evacuate the land without resettling the landless petitioners. The decision of the Court in these three PILs demonstrates how the Court helped the victims of environmental disaster (i.e., the landless people) by ensuring that their fundamental rights were protected (in this case, the right to housing), and that such people should be given priority over the government’s economic interest. It also shows that the government has a positive duty to resettle such migrants.

2. **Right of Protection From Potential Climate Induced Eviction:** The Supreme Court’s decision in the Sonadia Island writ protected an ECA, the destruction of which would have rendered hundreds of people homeless due to tidal bores and river erosion. A lack of communication and understanding between the government departments and the first respondent (Ministry of Environment and Forest) put an ECA at risk under an erroneous belief. The petitioner could not stop the respondents from taking action, despite showing the respondents that they had made a mistake. The impugned judgement shows how the Court intervened and stopped the government departments from acting under the misconception that the ECA of Sonadia Island was, in fact, a reserve forest. Without the Supreme Court’s intervention, land grabbers would have destroyed the forests of the ECA of Sonadia Island, thereby causing land erosion and inundation and the people concerned would likely have become climate migrants. The Court found the respondents to be in violation of Section 5 of the *Environment Conservation Act 1995*, as the respondents were involved in activities that could not be initiated or continued in an ECA. The question of the ‘right to life’ was also invoked and the Court decided in the affirmative. Hence,

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318 *Bangladesh Environmental Lawyers Association (BELA) v Secretary, Ministry of Environment and Forest*, (Unreported, High Court Division, Writ Petition No. 4286/2003).
even if no specific law is violated and the petitioners face the threat of becoming climate migrants, the Supreme Court can decide in favour of the petitioners in light of the right to life.

3. Right to Home: The two PILs involving development in the flood flow zone and the sub-flood flow zones of Dhaka City are instances where the Court protected the areas that are needed for the passage of floodwater. The obstruction of the said zones would cause submersion of many residential areas, and might even create new water passage routes through establishments, thereby causing the internal displacement of people. The Supreme Court of Bangladesh preserved people from becoming climate migrants, while the government failed to do so. Without the Court’s intervention in preventing works that would have interfered with flood flows, the people concerned would have likely become climate migrants. The Supreme Court found that the respondents were in violation of the *Environment Conservation Act 1995*, Act No. XXXVI of 2000 and the *Town Improvement Act 1953* and also in violation of the right to life. In Appeal No. 256 of 2009 (heard and decided along with Civil Appeal Nos. 253, 254 and 255 of 2009 as involving common questions of law and fact), preferred from the judgement of Writ Petition No. 4604/04, Syed Mahmud Hossain J stated that ‘the right to life includes the right to protection and improvement of the environment and ecology’ and even in the absence of any law preventing the lands in question from being filled in, the affected people could still compel the authorities through judicial review to take steps ‘to preserve and protect health, environment and ecology in the Metropolitan areas’.

This statement strongly supports the argument that even if there is no violation of any specific law, the Supreme Court is willing to give relief if the right to life is invoked.

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319The power of the Supreme Court to review the decisions of the legislative or executive or the decisions of the subordinate courts and even its own judgment and orders.

Possible remedies:

1. The victims of climate change-induced migration can certainly use the above mentioned Nijera Kori cases as precedents when they attend court stating that they have been made homeless by environmental degradation and that the government should take action to resettle them. Further, if climate migrants take shelter on government land and are under threat of being ousted they can file a PIL stating that they should not be ousted without being resettled. Victims of slow onset disasters often migrate to cities and take shelter in the slums alongside other poor people of the society. The slum dwellers are often arbitrarily evicted. If there are climate migrants amongst them they can use the precedent of the Nijera Kori cases.321

2. When people’s rights to housing and livelihood are threatened by the actions of a public authority, they can seek a remedy from the Court using the instance of the Sonadia writ.

3. Where laws and regulations for environmental protection are already in place but are under threat of being violated the potential climate migrants can file writs to seek protection from the Court. The Sonadia writ and the writs concerning the flood action plans can be used as precedents.

4. The PILs discussed in section 5.4 have all invoked the right to life along with other rights. The right to life is an universal right which can be invoked even in the absence of any specific statutory right. And can be a great tool for the climate migrants to seek remedy in the PIL cases.

5. Apart from giving directions as mentioned above, the climate migrants can be remedied by the court in the form of compensation and restoration of livelihoods. The Court might order that the compensations be offered from the Climate Change Trust Fund.322

321 Slum Eviction cases are also filed in the form of PILs but they are not PIELs as there is no direct connection to environmental degradation/climate change. Separate researches are going on in the field of slum eviction cases.

5.5 Conclusion

Climate migrants can use the above precedents when they claim environmental relief in similar cases. Even in the absence of a violation of any specific law, these precedents can be used because they also take into consideration the right to life, which includes the right to the environment. As the Court stated in Farooque v Bangladesh,323

Right to life includes ‘the enjoyment of pollution-free water and air....... improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent with human dignity’.324

Quoting the two cases of Farooque v Bangladesh,325 the Honourable Chief Justice of Bangladesh stated (in a speech delivered on 5 October 2015) that, the Appellate Division included the right to a healthy environment within the right to life. The Chief Justice also stated that because of these decisions the right to a healthy environment has now become a fundamental right in Bangladesh. Thus, in the opinion of the Chief Justice, the judiciary has the additional duty of upholding these precedents and ensuring rule of law where the applicant is a victim of a breach of environmental law and the sustainability of a development project or a proposed development project is in question.326

Given the approach of the Court and the discussion of the above cases, it appears that the Court can very well be a forum for climate migrants to seek redress.

323Radioactive Milk Case (1996) 48 DLR 438 (High Court Division).
324Faruque, above n 77.
325Fap 20 Case (1997)17 BLD 1(Appellate Division); Radioactive Milk Case (1996) 48 DLR 438 (High Court Division).
326Sinha, above n 89, 21.
Chapter 6 Conclusion

This research has been conducted to identify and determine ways in which national court systems may be utilised to provide redress to climate migrants. To further focus the research, three South Asian countries with comparable court systems, constitutional arrangements and procedural mechanisms—India, Bangladesh and Pakistan—have been selected for comparison. These three countries have also been selected because of the success they have achieved in enabling environmental justice through PIL.

The thesis has discussed a number of decided PIL cases from Bangladesh\(^{327}\) to examine whether PIL can be considered a suitable forum for climate migrants to seek justice. It concludes that the court is inclined towards providing justice to the victims of environmental disaster (whether human made or natural). Along with considering the specific findings of relevant environmental jurisprudence, the Supreme Court has also been willing to consider the violation of the human right to life. Therefore, climate migrants can avail themselves of the Supreme Court’s willingness to accommodate claims based on environmentally induced infringements of human rights to seek justice through PILs. The PIL precedents discussed can form the basis for climate migrants, or potential climate migrants, to claim relief in the form of resettlement and the institution of preventive measures when climate-induced migration is caused by rising sea levels victimising coastal populations.

While authors such as Razzaque,\(^{328}\) Hassan and Azfar,\(^{329}\) and Faruque\(^{330}\) have discussed the importance of PIL in the South Asian region, no research in particular has been undertaken with respect to PIL for climate migrants or potential climate migrants. The aim of this research is to both extend the work of those scholars and to breach the identified gap in the scholarship by

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\(^{327}\)Only PILs from Bangladesh have been discussed in detail to narrow the focus.

\(^{328}\)PIEL in India, Pakistan and Bangladesh.

\(^{329}\)Securing Environmental Rights through PIL in South Asia.

\(^{330}\)Protection of Environment through Judicial Activism in Bangladesh.
demonstrating that there are ways to address the situation of climate migrants in the absence of legislation regarding climate change-induced migration.

The introductory chapter set out the problem of climate-induced displacement and its connection to global warming. It also explained the problems that climate migrants are facing due to such displacement and the human rights that are violated as a result. A brief statement of the existing environmental legislation was also provided in Chapter 1, which shows that the jurisprudence regarding the right to the environment and the link between human rights and the environment is still evolving in international instruments, let alone there being any domestic legislation regarding climate migrants. The inadequacy of the environmental legislation, the need for environmental PIL or PIEL and the common environmental problems of the South Asian region were also briefly outlined in this chapter. The matters of development of PIL and PIEL, the need for filing PIELs and the inadequacy of other fora, such as the domestic courts, are dealt with by different authors such as Gill, Hassan and Azfar, Razzaque, Faruque and Hossain. Their works were discussed in Chapter 2, the ‘Literature Review’. The literature review also identified the relevant case law and legislation available to climate migrants to claim relief in the relevant courts.

Chapter 3, ‘Justiciability of the Human Right to Environment’, continued the discussion of PIL, discussing in detail the historical development of PIL and PIEL in South Asia. The chapter considered the courts’ relaxation of the rule of standing to ensure public access to the courts. It explored how the courts opened their doors to class actions in PIL and how the right to life has been interpreted to include the right to the environment. It found that the South Asian courts are playing a proactive role in protecting the environment. This chapter also discussed the procedure of filing PIL in the three South Asian countries, their court systems and their constitutional provisions regarding PIL in order to understand PILs properly in their legislative and jurisprudential contexts. The way

331 Gill, above n 98.
332 Hassan and Azfar, above n 4.
333 Razzaque, Public Interest Environmental Litigation, above n 5.
334 Faruque, above n 77.
335 Hossain, above n 84.
in which PIEL is developing in the South Asian region suggests that it is evolving into an effective tool for climate migrants to utilise to raise and resolve their issues in domestic cases. In the light of this, Chapter 5, ‘Finding a Solution’, discussed some decisions of the Bangladesh Supreme Court in PIL cases that climate migrants can use as precedents in the domestic courts in order to support their claims. While these cases demonstrate the possibility of seeking relief, by the prevention of climate-induced migration and resettlement of migrants, their precedential value is restricted to an application in domestic courts. Nevertheless, as discussed in Chapter 3, the decisions of the courts of the three South Asian countries can be persuasive and are taken into account when deciding cases in one of the others.

Only the PIELs of Bangladesh have been discussed in order to intensify the research area. This leaves a vast unexplored field for future research. This study has also focused on obtaining relief from domestic courts; hence, there is scope for further research regarding the justiciability of the rights of the climate migrants in the International Court of Justice.

6.1 Problems to Which The Relevant Actors Should Turn Their Attention

The courts have shown a willingness, given the appropriateness of the action at law and the circumstances of the case, to keep an open mind about climate change and the present and future migrations associated with it in order to entertain the PILs brought by climate migrants. When considering a PIL from climate migrant applicants, the courts have already taken several opportunities to issue useful directions. For example, courts have directed the government to take measures such as establishing an expert committee to assess the present and possible situations of climate migrants and to create a policy in order to meet their needs. In case of any breach of any existing plan that is not judicially enforceable (as it is not a law), the court can take such a plan or policy into consideration and direct the government to comply with it.
Examples of this approach are evident in the case of *Bangladesh Environmental Lawyers Association (BELA) v Bangladesh*,\(^{336}\) where the court considered the DMDP and directed compliance with it.\(^{337}\) The court can direct the government to take up court-prescribed measures to prevent and mitigate the effects of climate change if that has not already been done; or, in cases where plans are in place but the government has failed to implement them, the court can direct the execution of such a plan with immediate effect.

The Court can use provisions of existing laws like the Climate Change Trust Act, 2010\(^ {338}\) and Disaster Management Act, 2012 in order to aid the climate migrants.

As anthropogenic environmental effects increase and intensify and consequently the issue of climate migration escalates, PIEls regarding climate migrants are likely to involve increasingly complex policy issues. The judiciary has shown early signs of responding through the mechanism of the legal suit. However, the system-wide effects of the displacement of peoples and communities will require a whole of government approach. As yet the executive and legislative organs have not been as responsive as the judicial branch. The problem lies in those organs’ inadequate training and structure, including inadequate sensitisation to the state of the environment and the plight of climate migrants. Evidence from the South Asian region shows that the executive have been, and continue to be, unwilling to cooperate, and are reluctant to follow the directions of the court passed in the judgements of PIEls.\(^ {339}\) The governmental response would be strengthened\(^ {340}\) through such training methods, and by establishing expert advisory committees and appointing technocrat ministers to respond to the directions of the court.

It is further recommended that the court system be restructured to deal more effectively with

\(^{336}\)Unreported, High Court Division, Writ Petition No. 3336 of 2002.

\(^{337}\) In the same way, the Court can take Bangladesh Climate Change Strategy Action Plan into account and direct its compliance if the plan stays only on paper and not in execution.


\(^{340}\) Hassan and Azfar, above n 4, 247.
Given the continuing and cumulative effects of environmental change, environmental cases and litigation brought on by climate migrants is likely to escalate dramatically. At present, the courts of the South Asian region are already overburdened with these (and other) cases—a situation which will worsen markedly. Similarly, the environmental jurisdiction will require specialist knowledge and jurisprudential expertise, which can only be developed in a dedicated court or tribunal. As it currently stands a judge of the Environment Court disposes of environmental matters as an additional duty to his or her day-to-day work as a joint district judge rather than hearing only environmental cases.341

The Green Tribunal342 of India offers an example and a model of the type of court that has been established, consisting of both judges and expert scientists, to deal with the caseload associated with a mounting crisis.343 Further problems which need to be addressed include the lack of public access to, the absence of *suo motu* power of, and there being no capacity to work independently (i.e., an aggrieved person cannot file a suit directly in the Environment Court) of the Environment Court of Bangladesh.344

The largest surge of migrants in South Asia is likely to come from coastal regions, consisting mainly of people earning a subsistence living from the land or the sea, and who are poor, illiterate and vulnerable. Their impecuniosity means that the question of funding PIL is a significant issue for climate migrants. These people—both individually and as a group—face the problem of access to the justice system to prosecute claims founded on legally recognised justiciable rights. Their capacity to access legal aid is restricted by the fact that they must enter the same competition for legal aid resources as every other potential litigant. The lack of a

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341 The *Environmental Courts Act 2010*, s 4(2)b requires the district judge to hear environmental cases ‘in addition to his ordinary functions’:
Section 4(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.
342 Established under the *Green Tribunal Act 2010*.
343 Gill, above n 98, 217.
344 Established under the *Environment Courts Act 2010*. 
special provision for climate migrants in the legal aid laws of the specific countries and the provision of specific funding for climate litigation severely limits significantly restricts the prosecution of environmental litigation. Poverty, legal disability, lack of resources generally, and of dedicated funding specifically means that climate migrants are forced to seek relief through NGOs bringing representative suits on their behalf and seeking directions from the court to compel the government to take preventive measures; and, where that is not possible, resettle migrants, preferably within the country or region.

PILs are the starting point for solving the problems of the climate migrants. The courts’ judgments and orders provide, where appropriate, relief in the particular case. However, climate change is likely to result in environment effects on peoples and populations that cannot be addressed on a case by case basis in an ad hoc fashion guided by principles of precedent in analogous cases alone. Instead, a whole of government approach to climate induced migration, in which legislators fashion policies, rules and regulations (which courts adjudicate in relation to) in order to address matters such as priority settlement in government lands, and the training and strengthening of administrators’ skills so that climate migrants can migrate to other countries as skilled migrants and adapt more easily in the place of their migration, is required, but currently lacking.345

The current system in which courts make decisions and deliver judgments on an individual basis guided by their interpretation of domestic legislation and international instruments is cumbersome and inefficient. However, where environmental jurisprudence can be exercised in the context of a legislative and policy framework, assisted by a committee of experts able to suggest viable solutions rather than by the court giving directions regarding highly technical issues, court directions can be carefully crafted so that they lead to cost-effective, long-term and sustainable solutions and to predictable and consistent outcomes.346

345 BCCSAP, above n 268.
346 Rajamani, above n 213, 321.
6.2 Limitation and Scope for Further Research

PIEL can solve the problems relating to the migration caused by climate change in the form of directions given by the court to government or other public or private entities. However, the courts must be liberal, long-sighted and practical while giving such directions and the executives must be willing and skilled in order to implement the directions of the court.

Though this thesis only discussed PILs from Bangladesh, these precedents can be used by the climate migrants of other South-Asian countries. As we have seen from the discussions of chapter 4,\textsuperscript{347} that the South-Asian judges have been influenced by the decisions of each other. And it also leaves scope for future research in the field.

\textsuperscript{347} See above Chapter 4(4.4 The Development of Public Interest Litigation and Public Interest Environmental Litigation in South Asia) 53.
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