Legal Research & Analysis

Innovative

Article

Liberalizing 'Locus standi' in the Mohiuddin Farooque Case: Whether a De-novo Constitutional Transplantation or a Doctrinal Evolution

Md. Asif - Uz - Zaman

Department of Law, Shanto-Mariam University of Creative Technology, Uttara, Dhaka-1230, Bangladesh
* Correspondence: asifuzzaman.law02bup@gmail.com

Abstract: During the modern period, the states are increasingly focusing on public welfare, rather than just policing the people. To meet the purposes of a welfare state, the modern procedural jurisprudence has widened the scope of access to justice by introducing 'Public Interest Litigation.' Through such kinds of litigations, the concept of *locus standi*, i.e., the right to sue, has been liberalized for people who are not directly interested in dispute matters. In Bangladesh, Dr. Mohiuddin Farooque vs. Bangladesh (1996) is the landmark case by which liberalization of the concept of *'locus standi'* has been precedented. The interpretative judgment of this case made a turning point in viewing public interest litigations under the Constitution of the People's Republic of Bangladesh. While the judgment broadened constitutional interpretation, debate persists over whether this liberalization represents a *de-novo* constitutional transplantation, or a doctrinal evolution. From the perspective of comparative constitutional law and interpretation principles, the present study examines the conceptual evolution of the liberalizing ideas, relevant constitutional texts, case-precedents, etc. and proposes a definitive resolution to the interpretive debate and its broader impact on constitutional discourse in Bangladesh.

Keywords: comparative constitutional law; public interest litigation; locus standi; sufficient interest; judicial interpretation

1. Introduction

In the regular court system of Bangladesh, the persons who are directly interested or concerned in a matter of dispute can appear in a court to claim remedy. It is an established rule, incorporated from the Anglo-Saxon jurisprudential system, and is called the right to bring an action or to appear in court, which is commonly known by its Latin term *'locus standi.'* Under this system, a person who has interest or *locus standi* in the subject matter of the litigation may seek remedy to the appropriate court of justice, which have the jurisdiction to try the litigation. This strict construction of locus standi originated from *laissez faire* (means 'leave alone' or 'let do') rule to establish the non-interference character of the state that promotes the old concept of 'police state'. It limits the interventionism of the state in every single matter unless there exists an objection from the person directly affected from that matter (Hossaini and Mahmud 2019).

However, the above-mentioned strictness does not reflect the purpose of modern welfare states, rather it serves the old concept of police states (Lawyers and Jurists n.d.). It is the duty of a welfare state to ensure access to justice. The state should broaden the protection of adjudicative and non-adjudicative processes to all its people, especially to the disadvantaged people (Chowdhury 2018). Historically, three waves of access to justice have been identified (Cappelletti and Garth 1978), where the second wave of access to justice was the introduction of 'Public Interest Litigation (PIL),' i.e., a litigation for the protection of public interest. It was popularized, first at United States of America (USA), as it provided the opportunity to file a suit representing the collective interest of the society (Jolowicz 2000). This type of litigation opens the door of access to justice to the disadvantaged people by ensuring their participation in formal adjudication and by protecting their rights and interests. It allows a person to make a petition for protecting the rights of another person whose interest is directly involved in dispute. Public interest litigation does not require the direct interest of the petitioner, rather sufficient interest in the subject matter is enough for the petitioner to acquire the right to bring an action or to appear in court, i.e., *locus standi*. Through the liberalized view of *locus standi* introduced in the public interest litigation, a remarkable transformation has been brought up in the traditional justice system throughout the world that has met the purpose of a welfare state.

Citation: Md. Asif - Uz - Zaman. 2025. Liberalizing 'Locus standi' in the Mohiuddin Farooque Case: Whether a De-novo Constitutional Transplantation or a Doctrinal Evolutions. *Legal Research & Analysis* 3(2), 1-5.
https://doi.org/10.69971/lra.3.2.2025.86

In the context of public interest litigation in Bangladesh, the concept of locus standi was liberalized through the case of *Dr. Mohiuddin Farooque vs. Bangladesh & Others* (1996).[1] Although the case-precedent has construed a widening view in interpreting the constitutional texts, however, there is a debate on whether this liberalization under the Constitution of the People's Republic of Bangladesh was a *de-novo* constitutional transplantation, or a doctrinal evolution. A *de-novo* constitutional transplantation suggests a fresh importation of a constitutional idea from the foreign constitutions or the foreign judgments, where a doctrinal evolution indicates the jurisprudential continuity of an idea, already existed in the constitution, by the enrichment of constitutional interpretation. The present study suggests a definitive resolution to the prevailing legal debate through analyzing the conceptual evolution of the ideas, relevant constitutional texts and case-precedents from the perspective of comparative constitutional law and interpretation principles.

2. Background of Study

In 1987 and 1988, Bangladesh was hit by severe floods, causing immense loss of life and property. The severity of the floods attracted international attention and as a result, a meeting of the Government of Bangladesh with international donors was held in Washington, D.C., USA in July 1989. Since Bangladesh is a flood-prone region, it was decided to adopt a long-term project in the meeting to control floods in the region. In continuation of this, a document titled 'Bangladesh Action Plan for Flood Control' was presented to the international donors at London in the United Kingdom on December 11, 1989. As a result, the Government of Bangladesh, with the help of international donors, adopted the 'Flood Action Plan,' popularly known as the 'FAP-20' project (Arifin 2024). The implementation of the project began with the establishment of an experimental compartment in the floodplain of the Jamuna River flowing near Tangail district (KfW Entwicklungsbank 2004).

Although, the FAP-20 project was formulated for controlling flood, but unfortunately, this action program was likely to adversely affect nearly half a million of people within the project area, i.e., Tangail district (particularly in the Sadar upazila of Tangail district), and the extent of adverse impact was threatened the lives and livelihoods of more than a million people as well as the environment of that area (Arifin 2024).

In such a situation, Dr. Mohiuddin Farooque, the then Secretary General of Bangladesh Environmental Lawyers Association (BELA), Dr. Mohiuddin Farooque, filed a writ petition at the High Court Division of Bangladesh Supreme Court against the activities of the government regarding FAP-20 project in Tangail district under article 102(1) and article 102(2)(a) of the Constitution of the People's Republic of Bangladesh. In his writ petition, Dr. Farooque prayed for the issuance of a Rule Nisi upon the respondents to show cause as to why all the activities of the government regarding the FAP-20 project should not be declared unlawful. The High Court Division rejected the petition on the grounds of *locus standi* by saying that the appellant was not an 'aggrieved' person within the meaning of article 102 of the Constitution. Subsequently, Dr. Mohiuddin Farooque filed an appeal petition[2] to the Appellate Division of Bangladesh Supreme Court against the rejection order of the High Court Division.

3. Methods

The present study has followed qualitative research methodology by analyzing data from both primary and secondary sources. The primary source contains the Constitution of Bangladesh and case-precedents from both Bangladeshi and foreign judgments. The secondary data source contains various books, journal articles, newspaper and other reports, internet sources, etc.

4. Discussion and Analysis

4.1 Conceptual Evolution of the Idea of 'Sufficient Interest' in Liberalizing Locus Standi

Public interest litigations are generally instituted with a desire that the court would be able to give effective relief to the people in a whole or to a particular section of the people.[3] Historically, this kind litigation was initiated, concepted and developed in the United States of America (USA) on the near-around time of 1960s, where it is popularly known as the 'Public Interest Law.' *Brown vs. Board of Education* (1954)[4] is one of the earliest American cases in this regard where the idea of suing to protect the public interest was implemented (Hossaini and Mahmud 2019). However, public interest litigation structurally developed in England by creating the idea of 'Sufficient Interest' on the 1970s through the Blackburn cases. Mr. Raymond Blackburn came with four successive cases titled, R. Vs. *Commissioner of Police* (1968)[5], *Blackburn Vs. Attorney General (1971)*[6], *R. Vs. Police Commissioner* (1973)[7] and *R. Vs. GLC* (1976)[8], and established that any person, who has a 'sufficient interest,' i.e., the interest that is required for raising an issue before the court for hearing but not to get the eventual benefit of the ultimate benefit, on the disputing matter, deemed to have *locus standi* (Talukder and Alam 2011).

The distinction between the idea of 'interest' and 'sufficient interest' is that the idea of 'interest' requires both cause and benefit. A person with 'interest' has the full right to make a petition. But the idea of 'sufficient interest' does not require the eventual benefit of the ultimate benefit, rather it just requires the degree of interest to raise an issue. A person with 'sufficient interest' also has a *locus standi*. This concept is known as the 'liberalization of *locus standi*' and it was introduced in England in the above-mentioned four cases of Mr. Blackburn (Talukder and Alam 2011).

---

1 17 BLD (AD) 1.

2 Ibid.

3 People's Union of Democratic Rights vs. Ministry of Home Affairs (1985) AIR Delhi 268.

4 347 US 483.

5 2 QB 118.

6 1 WLR 1037.

7 QB 241.

8 1 WLR 550.

4.2 Interpretative role of judiciary in Dr. Mohiuddin Farooque case (1996)

4.2.1 Issue to be Considered

In *Dr. Mohiuddin Farooque vs. Bangladesh & Others* (1996), the fundamental issue was whether, or not, Dr. Farooque was a person 'aggrieved' and had *locus standi* to file the writ petition at the High Court Division against the activities of the government regarding FAP-20 project in Tangail district under article 102(1) and article 102(2)(a) of the constitution (Arifin 2024).

4.2.2 Existing legal framework under the Constitution of Bangladesh

The Constitution of the People's Republic of Bangladesh, in its article 44, guarantees the enforcement of the fundamental rights under Part III of the constitution through providing the right to move the High Court Division in accordance with clause (1) of article 102. However, article 44 does not clearly specify the person by whom the right to move the High Court Division to enforce fundamental rights may be exercised.

Article 102 of the constitution specifies the persons to exercise the right to move the High Court Division to enforce fundamental rights. According to clause (1) of article 102, the High Court Division may, on the ground of enforcing any of the fundamental rights and upon the application of 'any person aggrieved', issue directions or orders to any person or to any authority, including any person performing any function related to the affairs of the People's Republic of Bangladesh. Clause (2)(a) of article 102 provides that the High Court Division may, upon the application of any person aggrieved, issue an order directing a person performing functions related to the affairs of the People's Republic of Bangladesh or a local authority to refrain from doing something that is prohibited by law or to do something that is required by law, or may issue an order declaring that any act done or proceeding taken by that person or that local authority has been done or taken without lawful authority and has no legal effect, subject to the availability of any other equally efficacious remedy.

It is clear from the text of the constitution that both clauses (1) and clause (2)(a) of article 102 require a person to be 'aggrieved' to gain *locus standi* for filling a petition under these clauses.

4.2.3 Observation of the Court

The complexity that arose in this case was that the petitioner, Dr. Farooque, was not directly affected from the activitiesthe FAP FAP-20 project. He was neither a resident of the project area, nor any of his properties situated there. This matter created ambiguity to establish the interest of Dr. Farooque to be a person 'aggrieved' having *locus standi* to file a petition under article 102(1) and article 102(2)(a). To resolve this issue, the Appellate Division made its observation from the perspective of comparative constitutional law.

A.T.M. Afzal, C.J., referred *Kazi Mukhlesur Rahman case* (1974)[9] in his judgment, where the idea of 'sufficient interest' was first introduced in Bangladesh by the Appellate Division of Bangladesh Supreme Court. He observed that the judgment of the case was contemporary to the Blackburn cases, which indicated the progressiveness of the judiciary of Bangladesh.

In his judgment at the appeal petition of Dr. Farooque, Mustafa Kamal, C.J., referred the judgment of the Indian Supreme Court in S.P. *Gupta and others vs. President of India* (1982)[10], where the court observed that the matter of the existence of 'sufficient interest' should be determined by the court in each individual case.[11] He appreciated that the conceptual basis of the judgment in S.P. Gupta case (1982) had been precedented in Bangladesh eight years earlier in the *Kazi Mukhlesur Rahman case* (1974) by the Appellate Division of Bangladesh Supreme Court.

In the present appeal of Dr. Mohiuddin Farooque, the interest, which requires both cause and benefit, was held by the people of Tangail, who were directly affected from the activities of FAP-20 project and became the 'persons aggrieved.' But Dr. Farooque has also an interest there, which is called 'sufficient interest', because he was that person, as per Bimalendu Bikash Roy Choudhury, J., whose heart bled for his less fortunate fellow-beings for a wrong, done by the Government or a local authority in not fulfilling its constitutional or statutory obligations (Hasan 2022).

Here in this petition of appeal, the Appellate Division, by liberalizing the concept of *locus standi*, entitled Dr. Farooque with the status of a person 'aggrieved' on the ground of having sufficient interest to continue the writ petition at the High Court Division against the activities of the government regarding FAP-20 project in Tangail district under article 102(1) and article 102(2)(a) of the Constitution of Bangladesh (Mashraf 2019).

5. Findings

It can be undoubtably said that there was an influence of comparative constitutional law in liberalizing the concept of locus standi in this case, but here the question arises that whether it can be said as a de-novo constitutional transplantation which means adopting a wholly new concept in our constitution from the comparative study of other constitutions, or a doctrinal evolution, i.e., a complementation of the text of our constitution by using the materials of comparative constitutional law.

5.1 Kazi Mukhlesur Rahman Case (1974) as a Primer

In the judgment of *Dr. Mohiuddin Farooque case* (1996), the interpretative judgment of *Kazi Mukhlesur Rahman vs. Bangladesh and Another* (1974) [12] was frequently referred by the Appellate Division. The court observed that the idea of having 'sufficient interest' for becoming a person aggrieved was first introduced in *Kazi Mukhlesur Rahman case*.

In this case, the Appellate Division of Bangladesh Supreme Court approved the *locus standi* of Kazi Mukhlesur Rahman for the public interest litigation relating to the agreement of 1974 between the Government of Bangladesh and the Government of India about territorial exchange of South Berubari Union no. 12, of which, the appellant was not a resident. The court stated that the

---

9 Kazi Mukhlesur Rahman vs. Bangladesh and Another (1974) 26 DLR (AD) 44.

10 AIR 1982 (SC) 149.

11 Ibid, para 19A.

12 n 9.

approval of *locus standi* was made for two reasons in that case. Firstly, the said agreement concerning territorial exchange of South Berubari Union violated the fundamental rights of Kazi Mukhlesur Rahman guaranteed under article 36 of the Constitution of the People's Republic of Bangladesh, i.e., the right to freedom of movement throughout Bangladesh and right to reside and settle in any place in Bangladesh, and secondly, an important question of the articles of the Constitution of Bangladesh is involved in the said agreement (Ahmed 2024).

According to the observation of the Appellate Division in the *Kazi Mukhlesur Rahman case* considering the first reason of approving the locus standi of the appellant, the said fundamental rights are not the local rights of a citizen, rather these rights extend to every inch of the territory of Bangladesh. In this case, the Appellate Division also considered the matter of *locus standi* a discretionary power of the court, which should be determined according to the facts and circumstances of each case (Ahmed 2024).

However, the appeal petition of Kazi Mukhlesur Rahman was dismissed on the ground of prematurity,[13] for which, the principles established for liberalizing *locus standi* in this case did not get enough attention and could not become an effective precedent. To get the formal shape, the idea of 'sufficient interest' in liberalizing locus standi took more than twenty years from the judgment of *Kazi Mukhlesur Rahman case* (1974). It became an effective judicial precedent through *Dr. Mohiuddin Farooque case* (1996).

5.2 Doctrinal Evolution from the Constitutional Text

Looking into the Constitution of Bangladesh, it uses the word 'any person aggrieved' in both article 102(1) and article 102(2)(a) in its English text, whereas in the Bengali text, article 102(1) states, *"Kono shongkhubdho bekti"* and article 102(2)(a) states, *"Je kono shongkhubdho bekti."*

The proviso of article 153(3) of the Constitution of Bangladesh clears that the Bengali text of the constitution will prevail over the English text, if there is any conflict between them. Therefore, the omission of *"Je"* in the Bengali text of article 102(1) is not unintentional and insignificant according to the rules of the interpretation of statutes. While interpreting any law, the court must presume that the legislature is aware of the existing law[14] and the laws should be construed to carry out the intention of the legislature [15] (Islam 2009). Therefore, it cannot be said that the omission of *"Je"* in article 102(2)(a) is a mere mistake of the legislature. This omission must have a legal effect, and the effect has made article 102(1) wider than article 102(2)(a) regarding the scope of an aggrieved person. According to article 102(1), the meaning of the omission is that the person having sufficient interest, i.e., who is not directly a subject to the violation of any fundamental right, but indirectly aggrieved, can invoke the jurisdiction, subject to the objection of the person having full interest and directly aggrieved to the violation of that fundamental right.

In addition, the Bengali word *"Shongkhubdho"* means upset, concerned, anxious etc. These meanings are enough to determine the wide extent of the word 'aggrieved' and enabled Dr. Mohiuddin Farooque to file the present petition as an aggrieved person with sufficient interest. This word is not *de-novo*, rather contained by the Constitution of Bangladesh itself.

6. Conclusions

It is a well-established fact that liberalizing *locus standi* for public interest litigations has been precedented through *Dr. Mohiuddin Farooque vs. Bangladesh* (1996) in Bangladesh (Mashraf 2019). However, in searching the logical resolution of the debate on whether it was a *de-novo* constitutional transplantation or a doctrinal evolution, it has been found from the present study that the materials of comparative constitutional law used in this case have in fact complemented the Constitution of Bangladesh. From the introduction in *Kazi Mukhlesur Rahman case* (1974) to the formal establishment in *Dr. Mohiuddin Farooque case* (1996), the liberalized idea of locus standi travelled a long way. The harmonious interpretation of the constitutional text 'any person aggrieved' fuelled this constitutional journey to achieve the liberalized precedent. Hence, it clearly resulted from the careful analysis of this study that the liberalization of *locus standi* in the case of *Dr. Mohiuddin Farooque vs. Bangladesh* (1996) is best understood as a doctrinal evolution within constitutional interpretation, rather than a de-novo transplantation of constitutional ideas and the continuance of this doctrinal evolution is widening the scope of public interest litigations in Bangladesh.

References

Ahmed, Fahim. 2024. *Constitutional Law: Kazi Mukhlesur Rahman v Bangladesh*. https://thecasesummary.com/kazi-mukhlesur-rahman-v-bangladesh-en/

Arifin, Farah. 2024. *Constitutional Law: Mohiuddin Farooque v Bangladesh*. https://thecasesummary.com/mohiuddin-farooque-v-bangladesh-en/

Cappelletti, Mauro and Bryant G. Garth. 1978. Access to justice: the newest wave in the worldwide movement to make rights effective. *Buffalo Law* Review 27: 181-292. https://www.repository.law.indiana.edu/facpub/1142.

Chowdhury, Jamila A. 2018. *ADR Theories and Practices: A Glimpse on Access to Justice and ADR in Bangladesh*. 2nd ed. Dhaka, Bangladesh: London College of Legal Studies (South). https://www.researchgate.net/publication/342380658_ADR_Theories_and_Practices_A_Glimpse_on_Access_to_Justice_and_ADR_practices_in_Bangladesh

Haque, Muhammad Ekramul. 2011. The Bangladesh constitutional framework and human rights. *Dhaka University Law Journal* 22: 55-78. https://ssrn.com/abstract=4036033.

Hasan, Md. Nazmul. 2022. The role of foreign judgments in the landmark constitutional development in Bangladesh. SSRN. http://dx.doi.org/10.2139/ssrn.4369978

Hossaini, Md. Rafiqul Islam, and Mohammad Shoeb Mahmud. 2019. Public interest litigation in Bangladesh: a long way to go. *Social Change* 9: 61-70. https://ypsa.org/ypsa/wp-content/uploads/2021/08/Public-Interest-Litigation-in-Bangladesh.pdf.

Islam, Mahmudul. 2009. *Interpretation of Statutes and Documents*. 1st ed. Dhaka, Bangladesh: Mullick Brothers.

Jolowicz, John Anthony. 2000. *On Civil Procedure*. 1st ed. Cambridge, United Kingdom: Cambridge University Press.

KfW Entwicklungsbank. 2004. *Bangladesh: Compartmentalisation Pilot Project (FAP 20)*. Frankfurt am Main: KfW Entwicklungsbank. https://www.kfw-entwicklungsbank.de/migration/Entwicklungsbank-Startseite/Development-Finance/Evaluation/Results-and-Publications/PDF-Dokumente-A-D/Bangladesh_Compartmentalisation_2004.pdf

[13] Ibid, para 40.

[14] Abdus Sattar vs. Sub-Registrar (1977) 29 DLR 320.

[15] Stock vs. Frank Jones (Tipton) Ltd. (1978) 1 All ER 948.

Lawyers and Jurists. The Traditional Theory of 'Laissez Faire' Has Been Given Up and the Old 'Police State' Has Now Become 'Welfare State'. https://www.lawyersnjurists.com/article/the-traditional-theory-of-laissez-faire-has-been-given-up-and-the-old-police-state-has-now-become-welfare-state

Mashraf, Ali. 2019. Landmark Environmental Law Verdicts. *The Daily Star*. https://www.thedailystar.net/law-our-rights/news/landmark-environmental-law-verdicts-1753354

Talukder, S. M. Hassan, and Md. Jobair Alam. 2011. Public Interest Litigation: An Effective Mechanism for Securing Human Rights and the Rule of Law. *Dhaka University Law Journal* 22: 17-36. https://journal.library.du.ac.bd/index.php/DULJ/article/view/1666.