

# Equity and Sustainable Development Under Climate Regime of Bangladesh

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## ABSTRACT

*Equity and Sustainable Development are two important guiding principles of the international climate regime formed under the umbrella of the United Nations Framework Convention on Climate Change (UNFCCC) 1992. All international legal instruments concluded under the climate regime, including the recently adopted Paris Agreement, have acknowledged these two principles as their guiding principles. Consequently, all countries or parties to the UNFCCC and Paris Agreement require integrating these two principles with their national level climate change related laws and policies. Bangladesh, as a party to the UNFCCC and all other subsequent instruments including the Paris Agreement, is also required to incorporate the principles of equity and sustainable development into its national laws and policies. This Article examines to what extent Bangladesh successfully integrated these principles with its legal and executive instruments. The Article also examines and suggests possible ways as to how the principles of equity and sustainable development can be judicially enforced by the national courts of Bangladesh.*

## I. INTRODUCTION

Equity and sustainable development are the two most vital guiding principles for attaining all commitments agreed by the parties to the 1992 United Nations Framework Convention on Climate Change (UNFCCC).<sup>1</sup> The UNFCCC provisions implementing key global legal instruments, such as the Kyoto Protocol and Paris Agreement, also adopted equity and sustainable development as their own guiding principles.<sup>2</sup> Hence, equity and sustainable development remain two important factors for combating climate change under international laws on climate change or under international climate regimes. Accordingly, all nations or parties to the UNFCCC and/

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1. See United Nations Framework Convention on Climate Change, art. III, May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].

2. Environment Agreement Under the United Nations Framework Convention on Climate Change, art. III, April 22, 2016 – April 21, 2017, T.I.A.S. No. 16-1104, 3156 U.N.T.S. 79 [hereinafter Paris Agreement]; See Kyoto Protocol to the United Nations Framework Convention on Climate Change, art. II, Dec. 11, 1997, 2303 U.N.T.S. 162 [hereinafter Kyoto Protocol].

or its subsequent legal instruments are required to follow the same in taking national initiatives on dealing climate change.<sup>3</sup>

This Article aims to examine how principles of equity and sustainable development are integrated with the national climate change related initiatives taken by the government of Bangladesh and whether these principles are legally enforceable. In view of that, this study will first entail a short overview of equity and sustainable development followed by a brief picture of adoption of these two principles by the international climate regime. Thereafter, this study will provide a brief outline of the national executive and legislative initiatives taken by the Bangladesh government. Then, this academic paper will explain to what extent the principles of equity and sustainable development are reflected in concerned national instruments of Bangladesh. Finally, this paper will assess the possibility of judicial enforceability of equity and sustainable development under the current legal system of Bangladesh.

## II. EQUITY AND SUSTAINABLE DEVELOPMENT

### A. Equity

In line with the idea of social justice, the principle of equity refers to “a need of fairness in the distribution of gains and losses, and the entitlement of everyone to an acceptable quality and standard of living.”<sup>4</sup> In other words, the principle of equity refers to the concepts of “fairness and justice.”<sup>5</sup> It requires conferring special attention to the special requirements of the under-privileged or marginalized people of society. An effective technique of realization of equity is establishing pluralisms and promoting marginalized or disadvantaged groups’ participation in decision-making processes.<sup>6</sup> The determiner or benchmark of a “disadvantaged group of people” can be based on gender, ethnicity, religion, income, or other factors.<sup>7</sup>

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3. See Vienna Convention on the Law of Treaties, art. VI, May 23, 1969, 1155 U.N.T.S. 331.

4. Sharon Beder, *Costing the Earth: Equity, Sustainable Development and Environmental Economics*, 4 N.Z. J. ENV'T L. 227, 229 (2000).

5. ANTOINETTE HILDERING, INTERNATIONAL LAW, SUSTAINABLE DEVELOPMENT AND WATER MANAGEMENT 89 (2004).

6. Harry Jones, *Equity in Development: Why it is Important and how to Achieve it* vi-vii (Overseas Dev. Inst., Working Paper No. 311, 2009), <https://cdn.odi.org/media/documents/4577.pdf> [<https://perma.cc/U6LF-T4TD>].

7. See *id.* at 14.

There are two aspects of the principle of equity: the “intergenerational equity” and the “intragenerational equity.”<sup>8</sup> While the “intergenerational” aspect of equity addresses the inequalities between present and future generations, the “intragenerational” aspect of equity refers to the necessity of equal distribution of resources among people of the present generation.<sup>9</sup>

However, there is a common consensus that if a lack of equity exists in terms of economic development and environmental quality among the present generation, it must affect equity of the future generations.<sup>10</sup> Therefore, equity within the current generation is necessary for equity between generations.

### *B. Sustainable Development*

The 1987 Brundtland Report defines sustainable development as meeting the “needs of the present generation without compromising the ability of future generations to meet their own needs.”<sup>11</sup> From this definition of sustainable development, one can find that the concept is composed of both “intragenerational” and intergenerational” dimensions of the principle of equity. The notions of meeting “the needs of the present generation” refer to “intragenerational” and the notions of “without compromising the ability of future generations to meet their own needs” refers to the “intergenerational” aspect of the principle of equity.

In line with the Brundtland Report’s definition of sustainable development, sustainable development is based on three basic pillars: social justice, environmental protection and economic viability—popularly known as the “Triple Bottom Line.”<sup>12</sup> For this, sustainable development needs to follow an integrative approach that concerns economic sustainability, social sustainability, and environmental sustainability altogether.<sup>13</sup> At the time of considering all these three basic elements simultaneously, the

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8. See Beder, *supra* note 4, at 229–32.

9. *Id.* at 229, 231.

10. John C. Dernbach, *Sustainable Development as a Framework for National Governance*, 49 CASE W. RES. L. REV. 1, 31 (1998).

11. World Comm’n on Env’t and Dev., *Our Common Future*, U.N. Doc. A/42/427, at 54 (1987).

12. *Triple Bottom Line*, UNIV. OF WIS. EXTENDED CAMPUS (Dec. 9, 2022), <https://uwex.wisconsin.edu/stories-news/triple-bottom-line/> [<https://perma.cc/5GLL-FY9R>] (The “three pillars” concept was first introduced by John Elkington in the book *Cannibal with Forks*, 1998.); *3 Ps of Sustainability*, WHAT IS ENVIRONMENTAL (Sept. 12, 2012), <http://whatisenvironmental.blogspot.com/2012/09/the-3-ps-of-sustainability.html> [<https://perma.cc/QU4R-995V>] (This is also known as the 3 Ps of sustainability - people, planet, profit.).

13. Intergovernmental Panel on Climate Change, *Development, Sustainability, and Equity*, 68 (Feb. 23, 2000), <https://www.ipcc.ch/site/assets/uploads/2018/05/des-2nd-ipcc-expert-meeting.pdf> [<https://perma.cc/VZ3Q-U297>].

“integration” approach suggests conferring priority to the protection and promotion of environmental resources (*i.e. natural life supporting systems*).<sup>14</sup>

Despite its wide-ranged acceptance, the idea of sustainable development has been questioned by many scholars. For instance, since there is no specified or defined range of “need,” it is literally not possible to define needs of the present generation. As a matter of fact, the present generation’s needs of people who live in developed countries is different from the present generation’s needs of people who live in poor countries. Besides, scholars also find the idea “too vague” to provide specific guidelines.<sup>15</sup> The idea is also criticized as a late coming proposition to address the current global problems. Moreover, the idea has also been denoted as “too boring” to seek public attention.<sup>16</sup>

A grave criticism of sustainable development concerns its success in attempting to combine two contradictory discourses—economic expansion and environmental protection. Some scholars think that the idea has given an advantage to economic growth over environmental protection issues. For instance, Escobar states: “[b]y adopting the concept of sustainable development, two old enemies, growth and the environment, are reconciled;” “it is growth (read: capitalist market expansion), and not the environment, that has to be sustained.”<sup>17</sup>

Taking the above-mentioned criticism into account, this study considers that proper implementation of the principle of equity that includes both intergenerational and intragenerational aspects of equity can promote both environmental protection and economic development in tandem. In this manner these two aspects of equity can assist the world in attaining global sustainable development. This is justifiable by two facts. First, intragenerational equity facilitates the eradication of poverty, which as a result prevents environmental degradation and promotes environmental protection.<sup>18</sup> Second, the intergenerational aspect of equity inspires poverty-free people

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14. Christina Voigt, *Sustainable Development as a Principle of International Law: Resolving Conflicts Between Climate Measures and WTO Law*, in LEGAL ASPECTS OF SUSTAINABLE DEVELOPMENT 41 (David Freestone ed., 2009).

15. Federico Cheever & John C. Dernbach, *Sustainable Development and Its Discontents*, J. OF TRANSACTIONAL ENV'T LAW 1 (2015).

16. *Id.*

17. ARTURO ESCOBAR, ENCOUNTERING DEVELOPMENT: MAKING AND UNMAKING THE WORLD 195 (Princeton Univ. Press 1995).

18. FIONA NUNAN, UNDERSTANDING POVERTY AND THE ENVIRONMENT 1 (Routledge 2015); Ibimilua Foyeke Omoboye, *Linkages Between Poverty and Environmental Degradation*, 5 AFRICAN RSCH. REV. 475, 479, 482 (2011).

to conserve environmental quality and natural resources for future generations.

### III. NATIONAL CLIMATE CHANGE REGIME OF BANGLADESH

After signing and ratifying the UNFCCC on July 15, 1994, the Bangladesh Government provided a “high priority” to the climate change related issues by establishing a high-level national committee consisting of representatives of stakeholders, ministers, non-government organisations (NGOs) and academia in view to receive guidance to the activities.<sup>19</sup> At the same time, Bangladesh also gave “high priority” to addressing disaster management issues and formed a National Disaster Management Council, which is responsible for laying down policies and providing overall instructions for different aspects of disaster management including the climate change posed disaster management.<sup>20</sup> In December 2007, the government of Bangladesh also launched the National Capacity Self-Assessment for implementing the provisions of multilateral agreements that included the Climate Change Convention.<sup>21</sup> The National Capacity Self-Assessment of Bangladesh was conducted through financial support of GEF. All these steps taken by the Bangladesh government arguably explain the country’s commitment to battling climate change.

The national laws and policies of Bangladesh that concern climate change can be grouped into two groups: (1) laws and policies adopted to address environmental issues, but also concern some of the climate change related issues, and (2) laws and policies adopted exclusively to deal with climate change issues. The following table lists the laws and policies which were adopted to address diverse environmental issues, but also cover some issues essential for battling climate change.

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19. MINISTRY OF ENVIRONMENT AND FOREST, INITIAL COMMUNICATION UNDER THE UNITED NATIONS FRAMEWORK CONVENTION OF CLIMATE CHANGE (UNFCCC), 2002, 150 (Bangl.), <https://unfccc.int/sites/default/files/resource/Bangladesh%20Initial%20Natcom.pdf> [<https://perma.cc/J6SPAVTX>].

20. *Id.* at 170.

21. MINISTRY OF ENVIRONMENT AND FOREST, BANGLADESH CAPACITY DEVELOPMENT ACTION PLAN FOR SUSTAINABLE ENVIRONMENTAL GOVERNANCE, 2007, 246 (Bangl.), [https://www.iucn.org/sites/default/files/import/downloads/ncsa\\_compressed.pdf](https://www.iucn.org/sites/default/files/import/downloads/ncsa_compressed.pdf) [<http://perma.cc/JHN9-ZLCV>].

TABLE 1: LAWS AND POLICIES ADOPTED TO ADDRESS  
ENVIRONMENTAL ISSUES THAT ALSO CONCERN  
SOME OF THE CLIMATE CHANGE RELATED ISSUES

NAME OF THE POLICY	FOCUS AND OBJECTIVE OF THE POLICY THAT CONCERNS BATTLING CLIMATE CHANGE	YEAR OF ADOPTION
National Environment Policy (NEP) <sup>22</sup>	Eradicating adverse environmental impact (e.g., water resource and flood control issues).	1992
National Environmental Management Action Plan (NEMAP) <sup>23</sup>	Identifying key environmental issues, conserving nature, reducing environmental degradation, promoting sustainable development, and generally raising the quality of human life.	1995
National Agriculture Policy (NAP) <sup>24</sup>	Building up necessary arrangements for the rural disaster mitigation.	1999

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22. MINISTRY OF ENVIRONMENT AND FOREST, ENVIRONMENT POLICY, THREE IMPLEMENTATION ACTIVITIES, 1992, 3 (Bangl.), <http://nda.erd.gov.bd/files/1/Publications/Sectoral%20Policies%20and%20Plans/Environment%20Policy,%201992.pdf> [http://perma.cc/2Z6KVZ2L].

23. MINISTRY OF ENVIRONMENT AND FOREST, NATIONAL ENVIRONMENT MANAGEMENT ACTION PLAN (NEMAP), 1995, VOL. II (Bangl.), <https://documents1.worldbank.org/curated/en/329001468741610744/pdf/multi-page.pdf> [http://perma.cc/2RL7-3BKT].

24. MINISTRY OF AGRICULTURE, NATIONAL AGRICULTURE POLICY, 1999, at 5 (Bangl.), [http://dae.portal.gov.bd/sites/default/files/files/dae.portal.gov.bd/page/dd7d2be1\\_aeef\\_452f\\_9774\\_8c23462ab73a/NAP.pdf](http://dae.portal.gov.bd/sites/default/files/files/dae.portal.gov.bd/page/dd7d2be1_aeef_452f_9774_8c23462ab73a/NAP.pdf) [http://perma.cc/VWC5-HJ78].

National Water Policy (NWP) <sup>25</sup>	Joint activities with upstream neighbouring countries for development, collection, and distribution of water resources on international rivers increasing water flow in the dry seasons and reducing flood intensity during the rainy seasons.	1999
National Water Management Plan (NWMP) <sup>26</sup>	Implementing objectives of the National Water Policy.	2004
The Coastal Zone Policy 2005 <sup>27</sup>	Monitoring climate change and adaptive measures to climate change for coastal zones and resources.	2005

However, the government of Bangladesh initiated its first specific mechanism for dealing with climate change through submitting its Initial National Communication (INC) to the UNFCCC. The INC was conducted in 2002 to fulfil the international obligations of Bangladesh derived from Art. 4.1, and Art. 12 of the UNFCCC. All parties to the UNFCCC are obliged to report on the steps they are taking to implement the Convention.<sup>28</sup> All non-Annex I parties have an obligation to submit their initial communication

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25. MINISTRY OF WATER RESOURCES, NATIONAL WATER POLICY, 2001, vol. 4 (Bangl.), [https://warpo.portal.gov.bd/sites/default/files/files/warpo.portal.gov.bd/page/d921b920\\_d a0c\\_4775\\_a5c2\\_5c33e6938232/nwmp\\_vol4.pdf](https://warpo.portal.gov.bd/sites/default/files/files/warpo.portal.gov.bd/page/d921b920_d a0c_4775_a5c2_5c33e6938232/nwmp_vol4.pdf) [https://perma.cc/ZAN6-247K].

26. *Id.*

27. MINISTRY OF WATER RESOURCES, COASTAL ZONE POLICY, 2005 (Bangl.), <http://nda.erd.gov.bd/files/1/Publications/Sectoral%20Policies%20and%20Plans/Coastal-Zone-Policy-2005.pdf> [https://perma.cc/SXW4-B3Y7].

28. UNFCCC, *supra* note 1 (“All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall: (a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties”).



“within three years of the entry into force of the Convention for that Party, or of the availability of financial resources.”<sup>29</sup> Bangladesh submitted its first communication paper on November 12, 2002.<sup>30</sup> In addition to the national circumstances, mitigation, greenhouse gas inventory, vulnerability etc., the INC is comprised with chapters on adaptation to climate change and a strategic response to climate change.<sup>31</sup>

The government of Bangladesh submitted its second INC to the UNFCCC in 2012.<sup>32</sup> Both the first and second INCs were conducted through financial and technical cooperation of the UNFCCC financial cooperation mechanism—the Green Environment Facility (GEF).

Besides the above-stated INCs, all other official documents of Bangladesh dealing with climate change can be broadly divided into two portfolios: (1) executive instruments, and (2) legislative instruments. Main differences between executive and legislative instruments lie in their judicial enforceability, which will be discussed in detail under section VI.B. of this study. Table 2 below lists Bangladesh’s executive and legislative instruments concerning battling climate change.

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29. *Id.* art. 12, ¶ 5.

30. MINISTRY OF ENVIRONMENT AND FOREST, INITIAL NATIONAL COMMUNICATION UNDER THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC), 2002 (Bangl.), <https://unfccc.int/resource/docs/natc/bgdnc1.pdf> [<https://perma.cc/A4TT-W2E6>].

31. *Id.*

32. *See generally* MINISTRY OF ENVIRONMENT AND FORESTS, SECOND NATIONAL COMMUNICATION OF BANGLADESH TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC) 2012, at 1 (Bangl.), <http://unfccc.int/resource/docs/natc/bgdnc2.pdf> [<https://perma.cc/UA3N-XLD8>].

TABLE 2: BANGLADESH'S EXECUTIVE AND LEGISLATIVE  
INSTRUMENTS ON CLIMATE CHANGE ISSUES

TYPE OF THE INSTRUMENT	NAME OF THE INSTRUMENT	YEAR OF ADOPTION
Executive	National Adaptation Programmes of Action	2005
Executive	Bangladesh Climate Change Strategy and Action Plan (BCCSAP) 2009	2009
Executive	Renewable Energy Policy	2009
Executive	Action Plan for Energy Efficiency and Conservation	2013
Executive	Climate Fiscal Framework	2014
Executive	National Sustainable Development Strategy	2010-2021
Executive	Sixth (6th) Five Year Plan	FY 2011-FY 2015
Executive	Seventh (7th) Five Year Plan	FY 2011-FY 2015
Legislative	The Climate Change Trust Fund Act	2010
Legislative	Disaster Management Act	2012
Legislative	Sustainable and Renewable Energy Development Authority Act	2012

IV. EQUITY AND SUSTAINABLE DEVELOPMENT UNDER  
CLIMATE REGIME OF BANGLADESH

Since equity and sustainable development are two important principles of international legal instruments on climate change *e.g.* *UNFCCC, Paris Agreement*,<sup>33</sup> being a party to those legal instruments, national climate change instruments of Bangladesh need to be in line with these principles. However, like most other former colonies of Britain, Bangladesh follows the common law system,<sup>34</sup> and like all other common law countries, Bangladesh follows a “dualist”<sup>35</sup> approach for implementation of international treaties or provisions of international law. For this reason, even after appropriate ratification of any international treaty or law by the Bangladesh government, national courts of the country cannot directly enforce any provision of the concerned international law or any principle of the concerned international treaty. It means, in order to implement any principle or objective of international law at national level the Bangladesh government needs to integrate the concerned principle and objectives with concerned national documents or instruments. In view of that, the following two sub-sections of this Article aims to assess to what extent the principle of equity and sustainable development are integrated in the national climate regime of Bangladesh.

A. *Equity and Sustainable Development Under National  
Executive Instruments*

In 2005, the Ministry of Environment and Forest (MOEF) of Bangladesh prepared the National Adaptation Programmes of Action (NAPA).<sup>36</sup> Since the effectiveness of the National Environmental Management Action Plan (NEMAP) came to an end in 2004, the NAPA arguably filled the vacuum. More importantly, while the NEMAP was a mere environmental management

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33. See G.A. Dec. 1/CP.21, U.N. Doc. FCCC/CP/2015/10/Add.1, at 1, 3 (Dec. 12, 2015).

34. See generally Mazharul Islam et al., *Application of International Laws in Bangladesh: A Critical Evaluation*, UNNES LAW J.: JURNAL HUKUM UNIVERSITAS NEGERI SEMARANG 210 (2022), <https://journal.unnes.ac.id/sju/index.php/ulj/article/download/56458/21601> [<https://perma.cc/G9HU-U9J6>].

35. *Id.*

36. MINISTRY OF ENVIRONMENT AND FOREST, NATIONAL ADAPTATION PROGRAMME OF ACTION 2005, at 16–17 (Bangl.), <https://unfccc.int/resource/docs/napa/ban01.pdf> [<https://perma.cc/3L44-8EZH>].

plan of the country, the NAPA was exclusively aimed to deal with climate change adaptation issues of the country.

Preparing the NAPA is arguably an instance of Bangladesh's compliance with Art. 4(1)(b) of the UNFCCC.<sup>37</sup> The preparation process of the NAPA followed the general guiding principles drawn by the Conference of the parties to the Convention<sup>38</sup> as well as the annotated guideline given by the by the Least Developed Countries Expert Group (LEG) of the UNFCCC.<sup>39</sup> The guiding principles explicitly mention sustainable development issues that countries need to consider while preparing their own National Adaptation Plan of Action.<sup>40</sup> The LEG guideline does not directly mention anything about principles of equity, but it covers the equity issue by addressing participatory processes and gender equity issues.<sup>41</sup> The guideline requires countries to ensure participation of all stakeholders, especially the local communities in the decision-making process.<sup>42</sup> Besides, the LEG guideline acknowledges that climate change has more adverse impacts on women than men. For instance, in increased drought, women walk further than usual distance to collect drinking water.<sup>43</sup> Moreover, women are the main sources of local and traditional knowledge of any locality.<sup>44</sup> For these reasons, the LEG guideline requires countries to recognize women as key stakeholders in decision-making processes.<sup>45</sup>

Unlike the LEG guideline, the NAPA of Bangladesh does not explicitly refer to the notion of equity but adopted attaining sustainable development as one of its main goals.<sup>46</sup> The Programmes of Action clearly states that the "strategic goals and objectives" of future climate change coping mechanisms are "to reduce adverse effects of climate change" and to "promote sustainable development."<sup>47</sup>

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37. UNFCCC, *supra* note 1, at 5 ("All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall: Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change.").

38. BANGLADESH, NATIONAL ADAPTATION PROGRAMME OF ACTION, *supra* note 36, at i.

39. UNFCCC, *supra* note 1, at 7.

40. *Id.* at 9.

41. *Id.*

42. See generally Least Developed Countries Expert Grp., *Annotated Guidelines for the Preparation of National Adaptation Programmes of Action*, at 3 (July 2002).

43. *Id.*

44. *Id.*

45. *Id.*

46. NATIONAL ADAPTATION PROGRAMME OF ACTION, *supra* note 36, at 21.

47. *Id.*

An implication of the indirect reference to the principle of equity, i.e. intergenerational equity, is manifested through putting four capacity building projects on its priority list.<sup>48</sup> Another indirect reference to the principle of equity, i.e., intragenerational equity, can be found in this Programme of Action through its acknowledgment of vulnerability and necessity for special care to women, elderly and children.<sup>49</sup> Accordingly, an instance of manifestation of the principle of equity can be found by taking “eco-specific actions for helping vulnerable communities.” It confers priority to women, elderly and children, but does not provide more emphasis on involvement of local women in adaptation-related decision-making matters.<sup>50</sup>

However, the preparation process of the Programme of Action has impliedly facilitated the principle of equity through ensuring participation of “stakeholders in bargaining over resource use, allocation and distribution.”<sup>51</sup> In order to ensure participations of all concerned stakeholders, which is an important component of “intragenerational equity,”<sup>52</sup> the preparation process of the NAPA included government policy makers, local representatives of the government, members of the scientific community of different research institutes, academicians, teachers from primary to tertiary level, doctors, lawyers, and representatives from different ethnic groups, media, non-governmental organizations (NGOs), community based organizations (CBO), and indigenous women.<sup>53</sup>

In 2008, the Bangladesh government adopted the Bangladesh Climate Change Strategy and Action Plan (BCCSAP).<sup>54</sup> This Action Plan is Bangladesh’s first effort to combat climate change through adopting a ten-

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48. See *id.* at 24 (explaining that the four projects are as follows: 1. Integrating Climate Change in planning, designing of infrastructure, conflict management and land water zoning for water management institutions. 2. Climate change and adaptation information dissemination to vulnerable community for emergency preparedness measures and awareness raising on enhanced climatic disasters. 3. Mainstreaming adaptation to climate change into policies and programmes in different sectors (focusing on disaster management, water, agriculture, health and industry). 4. Enhancing resilience of urban infrastructure and industries to impacts of climate change.).

49. *Id.* at 17.

50. National Adaptation Programme of Action, *supra* note 36, at 34.

51. *Id.* at 42.

52. See *supra* Section II.A.

53. See NATIONAL ADAPTATION PROGRAMME OF ACTION, *supra* note 36, at xv; see also Aminul Islam et al., *National Adaptation Programme of Action*, in CLIMATE CHANGE ADAPTATION ACTIONS IN BANGLADESH 93, 99–100 (Rajib Shaw et al eds., 2009).

54. Ministry of Environment and Forest, *Bangladesh Climate Change Strategy and Action Plan* xvii (2009) (Bangl.) [hereinafter BCCSAP] [<https://perma.cc/QWC6-4VDQ>].

year (from 2009 to 2018) strategy.<sup>55</sup> Although adopted in 2008, it was revised and republished in 2009.<sup>56</sup>

In addition to outlining probable impacts of climate change and providing an overview of different adaptation strategies, the Bangladesh Climate Change Strategy and Action Plan contained a ten-year program with goals to build capacity and resilience of the country to deal with the challenges posed by climate change.<sup>57</sup> Arguably, these aims of building capacity and resilience of the country to combat climate change observed “intergenerational” aspects of the principle of equity. Hence, it also facilitated national sustainable development because the promotion of intergenerational equity is an essential condition of promoting sustainable development.<sup>58</sup>

Through acknowledging the role of “accelerated development” in building “resilience to climate change,” the objective of the Action Plan arguably accepts and endorses that social and economic development of the country are integral parts of climate change adaptation.<sup>59</sup> In fact, such integration of national social and economic development issues with “resilience to climate change” mirrors the guiding spirit of the UNFCCC: “responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter.”<sup>60</sup> Pursuant to the just-mentioned texts of the UNFCCC Preamble, the Bangladesh Climate Change Strategy and Action Plan also includes the notion of “rapid development” to accompany the main aim of the Action Plan: increasing “the country’s resilience to climate change.” In this connection, it is noteworthy that the integration of “development” with “resilience to climate change” is also a reflection of the notions of Principle 8 of the Stockholm Declaration and Principle 4 of the Rio Declaration, which urge for reconciliation of “environment” with “development.”<sup>61</sup>

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55. *Id.* at xvii.

56. *Id.* at ix.

57. *See id.* at xvii.

58. *Cf. supra* note 4.

59. BCCSAP *supra* note 54, at 24 (stating “to increase the country’s resilience to climate change, reduce and/or eliminate the risks climate change poses to national development, and rapidly develop the country, following a low carbon growth path. The country firmly believes that accelerated development is the most effective way to eradicate poverty and build resilience to climate change.”).

60. U.N. Conference on Environment and Development: Framework Convention on Climate Change, *Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of the Second Part of Its Fifth Session*, U.N. Doc. A/AC.237/18 (Part II), annex I (May 9, 1992) [hereinafter UNFCCC].

61. *Cf. Marie-Claire Cordonier Segger & Ashfaq Khalfan, SUSTAINABLE DEVELOPMENT LAW: PRINCIPLES, PRACTICES, AND PROSPECTS* (Oxford Univ. Press) (2004). But see U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992); *see also supra* note 4.

While “the first and overriding priority” for Bangladesh is eradicating poverty,<sup>62</sup> the country requires setting a priority list of its development goals.<sup>63</sup> Accordingly, the Bangladesh Climate Change Strategy and Action Plan confers the highest priority on food security, social protection, and health, followed by comprehensive disaster management, infrastructure, research and knowledge management, mitigation and low carbon development, and capacity building and institutional strengthening. These six thematic sectors are known as the six pillars of the Action Plan.<sup>64</sup> The inclusion of “capacity building” as one of the thematic sectors undoubtedly reflects the scope of realization of “intergenerational equity” and promotion of sustainable development.<sup>65</sup> Besides, conferring the highest priority on food security, social protection, and health is not only an instance of providing special attention to these special necessities, but also an instance of giving priority to the needs of the most marginalized people of the land. Therefore, it also gives an instance of observance of the main spirit of the principle of equity that requires special attention to the special necessities and prioritizing socially marginalized people.<sup>66</sup>

To fill the existing gap of national policy on renewable energy issues, the government of Bangladesh also adopted a Renewable Energy Policy (REP) in 2009 followed by the establishment of an independent entity—the Sustainable Energy Development Agency (SEDA).<sup>67</sup> The main objective of the Sustainable Energy Development Agency is to promote the generation of energy from renewable sources.<sup>68</sup> The REP requires the SEDA board to be composed of “representatives of stakeholders including business community, academics and/or representative from Bangladesh Solar Energy Society, NGOs, financial institutions and implementing agencies.”<sup>69</sup> Through ensuring participation of representatives from different concerned

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62. UNFCCC, *supra* note 60, art. 4, ¶ 7.

63. *See id.* at 3.

64. BCCSAP, *supra* note 54, at xv–xvi.

65. *See id.*; *see supra* Sections II.A, II.B.

66. *See supra* Section II.A.

67. GOV'T PEOPLE'S REPUBLIC BANGLA., POWER DIV., THE RENEWABLE ENERGY POLICY OF BANGLADESH, §§ 1.1, 3 (2008) [hereinafter REP Bangladesh] (“An institution, Sustainable Energy Development Agency (SEDA), shall be established under the Companies Act, 1994, as a focal point for sustainable energy development and promotion, ‘sustainable energy’ compromising renewable energy and energy efficiency.”).

68. *Id.* § 3.1 (listing the multiple goals of SEDA, including “promot[ing] awareness of renewable energy” and “provid[ing] fund for the development of . . . renewable energy”).

69. *Id.*

stakeholders, the REP arguably aims to promote an intragenerational aspect of the principle of equity and sustainable development.<sup>70</sup> But, the above-stated list does not include local stakeholders and also lacks assurances of the participation of women, which as a result can be seen as an impediment for the observance of equity and the promotion of sustainable development.

The REP of Bangladesh also aims to promote clean energy by establishing Clean Development Mechanism (CDM) projects.<sup>71</sup> The above-mentioned role of the REP to encourage establishing more Clean Development Mechanism (CDM) projects fulfils the country's aim to cooperate with other parties in attaining the goals and objectives of the Convention.<sup>72</sup> Because CDM is a tool of emission reduction,<sup>73</sup> any legal or executive initiative of Bangladesh that facilitates emission reduction activities, such as establishing CDM projects, should be considered as equivalent to cooperation with other parties in mitigating the greenhouse gas concentration in the atmosphere. Although CDM was introduced in the Kyoto Protocol, a similar kind of "sustainable development mechanism" has also been introduced by the Paris Agreement.<sup>74</sup> For this reason, the above-mentioned provision of the REP of Bangladesh not only complies with requirements of the Kyoto Protocol but also facilitates lately enacted Paris Agreement's objectives. Overall, there is evidence that CDM projects played a positive role in facilitating sustainable development in Bangladesh.<sup>75</sup>

The REP of Bangladesh opens doors for increased sources of renewable energy and increased possibilities of public and private financing. These opportunities can also play a mammoth role in the eradication of poverty,

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70. See *supra* Section II.A. (stating that intra-generational equity is achieved by ensuring "equal distribution of resources among people of the present generation"); *supra* Section II.B. (discussing how sustainable development, such as utilization of renewable energy, protects "the needs of the present generation" (citation omitted)).

71. See REP Bangladesh, *supra* note 67, §§ 2, 3; Kyoto Protocol, *supra* note 2; *Clean Development Mechanism*, U.N. CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-kyoto-protocol/mechanisms-under-the-kyoto-protocol/the-clean-development-mechanism> [<https://perma.cc/M4EX-DYTK>] (last visited Dec. 20, 2023) ("The Clean Development Mechanism (CDM), defined in Article 12 of the [Kyoto] Protocol, allows a country with an emission-reduction or emission-limitation commitment under the Kyoto Protocol [Annex B Party] to implement an emission-reduction project in developing countries. Such projects can earn saleable certified emission reduction (CER) credits, each equivalent to one tonne of CO<sub>2</sub>, which can be counted towards meeting Kyoto targets.").

72. See, e.g., Kyoto Protocol, *supra* note 2, art. 2(1)(b).

73. See *id.*, art. 12.

74. Paris Agreement to the United Nations Framework Convention on Climate Change art. 6(4), Dec. 12, 2015, 3156 U.N.T.S. 79 [hereinafter Paris Protocol].

75. Mahatab Uddin, *Transfer of Environmentally Sound Technologies and Promotion of Sustainable Development in the Least Developed Countries* (2016) (Ph.D. dissertation, Aarhus University).



which is an important part of the realization of “intragenerational equity” and the promotion of sustainable development.<sup>76</sup>

Henceforth, the REP of Bangladesh has two-fold implications in the promotion of sustainable development. First, it promotes local sustainable development through “intragenerational equity” by way of playing a role in poverty eradication in the country.<sup>77</sup> Second, it promotes the “integration” approach of sustainable development through taking part in facilitating environmental, social, and economic developments of the country with environmental development holding special priority.<sup>78</sup>

In 2010, the Bangladesh government adopted the National Sustainable Development Strategy for 2010-2021, which especially acknowledges and observes the principle of equity through emphasizing gender parity in all levels of education,<sup>79</sup> improving women’s labor force participation,<sup>80</sup> and promoting mass participation in forest development activities.<sup>81</sup> In addition, the strategy also observes the principle of equity through an emphasis on the participation of people with disabilities “in mainstream social, political, and cultural lives,”<sup>82</sup> and participation of local people and local governments in natural resources management.<sup>83</sup> Moreover, in line with the main spirit of the principle of equity, this strategy further requires taking “initiatives to make women politically more conscious, encouraging women to participate in politics, and building leadership among women at all levels.”<sup>84</sup>

In 2015, the Ministry of Power, Energy and Mineral Resources of the government of Bangladesh published another executive level national instrument which set a unified framework for energy efficiency and conservation activities under the supervision of the Sustainable and Renewable Energy Development Agency (SREDA).<sup>85</sup> SREDA was established in 2012 through the Sustainable and Renewable Energy

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76. See REP Bangladesh, *supra* note 67, §§ 1.1, 2; Beder, *supra* note 4, at 231.

77. See REP Bangladesh, *supra* note 67, § 1.1; *supra* Section II.B.

78. Pichs et al., *supra* note 13, at 67–68; see REP Bangladesh, *supra* note 67, §§ 1.1, 2.

79. GENERAL ECONOMICS DIVISION, NATIONAL SUSTAINABLE DEVELOPMENT STRATEGY 2010–2021, 2013, § 4.5.2.3 (Bangl.) [hereinafter NSDS].

80. *Id.* §§ 6.2.3, 6.3.1, 6.11.

81. *Id.* § 7.2.3.

82. NSDS *supra* note 79, § 6.5.2.

83. *Id.* § 6.8.3.

84. *Id.* § 6.3.3.

85. See SUSTAINABLE AND RENEWABLE ENERGY DEVELOPMENT AUTHORITY (SREDA), ENERGY EFFICIENCY AND CONSERVATION MASTER PLAN UP TO 2030, 2015, § 3.2 (Bangl.), [https://policy.asiapacificenergy.org/sites/default/files/EEC\\_Master\\_Plan\\_SREDA\\_2.pdf](https://policy.asiapacificenergy.org/sites/default/files/EEC_Master_Plan_SREDA_2.pdf) [<https://perma.cc/49PQ-RCVB>] [hereinafter Master Plan 2015].

Development Authority Act of 2012.<sup>86</sup> Under the Action Plan, the government expressed its interest in ensuring primary and secondary energy savings of 10% by 2015, 15% by 2021, and 20% by 2030.<sup>87</sup> Through this executive approach, the government of Bangladesh plays an important role in saving environment and natural resources for future generations, as such realizing the intergenerational principle of equity.<sup>88</sup> Because energy is produced at the cost of environmental degradation, the less energy consumed the more the environment is saved.<sup>89</sup>

To fulfill the Action Plan's expressed target, the government provides an outline of the legal and institutional framework of Bangladesh's energy sector, including possible ways of enhancing the capacity and management of the country's energy sector.<sup>90</sup> The government's role in enhancing energy capacity also includes the realization of the intergenerational approach's principle of equity.<sup>91</sup>

In 2014, the Ministry of Finance of Bangladesh published the Climate Fiscal Framework (CFF).<sup>92</sup> In addition to ensuring sustainable and transparent climate fiscal policymaking, the CFF aims to assist in identifying supply and demand sides of climate fiscal funds.<sup>93</sup> In line with the principles of equity and sustainable development, one of the Climate Fiscal Framework's main objectives is to determine "the equitable division of climate funds and their allocation to concerned sectors."<sup>94</sup> To achieve sustainable development, it argues for "involving all players in the economy—the Government, NGOs, markets, corporate entities, local businesses, civil society and, of course, the financial sector."<sup>95</sup> In line with promotion of sustainable development, the framework also argues for promotion of green banking.<sup>96</sup> The aim of green-banking is to facilitate an environmentally friendly banking system, and as a result, it implicitly realizes the

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86. Sustainable and Renewable Energy Development Authority Act 2012, No. 48, ch.2 (Bangl.).

87. Master Plan 2015, *supra* note 85, § 2.4.

88. *Cf. supra* Section II.A., II.B.

89. *See generally* Mustafa Balat, *Usage of Energy Sources and Environmental Problems*, 23 ENERGY EXPL. & EXPLOITATION 141, 141–67 (2005).

90. *Id.*

91. *Cf. supra* Section II.A.

92. MINISTRY OF FINANCE, CLIMATE FISCAL FRAMEWORK 2014, 1, 2 (Bangl.), [http://nda.erd.gov.bd/files/1/Publications/CC%20Policy%20Documents/Climate%20Fiscal%20Framework%20\(CFF\).pdf](http://nda.erd.gov.bd/files/1/Publications/CC%20Policy%20Documents/Climate%20Fiscal%20Framework%20(CFF).pdf) [<https://perma.cc/2DLB-Q6EP>] [hereinafter CFF].

93. *Id.*

94. *Id.*

95. *Id.* at 44.

96. CFF, *supra* note 92.

intergenerational approach of sustainable development through its role in preserving environment and natural resources for future generations.<sup>97</sup>

Apart from the above-mentioned national executive policies and plans, both the sixth five-year plan (FY 2011-2015), and the seventh five-year plan (FY 2016-2020) of Bangladesh adopt sustainable development as one of their main objectives. The sixth plan clearly stipulates “a firm commitment to pursue an environmentally sustainable development processes” as a “key strategic element” of the Plan.<sup>98</sup>

In 2016, Bangladesh’s seventh five-year plan was adopted while the United Nations Sustainable Development Goals (UNSDGs) were already set.<sup>99</sup> Hence, Bangladesh’s seventh five-year plan emphasizes promotion of sustainable development in numerous places. In the whole document, the notion of “sustainable development” is found in sixty-two places, while the notion of “equity” is found in fifty-nine places. Further, a chapter of the plan is named “Sustainable Development: Environment and Climate Change.”<sup>100</sup>

The seventh plan’s main objectives of climate change, environment, and disaster management noticeably embrace those issues that ultimately realize, observe, and promote intergenerational and/or intragenerational equity and sustainable development. The seventh plan’s first objective is to ensure an appropriate environment management system for sustainable development.<sup>101</sup> This objective clearly promotes intergenerational equity

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97. *See id.*

98. MINISTRY OF PLANNING GENERAL ECONOMICS DIVISION, SIXTH FIVE YEAR PLAN FY2011-FY2015: ACCELERATING GROWTH AND REDUCING POVERTY 2011, 8 (Bangl.), <https://faolex.fao.org/docs/pdf/bgd150862.pdf> [<https://perma.cc/A9KJ-JVLF>].

99. *See generally Take Action for the Sustainable Development Goals*, U.N. SUSTAINABLE DEV. GOALS, <https://www.un.org/sustainabledevelopment/sustainable-development-goals/> [<https://perma.cc/EZ52-HQQV>] (last visited Dec. 30, 2023).

100. MINISTRY OF PLANNING GENERAL ECONOMICS DIVISION, SEVENTH FIVE YEAR PLAN FY2016—FY2020, 2015, 401 (Bangl.), [https://www.unicef.org/bangladesh/sites/unicef.org.bangladesh/files/2018-10/7th\\_FYP\\_18\\_02\\_2016.pdf](https://www.unicef.org/bangladesh/sites/unicef.org.bangladesh/files/2018-10/7th_FYP_18_02_2016.pdf) [<https://perma.cc/SQ9D-Q5ZC>].

101. *Id.* at 405–07 (The other objectives of the Seventh Plan include eradicating extreme poverty and achieving national food security; addressing environmental health; ensuring that cities are sustainable and more efficient; establishing quality of life for the rural people of all regions; preserving agricultural land water ensuring production growth for food security with minimum environmental degradation; holding water of wetlands and rivers in dry season; meeting national air and water quality standards; achieving trees covering over 20% of the land surface (with tree density > 70%) and restoring and protecting ecologically healthy native forests in all public forest lands (about 16% of land); ensuring no new extinctions of globally and nationally threatened species; meeting energy

through protecting the environment. The plan's second objective also promotes intragenerational equity, as it requires the eradication of extreme poverty.<sup>102</sup>

*B. Equity and Sustainable Development Under  
National Legislative Instruments*

In 2010, Bangladesh enacted the Bangladesh Climate Change Trust Fund Act, which can be denoted as a speedy response to climate change adaptation activities.<sup>103</sup> In fact, as one of the most climate change vulnerable non-Annex I parties to the Convention, Bangladesh required conferring immediate priority on adaptation activities.<sup>104</sup> The Act established the Bangladesh Climate Change Trust Fund (BCTF).<sup>105</sup> This BCTF is a “block budgetary allocation” of \$100 million (USD) each year for three years (2009-2012).<sup>106</sup> The primary source of finance for this fund is mainly the revenue earned from the domestic resources.<sup>107</sup> The Act upholds the principle of sustainable development in its objective clause. In objective clause it mentions that one of the objectives of the Act is “to initiate and implement suitable action plan for implementation of [a] special programme regarding climate change and ensuring sustainable development.”<sup>108</sup>

The Act does not contain a direct reference to the principle of equity. However, an implicit reference to the intergenerational approach of the principle of equity is found in the Act's aims and objectives, which specifies that building capacity in adaptation, mitigation and other essential sectors for battling climate change is part of the aims and objectives of the Act.<sup>109</sup> Similarly, the Act has indirect reference to the intragenerational approach of the principle of equity through its objective to contribute to the eradication of poverty.<sup>110</sup>

In order to guarantee reduction of overall disaster risks to a tolerable level through taking proper risk reduction approaches, in 2012, Bangladesh enacted its national legislative instrument Disaster Management Act. The Preamble to the Act denotes its objective “to make the activities about disaster management coordinated, object oriented and strengthened and to

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demands of development through a low carbon strategy; and above all, reducing potential economic losses due to Climate Change (particularly from floods, drought and salinity)).

102. *Id.* at 405.

103. Climate Change Trust Act, 75-2016, § 15 (2010).

104. *Id.*

105. *Id.* § 3.

106. Uddin, *supra* note 75, at 187.

107. Climate Change Trust Act, *supra* note 103, § 15.

108. *Id.* § 6(b).

109. *See id.* §§ 5, 6(c).

110. *See id.* § 6.

formulate rules to build up infrastructure of effective disaster management to fight all types of disaster.” Though the Act’s objective is to deal with all kinds of disasters, the Act has special relevance for dealing with climate change posed adversities. This is because majority of the disasters that Bangladesh face fall under the category of natural disasters, which are recently geared up and enhanced by climate change. The Disaster Management Act specifically realizes the principle of equity by containing a provision of emergency humanitarian assistance to the most vulnerable community of people.<sup>111</sup>

In 2012, Bangladesh also enacted the Sustainable and Renewable Energy Development Authority Act that established an authority aimed to promote the development and use of renewable energy.<sup>112</sup> Since promotion of sustainable energy is an important tool of reduction of greenhouse gas in atmosphere, this act is a clear instance of a positive role that the Bangladesh government plays in climate change mitigation. For the purpose of promotion and development of renewable energy and energy efficient activities, the act confers a set of responsibilities and functions to the Sustainable and Renewable Energy Development Authority of the country.<sup>113</sup>

Although the Sustainable and Renewable Energy Development Authority Act does not directly refer to promotion of equity and sustainable development, the purpose of the act ultimately results in the promotion of equity and sustainable development in the country. Promotion of renewable energy itself has diverse, direct impact over sustainable development. It promotes both intergenerational and intragenerational equity elements of sustainable development. Firstly, sustainable and renewable energies promote intergenerational equity by saving the depletion of fossil fuels and reserving those for future generations. Secondly, in the context of Bangladesh, the promotion of renewable energy has a noteworthy positive impact in promoting intragenerational equity through helping reduce poverty by creating new job opportunities in the newly established renewable energy sectors. Thirdly, by reducing usage of fossil fuels, it reduces air pollution which helps improve the healthy lifestyle of people.<sup>114</sup> In consequence, it not only improves the environment through reducing air

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111. Disaster Management Act 2012, No. 34, § 27 (Bangl.).

112. Sustainable and Renewable Energy Development Authority Act, *supra* note 86.

113. *Id.* § 2.6.

114. Uddin, *supra* note 75, at 187.

pollution, but also helps promote sustainable development through promoting social development.<sup>115</sup>

However, although observation of the principle of equity inherently lies in promotion of sustainable development, the Sustainable and Renewable Energy Development Authority Act of 2012 of Bangladesh lacks any direct reference to the principle of equity. Its preparation process also contains a lack of considering the participation of local people or considering gender equity.

## V. JUDICIAL ENFORCEABILITY

### *A. Equity and Sustainable Development as Constitutional Right*

In connection with conferring some constitutional standing to the principles of equity and sustainable development, the 15th amendment of the Constitution of Bangladesh can be considered as a breakthrough amendment. In 2011, through its 15th amendment, the Bangladesh constitution included the “protection and improvement of environment and biodiversity” as one of the fundamental principles of state policy which was placed under Part II of the constitution.<sup>116</sup> It calls for the Government to “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.”<sup>117</sup> Arguably, by inserting the notions “present and future citizens,” Art. 18(A) impliedly refers to the intergenerational and intragenerational aspects of the principle of equity as well as the principle of sustainable development as fundamental principles of state policy. By urging to “preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wildlife” for both “present and future citizens,” it observes both “intragenerational equity” and the “intergenerational equity.”<sup>118</sup>

In connection with the observation and promotion of equity, especially intragenerational equity through the eradication of poverty, similar references can be found under Art. 14 of the Bangladesh Constitution. Art. 14 denotes the emancipation of “toiling masses, the peasants, and workers and backward sections of the people from all forms of exploitation” as a fundamental responsibility of a state.<sup>119</sup>

As a party of many international legal conventions and treaties, Bangladesh is committed to observe and promote sustainable development.<sup>120</sup> The

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115. *Id.*

116. BANGL. CONST., art. 18(A).

117. *Id.*

118. *Id.*

119. *Id.* art. 14.

120. *See supra* Section II.B.

concept of sustainable development as a fundamental principle of the state policy is arguably in line with those commitments. It should further be noted that the implied reference to “sustainable development” of Art. 18(A), and the notions from Art. 14 of Bangladesh Constitution also conform to the Bangladesh’s “first and overriding priority” obligation under the UNFCCC - eradicating poverty.<sup>121</sup>

However, although the notions of Art. 14 and Art. 18 (A) of the Bangladesh Constitution have conferred equity and sustainable development a constitutional merit, these principles are not judicially enforceable by the courts of Bangladesh. This is because the socio-economic rights enumerated as fundamental principles of state policy under Part II of the Bangladesh Constitution are considered merely “aspirational provisions.”<sup>122</sup> In connection with judicial enforceability of the fundamental principles of state policy, Art. 8(2) of Bangladesh Constitution clearly states that these principles (those placed under part II of the constitution),

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 citizen, but shall not be judicially enforceable.<sup>123</sup>

The judicial non-enforceability of the provisions of Part II of the Bangladesh Constitution was reconfirmed by several judgments of the High Court Division of Bangladesh.<sup>124</sup> For instance, in *Kudrat-E-Elahi Panir vs. Bangladesh* (1992), the Appellate Division of the Bangladesh Supreme Court observed:

The reason for not making these principles judicially enforceable is obvious. They are in the nature of people’s programme for socio-economic development of the country in a peaceful manner, not overnight, but gradually. Implementation of these programmes requires resources, technical know-how and many other things including mass-education. Whether all these pre-requisites for a peaceful socio-economic revolution exist is for the State to decide.<sup>125</sup>

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121. See *id.*; see also UNFCCC, *supra* note 1.

122. MD SAIFUL KARIM, *SHIPBREAKING IN DEVELOPING COUNTRIES: A REQUIEM FOR ENVIRONMENTAL JUSTICE FROM THE PERSPECTIVE OF BANGLADESH* 38 (Routledge 2018).

123. BANGL. CONST., art. 8(2).

124. See *Kudrat-E Elahi Panir v. Bangl.*, 44 DLR 319, 320, 331 (App. Div. 1992); *M Saleem Ulah v. J. M. Quddus Chowdhury*, 46 DLR 691 (High Ct. Div. 1994) (Bangl.); KARIM, *supra* note 122, at 39.

125. *Kudrat-E Elahi Panir*, 44 DLR at 331 (App. Div. 1992).

However, the fundamental principles of state policy of the Bangladesh Constitution have guiding impact over the state's activities.<sup>126</sup> In this regard, "the state has an obligation to act on this principle."<sup>127</sup> Moreover, after fifty years of independence for Bangladesh, considering the fundamental principles of state policy of Bangladesh Constitution as "judicially unenforceable" is also "against the spirit of the constitution."<sup>128</sup>

The Preamble to the Bangladesh Constitution aims for a "society in which rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens" as a fundamental aim of the country.<sup>129</sup> If intention of the original constitution is to ensure a state of fundamental human rights and freedom and a state of equality in terms of political, economic and social justice, then the question arises as to why the socio-economic rights and fundamental principles of state policies of the Bangladesh Constitution should remain judicially unenforceable.

Hence, approximately fifty years after the adoption of the constitution, when Bangladesh is gradually moving towards a middle-income country from a least developed country,<sup>130</sup> the lawmakers may reconsider the judicial enforceability issues of the fundamental principle of state policy of the Bangladesh Constitution. Until any reconsideration takes place, the implicit reference to sustainable development and the principle of equity will mainly remain as guidelines for interpreting environment and climate change related legal provisions of the country.<sup>131</sup>

#### *B. Judicial Enforceability of the Legal and Executive Instruments*

In Bangladesh, like many other common law countries, the instruments that fall under executive portfolios are known as policies and the instruments that fall under legislative portfolios are known as laws. In terms of judicial enforceability, national executive instruments of Bangladesh, unlike national

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126. Wahab v. Secretary Ministry of Land, 1 MLR 338 (High Ct. Div. 1996) (Bangl.).

127. KARIM, *supra* note 122, at 39.

128. *Id.* at 40.

129. BANGL. CONST., pmb1.

130. Rumi Kawser, *Developing Bangladesh: A New Identity*, DHAKA TRIBUNE (Mar. 18, 2018, 1:50 AM), <https://www.dhakatribune.com/bangladesh/2018/03/18/developing-bangladesh-new-identity-2> [<https://perma.cc/C372-LMEJ>]; *see generally* Lea Giménez et al., *Bangladesh, a Middle Income Country by 2021: What will it Take in Terms of Poverty Reduction?*, WORLD BANK (2014), <https://openknowledge.worldbank.org/handle/10986/18668> [<https://perma.cc/NH38-NZQG>]; *see also* Bangladesh, *UN Consider Expected LDC Graduation in 2024*, INT'L INST. FOR SUSTAINABLE DEV. (Dec. 18, 2018), <https://sdg.iisd.org/news/bangladesh-un-consider-expected-ldc-graduation-in-2024/> [<https://perma.cc/J3SY-U7AG>].

131. *Cf.* BANGL. CONST., art. 8(2).



laws, do not hold strong merit. If any government authority violates or fails to enforce any provision of law, it can be enforced through judiciary intervention by way of judicial review done under Article 102 of Bangladesh's constitution.<sup>132</sup> But since policies do not create any legal right, cases of violation or derogation from policies are not enforceable by way of judicial review.<sup>133</sup>

Hence, unlike the legal instruments, the references to the principle of equity and concept of sustainable development in several executive policies on climate change issues are not judicially enforceable as per general understandings of the current legal system of Bangladesh. However, exceptions may be created on the basis of some different legal premises. For instance, in a judgment, the Bangladesh Supreme Court held that if it is possible to establish that inclusion or exclusion of any certain issue in any policy might affect the fundamental rights laid down under third chapter of the Bangladesh Constitution then a policy document can also be brought under judicial review.<sup>134</sup> The issue was addressed in 1994, when Dr. M. Farooque as petitioner, brought public-interest litigation against the government of Bangladesh.<sup>135</sup> The subject of the litigation was air and noise pollution.<sup>136</sup> Since the Bangladesh Constitution does not contain any fundamental rights for citizens to a healthy or clean environment, the petitioners argued that access to clean air and noise free atmosphere should be considered an essential part of the "right to life" of citizens, as articulated under Art. 31 placed under chapter III of the Bangladesh Constitution.<sup>137</sup> The Court accepted the argument and extended the constitutional "right to life" to a right to access a safe and healthy environment. The Appellate Division remarked:

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132. *Id.* art. 102.

133. *See, e.g.,* Abdul Bashir v. Bangladesh, 50 DLR (AD) 11, 12 (1997); Kazi Mukhlesur Rahman v. Secretary, Ministry of Law, 2 BLC 286; *see also* MAHMUDUL ISLAM, CONSTITUTIONAL LAW OF BANGLADESH 530 (2nd ed. 2003 & Supp. 2010).

134. Dr. Mohiuddin Farooque v. Bangladesh, 49 DLR (AD) 1, 5–6, 11, 14, 24 (High Ct. 1997) (Bangl.).

135. *Id.*

136. *Id.*

137. *Id.* at 25.

Articles 31 and 32 of our constitution protect right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.<sup>138</sup>

In line with the just-mentioned case reference, the references to equity and sustainable development in the executive instruments and climate change-related policy documents of Bangladesh may become judicially enforceable by way of establishing that these principles resemble “the protection and preservation of environment, ecological balance free from pollution of air and water” and as such, amount to the “right to life.”

As per recent interpretation, as stated above, the material impact of the notion of a “right to life” goes beyond the mere right of existence. The idea is broadened to even a human’s “right to livelihood[.]” that without access to one’s means of living, it is not possible for one to live. For instance, if a number of homeless people take shelter in slums and somehow manage their livelihoods, widespread eviction of those people without any rehabilitation plan by government will also be deemed as an offence towards the “right to life” of those people.<sup>139</sup> Similarly, conferring value added taxes (VAT) on a citizen’s life-saving services, for instance, any imposition of value added taxes (VAT) on “receipts of medical and dental treatment, pathological laboratory and diagnostics center and fees of specialists doctor” will be deemed as “*ultra vires* of right to life[.]”<sup>140</sup> Even any kind of advertisement of cigarettes that may encourage people’s smoking (which is injurious to human’s health and life) is deemed to be a violation of “right to life.”<sup>141</sup>

## VI. CONCLUSION

This study argues that by being a party to international legal agreements on climate change, *e.g. UNFCCC, Paris Agreement*, Bangladesh requires integrating principles of equity and sustainable development with its own climate change related national laws and policies.

The study further demonstrates that national laws and policies of Bangladesh are divided into two categories—judicially non-enforceable executive instruments and judicially-enforceable legislative instruments. Among executive instruments, almost all climate change-related national plans, policies, and programs of action either explicitly or impliedly integrate principles of equity and sustainable development with their diverse provisions.

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138. *Farooque*, 49 DLR at 25.

139. *Ain O Salish Kendra v. Gov’t of Bangladesh*, 19 BLD 488, 490 (High Ct. 1999) (Bangl.).

140. *Advoc. Zulhas Uddin Ahmed v. Bangladesh*, 30 BLD 1, 5 (High Ct. 2010) (Bangl.).

141. *Prof. Nurul Islam v. Bangladesh*, 52 DLR 413, 433–34 (High Ct. 2000) (Bangl.).

Among executive climate change policies of Bangladesh, the National Adaptation Program of Action 2005 considers the principle of sustainable development as an important element of national adaptation plans. It does not explicitly mention the principle of equity. But some implicit references to the principle of equity are found through its advocacy for the necessity of special care towards women, children, and elderly. It further reflects the principle of equity through adopting several capacity-building related projects. However, it lacks manifestation of equity in terms of assuring local women's participation in adaptation related decision-taking.

Another executive instrument is the Bangladesh Climate Change Strategy and Action Plan 2009 which observes the intergenerational approach of the principle of equity through adopting the country's aim of resilience to climate change. Besides, it promotes the intragenerational approach of equity through setting priority development goals for the eradication of poverty. In addition, this executive legal instrument of Bangladesh integrates social and economic development parts of sustainable development through six of its priority sectors, e.g. food security, social protection and health followed by comprehensive disaster management, etc.

The National Renewable Energy Policy adopted in 2009 also integrates sustainable development through its objective of substituting indigenous non-renewable energy supply with sustainable energy supply. It promotes the intragenerational approach of equity through playing a role in the eradication of poverty.

The National Sustainable Development Strategy for 2010-2021 directly reflects the principle of equity through emphasizing gender disparity in diverse sectors of the country, *e.g., education, forestry*.

Among the legislative instruments, this Article shows that the Disaster Management Act 2012 of Bangladesh realizes the principle of equity through adopting a provision for emergency humanitarian assistance to the most vulnerable people of the community. The Sustainable and Renewable Energy Development Authority Act 2012 realizes an intergenerational approach of equity through ensuring protection of the environment by reducing the use of non-renewable energies. It facilitates the intragenerational approach through playing a role in the eradication of poverty by creating new jobs in renewable energy sectors. The Climate Change Trust Fund Act 2010 of Bangladesh facilitates an intergenerational approach of equity through assisting in capacity building in adaptation, mitigation, and other essential climate change-battling sectors. At the same time, it promotes intragenerational approach through its objective of assisting in the eradication of poverty.

This study also finds that the principles of equity and sustainable development are explicitly or impliedly adopted as fundamental principles of Bangladesh's Constitution. But the fundamental principles of Bangladesh's Constitution are not judicially enforceable by domestic courts. Hence, judicial enforceability of equity and sustainable development depend on the scope and nature of the explanation of these principles. If no constitutional amendment takes place, making the fundamental principle of state policy of Bangladesh's Constitution judicially enforceable, judicial implementation of the principles of equity and sustainable development will depend on merely innovative and justifiable explanations of the principles, which must prove that shielding these principles are essential to protect the "right to life" of the citizens of Bangladesh. However, considering the changed socio-economic circumstances of the country, this study recommends for constitutional amendment ensuring judicial enforceability of the fundamental principles of Bangladesh's Constitution.

However, this Article further denotes that, although legislative instruments of the country are judicially enforceable, executive instruments are not judicially enforceable by domestic courts. For this reason, the study finally examines the possibility of legal enforceability of the principle of equity and sustainable development which has been integrated in national executive instruments. On the basis of some relevant case references, this study reveals that the principle of equity and sustainable development of the climate change-related executive instruments can be legally enforceable if applications of those principles can be included under scope and ambit of the country's constitutional fundamental right—"right to life[.]" This study recommends that the High Court Division of Bangladesh Supreme Court be more liberal to broaden the scope and definition of the "right to life."