

Lecture on
Environmental Law in Bangladesh

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The legal system of Bangladesh, inherited from the British, provides limited Safeguard for the country's environment. However, experts say that the country's legal system needs some reorientation. In recent times some important victories have been

made possible in the legal battle for environment. Dr. Mohiuddin Farooque and Rizwana Hasan examine the legal aspects of environment.

Source of the Law

Bangladesh has inherited its legal system known as common law system from the British colonial rulers which was introduced in the 18th, 19th and 20th centuries. The foundation of Bangladesh's environmental law can be traced back to the British-laid legal system. A scrutiny of the statutory laws prevailing in Bangladesh reveals that about 185 laws deal with or have relevance to environmental issues.

The statutory laws (laws enacted by the parliament) and by-laws (rules, | regulations, etc. promulgated by the concerned authorities) are the primary source of environmental legislation. The principles of tortuous liability, e.g., strict liability, nuisance, etc. are common law principles of tort and would be well accepted by the courts if actions are brought. There are case laws (principles enumerated through judicial interpretation of law, by-law, etc.) which operate as mandatory precedents in some sectors, e. g. much of the law on fisheries have been developed through cases.

Another major source of rules of conduct that has significant relevance to environment is customs, uses and practices. In fact, the utilization of natural resources is primarily regulated by these norms and in certain cases even titles and tenures are based on cultural values. Examples of such parallel systems can be found in matters of forestry where indigenous or non-indigenous people living in and adjacent to the government forests claim certain rights based on customs and prescription.

Environment in Bangladesh Constitution

The Constitution of Bangladesh enshrines the "right to life and personal liberty" (Article 31 and 32) as a fundamental right to life. Although it does not explicitly recognize the right to environment as a fundamental right, in two recent cases [XLVIII DLR, 1996, p.438 and XVII Bangladesh Legal Digest (BLD), 1996 (AD), pg. 1] the Supreme Court has resolved that the "right to life" enshrined as a fundamental right includes the "right to a healthy environment". Categorization of Environmental Legislation The environmental legislation, especially the substantive and administrative rules are sectorally grouped. The procedural rules for the courts to

administer these laws derive mostly from the same general codes, e. g. the Code of Civil Procedure, 1908, the Code of Criminal Procedure, 1898, the Evidence Act, 1872 etc.

In general, environmental legislation can be categorized to cover sectors and issues like pollution and conservation; displacement, relief and rehabilitation; land use and administration; agriculture and agro-chemicals; water resources, fisheries; forestry; wildlife and domestic animals; energy and mineral resources; local government laws; rural and urban planning and protection; transportation and safety; cultural and natural heritage. Taking into consideration the dignity of human resources, laws relating to health, food and consumer protection, occupational rights and safety, public safety and dangerous cargo may also be included in the list of environmental legislation.

Scope of the Laws

Broadly speaking, the contents and objects of the environmental laws suggest that they were enacted to address two major aspects of environmental conservation, i.e., resource management and pollution control.

The common law principles promoted a feudal ownership concept. It empowered the authorities to fix and receive rents. After the adoption of the State Acquisition and Tenancy Act, 1950 in the then East Pakistan, the feudal system was abolished and the large private estates were acquired by the state. The holders of various titles to resources became tenants of the state. But the concept of different titles, especially those related to ownership remained almost unfettered, and the management system continued to expose "use oriented" approach to harness optimal economic benefit. Public agencies began to show feudal attitudes keeping away the common people from the management of the public resources. The resources which are not privately owned are known as khas meaning they

are vested in the government and are managed by government agencies. For example, the reserved and protected forests are controlled by the Department of Forests. Nevertheless, major khas properties and resources are left with the Revenue Department, i.e., under the jurisdiction of the district administration.

The colonial laws and institutions still form the central components in the management of environmental resources.

The private ownership concept contains a bundle of titles that are protected by the legal system. So sustainable resource management requires a fundamental

and conceptual change in juridical perception and interpretation of titles and liability. For the sustainable development the age old system of rights, duties, interests and liability needs proper orientation to get suitably changed. A major cause of environmental degradation is the failure of the regulatory regime to control indiscreet private and public actions.

A number of factors led to the framing of pollution oriented laws. The tendency for rapid industrial and economic growth introduced such a technology in Bangladesh that pollution control and establishment of a healthy working environment have become a huge task. The urbanization process added to the load while some heinous -trans-boundary activities being coupled with dishonest actions within the national frontier are regular contributors to environmental pollution. The Department of Environment (DOE) and other responsible authorities have not yet been successful in checking pollution in the respective sectors they look after despite the existence of a number of sound laws. This situation entails appropriate enforcement of legal provisions with good policy guidelines through adequate institutional set up. Nevertheless, with the emergence of recent environmental concerns, the conceptual and functional interpretation of the provisions of these laws can give a readily available statutory system and sanction to promote an equitable environmental order.

The world is ours. We are the child of this world. The world has given us a lot of resources to enjoy and use. We have been utilizing those resources from the beginning of our arrival in this world without paying heed to any sort of conservation. For this reason the environment has been deteriorating to the extent that has become unbearable for the earth. Various kinds of disasters are the instances of that impact. More over, the rise of sea level, global warming, greenhouse effect, loss of habitat of animals and wildlife, drought in various regions are the consequences of environmental deterioration. Due to this reason the protection and conservation of environment has become a global concern for the existence of life on earth. And for the conservation, improvement of environmental standards, and control and mitigation of environmental pollution various countries are enacting laws for their own protection.¹

Environment is the surrounding atmosphere around us. It is the arena of living where all species and organisms can survive and maintain their life. Environment is not only composed of living organisms but also non-living things and forces. Somebody says that environment is the combination of two that means 'Ecology + Society'. That means, we have two aspects of environment. One is the Natural environment consisting of natural resources, natural forces, wildlife, fauna and flora. And another is

Social environment consisting of basically human being and all elements used by them. The subject matter of the environmental law is both of them, because they are critically interdependent to each other. Social environment and the members of the society sometimes behaves ruthlessly towards the natural environment for which it take its revenge to the social environment and cause various kinds of disasters.

According to Section 2(d) of the Environment

Conservation Act 1995,

"Environment Means the inter- relationship existing between air, water, soil, and physical property and their relationship with human beings, other animals, plants and micro-organisms."

According to Oxford Advanced Learners Dictionary,

"Environment is the natural world in which the people, animals and plants live."

Ecosystem

The ecosystem is a unit of ecology which includes the plants and animals occurring together plus that part of their environment over which they have an influence.²

In the Environment conservation Act 1995, Section 2(g) it has been stated that, "Ecosystem means the inter-dependent and balanced complex association of all components of the environment which can support and influence the conservation of all living organisms." Ecosystem is the interacting synergism of all living organisms in a particular environment; every plant, insect, aquatic animal, bird, or land species that forms a complex web of interdependency.³

Environmental Law

Environmental law is a body of law, which is a system of complex and interlocking statutes, common law, treaties, conventions, regulations and policies which seek to protect the environment which may be affected, impacted or endangered by human activities. Some environmental laws regulate the quantity and nature of impacts of human activities: for example, setting allowable levels of pollution or requiring permits for potentially harmful activities. Other environmental laws are preventive in nature and seek to assess the possible impacts before the human activities can occur.

The environmental law is the special body of official rules, decisions, and actions concerning environmental quality, natural resources, and ecological sustainability.⁴

According to dictionary meaning, International Environmental law comprises of those substantive, procedural, and institutional rules of international law which have as their primary object the protection of the environment.

Environmental law should not only encompass the environmental protection but also conservation from further decay, development of it in a sustainable manner, laying out the manner of use of environmental resources in a sustainable way and proper instrument and machinery to enforce the law.

Remedies given through Environmental law

The environmental laws are of both Civil and criminal in nature. They provide the substantive provisions as well as the procedural provisions. The remedies provided by the environmental laws are given below.

a. Environmental compensation

Environmental compensation is a technique used by central and local government under resource management legislation, which seeks to remedy the loss of environmental resources resulting from activities with adverse effects. The environmental court firstly determines the loss and then imposes compensation on the liable party. In the environment Conservation Act 1995, the provision of compensation is included in section 9. It enumerates about the liability of a person who discharges excessive environmental pollutant. He has to pay to the director general to give it to the affected party the expenses to control and mitigate the pollution.

Another provision is enumerated in section 7, where it is said that the persons who damages the ecosystem and fails to comply with the direction of the Director General, a suit for compensation can be filed against him. The main feature of compensation is that it is for liquidated damages.

b. Punishment for offences:

Punishment is given for crime or offences against environmental legislation. Punishment can be given for:

1. Pollutant emissions to air, water or soil;
2. Trade in endangered species;
3. Improper disposal of wastes.

In our country there are various laws which provide punishments for environmental degradation. Such as The Environment conservation Act 1995, provides punishment for the violation its provisions in section 15. The highest punishment provided by this section is imprisonment for 10 years and fine of 1000000(Ten lac) taka.

Article 26 of The Bangladesh Wildlife (Preservation) Order 1973 provides that if any person contravenes or attempts to contravene any of the provisions of the Order shall be punished with imprisonment which may extend to six months to one year and also with a fine which may extend from minimum 500 taka to 1000 taka.

Orders and directions

Under the Environment Conservation Act 1995, the director general may take such measures as he considers necessary and expedient for the conservation of the environment and improvement of environmental standards and for the control and mitigation of environmental pollution, and he may issue necessary directions in writing to any person for the discharge of his duties under this Act.⁵

The Director General may also issue directions in the nature of Closure, Prohibition, or Regulation of any Industry, undertaking and or processes and the concerned persons will be bound to comply with such directions.⁶

Nature and scope of Environmental law in Bangladesh

Environmental laws are laws relating to the protection of environment, ecology and ecosystem. Environment encompasses a wide range of phenomenon and aspects. For this reason the nature and scope of environmental law should also be wide. To identify the nature of environmental laws in Bangladesh a close scrutiny of all the environment related laws should be made.

Nature of Environmental law

There is no exhaustive code relating to environment in Bangladesh. The laws are scattered and made for different purposes rather than environment. The only law which provides a direct address of environment is the Bangladesh Environment

Conservation Act 1995.⁷ This law says about some specific matters very shortly and does not define the environment in its wider sense. For this reason there are shortcomings in it in dealing with all the environment related issues. The other environment related laws were mostly passed in the British or Pakistani regime. For this reason those laws were for the purpose of ensuring highest revenue collection for the colonial rulers and not for the protection of the environment. Moreover the environment related issues have been emerged recently due to the rise of global temperature, sea level rise and frequent natural disasters. For this reason those laws were not formed keeping in mind of the naturalist and environmentalist aspects rather than governmental aspects. In the sense of application the environment related laws in Bangladesh are mostly both substantive and procedural at one time. These laws provide the definition of offences and wrongs and their punishment and penalties. Along with that they provide procedure as well as authorities to enforce the law and getting redress by those laws. The common things are that the authorities

sustainable future and the well being of the country in the 21st century.¹⁰

A better understanding of the fundamental principles and the underlying philosophy that govern the balance between components of the Earth's ecosystem can help us achieve economic development while safeguarding the environment. These philosophical concepts help us better comprehend the way our planet works; as well as will help us evaluate the extent and limitation of earth resources that are needed to attain a sustainable future.

Development of Environmental law in Bangladesh

Bangladesh is rich in natural resources and beauties. For this reason it is called the 'Queen of the Universe.' But with the process of Industrialization and urbanization along with the whole world its environmental soundness and riches are under threat. For this reason many environmental laws have been passed from time to time. The history of environmental law corresponds with the history of our country. At least 200 laws have passed regarding environmental protection in many names. The history of environmental law can be divided into three phases. Those are:

1. British regime,
2. Pakistan regime,
3. Bangladesh regime.

British regime

Bangladesh inherited a legal system introduced in the 19th and 20th century by the British. The basic structure of the system is built upon common law systems which promoted a feidal ownership concept and allocation with absolute rent fixing and receiving authority. Even huge resource bases like forestry, fisheries were settled under the permanent settlement regulation - 1793 and possessed by the feudal Lords. Tenurial strategy was to expedite optimum economic return from resources. Hence almost every resource was liable to be placed under private ownership on fixed rent payable on a fixed day of the year. About 59 laws were passed in this regime. The Fatal accidents Act 1855 was the first Act of this phase which relates to environment. Some other environment related laws passed in this regime are

1. The irrigation Act-1876,
2. The private fisheries protection Act 1889,
3. The public parks Act 1904,
4. The smoke nuisance Act 1905 ,
5. The juvenile smoking Act 1919,
6. The Forest Act 1927,
7. The coalmine labor welfare Act 1947 was the last law about environment in this regime.

Pakistan Regime (1947- 1971)

The fate of the people of Bangladesh was handed over to the Pakistan government by the British rulers in 1947. During that time 39 laws, relating to environment were passed. The State Acquisition Act 1950 was the first law of this period. By this Act, the feudal system was abolished and the estates possessed by the Landlords were acquired by the government. The holders of various titles to resources became tenants of the state. Some other laws relating to environment In this regime are-

1. The protection and Preservation offish Actl 950,
- 2.The Embankment and drainage Act 1959,
3. The pure food Ordinance 1959,
4. The government Fisheries Ordinance 1959,
5. The private Forest Ordinance 1959,
6. The Agricultural pesticides ordinance 1971 was the last law relating

to environment in this regime.

During this period the development of Environmental law was not satisfactory. Because of-

- a. Political instability,
- b. Discrimination by the government to the East Pakistan,
- c. Lack of environmental concern,
- d. Lack of government initiatives,
- e. Lack of technical and developed knowledge about environment,
- f. World concern about the environmental protection and conservation

was not so strong as it is now.

Bangladesh Period (1971- present)

The need for rapid industrial and economic growth introduced such a situation in Bangladesh that has resulted into a situation whereby healthy environment has become a huge task. After establishment of independent Bangladesh, we have at least 143 Acts, Ordinances, Orders and Rules with one Environment Policy. The development of International Environmental law was started wholeheartedly from 1970s. From that point of view the Bangladesh wildlife (Preservation) Order 1973 and Environment Pollution control Ordinance 1977 were passed. In 1992, The Bangladesh Environment Policy was formulated containing 15 major sectors providing policy guidelines. Then, The Bangladesh Environment Conservation Act 1995, Environment Conservation Rules - 1997 and Bangladesh Environment Court Act 2000 were passed to ensure environment justice system. The Environment Pollution Control Ordinance 1977 was repealed due to its ineffectiveness. However it may be mentioned that an elaborate law for conservation of environment is in the process of being enacted by the government. But the major common limitations of these laws are that-

1. Absence of comprehensive idea about environment,
2. Most of the laws are not enforced properly,
3. The laws which we inherited from British were only for collecting revenue, and not for preserving and protecting environment. The discipline of environmental law is so wide. For this reason it is a very comprehensive subject. The internal and international development greatly depends on environmental soundness. So, environmental law

can play a significant role for the progress of our country. More and more we become aware of this matter more we can proceed on.

The Environment Conservation Act-1995 and its application in Bangladesh .

Environmental laws existed in the country right from the 19th century; although they remained either unendorsed to a large extent or were vaguely known to the people and the responsible public agencies. The prevailing traditional practices were not conducive to environmental protection or conservation of resources. Some laws have also become redundant, as the conditions for which these were enacted do not exist any longer.¹¹ The existence of life on earth is threatened due amongst other things to climate change as a result of continuous environment pollution. For a long time, environmentalists around the world have tried to focus the attention of world leaders on this and other pressing environmental matters. One of the first internationally collaborative efforts was the Stockholm Conference on Human Environment in 1972. These efforts were given a new impetus in 1992 with the Earth Summit in Rio de Janeiro, Brazil, Due to this concern The Government of Bangladesh passed The Environment Conservation Act in 1995.

Basic features of environment conservation Act

There are some features of environment conservation Act. Those are written below:

1. **First to address the environment:** It is the first law which addressed the environment in a very comprehensive way. The definition given in the Act is a scientific definition and very wide.
2. **Feature as to purpose:** The purpose of enacting this law is to conserve the environment. To improve environmental standard and control and mitigate

environment related disputes. But this law predominantly addressed - 1. Industry, factory, company, industrial The Environment Conservation Act-1995 and its application in Bangladesh.

unit, which will discharge gaseous pollutants and liquids. 2. Vehicles emitting smoke injurious to environment, 3. Manufacturing sale etc. of articles injurious to environment, 4. Remedial measures for injury to the environment.

3. Overriding effect: the environment conservation Act 1995 has the overriding effect. Section 2A, says that notwithstanding anything contained to the contrary in any other law for the time being in force. The provisions of this Act, rules and directions shall have effect

4. Establishment of department of environment: Section 3 of the said Act carries a very important establishing a department of environment headed by the Director General. The DG of the department of environment has been equipped with a lot of powers to discharge his official duty.

5. Environment Clearance certificate: The Act makes it mandatory to get environment clearance certificate for the owners of industrial units. Section 12 says that No industrial unit or project be established; or undertaken without obtaining, in the manner prescribed by rules, an; environment clearance certificate from the Director General.

6. Power to make Rules: The government may under the Act, formulate guidelines and rules for the purpose of carrying out the objects of the

Act12

7. Legal Action: The Act empowers the DG to file suit for compensation or file a criminal case against any person or persons violating the provisions of the Act. The violators are liable to imprisonment or fine or both.

8. Good faith clause: This Act contains a good faith clause in section 18 which provides protection from legal actions to the Director General or other officers of the environment acting in good faith within his legal duty.

9. Providing substantive and procedural provisions: This Act is an example of both substantive and procedural law. By nature this law is both civil and criminal law. This Act while describing the offence relating to environment is the substantive law while providing the substantive mechanism to bring the violators within the bound of environmental justice system.

10. Declaration of ecologically critical area: Section 5 read with rule 3 of the Environment conservation Rules, empowers the government to declare an area facing

environmentally critical situation as a ecologically critical area. Under this section the ministry of environment and forest has declared certain areas as ecologically critical area. Such as: The Sundrebans, Teknaf sea shore, Saint Martins Island, Sonadia Island, Hakaluki Haor, Gulshan-Baridhara Lake etc.

Hence, the "right" to live in a specific environment can be vested in humanity as a whole only by using a philosophical outlook; nevertheless, this right of "humanity" can only be ensured by imposing concrete "duties" on humankind.

Department of Environment:

History of Department of Environment:

The first environmental activities in Bangladesh were taken soon after the Stockholm Conference on Human Environment in 1972. As a follow up action to the Stockholm Conference, the Government of Bangladesh funded, under the aegis of the Department of Public Health Engineering and with a staff level of 27 and after promulgating the Water Pollution Control Ordinance in 1973, a project primarily aimed at water pollution control. In subsequent years, various events took place as described below.

In 1977, Environment Pollution Control Board with 16 members headed by a Member of the Planning Commission and Environment Pollution Control Cell headed by a Director with staff complement of 26 was established. This was followed in 1977 by the establishment of the Environment Pollution Control Project, in 1985 by the establishment of the Department Pollution Control and finally, in 1989 by the restructured and renamed the Department of Environment (the Department) the activities of which are overseen by a Director General. The Department discharges its responsibilities through a head office and six Divisional offices located in Dhaka, Chittagong, Khulna, Bogra, I Barisal and Sylhet.

Lesal bases of DOE

The department of environment though was established in 1989 it got its legal basis when the Environment Conservation Act was passed in 1995. Section 3 of the Act directs about the establishment of Department of Environment by the Government. Section 21(3) clearly stipulates that The Department of Environment shall be deemed to have been established under section 3 of the Act. This Department now

conducts its duties under the following Acts:

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1. Environment Policy, 1992

2. Environment Conservation Act, 1995 and subsequent amendments

3. Environment Conservation Rules, 1997 , 4. Environment Court Act, 2000 and subsequent amendments // 5. Ozone Depleting Substances (Control) Rules, 2004

Powers and functions of the department of environment

Powers and functions of the department of environment is also regulated under the Act as well as the rules and regulations passed by the government The powers and functions of the department is described in a nutshell: .

Planning & Development

The main activities in this core area are

Policy Analysis

- DOE provides inputs to formulate environmental policy of the various sectors.**
- It also analyses various policies of the government and advises the government on modifications of any section of a policy where needed.**

Planning and Evaluation

- DOE prepares a five-year annual development plan to fulfill central planning requirements**
- Periodical evaluation of progress of implementation of projects and the five-year plan.**

Programme Coordination

- Coordination between projects and programmers is conducted to ensure effective project planning and implementation.**

Monitorins and evaluation

On-going monitoring and periodic evaluation and reporting on the progress of project implementation.

Environmental A wareness

The Publicity and Environmental Awareness unit of the Department of Environment is primarily responsible for creating awareness regarding

the urgent need to preserve the environment among the general public using various local media, as well as educational and nongovernmental partners. The unit also produces and distributes educational brochures, posters, pamphlets and leaflets that are used in schools, workshops and training programmers.

The Department organizes events to celebrate and promote a number of environmental awareness days, including:

World Environment Day, International Ozone Day, World Desertification Day.

Environmental Clearances and EIA Processing

As specified in Clause 7 of the Environmental Conservation Rules, all new industries and projects must apply for an Environmental Clearance I certificate¹³. Industries are classified according to their potential impact on the environment into four categories - Green, Orange - A, Orange -B, and Red.

Green industries are automatically granted a clearance certificate. Orange categories must submit considerable further information and plans, and may be subject to field inspection. The highly polluting categories Orange-B and Red must in addition conduct a detailed Environmental Impact Assessment and prepare environmental management plans satisfactory to the Department.

Powers and functions of the Director General

The Director General is the statutory head of the Department of environment. He will be appointed under Section 3(2) of the Environment Conservation Act. The powers and functions of the Director General are elucidated below:

Conservation of environment

The main duty of the Director General is the conservation of environment. Section 4(1) gives him power to take necessary and expedient measures and issue necessary directions for the purpose of conservation of the environment, and improvement of environmental standards, and for the control and mitigation of environmental pollution.

Taking Effective measures

To conserve the environment effectively and efficiently the DG can take the following measures:¹⁴

a) Co-ordination: The DG can co-ordinate with the activities of any authority or agency who has the relevance to the objectives of this Act. Such as he can co-ordinate with the activities of Forest department or Ministry of Environment and BELA or Bangladesh Consumers Association etc.

b) Prevention of probable accidents: The accidents which may cause environmental degradation and pollution can be prevented by the DG by undertaking safety measures and determining remedial measures of such accidents. He may issue necessary directions.

For example, the seismic survey made by the Chevron was a risky work for the environment. This work could be stopped by the DG applying this power.

Offences and penalty of offences

Section 15 of the Environment Conservation Act, stipulates the sections, for the violation of which punishment are specified. These offences and their punishment are described below:

Violation of orders or directions of the DG

If any person violates the orders, directions or measures taken by the DG for the purpose of improvement of the environment, control and mitigation of environmental pollution, under section 4(2) he will be punished. A concerned person of any industry undertaking or process shall be bound to perform any order relating to closure, prohibition or regulation under section 4(3) and its violation would be an offence under section 15.

Punishment

Imprisonment not exceeding 10 years or fine not exceeding 10 lac taka or both.

Prohibited actions under section 5

According to Section 5(1) The Government can declare an area as ecologically critical area.¹⁵ Under section 5(2) the Government by notification prohibits certain actions which cannot be done in those areas. If any person does anything in violation of that notification it will be an offence.

Punishment

Imprisonment not exceeding 10 years or fine not exceeding 10 lac taka or both.

Offences relating to Vehicles

Section 6(1) prohibits operating or switching on a vehicle which emits smoke or gas" injurious to health or environment except for the purpose of test operation for stopping the emission of such smoke or gas.

Punishment

- a) For first time a fine not exceeding taka five thousand,
- b) For second time a fine not exceeding taka ten thousand,
- c) For each subsequent offence, an imprisonment not exceeding 1 (one) year or a fine not exceeding taka 10 (ten) thousand or both.

Offences relating to substances injurious to environment

Section 6A gives the government power to make absolute ban on the manufacture, import, marketing, sale, demonstration for sale, stock, distribution, commercial carriage or commercial use of all or any kind of polythene or polypropylene or any kind of article injurious to the environment.

Punishment

- a. for manufacture, import and marketing tie punishment is imprisonment not exceeding 10 years or fine not exceeding 10 lac taka or both.
- b. For sale, exhibition for sale, stock, distribution or commercially transportation or commercially use the punishment is imprisonment not exceeding 6 months or fine not exceeding ten thousand taka or both.

Offence relating to injury to the ecosystem

If any person causes injury to the ecosystem the DG can determine compensation¹⁶. Under section 7(2) the DG can file .suit for compensation or a criminal case in the competent court. If any person violates the order of the DG made under section 7(1) he will be punished under section 15(1).

Punishment

- The punishment is imprisonment not exceeding 10 years or fine not exceeding 10 lac taka or both.

Power of the Government under Environment

Conservation Act

The Act has entrusted the Government with certain powers and functions. This power is generally performed by the Ministry of Forest and Environment on behalf of the Government. The powers and functions are given below:

1. Declaration of Ecologically critical Area

Ecologically Critical Area, ecologically defined areas or ecosystems affected adversely by the changes brought through human activities.

2. Formulation of environmental guidelines

Section 13 provides that the Government may, by notification in the official gazette from time to time, formulate and publish environmental guidelines relating to the control and mitigation of the environmental pollution, conservation and improvement of the environment.

3. Power to make Rules

The Government may by official gazette, make Rules for carrying out the purpose of this Act. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters:⁷

- a) Determination of the standards of air, water, sound, soil and other components of the environment in relation to different areas for different purposes;
- b) Regulation of the establishment of industries and other development activities for conservation of environment;
- c) Determination of safe procedures for the use, storage and transportation of hazardous substances;
- d) Determination of safety and remedial measures for prevention of accidents which may cause pollution to the environment;
- e) Determination of the standards for effluent and discharge;
- f) Procedures for assessment of the environmental impact of various projects and activities, and procedures for their review and approval;

Procedure for Environment clearance certificate:

The first regulatory structure for the control, prevention, and abatement of pollution in Bangladesh was the Environmental Pollution Control Ordinance in 1977. However, continued environmental degradation led to the drafting and enactment of the Environmental Conservation Act (ECA) in 1995. In order to enforce the Act the Environmental Conservation Rules (ECR) were developed in 1997. These Rules specified the power and functions of the Department of Environment (DOE) and the responsibilities of the private sector to mitigate for damage to the environment. A central instrument of the Industrial Categories

* Under the ECA and ECR industries are classified into four, categories: I Green: Orange A; Orange B: and Red. The categorization is based on the location and environmental impact. Industries that belong to the green category are the least polluting and industries that fall under the red category are potentially the most hazardous industries. Both tanneries and fabric dyeing are red category industries.

Chapter-3

Establishment and constitution of courts

Environment Court

Government shall establish one or more environmental courts in each division. The government shall appoint a joint district Judge as a judge of the Environment court. He will be appointed in consultation with the Supreme Court. The territorial jurisdiction of an Environment Court will be the Division in which it is established. But if there is more than one court in each Division, then the Government will specify their jurisdiction.¹⁸

Special Magistrates court

The court of special Magistrate will be constituted of one Magistrate of the First class or a metropolitan Magistrate.¹⁹

Jurisdiction of Special Magistrate: He can impose penalty not exceeding - two years of imprisonment and fine not exceeding 10 thousand taka. He can adjudicate offences committed by

a. Violation of Subsection 1 of section 6 of the Environment

conservation Act for which the highest punishment is imprisonment not

exceeding one year and fine not exceeding ten thousand taka.

b. Violation of section 6A of the environment conservation Act 1995, for which the punishment imprisonment not exceeding Six months and fine not exceeding ten thousand taka.

c. Violation of offences which are provided hi the rules for which the punishment will be not more than imprisonment of two yeas and fine often thousand taka.

Power and functions of the Environment Court

The Environment court shall be competent to exercise any power conferred on it by this Act or any other environmental law." Environment Court is the only court that can take cognizance and hold proceedings for trial and disposal of those cases. Environment Court shall have power to impose penalty of offences which are punishable under section any other Environmental Law that means Environment Conservation Act-1995.²⁰ It is said in section 8(4) of the Court Act 2000, which the environment court shall be competent to exercise any power conferred on it by this Act or any other environmental law.

Power to issue directions The environment court shall have power to -

- a. Issue a direction to the offender or other relevant persons not to repeat or continue any noxious act,
- b. Issue a direction to the offender or other relevant person to take remedial or preventive measures,
- c. Direct a person to submit a report to the director general I case of direction issued under clause (b).

The court can, along with these directions, confiscate things and impose punishments provided in the Environment conservation Act, and pass order or decree for appropriate cases.

Power to impose penalty and fine

The environment court can impose imprisonment and fine as is enumerated in section 15 of the Environment Conservation Act 1995. Because section 5(1) clearly says that

'notwithstanding anything contained to the contrary in any other law, a case shall, in accordance with the provisions of this Act, be directly instituted in an Environment Court for trial of an offence or for compensation under an environmental law, and only that court can take cognizance and hold proceedings for trial and disposal of those cases'.

Power to impose compensation

Under section 7 and 9 of the Environment Conservation Act 1995 the DG can impose compensation upon the violator. This power can also be utilized by the environment court when the DG files a suit for compensation under section 15B of the Environment Conservation Act 1995.²¹ The environment court can also convert fine into compensation under section 10 of the Environment Court Act.

Procedure in the Environment Courts

Environment is a special court to try and dispose of environment related cases. So it has to follow some additional procedure from the beginning of a case or initiation of a process. The procedure is given below:

Initiation of a case

The environment court Act 2000, does not give a person right to seek remedy directly to the environment court. At first he has to seek remedy to the director general under the Environment Conservation Act 1995.

This has been inferred from Section 17 of the Environment Conservation Act 1995 and section 5(3) of the Environment court Act 2000. In section 5(3) of the Environment court Act 2000, it is clearly said that no environment court shall take cognizance of an offence or receive any suit for compensation except on the written report of an inspector or any other person authorized by the director general. Section 17 of the Environment Conservation Act 1995, says the same thing. But the environment court can give an opportunity to file a suit directly to it, if it is satisfied that-

1. No action has been taken within sixty day of the request to accept complain to the Inspector or authorized person.

2. The complaint or claim deserves to be taken into cognizance for the purpose of trial.

The court will give the Inspector general or authorized person or the Director General reasonable opportunity of being heard. Afterwards the court may either take the case directly and without written report or direct the said inspector or authorized person to investigate the offence or claim.²²

Effectiveness Of environmental Court Act 2000

Environmental court Act 2000 is an Act which establishes a specialized court to deal with the cases regarding environment. This is a noble initiative take by the government. But there are some accusations against it that this court is not properly efficient to serve the purpose for which it was framed. Now we will see how effective the Act is for the establishment of environment related right and prevention of their violation.

Complexity in filing suit:

A person cannot file a suit directly in the environment court. He has to make a complaint to the director general.³⁸ A person is entitled to file a suit directly to the environment court, if the inspector or authorized person does not take any action within 60 days after a written requisition is filed to the DG. So we can see that it is a very hazardous process for an aggrieved person.

Act not Exhaustive:

The court has to follow Criminal procedure code Civil procedure code and the procedure described in the Act itself. So, it can be said that the Act is not exhaustive. Due to this reason the environment court sometimes makes some confusion in the mind of general people.

Unexpected Paradox:

The Act specifically enumerates that the court should follow Criminal Procedure Code. But it engages a joint district judge who is mainly a civil Court judge. So, criminal proceeding is followed by a civil court Judge, which creates confusion.

Insufficiency of Scope:

Focus of law and its enforcement are limited within few common areas of environment pollution. It deals preliminarily equipments, manufacturing process, ingredients substances, but many other vital areas are left behind and thus not brought into specific terminology and explanations. That means environmental law

does not provide sufficient definition of environment as well as environment related offences. So it has ultimately shortened the scope of the environment Courts.

Insufficiency of punishment:

Environmental offences sometimes cause innumerable loss to the environment. This loss cannot be redressed properly and sufficiently through a certain amount of money. But the environment Conservation Act 1995, in its section 15, gives scope to the court to adjudge for the affected party a small amount of punishment and fine to be paid by the violator. The highest punishment is 10 years imprisonment and fine not exceeding 10 lac taka. If we think of environmental losses caused by Hazaribagh tannery, Tengratilla gas blast, Shevron's seismic survey we can come to know the loss I thousands of crore taka. The loss of gas caused by Tengratilla gas blast was about 13630.50 crore taka. And the environmental damage was about 3175 core taka.²³ The trivial amount of punishment which can be imposed by the environment court is not adequate.

Appeal in Environment Courts: Structure:

Environment Appellate court (District Judge)

Environment Court (Joint District Judge)

Special magistrates court (Magistrate of the first class or a Metropolitan Magistrate)

Constitution of Environment Appellate Court:

Judge:

The environment appellate court shall be constituted with one judge. An officer of the Judicial service of the rank of District Judge shall be appointed as the Judge of Environment Appellate Court. He shall dispose of cases only under environmental law²⁵. The Government can also appoint a District Judge to act as the Judge of the Environment Appellate Court in addition to its ordinary duties. Such a Judge shall

dispose of the cases relating to Environment in addition to his ordinary duties.⁴⁸ The seat of environment court shall be Dhaka.

Chapter-4

Biological Diversity in Bangladesh and related laws for

its conservation:

Biodiversity is a neologism and portmanteau word, from biology and diversity. The Science Division of The Nature Conservancy used the term "natural diversity" in a 1975 study, "The Preservation of Natural Diversity." The term biological diversity was used even before that by conservation scientists like Robert E. Jenkins and Thomas Lovejoy. The word biodiversity itself may have been coined by W.G. Rosen in 1985 while planning the National Forum on Biological Diversity organized by the National Research Council (NRC) which was to be held in 1986, and first appeared in a publication in 19 SE Since 1986 the terms and the concept have achieved widespread use among biologists, environmentalists, political leaders, and concerned citizens worldwide. It is generally used to equate to a concern for the natural environment and nature conservation. This use has coincided with the expansion of concern over extinction observed in the last decades of the 20th century.²⁶ Definition;

Biological diversity is the existence of a large number of different kinds of animals and plants which make a balanced environment. Biological diversity includes flora and fauna and the variety of living organisms and the ecological communities they inhabit.²⁷

Bio diversity can be considered in relation to three hierarchical categories which describes different aspects of living systems measured in different ways: Genetic diversity (the variation of genes within a species); species diversity(the variety of species within a region); and the Ecosystem diversity (the variety of species within a region). Other expressions of Bio diversity include the relative abundance of species, the age structure of populations, the pattern of communities in a region and changes in community composition and structure over-time.²⁸

Benefits Of Biodiversity;

There are a multitude of benefits of biodiversity hi the sense of one diverse group aiding another such as:

Resistance to Catastrophe:

Monoculture, the lack of biodiversity, was a contributing factor to several agricultural disasters in history, including the Irish Potato

Famine, the European wine industry collapse in the late 800 and the. US Southern Corn Leaf Blight epidemic of 1970. Higher biodiversity also controls the spread of certain diseases as viruses will need adapt to infect different species.

Food and Drink:

Biodiversity provides food for humans. Although about 80 percent of our food supply comes from just 20 kinds of plants, humans use at least 40,000 species of plants and animals a day. Many people around the world depend on these species for their food, shelter, and clothing. There is untapped potential for increasing the range of food products suitable for human consumption, provided that the high present extinction rate can be stopped.

and 22 species of amphibians. It has 260 freshwater species and 475 marine species. As far available information, other faunal species include 327 mollusks and 66 corals. Status of insect species is not available but it is reported to be highly diverse.

Bangladesh has been the abode of 5000 angiosperm species and several subspecies. Of them 160 species are used as crops. The crops are rice, wheat, jute, pulses, oilseed plants, minor cereals, sugar corps, fruit plants, vegetables, root rubber crops, spices, forest trees, beverage crops, flowers, medicinal and aromatic plants and other wild plants.

Charts Of Wild Faunas In Bangladesh Are Given Below:35

Group

Total no. of living species

Total

Fishes

259 (fresh-water and brackish water)

442 (marine)

701

Amphibians

22 (inland)

—

22

Reptiles

109 (inland)

17 (marine)

126

Birds

388 (resident)

240 (migratory)

628

Mammals

110 (inland)

3 (marine)

113

Total

890

702

1593

Some Places Of Bangladesh Rich In Biological Diversity The Sundarbans

Sundarbans, the largest single block of tidal halophytic mangrove forest in the world, located in the southern part of Bangladesh. It lies on the Ganges-Brahmaputra Delta at the point where it merges with the Bay of Bengal.

The Sundarbans was declared as a Reserve Forest in 1875. About 32,400 hectares of the Sundarbans have been declared as three wildlife sanctuaries, and came under the UNESCO World Heritage Site in 1999. These wildlife sanctuaries were established in 1977 under the Bangladesh Wildlife (Preservation) (Amendment) Act, 1974.

In the Sundarbans the saltwater forest is situated in the south-western part where Gewa (*E. agallocha*), Goran (*Ceriops decandra*), Keora (*Sonneratia apetala*), Ora (*S. caseolaris*), Passur (*Xylocarpus mekongensis*), Dhundu (*X. granatum*), Bain (*Avicennia Alba*, *A. marina*, *A. officinales*), and other rhizophores, and Hantal (Phoenix

pelludosa) dominate. The typical mangrove species dominate the central part of the forest. The moderate saltwater forest covers most of the

southern parts of Khulna and Bagerhat districts where Sundari is the dominant species.

The Sundarbans hosts a large variety of animals. It is the last stronghold of the Bengal tiger (*Panther tigris*). Within the forest habitats there are about 50 species of mammals, about 320 species of inland and migratory birds, about 50 species of reptiles, 8 species of amphibians, and about 400 species of fish.³⁶ St Martin's Island:

St Martin's Island a small island in the northeast of the bay OF BENGAL, about 9 km south of the Cox's Bazar-Teknaf peninsular tip and forming the southernmost part of Bangladesh. Though the island falls in the MONSOON zone, the climate is much influenced by the sea The main vegetation is COCONUT, betel nut and BAMBOO. Coconut trees are abundant and more concentrated in the Jinjira area. The SOIL of the island is not so fertile. The main agricultural products are ONION, watermelon and some RICE. Several living small coral colonies are found in small sheltered pools very near the low tide level around the island. They also occur in the surrounding shallow sea, mostly growing on the beach rocks and calcareous sandstone concretions. The dead coral colonies also occur in pool-like depressions within the high and low tide levels. Some of them are located at an elevation of nearly 3.50m above the low tide

level. The oldest fossil coral belongs to Late Pleistocene, giving an age of 33,238 years (C14 dating).³⁷

Biodiversity in the Hill Tracts of Bangladesh

The area of the Chittagong Hill Tracts is about 13,184 sq km, which is approximately one-tenth of the total area of Bangladesh which comprises the three Districts of RANGAMATI, KHAGRACHHARI and

BANDARBAN.

Flora

The hills, rivers and cliffs are covered with dense bamboo breaks, tall trees and creeper jungles. The valleys are covered with thick FOREST. The vegetation is characterized by semi-evergreen (deciduous) to tropical evergreen dominated by tall trees belonging to dipterocarpaceae, euphorbiaceae, lauraceae, leguminaceae and rubiaceae.

Fauna

The fauna mainly includes monkey, fox, jungle cat, fishing cat, wild boar, land turtle, king cobra, reticulated python, rat snake and other non-poisonous snakes together with large number of species of lizards and amphibians like frog and toad, and tree frogs. The bird life of the Chittagong Hill Tracts is wonderfully rich. More than 60 families of birds are found.³⁸

settings rather than in a delta. In addition to this mangrove area, the island supports a large number of water birds rich communities of mollusks and echinoderms and marine turtles.

Position Of Bangladesh In Comparison To Convention On Biological Diversity⁴²

Bangladesh signed the biodiversity convention at Rio on 5 July 1992 and ratified on 3 May 1994. A focus on biodiversity has been emphasized in the Forest policy and environment policy. However a separate policy on biodiversity is yet to be formulated and until then various departments of Government are responsible for conservation of biodiversity. The steps taken by the government for keeping pace with the biodiversity convention are given below (Article-wise steps)

Article - 5 (Cooperation)

This article provides mandate to the Contracting Parties (CP) to cooperate directly or indirectly with other contracting parties (other CPs) regarding conservation and

sustainable use of biodiversity in respect of areas beyond national jurisdiction and other matters of mutual interests.

Bangladesh faces the Bay of Bengal in the south and has international border with India in the west, north and northeast; and Myanmar in the southeast. It has very similar biodiversity both in ecosystem and species with the above two countries. Till date we have not been able to identify any issue in respect of constraints of biodiversity conservation. However, we have signed agreement with India for sharing of Ganges water. Recently, we are in the process to develop common approach for conservation of Sundarbans, particularly the World Heritage Sites of the Sundarbans of both part of Bangladesh and India.

Article ~ 6 (Strategies., Plans and Programmes) Contracting parties shall develop national strategies, plans or programmes for the conservation of biological diversity.

Different legislations of Bangladesh Covering Different

aspects of Biodiversity

The government of Bangladesh though has taken many steps to conform with the provisions of Convention on Biodiversity it has not yet been able to pass a specific legislation in this respect. In Bangladesh we have some laws which were made to protect specially one or more component of Biodiversity. So these laws are also equally important, and if this laws were properly implemented our natural biodiversity would more be protected and prevented from destruction. Those laws and some important provisions of such laws are given below:

Bangladesh Wildlife (Preservation) Order 1973

This law was passed soon after the independence of Bangladesh through a presidential order to protect the wild faunas. Articles 5, 7, 9, 10, 11, 12, 13,14, 15 and 23 of this Order provide that no wild animal shall be hunted, killed or captured by set gun, drop spear, dead fall, gun trap, bomb, grenade, electrical contrivances or any other traps⁴³. Article 11 provides that no person shall transfer by gift, sale or otherwise to any or any other person any wildlife. Article 12 stipulates that no person shall import or attempt to import into Bangladesh any wild animal of any wild animal of an endemic or exotic species. Article 15 prohibits any kind of trade, profession or business, buy sell or otherwise deal in wild animals. Besides there is a guarantee clause under.

Article 26 that if any person contravenes or attempts to contravene any of the provisions of the Order shall be punished with imprisonment which may extend to six months to one year and also with a fine which may extend from minimum 500 taka to

1000 taka. If we look into the provisions we can easily see that here all the provisions are aimed to preserve the biodiversity of wildlife.

Forest Act 1927

Section 26 of the act says that any person who in a reserved forest kindles, keeps or carries any fire except at such seasons as the forest officer may notify in this behalf or any person trespasses pastures cattle or permits cattle to trespass or causes any damage by negligence in felling any tree or cutting or dragging any timber or quarries any stone, burns lime or charcoal or collects, subject to any manufacturing process or removes any forest produce other than timber who enters a reserved forest with fire arms without prior permission from the divisional forest officer concerned shall be punishable with imprisonment for a term which may extend to six months and shall also be liable to fine which may extend to 2000 taka. In addition to such compensation for damage done to the forest as the convicting court may direct to be paid.⁴⁴

The Playground, Open Space, Park And Natural Tanks Of The Metropolitan City, City Corporation And District (Protection) Act-2000

This Act provides for the protection of sports field, open spaces, parks and natural wetlands by prohibiting any activities detrimental to them. It defined sport fields, open spaces and parks hi relation to their inclusion in the master plan of the concerned cities or hi circulars or gazette notifications of the government and thus intends the exclusion of other areas from the protection offered by this Act.

This act proves in its Section 5 that except the provision of this act, no play ground open space park and natural tanks can be altered changing the state of mentioned places by filling soil, constructing pakka, and semi-pakka or erecting any other kinds of building.

Besides Section 8 of the said ACT also penalises the person the person who contravenes the provisions of the ACT.

We can see that this law is for the protection of some places which is necessary for the keeping of natural sites within a city. It is surely provided to keep intact the biological diversity in city areas.

Bangladesh Environment (Conservation) Act-1995

This act is for providing the conservation of environment, improvement of environment standards and control and mitigation of environmental pollution. It has underscored its overriding effect over other inconsistent laws, established a Department of Environment empowered to intervene in almost all areas of environmental concerns, provided operational definition of important phrases like conservation, environment, eco-system, pollution etc. and prescribed punishment for various environmental offences. The Act is geared more to protection of environment rather than its restoration and improvement. Section 5 provides, considering the protection of biodiversity and other environmental components that if the government is satisfied that an area is ecologically critical situation or is treated to be in such situation, the government may by notification in the official gazette, declare such area as an ecologically critical area⁴⁵. It also provides some other provisions which enumerate some safeguard to biodiversity. Such as: Section 6A which was incorporated by Sec. 5 of Act 9 of 2002, bans the manufacture, sale, stock, distribution of some obnoxious materials such as polythene, dangerous chemicals etc. Section 7 of the Act provides for the safety of Ecosystems which is the prime concern to protect biodiversity. The EGA along with the Rules (ECR) made under it in 1997 have the potentials to succeed in protecting the biological wealth of the country from detrimental effects of industrial wastes and emissions. Under Section 12 of the Act, industrial plants or set-ups cannot be established without obtaining Environmental Clearance Certificate (ECC) from, the DoE and also cannot be continued without renewal of that certificate. It is, however, not clear whether the ECC provisions are equally mandatory for prefects under taken by the government authorities and agencies dealing with embankment, agriculture, fisheries or other sectors. Although the clause of the Act that establishes its overriding effects suggest such consequences of 03-05-99 that exempt the reserved forest areas of the EGAs from the regulatory regime of the Act can be viewed as having confusing implications.

The Environment Conservation Rules 1997

Environment Conservation Rules is basically the assisting material to the Act. It gives the process for the materialization of the Act. Moreover it provides some 14 Schedules and 4 Forms to support the Environment Conservation Act. The Environment Conservation Rules have set environmental standards and permissible emission levels and spelt out detailed procedures and requirements for obtaining the Environmental Clearance Certificate. In order to specify the ECC requirements, the ECR has classified the industries and the prefects into four categories, depending on the respective risks their operation involve. The riskiest projects and industries (Red Category) would comply with the severest obligations in terms of carrying out various detailed studies and investigations and taking elaborate preventive and corrective measures.

This categorization needs to be reviewed on the basis of the findings of technical studies on the actual risks associated with the industries. Some of the ECC requirements (e.g. no objection certificate of the local authority and approval of RAJUK or Divisional Development Authorities) are often criticized by the industries on the ground that these are required from such authorities that do not have sufficient accountability, transparency and institutional competence to handle the relevant issues. Furthermore, in order to establish transparency and accountability in the EIA procedures, a number of issues viz. who would conduct the EIA, what institutional competence the conductor must have, how the decision of acceptability of the EIA would be taken by the DOE etc must be clarified in the ECR or by government notifications.⁴⁶

Environment Policy 1992:

The Environment Policy, 1992 is the main document that provides general policy guidance to all relevant sectors with a view to ensuring that their activities take place in environmentally sound way. The major objectives of the 1992 Policy are:

- (i) To maintain ecological balance and overall development through protection and improvement of the environment;
- (ii) To identify and regulate activities which pollute and degrade the environment;
- (iii) To ensure environmentally sound development in all sectors,
- (iv) To ensure sustainable, long term and environmentally sound use of all national resources.

The 1992 Policy outlines the general policies for all relevant sectors of the country for the realization of its overall objectives. For example, in the agriculture sector the major policy statements are:⁴⁷ (i) All steps taken and technologies adopted for agricultural development and attainment of self-sufficiency in food are to be made environmentally sound;

(ii) The application of agro chemicals, artificial materials and inputs which adversely affect the fertility as well as organic properties of the soil and also cause adverse impacts on man and animals are to be regulated.

In the forest, wildlife and biodiversity sector major policy statements are:

- (i) To conserve, expand and develop forest to sustain the ecological

balance and meet the socio-economic needs and realities;

(ii) To conserve wildlife and bio-diversity, strengthen related research

and help insemination and exchange of knowledge in the concerned

area; .

(iii) to conserve and develop wetlands and protect migratory birds. In the food sector major policy statements are ;

(i) To ensure hygienically and environmentally sound methods for production, preservation, processing and distribution of food;

(ii) To prohibit import of food items likely to create adverse impact on the environment and public health.

The 1992 policy emphasizes the need for creating widespread mass awareness regarding environmental conservation and sustainable utilization of all resources. The need for dissemination of environmental information and public participation is also emphasized in the policy. The Environment Policy suggests that all laws and regulations related to protection of environment, conservation of natural resources, and control of environmental pollution and degradation should be amended. Whenever is necessary a new law is to be framed. What is important is to ensure proper implementation of all relevant laws/regulations and create wide spread public awareness in this regard. In order to address the global environmental issues the policy advocates for the ratification of all concerned international conventions and protocols. Thus, the policy statements for the relevant sectors, contained in the 1992 Policy, provide adequate basis for the adoption of additional measures to regulate GMOs in environmentally sound way.

The Brick Burning (Control} Act 1989 (amended 1992. 2001)

This Act would prevail over all other inconsistent laws concerning brick burning activities . It prohibits anyone from establishing brickfields or continuing its activities without obtaining prior license from the concerned Deputy Commissioner (DC). No such license could be issued unless the brick field is located 3 km outside the border of the Upazila Sadar (Headquarter), or 3 km outside any reserved, protected, acquisitioned or public forest, residential area and fruit garden.

The 1980 Act contains a number of loopholes some of which are as follows:

- The use of fuel wood in brickfields is prohibited under this Act. However, the latest definition of fuel wood apparently excludes any plant species other than woods utilizable as fuel and this could spell the destruction of local habitats.

- The right to resort to the court for trial of the offences under this Act is restricted to the DC and other government officials.
- The license for burning bricks would remain valid for three years under this Act, whereas, for the same activity, the license would be valid for tenure of five years under the Brick Burning (Control) Rules of 1989.

The Building construction Act, 1952 (Amended in 60, 66, 72. 87. 90 and the Rules. 1996

This Act provides for the prevention of haphazard construction of buildings and excavation of tanks and cutting and razing of hills without previous sanction of the Authorized Officer, it allows cutting and razing of hills if the authorized officer is satisfied, among other things, that such acts shall not cause any scours damage to the hill or any silting of or obstruction to any drain, stream or river. In doing so, the Act disregards the fact that cutting and razing of any hill would invariably damage the ecosystem, natural habitats and topsoil and deplete the biodiversity⁴⁹. According to the public notification of the DOE dated 09/03/02, the maximum punishment for unauthorized cutting and razing of hills is 10 year's imprisonment with or without a maximum 10 lac taka fine, whereas, under the Act of 1952, the maximum punishment for the same offence was 7 years imprisonment with or without a fine.

The Protection And Conservation Of Fish Act 1950:50

Section 4A of the said Act deals with prohibition about current net. It says that no person shall manufacture, fabricate, import, market," store, carry, transport, own process or use current net. Section 5 keeps the penalty of rigorous imprisonment for a term of one year and fine of five thousand taka if any one violates section 3 and 4A. so we can say that though this law has an economic goal its ultimate aim is to protect an preserve the biodiversity of Hilsha fish as well as other fishes.

The marine Fisheries Ordinance 1983:51

Article 26 prohibits the explosives, poison or other noxious substances for the purpose of killing, stunning, disabling or catching fish or abets, attempts the doing of such acts shall be guilty of an offence punishable with a fine not exceeding one lac taka. Under Article 28, Government may declare any Marine area as reserved zone, where fishing, dredging, etc are prohibited under Article 29. Article 48, lays down the provision of forfeiture of vessel if the violates any provision of this Ordinance. This law as we can see that is much competent to protect the diversity of marine fishes if it is duly applied by the authority.

There are some other laws for the preservation and protection of diversity of fish. Such as:

The cruelty to animals Act 1920:52

Section 5 of the Act gives penalty for overloading any animal while transporting one place to another place. Section 6 says that if any person performs, upon any cow or other milch animal the operation called phuka, he shall be deemed to commit a cognizable offence punishing him 500 hundred taka or imprisonment for 2 years or both. Section 7 says that if any person kills any animal in an unnecessary cruel manner he shall be punished with fine of two hundred taka or imprisonment for six months or with both. This law is for the purpose of preventing the endangerment of the life of livestock animals and preserving their biodiversity from further impairment.

The seeds Ordinance 1977:

By this Ordinance a national seed board⁵³ and a government seed laboratory are established. By Article 6 the standard of seed quality is determined regarding the germination percentage, purity percentage, moisture content and such other components of seed quality with respect to any seed of any notified kind or variety. This standard as well as these institutions are established for the preservation of seeds diversity.

Nuclear safety and Radiation Control Act 1993:

This law makes a commission for the control of nuclear radiation. Section 5 of this Act gives the criteria of giving license for the purpose of using nuclear energy. The commission can take necessary steps for the sake of protecting people and environment from nuclear radiation in case of emergency under section 10. Section 11 lays down provision of punishment of imprisonment for seven years and not less than three years for violation of this law. This law is though not so developed but workable for the protection of biodiversity from atomic radiation.

Recommendations for Future Activities⁵⁴

1. The Government, NGOs, other Non-Government institutions and the enlightened people should come forward to raise consciousness among people about the importance of Biodiversity.
2. An effective legislation should be passed.

3. The Environment Ministry, The Environment Department, and the Law enforcement agencies should be more dedicated. In this regard they can be made cautious" by counseling, doing seminars and symposiums.

4. Implementation of eco-system approach and community-based conservation programme of Bio-diversity.

5. Measures should be taken to mitigate the adverse effects caused by cyclones and floods and anticipated global warming and sea-level rise.

6. Formulating sustainable management and utilization strategy of living and non-living resources.

7. Accelerating the establishment of the national network of nature conservation and reserved, protected areas that include a full range, type and level of Bio-diversity and which will have a reasonable distribution and appropriate area coverage.

8. Establishment of a network of ecologically critical areas by including more critical areas of the country and ensuring their proper management.

9. Conservation of special habitats and ecosystems such as hill forests, Shal forests, wet lands, Mangrove ecosystems, Coral reef ecosystems, estuarine ecosystems as well as the protections of migratory animals and birds.

10. Conservation of habitats other than those within the nature reserve system, including but not limited to selectively felled forest, secondary bushes, farm fields etc. Emphasis may be placed on conserving the agro-ecosystem and agriculture species by establishing a number sites for in situ conservation of the wild relatives of crop species and seeking gradually to establish a number of protected areas or agricultural field types which are of local significance.

Every state has sovereignty over its territorial jurisdiction. But the environment and nature has no such territorial limit. It reigns over the whole world. For this reason if environment of one country is polluted it affects others also. So every state should perform its own duty as well as collective duties to protect the environment from pollution. Now it is high time we took steps heart and soul. Otherwise, we shall face massive destruction in the near future. The destruction has already started and we observed Tsunami, Sidr, Nargis and many other natural disasters. Our world is now in a vulnerable position. It is crying for its protection. We should realize one thing that every action has its equal and opposite reaction. If we show cruelty to the nature, it must take its revenge against us. So we should be friend of nature. We should do our development works in a sustainable manner not doing any harm to the environment

and bio-diversity. Otherwise one day the human being would have to face a threat of extinction. We should always ensure that our little comfort does not affect the environment. Otherwise our little comfort will turn into a great misery for us.

Chapter-6

Wildlife conservation in Bangladesh

There is a wide variety of animal diversity to be found in the wilderness areas of Bangladesh, so nature lovers can really take their time to enjoy this side of the country. Even though Bangladesh is one of the most highly populated countries in the world, the majority of the population lives in or around large cities and this has helped to limit deforestation to some extent. However, the growth rate continues to increase at an alarming rate and this has placed large demands on the environment and lead to subsequent clearing of numerous natural habitats. Though several areas are protected under law, a large portion of Bangladeshi Wildlife is threatened by this growth.

Definition:

Wildlife includes all non-domesticated plants, animals, and other organisms. Domesticating wild plant and animal species for human benefit has occurred many times all over the planet, and has a major impact on the environment, both positive and negative. Wildlife is any vertebrate animal other than human being, domesticated animals and fishes, living in its natural habitat. Members of Amphibia, Reptilia, Aves, and Mammalia, their eggs or Youngs are included in wildlife. Wild animals can live independently without the help or care of man. Not necessarily a wild animal has to live in forests or jungles; a wall lizard, a sparrow, a pigeon, a myna or a crow are all members of wild FAUNA. Wildlife can be found in all ecosystems, Deserts, rainforests, plains, and other areas including the most developed urban sites—all have distinct forms of wildlife. While the term in popular culture usually refers to animals that are untouched by human factors, most scientists agree that wildlife around the world is impacted by human activities.

Global warming and Wildlife:

Global warming greatly upsets the ecosystems and habitat of wildlife, totally disrupting their lives. With increasing human population, humans occupy more of the landmass, leaving little space for wildlife.

- With increasing global warming, animals tend to move to higher levels and plants to new areas that are cooler as the existing environment gets too hot for growth. This includes species of mountain goat, and bighorn sheep.
- Global warming will affect all ecosystems and species that are unable to adapt and adjust will face extinction.
- Wildlife around the Arctic is most likely to face the brunt of this warming. Species like the polar bear, emperor penguins
- Snowy owls and others that are suited for the cold climate will suffer.
- The reducing permafrost will cause problems in water supply for wildlife in the Rocky Mountains and the Pacific Northwest of America.
- Considerable tracts of the tundra now resemble brush vegetation. Forests are now more prone to attacks by beetles and other pests due to warmer conditions.
- Sagebrush in parts of the US is disappearing and this bodes ill for species of sage grouse, mule deer, and pronghorn that subsist on them.
- There will be frequent droughts and warm months that are not conducive to several species of flora and fauna. Heat waves will be frequent and droughts may be recurrent.
- Warm temperatures around the poles means less ice and hence less food for these species that subsist on fish.

Wild life of Bangladesh:

The wildlife of Bangladesh includes Bangladesh's flora and fauna and their natural habitats. The majority of the human population lives in or around large cities and this has helped to limit deforestation to some extent. However, the growth rate continues to increase at an alarming rate and this has placed large demands on the environment and lead to subsequent clearing of numerous natural habitats. Though several areas are protected under law, a large portion of Bangladeshi wildlife is threatened by this growth.

Bangladesh is home to roughly 22 species of amphibian, 17 species of marine reptiles, 109 species of reptile, 388 species of birds, 110 species of mammals and 3 species of marine mammals. In addition to the large bird count, a further 240 species of migratory birds swell bird numbers each year. The vast majority of these creatures

currently dwell in an area of land that is some 150 000 sq kilometers in size This is a remarkable achievement to say the least. However this does not mean all is well with the country's natural heritage. So far a number of creatures have disappeared completely from the country and a further 201 species are threatened. Notable species that have disappeared from Bangladesh are the one-horned Rhinoceros, the two-horned Rhinoceros, the Gaur, the Ganteng, Hog deer and swamp deer, wolf, marsh crocodile and wild buffalo. Generally speaking, such a large loss will usually effect the environment to a greater or lesser degree and result in environmental imbalances.⁶⁴

Wild life Management in Bangladesh:65

Forest Department under the Ministry of Environment and Forests, Government of the People's Republic of Bangladesh is responsible for preservation, conservation and management of Wildlife in the country. The Chief Conservator of Forests is the Chief Wildlife Warden. There is a Circle named Wildlife and Nature Conservation Circle administered by an officer in the rank of Conservator of Forest. There are Four Wildlife Management and Nature Conservation Divisions under this Circle. Each of the Division is administered by a Divisional Forest Officer. In addition, there are two Botanical Gardens in the country.

1. Wildlife Management and Nature Conservation Divisions

a. Wildlife Management and Nature Conservation Division, Dhaka.

b. Wildlife Management and Nature Conservation Division, Dhaka.

c. Wildlife Management and Nature Conservation Division. Sylhet. d. Wildlife Management and Nature Conservation Division, Khulna.

2. Botanical Gardens

a. National Botanical Garden, Dhaka.

b. Botanical Garden and Eco-Park, Chittagong.

CHAPTER -7

Pollution, Its Effect on Environment and Laws and Treaties for the Control and Prevention of Pollution

The environment and ecology of Bangladesh, more particularly in the urban areas, are being continuously endangered and threatened by various activities originating from

private and public affairs. Amongst the primary causes and sources of environmental degradation, pollution of the ecosystem, surrounding atmosphere and natural resources have exceeded all norms and standards of human cognition. In a large number of cases such grave contamination has been contributed by the careless, selfish and profit seeking attitudes of various industries and factories that defy all applicable law, rules and regulations. Pollution by such industries/factories has been identified as major environmental threat by various scientific studies, research, investigation, reports, surveys and so on conducted by various persons, agencies/institutions, both national and international. In certain severe instances, the concerned agencies of the government have also admitted facts of such pollution and contamination in publications and printed forms. Unfortunately, in a large number of cases, such pollution remains unrepressed due to failure by the statutory agencies to ensure compliance with regulatory provisions and protect life, public health, comfort and property of the people⁶⁶. But the days are now changing that some progressive judgments and interpretations are give by the Judges. In a case of Pennsylvania it was held that "[i]n this age, persons living in a community or neighborhood must subject their personal comfort to the necessities of carrying on trade or business," and when an "individual is affected only in his tastes, his personal comfort, or pleasure, or preferences, these he must surrender for the comfort and preferences of the many".

Definition of Pollution

Pollution is the introduction of contaminants into an environment that causes instability, disorder, harm or discomfort to the physical systems or living organisms they are in. Pollution can take the form of chemical substances, or energy, such as noise, heat, or light -energy. Pollutants, the elements of pollution, can be foreign substances or energies, or naturally occurring; when naturally occurring, they are considered contaminants when they exceed natural levels. Pollution is often classed as point source or nonpoint source pollution. In the case of Farooque v. Government of Bangladesh WP 891 of 1994⁶⁷ "pollution" was defined as - such contamination, or other alteration of the physical, chemical, or biological properties of any waters, including change in temperature, taste, colour, turbidity, or colour of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health,; safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life;

Air Pollution

Air pollution is the presence in the earth's atmosphere of man-caused, or man-made, contaminants which may adversely affect property, or the lives of plants, animals, or

humans. Common air pollutants include: carbon dioxide, carbon monoxide, lead, nitrogen oxides, ozone, smoke, and sulphur-dioxide.

The Columbia Encyclopedia has defined it as contamination of the air by noxious gases and minute particles of solid and liquid matter (particulates) in concentrations that endanger health.

Types of sources of Air Pollution

Sources may be characterized in a number of ways. First, a distinction may be made between natural and anthropogenic sources. Another frequent classification is in terms of stationary (power plants, incinerators, industrial operations, and space heating) and moving (motor vehicles, ships, aircraft, and rockets) sources. Another classification describes sources as point (a single stack), line (a line of stacks), or area (city). Different types of pollution are conveniently specified in various ways: gaseous, such as carbon-monoxide, or particulate, such as smoke, pesticides, and aerosol sprays; inorganic, such as hydrogen Chloride, or organic, such as mercaptans; oxidizing substances, such as ozone, or reducing substances, such as oxides of sulfur and oxide s of nitrogen; radioactive substances, such as iodine-131; inert substances, such as pollen or fly ash; or thermal pollution, such as the heat produced by nuclear power plants. Air contaminants are produced in many ways and come from many sources; it is difficult to identify all the various producers. Also, for some pollutants such as carbon-dioxide and methane, the natural emissions sometimes far exceed the anthropogenic emissions. Both anthropogenic and natural emissions are variable from year to year, depending on fuel usage, industrial development, and climate. In some countries where pollution control regulations have been implemented, emissions have been significantly reduced. For example, in the United States sulfur dioxide emissions dropped by about 30% between 1970 and 1992, and carbon monoxide (CO) emissions were cut by over 30% in the same period. However, in some developing countries emissions continually rise as more cars are put on the road and more industrial facilities and power plants are constructed. In dry regions, natural emissions of nitrogen oxides (NO₄), carbon dioxide (CO₂), and hydrocarbons can be greatly increased during a season with high rainfall and above-average vegetation growth. The anthropogenic component of most estimates of the methane budget is about two-thirds. Ruminant production and emissions from rice paddies are regarded as anthropogenic because they result from human agricultural activities. The perturbations to carbon dioxide since the industrial revolution are also principally the result of human activities. These emissions have not yet equilibrated with the rest of the carbon cycle and so have had a profound effect on atmospheric levels, even though emissions from fossil fuel combustion are dwarfed by natural emissions.

Effects of Air Pollution

Causes Greenhouse effect

Carbon dioxide, methane, fluorocarbons, nitrous oxides, ozone, and water vapor are important greenhouse gases. These represent a "class of gases that selectively absorb long-wave radiation. This effect warms the temperature of the Earth's atmosphere and surface higher than would be found in the absence of an atmosphere (the greenhouse effect). Because the amount of greenhouse gases in the atmosphere is rising, there is a possibility that the temperature of the atmosphere will gradually rise, possibly resulting in a general warming of the global climate over a time period of several generations.

Damage of Stratosphere

Researchers are also concerned with pollution of the stratosphere (10-50 km or 6-30 mi above the Earth's surface) by aircraft and by broad surface sources. The stratosphere is important, because it contains the ozone layer, which absorbs part of the Sun's short-wave radiation and keeps it from reaching the surface. If the ozone layer is significantly depleted, an increase in skin cancer in humans is expected. Each 1% loss of ozone is estimated to increase the skin cancer rate 3-6%.

Air pollution in Bangladesh:

Bangladesh is one of the least developed agrarian nations in the world. Since its inception in 1971, there has been some growth in the industrial sector. Industries are mainly concentrated in major urban areas like Dhaka, the seaport cities like Chittagong and Khulna, the inland port city Narayanganj-, and other divisional towns. Naturally, the air pollution problem is more acute in these areas. Apart from unplanned industrial development in these areas, the severity of the pollution is increased mainly due to exhausts from two-stroke engine and diesel-run vehicles. In the rural areas of Bangladesh, the air pollution problems have not yet become a point of concern. This is due to fewer motorized vehicles and industries in rural areas. The primary air pollutants found in most urban areas are carbon monoxide, nitrogen oxides, sulfur oxides, hydrocarbons, and particulate matter (both solid and liquid). These pollutants are dispersed throughout the world's atmosphere in concentrations high enough to gradually cause serious health problems. Serious health problems can occur quickly when air pollutants are concentrated, such as when massive injections of sulfur dioxide and suspended particulate matter are emitted from different sources. The principal sources of air pollution in the rural areas are brick kilns and cooking stoves. In rural areas, wood, coal, and bio-mass are used as sources of energy. During the monsoon, rural people cook inside their houses without adequate ventilation systems. This gives rise to severe indoor air pollution which brings health hazards, particularly

for women and children. There are two major sources of air pollution in Bangladesh, vehicular emissions and industrial emissions. These are mainly concentrated in the cities. Other than those there are numerous brick-making kilns operated seasonally, mainly in dry season all over Bangladesh. Almost all of these kilns use coal and wood as their prime sources of energy, resulting in the emission of particulate matter, oxides of sulfur, and volatile organic compounds. In addition to these usual sources of fuel, used rubber wheels of vehicles are also burnt, which emit black carbon and toxic gases. These are hazardous for health. The major urban centers in the country are the metropolitan cities of Dhaka, Rajshahi, Khulna and Chittagong. Dhaka is one of the most densely populated cities in the world. This is the center for the major economic and commercial activities. In the urban areas ambient air quality is dependent on many factors like air movement, traffic volume, congestion, emissions from motor vehicles, and resuspended dust particles. Various other activities related to the extremely high population density also result in severe air and other forms of pollution. Aircrafts, railway engines, power plants, open burning incineration, solid waste disposal sites, and dust particles also contribute to air pollution. Dust pollution due to road diggings, constructions and other development activities further aggravate the air pollution situation in cities. In order to accommodate the growing population, the construction of multi-storied buildings is increasing rapidly. Along with these buildings, the number of slums is also increasing. The tremendous pressure of population has made it almost impossible to maintain a clean environment in the capital city of Dhaka. Industrial development is another p source of air pollution. Industries in Bangladesh are situated mainly in major urban areas, particularly in Dhaka, Chittagong, and Khulna. So, air pollution is concentrated mainly in these cities. Brick-making kilns, of which the majority is of the conventional type, use coal and wood as their source of energy.

Children suffer more from air pollution in the cities. Most of the children in the cities of Bangladesh are suffering from respiratory problem. Because children breathe more air relative to their body-weight and lung surface area than do adults. So, they also receive proportionately higher doses of air pollutants. They spend more time outdoors, often during midday and afternoons when pollutant levels are generally highest. They are three times more active than adults while outdoor, significantly increasing their oxygen demand and consequently raising their breathing rates. Children often fail to recognize the significance of respiratory symptoms such as coughing, wheezing, and shortness of breath, and they frequently fail to move indoors of curtail exercise during air pollution episodes. Children tend to breathe more through the mouth than through the nose due to their increased physical exertion, thus reducing the effectiveness of one level of filtration. In addition, young children's small noses are easily blocked by congestion, constriction, or other illnesses. Children

at greatest risk from the effects of air pollution of sensitized respiratory systems, such as allergic or asthmatic, children who live near industrial pollution sources, areas of heavy traffic, or in homes with cigarette smokers, and children who lack adequate medical attention, nourishment, or sanitary living conditions. In order to safeguard public health, biodiversity and ecosystems, sustainable environmental management needs to be ensured. As a part of country's environmental management air quality monitoring activities is going to be expanded to the major cities like Chittagong, Rajshahi, Khulna, Barisal, Sylhet and Narayanganj. These cities will be brought under air quality monitoring network by 2007 by the Government of Bangladesh with support from the donor agencies. State of air pollution of these cities will be regularly communicated along with health advisory to the people to create more awareness through electronic and print media. A follow up project on Air Quality Management is undertaken with the financial assistance from the World Bank. It will also look into indoor air pollution, industrial process improvement with focus on change of technology of brick kilns, introduction of environment friendly public transport system and capacity building for air quality management.⁶⁹

Water pollution

Water pollution is a global plague that affects the people, animals, and plants. These life forms need water to survive. Sea and river pollution is one of the problems that resulted from the new technology. Water is one of the most important sources of life on earth a lot of animals live in seas, rivers and lakes. In addition water is also important for humans, not just for drinking; seas are one of our main sources of food today, for example fish. Sea pollution has become one of the biggest problems facing our environment. Across the world, about half of all sewage is dumped into water bodies in its original form. Water pollution is a senseless act that people can help stop. Often, governments either do not care or simply look the other way. The main effect of chemical water pollution is that it kills life that inhabits water-based ecosystems. In addition to sewage, chemicals dumped by industries and governments are another major source of water pollution. And another solution is to think of an alternative farming practice that allows the wastes to be eliminated safely without causing any health or environment problems. Some of these alternatives things such as regulations and accountability for the actions taken by the factories, more public awareness and participations in the community they live in, and new technology that can help eliminate this problem.⁷⁰

Water pollution in Bangladesh

Rainwater pollution: Acid rain damages forests and may cause significant decrease in productivity. Numerous authors have also raised concern for crop damage. Acid rain is particularly damaging to buds; therefore, acids falling on plants in springtime may impair growth. Acidification of SOIL may also impair soil bacteria that play an

important role in nutrient cycling and nitrogen fixation. Acid rain is also capable of corroding manmade structures. Examples of such corrosion are: the Statue of Liberty, the Canadian Parliament in Ottawa and Egypt's temple at Kamak. Acid rain may also damage house paint and etch the surfaces of automobiles. There is no record of acid rain in Bangladesh. However, due to extensive AIR POLLUTION in Dhaka city, it is very likely that rain water in Dhaka would be more acidic than

rain water in rural areas.⁷¹

Sound pollution in Bangladesh:

Many parts of Dhaka have high levels of noise. Noise in the city exceeded World Health Organization recommendations in many places. Factors that contribute to the problem include densely packed structures, construction, loudspeakers, and lack of green spaces to absorb sound waves. The unit of sound frequency is hertz. Human beings usually hear 15 to 20 kilohertz (KHz) frequency sound. According to the World Health Organization (WHO), generally 60 dB sound can make a man deaf temporarily and 100 dB sound can cause complete deafness. But the noise of any busy street in Dhaka has been estimated at 60 to 80 dB, with the sound of vehicles being 95 dB, loud speakers 90 to 100 dB, mills and factories 80 to 90 dB, restaurants and cinema halls 75 to 90 dB, festivals 85 to 90 dB, scooter or motorbike 87 to 92 dB and trucks and buses 92 to 94 dB. But the desired sound measure is 25 dB in the bedroom, 40 dB in the dining or drawing room.

Chapter-8

Public interest Environmental litigation

Over the years, Public Interest Litigation (PIL) has emerged as an effective tool for seeking judicial responses and subsequent government actions to the socio-economic challenges of the unorganized, powerless and those segments of the society who are precluded from resorting to legal redress owing to resource or knowledge constraints. PIL has enabled public-spirited individuals, groups and conscious citizens to litigate in the interest of the poor and disadvantaged; and widened the scope for NGOs and civil society to participate in formulation of pro-people policies and laws. A PIL (a petition brought before the High Court Division of the Supreme Court of Bangladesh in the nature of writ under Article 102 of the Constitution) is generally instituted for the enforcement of the constitutional and legal rights of the poor and excluded groups as well as ensuring accountability of concerned government and public, authorities towards issues of public importance. Persistent efforts by NGOs and social action groups through PIL has, in many occasions, prompted the High Court Division to issue

directives and orders that in turn addressed the socio-economic concerns of the poor and the marginalized groups.

Definition And Meaning

Public Interest Litigation means litigation for the protection of public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party.

Public Interest Litigation is the power given to the public by courts through judicial activism.⁸¹

"Public Interest Litigation", in simple words, means, litigation filed in a court of law, for the protection of "Public Interest", such as pollution, Terrorism, Road safety, constructional hazards etc⁸². PUBLIC INTEREST LITIGATION is not defined in any statute or in any Act. It has been interpreted by judges to consider the intent of public at large. Although, the main and only focus of such litigation is only "Public Interest" there are various areas where a PUBLIC INTEREST LITIGATION can be filed. For e.g.

- Violation of basic human rights of the poor ,
- Content or conduct of government policy
- Compel municipal authorities to perform a public duty.
- Violation of religious rights or other basic fundamental rights. "Public interest litigation can be initiated and maintained by a public such with regard to public injury, though such a person or a body of persons may not seemingly have been personally hurt by a public injury.

Public interest litigation in the regime of environmental law in Bangladesh

The Constitution of Bangladesh does not explicitly provide for the right to healthy environment either in the directive principles or as a fundamental right. Article 31 states that every citizen has the right to protection from 'action detrimental to the life liberty, body, reputation, or 'property', unless these are taken in accordance with law. It added that the citizens and the residents of Bangladesh, have the inalienable right to be treated in accordance with law.

If these rights are taken away, compensation must be paid. Article 32 states: "No person shall be deprived of life or personal liberty saves in accordance with law". These two articles together incorporate the fundamental 'right to life'. The following discussion suggests that this right to life includes the right to a healthy environment capable of supporting the growth of a meaningful existence of life'. Pakistan Chest Foundation and others Vs. Government of Pakistan and others reported in 1997 CLC 1379. In 1994, a public interest litigation was initiated before the Supreme Court dealing with air and noise pollution. The Supreme Court agreed with the argument presented by the petitioner that the constitutional 'right to life' does extend to include right to a safe and healthy environment⁸⁴." In a recent case, the Appellate Division and the High Court Division of the Supreme Court have dealt with the question in a positive manner. The Appellate Division, in the case of Dr. M. Farooque v. Bangladesh has reiterated Bangladesh's commitment in the context of engaging concern for the conservation of environment, irrespective of the locality where it is threatened.' (Afzal, CJ, para. 17). This was a full court consensus judgment and the court decided:

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."(Chowdhury, J, Para. 101)

The High Court Division in the same case⁸⁵ expanded the fundamental 'right to life to include anything that affects life, public health and safety. It includes 'the enjoyment of pollution free water and air, improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent with human dignity. The court added that, if right to life means the right to protect health and normal longevity of any ordinary human being, then it could be said that the fundamental right to life of a person has been threatened or endangered.

These two cases show that the courts are willing to establish the right to a clean environment. Another case⁸⁶ presently pending before the High Court deals with commercial shrimp cultivation and adverse development. According to the petitioner, commercial shrimp cultivation involves the "usage of various chemicals and saline water"....which eventually makes the soil infertile and unsuitable for soil cultivation...[I]t further damages the environment by causing stunted growth of the trees or their death, reducing the grazing areas for cattle by increasing water logging, and adversely affecting the size of the open water fish catch as a result of the dumping of chemicals into the river....shrimp cultivation will cause irreparable ecological and environmental damage to the community and to the livelihoods of the inhabitants of the said area.' The petitioners submitted that the government orders regarding

commercial shrimp farming frustrated the spirit of Environmental Policy 1992 and breach of article 32 of the Constitution.

Chapter-9

Environmental Cases

In recent times, three important achievements have been made through the judicial court system regarding environment conservation. First, significant judicial recognition has been gained in environmental and public health matters. Second, the scope of the legal requirements, standing, or Locus Standi for an unaffected third party to initiate suits on behalf of the aggrieved people have been significantly broadened.

Until 1994 there was no reported case decided by the Supreme Court on environmental issues. The first case was filed in January 1994 by Bangladesh Environmental Lawyers Association (BELA) and since then the list is getting longer.

The judgments of the Court in these cases have addressed some vital legal questions. Following are the important environmental litigation decided in the court.

1. Election Nuisance to be Mitigated (XLVIDLR 1994, p. 235) The first ever environmental litigation in Bangladesh was filed in January, 1994. This suit, in the form of a writ petition, was instituted in the High Court Division of the Supreme Court of Bangladesh. It was filed against the four authorities of the government alleging that they had failed to restore some important civic laws being flouted in the name of election campaign by the candidates contesting for the post of Mayor and Commissioners of Dhaka City. The candidates ignored Election Commission's repeated directions to show respect to the laws.

Finally, the Writ Petition Bench of the High Court issued rule nisi upon the Election Commission and others. The respondents were asked to show cause as to why they should not be instructed to comply with the direction of the Election Commissioner. The Court also agreed to consider the prayer of the

petitioner to restrain the EC from holding the election till the respondents ensured that the law would be fully respected. The rule was subsequently disposed off on hearing the assurance from the Attorney General that the Government would take all necessary steps to implement the directives of the EC. The judgment stated the desire

of the Court (first time in the country's judicial history) "to mitigate the environmental pollution" raised by the petitioner.

2. High Court's Strict Direction on Radioactive Milk: (XLVIII DLR 1996, p.438) On July 1, 1996, a Division Bench of the High Court Division delivered judgment concerning the radioactively contaminated dried skimmed milk powder. A case was filed by Dr. Mohiuddin Farooque, Secretary General, Bangladesh Environmental Lawyers Association (BELA). The petitioner alleged that the Bangladesh Government, represented by the Secretaries of the Ministries of Commerce (No.1) and Science.

3. Mohiuddin Farooque vs. Government of Bangladesh, WP 998 of 1994. and CA 24 of 1995 (1996.07.25) (Flood Action Plan Case).

Fact:

The activities of FAP, FAP-20 and the FPCO adversely affected more than a million human lives and natural resources and the natural habitat of man and other flora and fauna and that they aroused wide attention for being allegedly anti-environment and anti-people project. BELA conducted investigations at various times in 1992-93 in the FAP-20 areas. No proper environmental impact assessment has been undertaken in relation to FAP projects even though the European parliament declared in its resolution of 24 June 1993 that there was urgent need of changing the FAP's classification within the World Bank project scheme from category 'B' to category 'A1' requiring full environmental assessment for projects which appear to have significant adverse effect on the environment. A group of environmental lawyers possessed of pertinent, bonafide and well-recognized attributes and purposes in the area of environment and having a provable, sincere, dedicated and established status is asking for a judicial review of certain activities under a flood action plan undertaken with foreign assistance on the ground, inter alia, of alleged environmental degradation and ecological imbalance and violation of several laws in certain areas of the district of Tangail.

Grounds

In this case, the greatest environmental activist in Bangladesh, Dr. Mohiuddin Farooque tried heart and soul to materialize his wish of establishing environmental rights of the people of Bangladesh as well as save the affected people of Tangail. He argued that our constitution, in its Preamble as well as in the fundamental principles of state policy, enumerated that 'absolute faith and trust and faith on the almighty 'Allah' shall be the basis of all state actions. So it is the duty of every state organization to save the creature of Allah so as to show trust and faith on Allah. I think it was a unique argument to establish the environmental rights of the people of Bangladesh. The loss of biodiversity in the affected area of Tangail as well as the life which was

threatened by creating economic problems to them was the prime concern of the case. It is no doubt that the project which was affecting the biodiversity by impeding natural water flow as well as imperiling the life line of fishes there affected the right to life of the project area. And it had a wide and longstanding impact on the biodiversity as well as environment of Bangladesh. So it was correctly said in the judgment that- 'Although we do not have any provision like article 48-A of the Indian Constitution for protection and improvement of environment, articles 31 and 32 of our Constitution protects right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of the environment, ecological balance free from pollution of air and water, and sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life'.¹²

4. Farooque v. Government of Bangladesh WP 300 of 1995 2002.04.30) (Vehicle Pollution Case: Horn Specifications)

This case was about sound pollution.

Fact

This case was filed by the Petitioner Syeda Rizwana HassanJ Director (Programmes) and Member, Executive committee off Bangladesh Environmental Lawyers Association (BELA), a Society registered under the societies Registration Act 1860 seeking direction upon the respondents to take all adequate and effective measures to check pollution caused due to the emissions of hazardous smokes from. Motor Vehicles and the use of audible signaling devices giving unduly harsh, shrill, loud or alarming noise; and to take step within 8 weeks to activate the j centers with automatic computerized process that have already been constructed for giving fitness certificate so that unfit motor vehicles may not ply on the road.

Lesal Issues:

It is a mandatory provision of Rule 114(d) of Motor Vehicle Rules that each transport Vehicle namely stage Carriages, which include private buses, P.R.T.C. buses, mini bus etc. cannot be fitted with any other form of horns excepting a bulb horn. But no transport vehicle owner follows such Rules. She further submits that use of shrill horns including air horns are polluting air of the city of Dhaka. Accordingly, she prays for a direction that the provision Of rule 114(d) of Bengal Motor Vehicles rules provides that every transport vehicle shall be fitted with a bulb horn.

Decision:

The court, considering the matters in issue ordered the government to take adequate steps according to the statute.

5. BEL A v. Government of Bangladesh and others (WP of 2003) (Tannery Case)

Fact

The case was filed Failure to perform statutory public environmental duties on the part of the respondents and inordinate delay and negligence in arranging for relocation of the tannery industries/ units operating in the Hazaribagh area of the Dhaka Metropolitan City to combat the adverse effects of pollution caused by the tanneries in the Hazaribagh and surrounding areas under the Police Station- Lalbagh, Dhaka.

Legal Aspects

It was submitted that operation of the tanneries in the residential area of Hazaribagh and with no effective pollution fighting devices is continuing in flagrant violation of the legal provisions the Environment Conservation Act, 1995 (Act No.10 of 1995), Environment Conservation Rules, 1997, Factories Act, 1965 and Town Improvement Act, 1953. It was stated that the statutory duty of the respondents to protect environment and environmental recourses to maintain and restore the same in a manner favorable to the objectives of the law and policy. The cumulative, synergistic and consequential effects of the said failures of the respondents have resulted in the denial of the fundamental rights of the people guaranteed under Article 32 and 32 of the Constitution and in other law of the land.

Decision

The court Issued a rule Nisi calling upon the respondents to show cause as to why they should not be directed to relocate, within a given time frame, the tannery units from the Hazaribagh area of the City to a suitable location/site as contemplated in the Master Plan prepared under the Town Improvement Act, 1953 and ensure that adequate pollution fighting devices are developed in the new location/site as required under the Environment Conservation Act, 1 995 and the Factories Act, 1 965 and the rules made thereunder.

6. Farooque v. Government of Bangladesh WP 891 of 1994

This writ petition was made after several investigations up and down the country to assess the improvement, if any, made in the ecology of the country by lessening the adverse effects of pollution caused by the huge number of industries/factories identified by the Government itself and specifically pointed out in the notification

dated 7.8.1986 (Annexure-C to the petition) but in its utter dismay found no evidence as to any effective measure of legal action taken against any of the 903 industries/factories to curb their continuing discharge of the affluent and wastes into air and water bodies, rather, such pollution is" being continued unabated, uncontrolled and indiscriminately, not only by those industries/factories identified by the Government as mentioned in the list published in the Gazette notification dated 7.8 1986 but in many a new industries/factories sprung up since then and are severely polluting the environment and ecology endangering life and its support systems, thereby the respondents failed in performing their statutory duties and obligations cast upon them by the provisions of the Ordinance. As such, being aggrieved Late Dr. Mohiuddin Farooque on behalf of BELA obtained the instant rule. But he died during the pendency of the rule and Ms. Syeda Rizwana Hasan, Director (Program), BELA, has been authorized, by a resolution of the executive committee of BELA, taken on 30.6.2001, to represent BELA in the instant writ petition.

Conclusion

Legal experts contend that proper implementation of most of the existing laws can undoubtedly resolve many environmental problems. But, being a multi-disciplinary subject, environment requires activism from all concerned to which legal measures can only add more force. It also needs an inter-generational equity to justify the valued saying that we have not only inherited this earth from our descendants also. The intergeneration to leave behind a healthy planet requires us to utilize our wisdom. When it is for the sake of our own descendants, why should there be any dilemma?

Environmental issues need to be dealt with the participation of all concerned, with the government and citizens at the relevant levels. This, unfortunately, is almost absent in Bangladesh. Moreover international organizations and multinational corporations most often are pressing the government to adopt unsustainable policy, which cause serious degradation to the environment in developing countries including Bangladesh. Although poverty alleviation in Bangladesh has been considered as necessary, it must be mentioned that unplanned poverty reduction and development strategy becomes less effective and less sustainable. It is true that there is a need to change the pattern of consumption, especially within the upper and middle class people. To this end the government has taken many policies most of which are not favorable to agriculture and environmental development, rather cause deterioration in the environment. There are also development policies which are identified as anti-poor strategy. According to the Environmental Sustainable Index 2001 Report, Bangladesh has been ranked in 99th position. It scores 14 out of 100 countries in reducing vulnerability. A number of criticisms have emerged against conventional sustainable development approach in context of reducing poverty and maintaining sustainability in resource

management, disparity, exploitation, inequality etc. There is a need for comprehensive strategy to maintain sustainable resources as a means to reduce the poverty. -

People of Bangladesh are looking for self sufficiency in food production. Food security is peoples fundamental right to determine their access and benefit scaring over their food, agricultural resources that maintain their livelihood. Such an abject state of affairs looks for no debate or definition of the concept

related to sustainability, but a real sustainable Bangladesh without poverty and without degradation of natural resources.-The nature of intereatership between poverty, environment and sustainable development is a complex one and all these variables needed to be analyzed from the social, economics, political, cultural and resource management perspectives. In Bangladesh, we have adopted western development model in the context of poverty reduction, population control and sustainable resource management. But this kind of development models has failed to reduce poverty, population growth as well as environmental sustainabiity in a meaningful way. A number of factors are involved in this failure which includes lack of good governance and political institution, corruption, western development model, unplanned use of natural resources, defective industrialization and urbanization process, social Pollution is a major environmental problem throughout the whole of South Africa. South Africa derives 75, 2 % of its energy from coal (a non-renewable resource), and . most air pollution problems thus result from man's pattern of energy use and production. The rest of the energy comes from the following sources: 10,1% from crude oil, 9,8% from renewable bagasse and wood, 3,1% from nuclear power, 1,6% from gas and 0,2% from hydro power (Surridge, 1999).

Even if the pollutants manage to escape the low-level inversion they still become trapped in high level inversions, which occur when cooler rurai air moves in beneath warmer city air. These inversions commonly occur over Greater Johannesburg at a height of 1 200 - 1 600m above the ground,

- Height above sea level

Due to Greater Johannesburg being about 1 600 - 2000 m above sea

level, the levels of oxygen on the High-end are 20% less than that at the

coast. This means that incomplete combustion of fossil fuels takes

place.

Wind speed and direction influences the rae of diffusion of pollutants. .

The following table "gives the average wind speeds (m/s) and direction at the Johannesburg International Airport for 1993-1998 (Weather Bureau, 1999). The prevailing wind on the reef in Greater Johannesburg is north-northwest, especially in the wintertime. The wind can turn around and blow from the southeast in summer when it brings rain.