

**International Environmental Principles and It's  
Applicability in Legal System of Bangladesh..**

DISSERTATION SUBMITTED TO DAFFODIL INTERNATIONAL  
UNIVERSITY IN PARTIAL FULLFILLMENT OF THE  
REQUIREMENT FOR THE AWARD OF THE DEGREE OF

**BACHELOR OF LAWS**

**2015-2018**

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**2018**



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## **DECLARATION**

I am Tahrin Chowdhury student of LL.B (Hon's) hereby solemnly declare that, the presented work has been performed by me and has been submitted in the fulfillment of the requirement for the degree of Bachelor of Laws LL.B (Hon's).

I declare that thesis has been prepared by me and has not previously submitted to any other university/college/organization for any academic qualification/ certificate/ diploma degree.

The work presented is my original work and it is not submitted before.

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## CERTIFICATION

This is to certify that the thesis on "**International Environmental Principles and Its Applicability in Legal System of Bangladesh**" is done by Tahrin Chowdhury in the partial fulfillment of the requirements for the degree of LL.B (Hon's) from Daffodil International University of Bangladesh. The thesis has been carried out under my guidance and is a record of this research which is carried out successfully.

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## ACKNOWLEDGEMENTS

First of all, I am deeply indebted to my honorable course teacher Md. Safiullah, Senior Lecturer Department of Law Daffodil International University for his proper guidance on this topic. He has given a lot of his time in supervising me. Without his conceptual support, advice and direction, it would be really tough for me to complete this dissertation.

I am also grateful to the authority, journals and webs mentioned in the references but I alone bear the responsibility of errors, omission and discrepancy, if there is any.

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## **Abbreviation**

<b>PPP</b>	<b>Polluter Pays Principle</b>
<b>BELA</b>	<b>Bangladesh Environmental Lawyers Association</b>
<b>EIA</b>	<b>Environmental impact assessment</b>
<b>PP</b>	<b>precautionary principle</b>
<b>OECD</b>	<b>Organisation for Economic Co-operation and Development</b>
<b>UNEP</b>	<b>United Nations Environment Programme</b>
<b>EIS</b>	<b>Environmental Impact Statement</b>
<b>ECA</b>	<b>Environment Conservation Act/ Ecologically Critical Area</b>
<b>UN</b>	<b>United Nation</b>
<b>ACI</b>	<b>Advanced Chemical Industries</b>
<b>FAP</b>	<b>Flood Action Program</b>
<b>ICJ</b>	<b>International Court of Justice</b>
<b>WP</b>	<b>Writ petition</b>

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# Abstract

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Environment is one of the most demanding issues now a day's not only environmentalists are concerned about the environment but there has been going on few protests regarding saving the environment. In Bangladesh environment has become a hot issue since Rampal power plant establishment and saving Sunderban. In Bangladesh there is a lawyer association which is working for the environment which is called BELA. The environmental principles are scattered in Rio declaration, Stockholm declaration and Johannesburg declaration. These principles are part of the law and it is the base of every other environment project and strategy and any new international environmental instruments. Bangladesh's legal system is very much keen to situate these principles into domestic laws and to prevail the environmental issues with other laws there are different precedents which are establishing the court standing on environmental issues along with the supreme law of Bangladesh. In other words Bangladesh is working in favor of environmental concern of the world and keep ratifying each and every environmental convention, conference of the states. The objectives of this paper to find out about the existing principles in international platform, the enforceability of the laws in Bangladesh related to environment and the standing of the court and how the legal system makes all this work in Bangladesh. To write this paper the methodology has taken as doctrine research, Socio Legal and Analyzing approach. In conclusion it can be said that even though Bangladesh has ratified all of the environmental conventions but it is yet to be enforced as a part of Domestic law than under or making it falls under a right given in constitution But all three organs of legal system of Bangladesh is working to make these principles work so the right to environment can be surely prevail than anything else.

# Chapter 1: Introduction

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## 1.1. Introduction

The Earth's climate has changed a lot throughout the history of mankind. According to Intergovernmental Panel on Climate Change stated that that is climate is changing and it is indisputable. From Late nineties the earth's temperature has been rising and now it risen to 0.9 degrees Celsius.<sup>1</sup> Environmental Law is a term which is given in international instruments as a regulatory System between human and the natural environment, towards the purpose of reducing the negative impacts from human activity.

## 1.2. Background

Bangladesh achieved its independence in 1971 from Pakistan. From than Bangladesh is very much eager and aware about the conservation of the environment and environmental issues. After few years of Independence, the Government passed "the Environment Pollution Control Ordinance 1977". But it has some major problems therefore the Government enacted new policy which is called Environment Policy, 1992 followed by the Environment Action Plan, 1992 but even than the proper implement and execute of the environmental issues was still in a miss, Hence the Government passed the Bangladesh Environment Conservation Act in 1995; then the Bangladesh Environment Conservation Rules in 1997 and eventually the Environment Courts Act in 2000. The judiciary of Bangladesh is trying to apply as well as encouraging the modes of public interest litigation. In Bangladesh there are some non-governmental organizations who are working in this field. The Government is not only legislating national prospective but also it has ratified the major international conventions relating the environment which are: the Rio declaration 1992, the Stockholm Conference 1972; the UNFCCC 1992, Kyoto Protocol 1987, Johannesburg Conference 2002.<sup>2</sup>

## 1.3. Statement of Problem

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<sup>1</sup> NASA, *Climate change: How do we know?* <<https://climate.nasa.gov/evidence/>> accessed on 10 October 2018

<sup>2</sup> Noor Mohammad, *Development of environmental law and policy in Bangladesh: An overview*, (The national University of Malaysia, Published - 2013) <<https://ukm.pure.elsevier.com/en/publications/development-of-environmental-law-and-policy-in-bangladesh-an-over>>accesseded on 7 October 2018

It will reveal the actual situation of the legal system and the applicability of the international principle consistent with the national laws and the role of judiciary concerning environment in Bangladesh. Study will also give some recommendation if there is any needed to make the applicability more stronger and to make judiciary more diverted to natural justice.

#### **1.4. Research Questions**

- What are the International Environment Principles?
- What Are the Laws exist in Bangladesh concerning environment?
- How does the National Application of Environmental Laws took place in Bangladesh?
- What is the Standing of the Court on Environment problems?
- What are the remedies given by the Court of Law?

#### **1.5. Object of the Study**

The Main Object of this study is,

- To discuss different Principle of Environment in International platform
- To discuss the existing environmental law in Bangladesh
- To know the application of these laws in Legal system of Bangladesh
- To know the Role of Judiciary

#### **1.6. Conceptual Undertanding**

In 1960 some concerned group take notice have environmental change and realised the sufferings and consequence from than the public awareness began to grow and more people started to know about the environmental law. During 1990 some NGO's were working to addressing the issues of environment, among them was the Bangladesh Environmental Lawyers Association and Bangladesh Poribesh Andolon who with their judicial and extrajudicial activism set a standard for Environmental Law in Bangladesh.<sup>3</sup>

#### **1.7. Methodology**

The nature of the Research mainly will be based on statute and international principle .

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<sup>3</sup>Rayhanul Islam, *Environmental Law in Bangladesh* (Published December 1, 2017)

<<https://lawhelpbd.com/international-law/environmental-law/environmental-law-bangladesh/>> accessed on 10 October 2018.

Doctrine Research: This paper is based on Doctrine research. this paper will deal with the principle and laws which is related to environment and since both principle and laws are part of doctrine therefore it will be a Doctrine research.

This Study will be done under Analyzing Approach, Socio legal Approach as well as Comparative approach.

*Analyzing Approach:* Analysis involves expedition of cause and effect of a complex study. and here this approach has been followed to complete this study. under this study the International principles will be analyzed as well as existing laws related to environment similarly the work system of legal system of Bangladesh along with Judiciary will be seen here.

*Socio Legal Approach:* This research will be also Socio legal Approach as having Environmental harm is social problem to remove this problem the remedies will also be researched.

*Comparative Approach:* Since Both the International and National environmental instruments going to be discuss thus this research will be taking comparative approach as well.

Primary Source: The Primary Source which will be followed in this research will be Environmental Principle, Statute of Bangladesh related Environmental Law and Case laws.

Secondary Source: The Secondary Source will be Books, Internet materials and Journals, Newspaper Article.

Data Collection Tools: For Data collection I would need help of books, Scholarly writing, articles, journal, case reports, legislation, treaties, historical records, Some studies and online web materials

# Chapter 2 Principle of International Environmental Laws

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## 2.1. Principle of Prevention of Harm

Prevention of Harm also known as Trans-boundary Harm. It means that a state cannot act in a way in its territory that it cause harm in other state. It can be also explain by the acts of a country which may violate the sovereignty of another country and there is a possibility that it can give rise to conflict. Therefore according to the Traditional international law a country must respects each other country's jurisdiction over its territory. Thus it established the Principle of Prevention of Harm. In Trail Smelter arbitration, the duty to prevent extra-territorial environmental harm was most famously stated in the 1972 Stockholm Declaration in Principle 21.<sup>4</sup>

The International Court of Justice was the first to address that extra-territorial environmental harm is part of customary international law. Under the United Nation Convention on the Law of the Sea in Art. 192 first expressed the general requirement of prevention<sup>5</sup> which was further affirmed by of the United nation Convention on the Non-Navigational Uses of International Watercourses in Art. 20.<sup>6</sup>

## 2.2 Precautionary Principle

Human life is and has always been full of risks. And dealing with these risks are consider as the basic needs for our existence. Every day the increasing unpredictability, uncertainty, and possibly fatal risks, has confronted societies with the need to develop a principle which is called the Precautionary Principle. The emergency of the Precautionary Principle has shifted from before and after damage control.<sup>7</sup>

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<sup>4</sup> Stockholm Declaration 1972, principle 21

<sup>5</sup> UN Convention on the Law of the Sea, art 192

<sup>6</sup> Non-Navigational Uses of International Watercourses 1997, art 20

<sup>7</sup> World Commission on the Ethics of Scientific Knowledge and Technology, *The Precautionary Principle*, Published (Published on 2005) <<http://unesdoc.unesco.org/images/0013/001395/139578e.pdf>> accessed on 20 October 2018.

The Precautionary Principle is a scheme which deals with the apparent risks where scientific understanding is not yet complete. The Precautionary Principle is defined as follows, "*When human activities may lead to morally unacceptable harm that is scientifically reasonable but uncertain, actions shall be taken to avoid or diminish that harm.*" Morally unacceptable harm means harm which are fatal for both humans and environment and its effect will be irreversible, or inequitable for the present or future generations, or imposed without adequate consideration of the human rights of those affected.<sup>8</sup>

Although precautionary principle is not a measure but the opinions are divided among the experts as when to apply precautionary measures. The precautionary principle is closely linked to tutoreess. This has three aspects first of all the risk assessment Secondly the management and eventually the communication.<sup>9</sup>

### **2.3. EIA**

Environmental Impact Assessment also known as EIA is the way of examining the expected environmental effects of a certain proposed project. Each country are expected to consider the environmental aspects for their design of the projects and through consultation and preparation of an report build the propose project so it does not make any kind of bad impacts on the environment.<sup>10</sup>

UNEP defines Environmental Impact Assessment as a tool which is used to identify the environmental, social and economic impacts of a project. An EIA would necessarily involve the following stages: First of all the Screening and Scoping than there will be Assessment and evaluation of impacts and development of alternatives, Than there will be the Reporting the EIA report and it will be Reviewed and will be given the Environmental Impact Statement (EIS) and Finally the Decision-making and Monitoring, compliance, enforcement and environmental auditing.<sup>11</sup>

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<sup>8</sup> The Precautionary Principle <<http://www.precautionaryprinciple.eu/>> accessed on 20 October

<sup>9</sup> Didier Bourguignon, The precautionary principle: Definitions, applications and governance09-12-2015 <[http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_IDA\(2015\)573876](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2015)573876)> accessed on 20 October 2018

<sup>10</sup> Environmental Impact Assessment , <<http://www.epa.ie/monitoringassessment/assessment/eia/>> accessed on 15 October 2018

<sup>11</sup> What is Impact Assessment?, <<https://www.cbd.int/impact/whatis.shtml>> accessed on 15 October 2018

EIA is not a way of allowing an environmental 'veto' on development proposals. The International Platform has open the all state to take approach regarding EIA to create its own legislation relating to EIA.<sup>12</sup>

#### **2.4. Polluters Pay Principle**

The 'polluter pays' principle is an principles which depicts that it is he who produce pollution should bear the costs of damage towards human and environment. The polluter pays principle is part of a set of broader principles to guide sustainable development worldwide<sup>13</sup> Most of the time, the 'polluter pays' principle is taken from the government in form of fiscal.<sup>14</sup>

The polluter pays principle is mainly implement to command and control but it can also be applied in market mechanisms.<sup>15</sup> The polluter pays principle is preventive and compensatory principle even then few countries take this as a retrospective liability on the polluter. Polluters pay principle favors making the defaulter correct but less concerned very of the idea of fault.<sup>16</sup>

#### **2.5. Sustainable Development**

Sustainable development is a new and most talked concept in the field of Environment. It means a development or a process which not only meets the needs of the present but also the future generation without compromise<sup>17</sup> The concept first came into light in 1987 with the publication of the Brundtland Report. It promotes environmental conservation and sustainability.<sup>18</sup> Sustainability is the hot topic for today's global framework as by 2030 UN

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<sup>12</sup> What is Environmental Impact Assessment? , <<https://www.uow.edu.au/~sharonb/STS218/eis/what.html>> accessed on 17 October 2018

<sup>13</sup> What is the polluter pays principle?, Published on 11 May, 2018  
<<http://www.lse.ac.uk/GranthamInstitute/faqs/what-is-the-polluter-pays-principle/>> accessed on 11 october 2018

<sup>14</sup> Hali Healy, Sylvia Lorek and Beatriz Rodríguez-Labajos, *Polluter pays principle*  
<<http://www.ejolt.org/2013/05/polluter-pays-principle/>> accessed on 18 October 2018

<sup>15</sup> OSPAR Commission, *Polluter Pays Principle*<<https://www.ospar.org/about/principles/polluter-pays-principle>> accessed on 22 November 2018

<sup>16</sup> *Polluters Pay principle case study*, (Published: Wed, 12 Jul 2017) <  
[https://www.ukessays.com/essays/environmental-studies/polluter-pays-principle.php#\\_ftn2](https://www.ukessays.com/essays/environmental-studies/polluter-pays-principle.php#_ftn2)> accessed on 1 December 2018

<sup>17</sup> What is sustainable development <<http://www.sd-commission.org.uk/pages/what-is-sustainable-development.html>> accessed on 18 October 2018

<sup>18</sup> What is sustainable development <<https://www.acciona.com/sustainable-development/>> accessed on 11th October 2018



has taken the Agenda for Sustainable Development and also under Sustainable Development Goals (SDGs).<sup>19</sup>

Today, the Division for Sustainable Development Goals (DSDG) in the United Nations Department of Economic and Social Affairs (UNDESA) provides support to state parties to meet these Goals to make that future better for our future generation and also livable for our present generation.<sup>20</sup>

## **2.6. Co-operation principle**

Through co operation the principle of International environmental law was founded. According to Principle 24 of the Stockholm Declaration 1972 states that ‘international matters relating to protection and improvement of the environment may handled in a co-operative intention’<sup>21</sup>, Moreover in Principle 7 of the Rio Declaration 1992 further explain that, ‘All states should be co-operative with each other for the global partnership in a purpose to conserve, protect and restore the ecosystem’.<sup>22</sup> and Finally Principle 13 of the Rio Declaration refers both to national and international activities in this field.<sup>23</sup>

In 1995, the ACI adopted the revised Statement on the Cooperative Identity which contains the definition of a cooperative, the values of cooperatives, and the seven cooperative principles.<sup>24</sup> These 7 principles of cooperatives are Voluntary and open membership, Than Democratic member control with Member economic participation followed by Autonomy and independence and Financial education, training, and information and Finally the Cooperation among cooperatives and Concern for the community.<sup>25</sup> These seven principle is very necessary for the relation of cooperation to be fulfilled. without these a co operation between countries are consider to be invalid.

## **2.7. Inter Generation Equity**

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<sup>19</sup> IISD, *Sustainable development* <<https://www.iisd.org/topic/sustainable-development>> accessed on 11th October 2018

<sup>20</sup> UNESCO, *Sustainable Development Goals* <<https://sustainabledevelopment.un.org/?menu=1300>> accessed on 12th October 2018

<sup>21</sup> Principle 24 of the Stockholm Declaration 1972

<sup>22</sup> Principle 7 of the Rio Declaration 1992

<sup>23</sup> Malcolm N Shaw, *International Law*, (Sixth Edition), Published by Cambridge University Press, 2008 p 863

<sup>24</sup> Coop, *Cooperative identity, values & principles* <<https://www.ica.coop/en/cooperatives/cooperative-identity>> accessed on 17 October 2018

<sup>25</sup> Coop, *7 Principles of a Cooperative* <<https://co-opcreditunions.org/7-principles-of-a-cooperative/>> accessed on 19 October 2018

The principle of intergenerational equity states that, every generation share the Earth in common with both the present generation and past as well as the future. It shows a concept of fairness among generations in the use and conservation of the environment. The principle is the backbone for the sustainable development therefore sustainable development or the concept of Sustainable development was established from this principle. Also it is mainly applied to cultural resources and to economic and social problems.<sup>26</sup>

In Stockholm Declaration 1972 under principle 1 it is given that all man is a responsible for protecting and improving the environment for both present and future generations. The Rio Declaration joins this principle with the right to development, which is provided by the Principle 4 which states that inter generation equity must be fulfilled when development is equitably meet the needs of both present and future generations'.<sup>27</sup>

## **2.8. Equitable Utilization of Shared Resources**

Equitable utilization is a widely accepted principle which is applied in equal sharing relating the watercourses and fish and other exploited species. It is given in Art. 2 of the 1997 UN Convention on the Law of Non-Navigational Uses of International Watercourses, which states that, the parties to take all the right measures to ensure that international watercourses and used it in a reasonable manner which also supports equitable way. The status of equitable utilization was recognized as fundamental norm by the ICJ Case called the Gabčíkovo-Nagymaros Project<sup>28</sup> and also in the earlier Fisheries Jurisdiction Cases<sup>29</sup> where the ICJ addressed that the obligation of reasonable use and good faith negotiations aimed at an equitable result.<sup>30</sup>

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<sup>26</sup> Edith Brown Weiss, *Intergenerational Equity*, Oxford public international law <<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1421>> accessed on 1st November 2018

<sup>27</sup> Philip Sands, *Principle of International Environmental Law* (Second Edition), Cambridge University Press 2003, P 257

<sup>28</sup> Gabčíkovo-Nagymaros Project, Hungary v Slovakia, Judgment, Merits, ICJ GL No 92, [1997] ICJ Rep 7, [1997] ICJ Rep 88, (1998) 37 ILM 162, ICGJ 66 (ICJ 1997), 25th September 1997, International Court of Justice [ICJ]

<sup>29</sup> Fisheries Jurisdiction, Germany v Iceland, Interim Measures, Order, [1973] ICJ Rep 313, ICGJ 145 (ICJ 1973), 12th July 1973, International Court of Justice [ICJ]

<sup>30</sup> Alexandre kiss, *Guide to International Environmental Law*, Published by Mairtinus Nijoff, P 108

# Chapter 3 Laws that is regulated in Bangladesh for Environmental Protection

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## 3.1 Constitution of People's Republic of Bangladesh

The Constitution of Bangladesh have given the "right to life and personal Liberty"<sup>31</sup> as a fundamental right to its people but it does not clearly recognize the right to environment as a fundamental right. Even though in Dr. Mohiuddin Farooque and Another vs. Bangladesh, the Supreme Court of Bangladesh has decided that the right to life is a fundamental right which not just includes the right to life peacefully but also the right to enjoy a healthy environment.<sup>32</sup>

Article 18A of the Constitution of People's Republic of Bangladesh states that *"the state shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources ,biodiversity, wetlands, forests and wild life for the present and future citizens."*<sup>33</sup> Therefore Bangladeshi people can have the right to healthy environment as a part of right to life and it is consider as fundamental for living.

## 3.2 Environment Conservation Act 1995

The Bangladesh Environmental Conservation Act passed in 1995 is the most important document in the framework of Bangladesh in relation of Environment. it was made to conserve the country's environment. Its main goals were to *"provide for conservation of the environment, improvement of the environmental standards, and control and mitigation of environmental pollution"*<sup>34</sup>

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<sup>31</sup>Constitution of People's Republic of Bangladesh, art 31 and art 32

<sup>32</sup> Dr. Mohiuddin Farooque and Another vs. Bangladesh XLVIII DLR 1996, p438 and XVII BLD 1996 (AD) p1

<sup>33</sup> Constitution of People's Republic of Bangladesh, art 18A

<sup>34</sup>UNDP Bangladesh , *Inclusive Budgeting and Financing for Climate Resilience(IBFCR)*What is the project about?<[http://www.bd.undp.org/content/bangladesh/en/home/operations/projects/environment\\_and\\_energy/inclusive-budgeting-and-financing-for-climate-resilience1/national-policies-and-strategies/the-bangladesh-environment-conservation-act--1995--.html](http://www.bd.undp.org/content/bangladesh/en/home/operations/projects/environment_and_energy/inclusive-budgeting-and-financing-for-climate-resilience1/national-policies-and-strategies/the-bangladesh-environment-conservation-act--1995--.html)> accessed on 27 October 2018

*Criticism of the Act:* This Act was provided by the environment policy of 1992 and the national environment management action plan of 1995. Even though this Act was enacted it has several loopholes. Which are explained below:

- I. There are some Institutional defects as there is no specific provision regarding appointment, qualification, remuneration and retirement or removal of Director General.
- II. It does not have any kind of all independence to its institutions.
- III. It does confer unlimited and unfiltered powers on the Director General of Department of Environment.
- IV. It is not accompanied by the Constitutional Mandate as it is not mentioned in Bangladesh Environment Conservation Act.
- V. And Finally in the matter of declaration of ECA, Government satisfaction is subjective satisfaction and There is no time-limit for taking measure in such area.

### **3.4 Environment Courts Act 2000**

Currently Bangladesh is facing an environmental vulnerability. The Environment Court Act (ECA) 2010 requires no such experts in our environmental courts. The major problem with this act is the court can try any case only if it is arising out of the Environment Conservation Act 1995, but not from the other environmental laws.<sup>35</sup> This Act does also have some Loopholes. there are:

- I. According to section 4 of the ECA, 2010 "*the environment court consisting of joint district judge who is required to perform the functions of environmental court in addition to his general duties*" which makes his workload more heavy and thus he has difficulties to handle both his special powers and general duties.
- II. The environmental offences are of special nature involving scientific and technical implications of environmental violations therefore expert knowledge is specially

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<sup>35</sup> Md. Ahsan Habib , *Reflections on Environmental Adjudication Regime of Bangladesh*, (BDLD, Published on - June 12, 2015) <<http://bdlawdigest.org/bangladesh-environment-court-act-2010.html>> accessed on 22 October 2018

required. But Bangladesh majorly lack in this matter as there is no enough expert and nor there is an well established training program.<sup>36</sup>

### **3.5 Brick Manufacturing and Brick Kilns Establishment (Control) Act, 2013**

Act was published in the Bangladesh Gazette in 2013. This Act is passed to provide for the control of activities relating to brick manufacturing and brick kiln establishment But this Act also have some challenges.

- I. According to the Act there are lots of prohibition such as to establish a kilns in several areas such as, residential, preserved or commercial area. City Corporation, Municipality or Upazila headquarters, forests, sanctuary, gardens or wetlands, agricultural land, Ecologically Critical Area (ECA), and areas adjacent to these areas.
- II. The law also prohibits to establish kiln in the agricultural land and also within one kilometer distance from any land thereof.
- III. Also law provides mandatory provision to manufacture minimum 50 percent hollow brick which is impossible due to the lack of technology skill in Bangladesh.
- IV. Again The law talks about different areas or zones but in reality there is no complete land zoning in Bangladesh<sup>37</sup>

However, According to Environment ministry about 63 percent of brickfields only met the ‘modern kiln’ regulation.

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<sup>36</sup> Md. Khaled Miah, *Effective functioning of Environment Court*, (The DailyStar, Law opinion: Published on 12:00 AM, August 25, 2015)<<https://www.thedailystar.net/law-our-rights/effective-functioning-environment-court-131956>>

<sup>37</sup>Imtiaz Ahmed Saja, *Feasibility of Brick Kiln Control Act*, (The DaiyStar law in-depth Published on 12:00 AM, May 17, 2016 ) <<https://www.thedailystar.net/law-our-rights/feasibility-brick-kiln-control-act-1225177>> accessed on 22 October 2018

# Chapter 4 National Applicability of the laws and the International Principles

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## 4.1. Sustainability application in court

According to Principle 4 of Rio Declaration 1992 it is given that "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it"<sup>38</sup>

In Bangladesh under the FAP case, the Court applied sustainable development in an indirect manner and gave priority to a development project funded by international donors<sup>39</sup> and sustainable development has been defended as a life's element which make the economy and ecology sustainable.

Where in Indian national courts the courts mentions international principle directly and also apply them stay in within there domestic jurisdiction and limitation. Whereof, Bangladesh do not mention any of the principles of international environmental law directly. However there are some remarkable case which regard the application of principles of international environmental law. Such as the **Flood Action Program case** where the principle of sustainable development was applied by the court indirectly in Bangladesh.

In this case, Dr. Farooque challenged the validity of some flood action programs taken by the government in 1995 stating that the project would adversely affect and injure more than a million people by way of damage to the soil and threatening human health and worsening sanitation and drinking water supplies. It was also claimed that the project would create environmental disaster and create ecological imbalance. Following these claim by applicant and accepting there locus Sandi the Appellate Division held that the right to healthy environment is amenable under Article 102 of the Bangladesh Constitution. Justice ATM Afzal declared rather that in the *'context of engaging concerns for the conservation of environment, irrespective of the locality where it is threatened any person'*<sup>40</sup> should be

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<sup>38</sup> Rio Declaration 1992, principle 4

<sup>39</sup> Farooque v Bangladesh WP no 998 of 1994

<sup>40</sup> Flood Action Plan Case WP 998 of 1994, CA 24 of 1995 (1996.07.25)

attributed to his right to life. Also Justice B. B. Roy Chowdhury made it clear that “Articles 31 and 32 of our Constitution protect right to life as a fundamental right.”<sup>41</sup>

#### 4.2. The precautionary Principle's application in court

Mainly the precautionary principle is applied where there is scientific uncertainty and the decision-makers can consider what is harmful and not by their activities on the environment.<sup>42</sup> Under to the precautionary the polluter, or the polluting state needs to established their activities is not not going to majorly affect the environment before it is granted to be built or it start its proposed activity.<sup>43</sup>

Under Bangladeshi law and Bangladeshi court precedent precautionary principle is taken as guiding but not binding principle.<sup>44</sup> In Bangladesh, the court examined the seriousness of environment damage to determine whether there is any need for precautionary approach.<sup>45</sup> but it is with a great sorrow that Bangladesh does not consider PP as a customary law where the Indian courts is avoiding this strict rules and procedures of evidence and application and consider precautionary principle as a the customary law thus given it a abidingness.<sup>46</sup> Moreover, Bangladesh judiciary accept the Rio Declaration 1992 has a ‘persuasive value’ as Bangladesh did sign the Declaration. But in the mean time, the judiciary believes that an international agreement can only be implemented when when it is enforced under domestic laws or part of legal system in Bangladesh.<sup>47</sup>

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<sup>41</sup>M. Z. Ashraful, *Application of the Principles of International Environmental Law in the domestic legal System of Bangladesh: A Critical Study on the legal framework and the position of judiciary* (IOSR Journal Of Humanities And Social Science (IOSR-JHSS)Volume 19, Issue 5, Ver. IV (May. 2014), PP 18-24e-ISSN: 2279-0837, p-ISSN: 2279-

0845)<[https://www.academia.edu/7124631/Application\\_of\\_the\\_Principles\\_of\\_International\\_Environmental\\_Law\\_in\\_the\\_domestic\\_legal\\_System\\_of\\_Bangladesh\\_A\\_Critical\\_Study\\_on\\_the\\_legal\\_framework\\_and\\_the\\_position\\_of\\_judiciary](https://www.academia.edu/7124631/Application_of_the_Principles_of_International_Environmental_Law_in_the_domestic_legal_System_of_Bangladesh_A_Critical_Study_on_the_legal_framework_and_the_position_of_judiciary)> accessed on 25 October 2018

<sup>42</sup>The Stockholm declaration 1972 and the Rio declaration 1992

<sup>43</sup>O. McIntyre and Thomas Mosedale, “*The Precautionary Principle as a Norm of Customary International Law*”, *Journal of Environmental Law*, (1997)

<sup>44</sup>Bangladesh, the Wildlife Acts, the Fisheries Act

<sup>45</sup>Dr Mohiuddin Farooque vs Bangladesh and Others, WP No. 92 of 1996

<sup>46</sup>ellore Citizen’s Welfare Forum,(1996) 5 SCC 647

<sup>47</sup>Jona Razzaque , *Access to environmental justice: Role of the judiciary in Bangladesh*, (Published 2000) <<http://www.biliabd.org/article%20law/Vol-04/Jona%20Razzaque.pdf>> accessed on 21 October 2018

### **4.3. Polluters pay's application in court**

The polluter pays principle (hereinafter, PPP) also means which principle helps to prevent and reduce environmental harm and presume that polluters will bear the costs of damage which has been constituted by their activities. In today's scenario, the public authorities makes environmental standards which are needed by them from polluters that they will take steps and will comply with those rules.

However, Bangladesh judiciary is unlikely to take make PPP be treated as a part of customary international law judging from other principle. But, if any cases on this issue are presented before the court, it would follow the absolute liability and will make the polluters, be it a company or a public body be responsible for their pollution.



# Chapter 5 - Remedies and Recommendation to Judiciary system

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## 5.1 Remedies given by the Court

So far Bangladesh court is dealing quite a lot of the environmental issues and it has given remedies to the aggrieved person which are injunction, declaration and Compensation. In the History of Bangladesh in four environmental cases the court has granted injunctive relief in a vision to lessen the environmental damage. Though no suo motu actions has been taken by the Bangladeshi judiciary in any environmental case yet. There is a number of opportunity to the courts to make innovative direction and to take suo motu action in environmental cases.<sup>48</sup> and not only suo motu action but Bangladesh judiciary should also apply the international principle as a primary law then the secondary source of law. Also Bangladesh judiciary has granted right to healthy environment as a part of right to life which further prolong as a Fundamental right according to the highest law of the country and moreover by making it as a part of right to life the judiciary not only gave importance to it but also made the executive and judiciary bound to ensure the right of the party. Therefore though Bangladesh has yet to give a direct remedies if there is a violation of environment conservation but as a fundamental right Bangladesh has consider giving the remedies under it.

## 5.2 Recommendations to Judiciary System

Bangladesh is working slowly but steadily towards the improvement of environment. Though it lack in most of the case to give the injured party their natural justice but it is working in favor of environment and to make the judiciary system more prompt the below recommendation are given:

The Judiciary needs to skilled the persons of the court up. Most of the people in court including the judge is not well aware of the principle rather they try to include the environmental factor under cpc and crpc or most of the time in constitution. Therefore the judiciary should address that there are missing of proper law related environment and the existing environmental laws are not adequate.

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<sup>48</sup> Jona Razzaque , *Access to environmental justice: Role of the judiciary in Bangladesh*, (Published 2000) <<http://www.biliabd.org/article%20law/Vol-04/Jona%20Razzaque.pdf>> accessed on 21 October 2018

Secondly, The government should establish more environmental court rather one court in a district and that also joint with a general court judge. as it exhaust the judge as to choose from which case to deal first whether the special case like environment or the regular cases under his court under regular crimes.

Thirdly, The people of Bangladesh needs to be made well are of the right of environment and which actions is under violation of their rights. more awareness needs to be built in Bangladesh among the general people.

Moreover, ‘no win no fee’ could be an option to initiate or encourage more environmental litigation. This would allow the lawyers to take on cases without charging their clients.<sup>49</sup>

Therefore these are some of the recommendation which I would like to see both the government and the judiciary to take.

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<sup>49</sup> Jona Razzaque , *Access to environmental justice: Role of the judiciary in Bangladesh*, (Published 2000) <<http://www.biliabd.org/article%20law/Vol-04/Jona%20Razzaque.pdf>> accessed on 21 October 2018

## Chapter 6 Conclusion

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After analysing the entire legal framework and related cases it can be concluded that there is no direct implementation of the principles of international environmental law in Bangladesh. Although in some cases the Judiciary has tried to take turn to explaining on different approach between the principles of international environmental law and the existing detail the regime of Bangladesh but it is very much cautious to apply this principle directly in the national level. In the advancement of environmental law like many other countries the constitution of Bangladesh should incorporate the strong provisions with regard to the environmental protection and conservation so that the fundamental and recognize principle of international environmental law can be implemented in the domestic legal system very effortlessly. Another important thing is that it is high time to incorporate environmental right in the constitution desh is one of the fundamental rights. So like many other modern constitution of the world Bangladesh should incorporate in a constitution at least some basic principles of international environmental law. However recommendation is that Bangladesh should amend the existing environmental related laws and enact some other legislations incorporation of these principles to adjust the changing circumstances of international regime. While a new environmental jurisprudence has emerged in Bangladesh through judicial activism but this will flourishing only one the legal Framework will be strong as well. The laws of environment which have adopted this adopted in Bangladesh are not adequate respect of international prospective. To fulfill the purpose international laws bangladesh needs to go some extra miles. Is Bangladesh is a party of international conventions entreaties regarding environment take some initiative to implement environmental laws. Bangladesh has to has to amend the laws in order to prevent environmental pollution. Furthermore, international authority requires more conscious about the implementation process of environmental laws respected States. The authorities have to emphasize on the penalty provisions in case of violation of environmental laws by any state parties. Legal Experts on contend set proper implementation of most of the existing laws can undoubtedly is a many environmental problems. But being a multidisciplinary subject environment because activism from all concerned to which legal measures can only add more force. Also needs and intergenerational equity to justify the valued that we have not only inherited this earth from our descendants also. Certainly there are some loopholes in most of the laws made by Bangladesh or is enforced by Bangladesh therefore Bangladesh needs more effective laws and guidelines too to make environmental protection and conservation more

strong and effective and only then can Bangladesh achieve the sustainable goals which is set by UN sustainable development goals. Even all of this Bangladesh is not at all in bad position regarding the environment issues and Bangladesh has goals to make the land more sustainable and aggressive as well for both the future and Present. and this is the sole reason why Bangladesh is attaining most of the environmental conference and ratifying the international instrument.

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