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**Research**

**On**

**“Environmental Policy of Bangladesh and Role of Judiciary of Bangladesh to  
Protect Environment.”**

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## **DEDICATION**

This Research Monograph is dedicated to all of my beloved teachers who always encourages me and help me to pursuing legal studies.

-Nurul Adnan Mostafa

## DECLARATION

This is *Nurul Adnan Mostafa*, **ID NO: 151-26-756**, a regular student of Bachelor of Laws Program under the Department of Law, Daffodil International University, hereby declaring that this Research Monograph on “**Environmental Policy of Bangladesh and Role of Judiciary of Bangladesh to Protect Environment**.” is prepared only for the requirements of the Department and for the partial fulfillment of LL.B. (Hons.) degree.

-Nurul Adnan Mostafa

## TABLE OF ABBREVIATIONS

|              |   |
|--------------|---|
| &            | And   |
| AD           | Appellate Division                                      |
| Art.         | Article   |
| BLD          | Bangladesh Legal Decisions                              |
| C.J          | Chief Justice   |
| Constitution | The Constitution of the Peoples' Republic of Bangladesh |
| DOE          | Department of Environment                               |
| ECA          | Ecologically Critical Area                              |
| ECHR         | European Convention for the Protection of Human Rights  |
| EIA          | Environmental Impact Assessment                         |
| HCD          | High Court Division                                     |
| <i>Ibid</i>  | <i>Ibidem</i>   |
| J            | Justice   |
| LL.B.        | Bachelor of Laws  |
| Ltd.         | Limited   |
| MEF          | Ministry of Environment and Forests                     |
| MIS          | Management Information System                           |

|        |  |
|--------|--|
| MLGRDC | Ministry of Local Government Rural Development and Corporative |
| MOI    | Ministry of Industry   |
| NEMAP  | National Environmental Management Action Plant                 |
| No.    | Number   |
| NUB    | Northern University Bangladesh                                 |
| P.     | Page   |
| PAB    | Pesticides Association of Bangladesh                           |
| Para   | Paragraph  |
| PPW    | Plant Protection Wing  |
| R      | Regime   |
| SC     | Supreme Court  |
| SEHD   | Bangladesh Society for Environment and Human Development       |
| Vol.   | Volume   |
| Vs.    | Versus   |
| WARPO  | Water Resources Planning Organization                          |
| WHO    | World Health Organization                                      |

## TABLE OF CASES

*“Bangladesh Environment Lawyers Association (BELA) v. Bangladesh and others: Writ Petition No. 4098/1999 (Buriganga Encroachment)”*

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*“Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh and others: Writ Petition 3336 of 2002 (Filling up of Ashulia Flood Flow Zone)”*

*“Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh and others: Writ Petition No. 4685 of 2002 (Protection of Fuldi River from Unlawful Leasing)”*

*“Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh and others: Writ Petition No. 1430 of 2003 (Tannery case)”*

*“Bangladesh Environmental Lawyers Association (BELA) vs. Bangladesh & others: Writ Petition no. 2224 of 2004 (Protection and Conservation of Sundarbans)”*

*“Bangladesh Environmental Lawyers Association (BELA) vs. Ministry of Land and others: Writ Petition No 4286 of 2003 (Protection and Conservation of Sonadia Island)”*

*“Bangladesh Environmental Lawyers Association (BELA) vs Bangladesh & others: Writ Petition No. 3091 of 2000 (Illegal Shrimp Cultivation)”*

*“Kumar Roy vs. Bangladesh and others: Writ Petition No. 1840 of 1999 (Nabaganga River)  
Dr. Mohiuddin Farooque vs. Bangladesh & others Writ Petition No. 6020/1997 (Hill Cutting Case)”*

*“Dr. Mohiuddin Farooque vs. Bangladesh & others: Writ Petition No. 300/1995 (Vehicular Pollution Case)”*

*“Dr. Mohiuddin Farooque vs. Bangladesh & others: Writ Petition No. 92/1996 (Radiated Milk)”*

*“Dr. Mohiuddin Farooque vs. Bangladesh & others: Writ petition No. 948/1997 (Uttara Lake Fill-up)”*

*“Dr. Mohiuddin Farooque vs. Bangladesh & others: Writ petition No. 1252/1997”*

*“Dr. Mohiuddin Farooque vs. Bangladesh & others: Writ Petition No. 6105/1997 (Gas Explosion at Magurchara)”*

*“Dr. Mohiuddin Farooque vs. Bangladesh & others: Writ Petition No. 7422/1997 (Gulshan Lake Fill-up)”*

*“Khushi Kabir vs. Bangladesh and others: Contempt Petition No. 33 of 2001 (Arising out of Writ Petition No. 4098 of 1999) (Buriganga Encroachment)”*

*“M.C. Mehta vs. Union of India and Others (1998) 9 SCC 93”*

*“M.C. Mehta vs. Union of India AIR 1992 SC 382”*

*“Nijera Kori vs. Bangladesh & others: Writ Petition No. 1162/1998 (Allotment of Land for Shrimp Cultivation)”*

*“Nijera Kori vs. Bangladesh & others: Writ Petition no. 7248 of 2003 (Shrimp Cultivation)”*

#### **LIST OF STATUTES, ACT AND OTHER DOCUMENTS:**

##### **Constitution:**

- *“The Constitution of the People’s Republic of Bangladesh.”*

##### **Bare Acts:**

- *“The Agricultural Pest Ordinance, 1962.”*
- *“The Agricultural Pesticides Ordinance, 1971.”*

- *“The Bangladesh Bureau of Statistics Report, 2004”*

- *“The National Environment Management Action Plan (NEMAP) of Bangladesh.”*



## **Abstract:**

Conservation of environment is most important issue all over the world. Due to climate change the existence of life on earth is in threat. The Main reason of climate change is continuous environment pollution. Environmentalists of the world have tried to focus the attention of world leaders on this and other pressing environmental matters for a long time. The Stockholm Conference on Human Environment in 1972 was one of the first internationally collaborative efforts.

In Bangladesh perspective judiciary playing a vital role in the enhancement and interpretation of environmental law. The Judiciary have played and will continue to play an important role in the development of legislative as well as in the institutional regimes for sustainable development. Promoting the goals of sustainable development is the judiciary's main role as well as dispute settlement. Judicial decisions give close attention to fundamental principles of law and justice which are vital to realize the aim of sustainable development. Added that, their judgements take steps precedents to courts within national and outside national boundaries.

The Constitution of Bangladesh, 1972 does not bluntly take steps for the right to healthy environment as a fundamental right. It is state in Article 31 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”***. Article 32 states that ***“No person shall be deprived of life or personal liberty saves in accordance with law”***.

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## Chapter One

### Introductory Chapter

#### 1.1 Introduction

The gradual development of civilization, the rapid progress in science and technology and ever increasing population affected the life style of the human race at the cost of environment. Deforestation is responsible for inaction of ozone layer and biodiversity. As a result, international community expressed deep concern and for protection of global environment organized regional, national and international conferences and government made various treaties on this subject. The measures adopted in these conferences and conventions crystallized certain principles and rules relating to the protection of environment of the world.<sup>1</sup>

The term environment is very wide which implies the natural world in which people, animal and plants live side by side. Law of environment can control this and Department of Environment is the proper authority.

International environmental law, a new branch of Public International Law, addresses those principles and rules of international law which are essentially relative to the protection of the environment which serves central theme of the present world.

#### 1.2 Nature and Scope

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. 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 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 has been emerged recently due to the rise of global temperature, sea level rise and frequent

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<sup>1</sup> Md.Iqbal Hossain, International Environmental Law Bangladesh Perspective, Published by- Ain Prokashan Dhaka, Dhaka, 2<sup>nd</sup> Edition, 2008,

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 should have to follow the Code of Civil Procedure, the Criminal Procedure Code & the Evidence Act along with laws relating to environment.

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. Moreover, 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

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 Mean 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."*

### **1.3 Objective of the Research:**

- (1) Its main object is to protect our environment and also many scopes to protect the Global environment.
- (2) The another object is to aware people to protect our planet.
- (3) To create a different dimension among the government org
- (4) To promote the sustainable development goal.
- (5) This article makes a comparison between national and international environmental laws.
- (6) This article examines a principle which is "common but differentiated responsibilities"

### **1.4 Research Methodology**

The research is done by the following qualitative methodology and used the mixed approach. My research will be about the different environmental laws and role of judiciary of Bangladesh. So I do analytical study sometimes. I also do empirical study which is data based study. To complete my research, I took help from the different books, scholars article, Journal, case study, legislation, treaties, online web materials.

### **1.5 Limitations**

When I was making this report I faces some problems. The main limitation was current statistics. There were some other limitations like insufficient of information.

## Chapter Two

### Existing Environmental Issues in Bangladesh

#### 2.1 Introduction

Conservation of environment is most consulting issue all over the world. The lives on the earth is under threat due to climate change for pollution of environment. Environmentalists of all over the world are trying seek attention of the world leaders for making awareness among the people. The Stockholm Conference on Human Environment in 1972<sup>2</sup> is one of the first internationally collaborative efforts. This effort was given a new dimension in 1992 by the Earth Summit which was held in Rio de Janeiro, Brazil.

We can amalgamate that we are affecting by different environmental problems and by this matter different countries are victim. Bangladesh is one of them. Nowadays Bangladesh is facing many problems which are related with environment. Some problems causing naturally and some are created by humans. Over-population and poverty can be traced the major causes environmental problems in Bangladesh.

#### 2.2 Current Environmental Problems in the Country:

Bangladesh is normally a reverent country. It has highly fertile delta soil and situated in tropical zone. The main source of its economy is agriculture. This is an over populated country. For highly densed populated country its faces different natural and human created environmental problems. Such s flood natural calamities. On the other hand, human created problems are making brickfield, global warming, making industry etc. For more population there is need more car and those cars are responsible for carbon emission. For resulting of carbon emission world is warming and Bangladesh is a great victim of global warming.

#### 2.3 Right to Healthy Environment:

The constitution of Bangladesh does not provide right to healthy environment. Article 31 states that **“every citizen has the right to protection from action detrimental to the life, liberty,**

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<sup>2</sup> Md. Iqbal Hossain, *International Environmental Law Bangladesh Perspective*, Published by- Ain Prokashan, Dhaka, 2<sup>nd</sup> Edition, 2008, p.14



body, reputation or property, unless these are taken in accordance with law.”<sup>3</sup> Article 32 states that “No person shall be deprived of life or personal liberty saves in accordance with law”.<sup>4</sup> This article ensure the right to life. The question is that whether right to life incorporate right to environment or not. There are two cases in relation with this matter. In “*Dr. Mohiuddin Farooque vs Bangladesh and others*”<sup>5</sup> case it is said that “articles 31 and 32 of our Constitution protect right to life as fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.”<sup>6</sup>In another case which is also known as “*Dr. Mohiuddin Farooque vs. Bangladesh and others*”<sup>7</sup> stated that “right to life includes right to fresh air and water and a situation beyond animal existence in which one can expect normal longevity of life.”

So it is clear that right to healthy environment is now a fundamental right. It is proved in above cases. Judiciary ensure it for implement the role of law.

#### **2.4 Public Interest Environmental Litigation:**

The governance system in Bangladesh is disorganized. There is no consistency between policy law and institution. So for this reason there is present anarchy. Sometimes law enforcements agencies became law violators. The law enforcers are often the violators. So there is no public accountability. So for this reason the initiative cannot came into force. The general public has no activities in this sector. There are some so called public activities. In public interest litigation BELA has first take initiative. They filed a case in January 1994. Bangladesh has no environmental case before issuing of BELA.

In July, 1996 the Appellate Division has given its decision in which Mustafa Kamal, J. said, “In so far as it concerns public wrong or public injury or invasion of fundamental rights of an indeterminate number of people, any member of the public, being a citizen, suffering the

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<sup>3</sup> The Constitution of the People’s Republic of Bangladesh

<sup>4</sup> *Ibid.*

<sup>5</sup> BLD,1997, p.1

<sup>6</sup> *Ibid*, para-101

<sup>7</sup> 48 DLR, p. 438

common injury or common invasion in common with others or any citizen or an indigenous association, as distinguished from a local component of a foreign organization, espousing that particular cause is a person aggrieved and has the right to invoke the jurisdiction under Article 102”.

## Chapter Three

### Existing Principal Environmental Laws of Bangladesh

#### 3.1 General Introduction:

Environmental laws are existing from 19<sup>th</sup> century. The laws were remaining unforced. The laws were not prevailing for protecting environmental protection and it was vaguely known to the people.

Ministry of Environment and Forest first established the environment related issues and day drafted a conservation of strategy in 1992. By revising the old law, the department enacted the Bangladesh Environment Conservation Act 1995. Before enactment of this law the government enacted a law for control of pollution of water in 1974.

In 1992 government adopted environment protection policy. In environment Conservation Act,1995 It is said that, Environment includes water, air, land and other physical properties and the interrelationships which exist among them and between them, and human beings, other living beings, plants and micro-organisms.

After adoption of this act government adopted Environment Conservation Rules of 1997.

By this rules government declare some Ecologically Critical Area(ECA). By declaring this government wanted to safe the eco-system.

To protect the forest the authority adopted a law whis name was The Forst Act,1927.Because that time the forest land was very much lowest.

It is added that Bangladesh also adopted the Bangladesh Wild Life (Preservation) Order 1973.

For controlling the brickfield, they adopted the Brick Burning Control Act, 1989.Before that the Public Park Act was introduced in 1904.

#### 3.2 Environmental Laws of Bangladesh:

There are different laws which are related to environment. Majority environment laws passed under development conditions. The Factories Act 1965 was enacted for health protection. For addressing environmental issues, The Environmental Policy was enacted.

Environment ConservationAct,1995 is only law which purely deals with environment.

The Petroleum ACT 1975 enacted for duty of person who are engaged in petroleum sector.

The Brick Kilns Establishment (Control) Act, 2013 was established for controlling the establishment of Brick Kiln.

## Chapter Four

### Environmental Policy of Bangladesh

#### 4.1 General Introduction:

“Since independence of Bangladesh in 1971, GDP has more than tripled in real terms, food Production has increased three-fold, the population growth rate has declined from around 2.9 per annum in 1974 to 1.4% in 2006 and the country is now largely food secure. (GoB, 2009). Over last 20 years, growth has accelerated and the country is on track to become a middle income country by 2021 when it celebrates its 50 years of independence. In four out of last five years the economy has grown at around 6 % (GoB, 2008). The Percentage of people living in poverty declined from 59% to 40% and the country's Human Development Index improved from 0.347 in 1975 to 0.547 in 2005. Child mortality has fallen substantially and gender parity in primary education has been achieved (UNDP,2007). Despite these successes, more than 50 million of the people still live in poverty. Climate change will severely challenge the country's ability to achieve the high rates of economic growth needed to sustain these reduction indicators in poverty. During the last three decades, the Government of Bangladesh has spent over \$10 Billion (at constant price of 2007) to make the country climate resilient and less vulnerable to natural disaster. However, in the global context, Bangladesh is considered to be one of the most critical countries which is the victim of climate change in the coming decade. It is predicted that there will be increasingly frequent and severe floods, tropical cyclones, storm surges, and droughts that would challenge the survival of Bangladesh (GoB,2009).”<sup>8</sup>

Bangladesh, with an area of 147,570 sq.km, lies between 20°34' - 26°38' N and 88°01' - 92°41'E. It is bounded by India to the west, the north and the north-east, by Myanmar to the south-east and by the Bay of Bengal to the south. The country enjoys a sub-tropical monsoon climate with a

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<sup>8</sup> Please visit: [http://www.monash.edu.au/research/.../asia.../paper\\_salahuddin\\_aminuzzaman.pdf](http://www.monash.edu.au/research/.../asia.../paper_salahuddin_aminuzzaman.pdf). >assessed on 5 July 2011

distinct dry season. In the winter (November-February) the temperature varies from 5° - 23°C, in the summer (March-June) the maximum temperature shoots up to 40°C while the monsoon starts in July and persists until October. The Bureau of Statistics said in a report that “The average annual rainfall varies from 1229 to 4338 mm (WARPO, 2000). Forests cover about 14% of the country and per capita forest cover is 0.016 having the 1980s, the rate of forest destruction was 8,000 hectares per annum and the annual deforestation rate is estimated to be 3.3%. Consequently, per capita forest land has declined from 0.035 ha in 1969 to 0.02 ha in 1995 (BBS) 2004).”<sup>9</sup>

In the context of the environment, the Government of Bangladesh formulated an Environment Policy in 1992. The objectives of Environment Policy are to:

- Maintenance of ecological balance make a development through protection and improvement of the environment;
- Protect the country form natural disaster.
- Place the thing which pollute the environment.
- To ensure environmental development in all sectors.

#### **4.2 Background of the Environment Policy Formulation:**

In CRS report it is clearly stated the background history of environment policy. Here I have knot this directly “In pursuance of the Stockholm mandate, the government of Bangladesh, like all other developing and developed countries, actively participated in the evolutionary process of protecting global environment. As a result, the first Water Pollution Control Ordinance was promulgated in 1973 followed by the promulgation of the Environment Pollution Control Ordinance in 1977. In 1985 Department of Pollution Control Ordinance was established which subsequently renamed and structured as Department of Environment (DOE). The idea of environmental protection through national efforts was first recognized and declared with the adoption of the Environmental Policy 1992. In the formation of Environmental Policy, different actors and factors played some direct and indirect roles.”<sup>10</sup>

It is said in government annual journal that-

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<sup>9</sup> The Bangladesh Bureau of Statistics Report,2004

<sup>10</sup> Please visit: [http://www.fta.dot.gov/documents/Unit1\\_01CRSReport.pdf](http://www.fta.dot.gov/documents/Unit1_01CRSReport.pdf) >assessed on 5 July 2011

“All the factors, whether external or internal, played very pertinent roles in the formulation of the Environmental Policy. An important step in this regard was the formulation of the national Environment Management Action Plan (NEMAP) by the Ministry of Environment with participation by some NGOs and other organizations.”

“The Government of Bangladesh has also adopted a number of supplementary policies where environment and development issues have been addressed. Important policy documents in this respect are the Forest Policy (1994), the Fisheries Policy (1998), the Water Policy (1998), the New Agriculture Extension Policy (1995), The Energy Policy (1995). Besides these sect’s oral policy, the National Conservation Strategy (NCS) and especially the National Environment Management Action Plan, 1995 (NEMAP) have been formulated to provide action plans to respond to environmental issues and promote sustainable development. The second Poverty Reduction Strategy has recognized environmental degradation as one of the most crucial factors that causes and perpetuates poverty in Bangladesh. The PRSP also asserted the need for a comprehensive strategic approach to address environmental challenges and issues. Although some of these policies are not judicially enforceable according to the Constitution of Bangladesh, they are still potentially important in guiding and influencing the activities of the concerned Ministries and other governmental agencies.”<sup>11</sup>

#### **4.3 Major Features of the Environment Policy:**

The policy covered all geographical regions and 15 development sectors like Agriculture, Industry, Health & Sanitation, Energy and Fuel, Water Development, Flood Control and Irrigation, Land, Forest, Wildlife and Bio-diversity, Fisheries and Livestock, Food, Coastal and Marine Environment, Transport and Communication, Housing and Urbanization, Population, Education and Public Awareness, Science, Technology and Research, Legal Framework and Institutional Arrangements. Moreover, the policy necessitated firmly to review Environmental Impact Assessment (EIA) on industries of public and private sectors and also encompassed the necessity of integrated environmental concerns that shaped into the National Health Policy (Section 3.2.2). In 1992 the National Environmental Policy was drawn up with the aim of providing protection and sustainable management of the environment. The National

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<sup>11</sup> *Supra note-4*

Environment Policy 1992 embraces a number of related sectors including agriculture, industry, health, energy, water, land, forest, fisheries, marine, transport, housing, population, education and science. The central theme of the Environment Policy of 1992 is to ensure the protection and improvement of the environment. It requires the Government of Bangladesh to ratify international convention and protocols in view of its suitability. The National environment policy has introduced a number of salient environment principles like precautionary approach and Environmental Impact Assessment (EIA). It also assigned the Ministry of Environment and Forests (MoEF) with the responsibility of coordinating the implementation of the policy.<sup>12</sup>

#### **4.5 Lack of Inter-Sectoral Coordination:**

Inter-sectoral coordination in dealing with cross-cutting issue like environment is a major issue in Bangladesh. The natural resource sectors such as water, fish, forests, etc. are the worst sufferers in this context. Policies are thus often criticized for their lack of directions for cooperation, coherence and coordination among the interested parties involved their in. The management responsibilities of different environmental components are divided into different sectors and ministries. This hinders smooth operation and execution of sustainable management regime.

Coordination between the DOE, the Ministry of Environment and Forests (MOEF) and line ministries is weak. Under the national Fisheries Policy, the MoFL is expected to “control all aspects of fisheries sector”. However, no reference was made to the required linkage with the numerous agencies and ministries those manage different aspects of fisheries. Though the policy states that coordination will be established, but the mechanism for that has not been spelled out.

Although the Department of Fisheries is responsible for the improvement of the fisheries sector, but legally the owner of the water bodies are other government bodies. Access rights to jalmohals larger than 3 acres are controlled by the Ministry of Land and Ministry of Youth and Sport. The Ministry of Water Resources is responsible for haor development. Only recently a small number of selected jalmohals have been handed over to DOF to develop community based fisheries management. Often activities of the Water, Communication or Local Government Ministry cause damage to the fisheries sector as well as to the natural ecosystems. These give rise to inter-sectoral conflicts, mainly due to lack of coordination. In the process, the subject of

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<sup>12</sup> *Supra note-3*

protecting the resources and the ecosystems does not happen to be treated with appropriate urgency and priority and thus creates inconsistencies.<sup>13</sup>

#### **4.6 Limitations of the Environment Laws:**

Following the environment policy, the Environment Conservation Act 1995 was adopted for the conservation, improvement of environmental standard and controlling the pollution of environment. In addition, Environment Conservation Rule 1997 was passed to supplement the Act. Another milestone in this regard was the Environment Court Act, 2000. This Act was passed for the purpose of trying cases involving offences regarding violation of environmental laws. However still there are some limitations of these environmental related laws. It is said that, *“Evaluations of the legislation of environmental impact assessments show that the law has not been adequately implemented. Transparency and public consultation have been lacking in EIA implementation”*.<sup>14</sup>

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<sup>13</sup> Please visit: Department of Environment official website [www.DOE.com](http://www.DOE.com) >assessed on July 13, 2011

<sup>14</sup> ADB,2004.



## **Chapter-Five**

### **Penetration to Environmental Justice: Role of the Judiciary in Bangladesh**

#### **5.1. Role of judicial review**

Judiciary of Bangladesh is playing a vital and fundamental role in the development or interpretation of environmental law. For ensuring a healthy and secure environment it is very important to play a crucial role.

According to Dhaka Law review “Judiciaries have played, and will most certainly continue to play a pivotal role both in the development of legislative and institutional regimes for sustainable development, as well as their enforcement. The judiciary's main role in promoting the goals of sustainable development lies in serving as the final arbiter in arriving at a perceptive and sensitive equilibrium between competing environmental and developmental interests, through interpretation of environmental laws and regulations, as well as international environmental agreements in the process of dispute settlement. Judicial decisions demonstrate that close attention to fundamental principles of law and justice are essential to realize the goals of sustainable development. Further, their decisions provide precedents to courts within and outside national boundaries.”

The decisions of court always help to made or incorporate new laws and laws.

#### **5.2. “The implication of judicial review in Bangladesh.”**

##### **Create a path for the general public to participate.**

It creates a new path or right for the people to seek the justice. It also helps for implement the Act. Judicial review is very important for create opportunity for the people in environmental matters. It allows public to participate in plan and development process.

### **Available opportunity for seeking relief**

The environmental legislation is not available in Bangladesh now By which a person or org can seek justice or judicial review. There is judicial review under Civil procedure code.

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### **Removal of unjustified threat**

- In the judgment of the case of - Dr Mohiuddin Farooque v. Bangladesh, it is said that “the petitioner asked that 125 metric tons of milk powder imported from Estonia be returned as they were found to contain radioactive matter by the Atomic Energy Commission of Bangladesh. The milk powder which was shipped to Bangladesh from Holland was certified both by the producing and the exporting countries as being fit for human consumption. The certification was false. In the instant case the importer managed to obtain false evidence regarding the level of radioactive matter in order to get the milk out of the port of entry for sale.” This was done despite the fact that the letter of credit provided that if the radiation level was found to be high in Bangladesh the exporter was bound to take back the goods. Instead of doing so the importer opted to try various means to get the milk released. The High Court Division dealt strongly with the case and directed the authority to "remove any unjustified threat" saying that "no one has any right to endanger the life of the people ... by marketing in the country any food item injurious to the health of the people." This case expanded the horizon of the right to life and also the scope of potential consumers to file such public-interest cases.

### **5.4 International court for the environment**

- There will be a proper forum and Permanent Arbitration Court.

#### **Appropriate forum to settle environmental disputes**

Before establishment of Environmental court, the permanent court of arbitration (PCA) at Hague is proper court for environment. For dispute settlement this is the proper court.

There are some reasons for favoring the PCA

### **Acceptance of UN members**

United Nations arranged the Peace Conference at Hague in 1899 and in the year of 1907. This main reason was settlement of environmental dispute among the states. A **flexible and unique institution**

**There are four dispute settlement systems in PCA. It is stated in Article 33 of the Charter of United Nations.**

## **5.5 Role of legal structures**

**-Sustainable development is related with legal structure and environment.**

**- there are some basic challenges in the legal system**

- It is quite clear that the sustainable development role of law provides at least three basic challenges to the legal system.

### **I. Coping with uncertainty, including operating with a long-term perspective.**

a. **Gaps in our knowledge** - Nobody will deny that there are wide gaps in our knowledge, understanding and charting of basic environmental phenomena. In addition, it is frequently impossible to trace damage to a specific source of environmental pollution, or to prove damage - especially future damage - in terms more conclusive than statistical probabilities.

b. **Uncertainty** - The pervasive aura of uncertainty has profound implications for a legal system which relies to a large extent on demonstrable causal links, measurability and predictability. The law and conflict settlement relating to environmental management must be process-oriented, and rely on equity rather than on rigid "right-or-wrong" rules, whether these norms be civil or penal.

c. **Effective representation** - Further governance - including legislative and judicial processes must make provisions for the effective representation of future generations. More importantly, there is the precautionary principle, which calls upon legislators and

regulatory systems to take account of the probability of serious environmental harm even when it is not demonstrated by conclusive scientific data.

**ii. Effectively preventing man-made environmental harm, rather than simply attempting to repair it.**

a. **Irreversible damages-** Environmental degradation is often irreversible, as is the depletion or mismanagement of natural resources. This means that reparatory or punitive legal measures taken after the event, by tort remedies or by penal sanctions, are not, at least by themselves, effective instruments of control. They may, surely, serve as a disincentive.

b. **Effective regulatory systems** - Priority must be given to preventive policies and measures. These presuppose the adoption of effective regulatory systems whose functions must range from environmental impact assessments to licensing or prohibition, monitoring and supervision and, ultimately, enforcement.

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## Chapter Six

### Analysis of Significant Environmental Cases and Judgments

The public interest litigation is now a matured concept or idea. When it was emerged it was not mature. This system is guaranteed by the constitution. This is an important idea in a country like our country where 65% of the total population have no or less access to judiciary. But the constitution of Bangladesh make commitment for *“equality before law, right to life, justice and equal enjoyment of fundamental rights by all citizens.”*

In the recent time the stroll for enjoyment of rights which took a new volume as the potential of judiciary is being increasingly emphasized by the activists and the courts are dealing with cases seeking relief against administrative anarchy and ignorance. It is noted that the idea of PIL is developed in Bangladesh as a performance of public duty by some citizen’s groups advocating in support of progressive ideologies. Thus a petition was first taken in 1994 before the HCD by a national non-governmental organization called *“Bangladesh Environmental Lawyers Association (BELA)”* on behalf of the people of a locality. At first the petition was rejected by the HCD on the ground of standing of the organization. An appeal was made from that rejection. The Supreme responded positively and this case this became the turning point in the history of PIL in Bangladesh.

BELA that driven the movement for opening up the horizon of PIL in Bangladesh has filed the cases<sup>15</sup> noted below:

#### 1. Protection and Conservation of Sundarbans:

A writ was issued by BELA for conservation or protection of Sundarbans. In the year of 1994 it was filed. Almost 904 industries were creating the garbage from there production and contaminate the Sundarbans. The Ministry of Industry was called by the court. After that they ensure that the factories will follow the control measures and the industries will produce the product without pollution.

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<sup>15</sup> Writ petitions to protect the environment by The Bangladesh Environmental Lawyers Association (BELA), [www.belabangla.org/activities.htm](http://www.belabangla.org/activities.htm) > assessed on 1 July, 2011

After hearing the Petitioner, the Rule has been made absolute today and the DG, DoE has been directed to ***“Report to this Court after six months by furnishing concerned affidavit showing that compliance of this Order of this Court”***. For implement the direction of Court, the Honorable High Court further held that ***“It will be imperative on the part of the Director General to take penal action against such department for persons who are responsible for not implementing the letter of the Environment Conservation Act, 1995.”***<sup>16</sup>

## **2. Fill-up of Uttara Lake:**

The High Court Division, a division Bench issued an injunction because Uttara Lake was using for housing purposes. It was issued for the application of Dr. Mohiuddin Farooque, Secretary General, BELA upon the Secretary, Ministry of Housing and Public Works, Chairman, (RAJUK) and DG, DoE. The local residents of Uttara filed a petition on an appeal, by whom RAJUK was accused. Because that project created an environmental hazard in the area of the Uttara lake and which is in violation of the original Master Plan of Uttara. HCD said that ***“The injunction would remain effective till disposal of the case.”***

This role was discharged by the HCD.

## **3. Unregulated Operation of Brick Field:**

In Senbag of Noakhali District 19 brickfields operation was in violation of applicable legal provisions. A petition was brought before the High Court. The petition was filed by BELA on behalf of a local group called ***“Senbag Thana Pollution Free Environment Committee”***.

The brickfields management were violating the existing laws. The also violated the laws when they leased the land for the brick field.

After hearing the petitioner BELA, the court issued a rule and call the secretary of the Ministry of Land and DC of Noakhali.

This case is pending now and the petitioner is waiting for hearing.

## **4. The Case of Hill Cutting:**

In the Chittagong City Corporation, the unlawful cutting and rising of hills was happened. BELA brought a judicial notice and file a petition. The Court make hearing and call the petitioner, Dr.

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<sup>16</sup> ***“Dr. Mohiuddin Farooque v. Bangladesh & others, Writ Petition no. 2224 of 2004”***

Mohiuddin Farooque, DG, DoE to submit a report on alleged illegal cutting of hills, which was a big reason to ecological imbalance and degradation of environment of the city. The Court again make an order for issue a report which will contain the measures taken by the Government to prevent such illegal activities. The application was filed under the petition.

This matter is also pending now for hearing.<sup>17</sup>

### **5. Fill-up of Gulshan Lake:**

HCD issued a Rule in a petition filed in 1997 against implementation of an agreement called the “Banani, Gulshan, Baridhara Lake Development Project Agreement” which was dealt between RAJUK and Indus valley Investment Pvt. Ltd. to make a big construction in the said areas by violating the constitutional and legal requirements. The Court said them to show cause as to why “the agreement and the subsequent agreements to lease out a total area of 220 acres of public land should not be declared to have been entered/undertaken without lawful authority in violation of law and the constitution against public interest and as such be declared null and void and of no legal effect.”

The Government cancelled the project for subsequent petition.<sup>18</sup>

### **6. Allotment of Land for Shrimp Cultivation:**

There was filed a petition against Shrimp Cultivators in Sudharam for fixation of Government owned *Khas* Land to, P.S. of Noakhali District. This was in contravention of the provision of the Land Management Manual, 1991 and some Articles (15, 19, 31,32) of the Constitution. The cultivation will deprive the landless people.

This case is also pending now for hearing.<sup>19</sup>

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<sup>17</sup> “*Dr. Mohiuddin Farooque v. Bangladesh & others, Writ Petition No. 6020/1997*”

<sup>18</sup> “*Dr. Mohiuddin Farooque v. Bangladesh & others, Writ Petition No. 7422/1997*”

<sup>19</sup> “*Nijera Kori v. Bangladesh & others, Writ Petition No. 1162/1998*”

### **7. Buriganga Encroachment:**

A petition has been filed before the Honorable High Court Division which are related to the Buriganga Encroachment. In this petition the HCD called the respondents for show cause. The respondents had to prove why they will not be prosecuted.

This is pending now for hearing<sup>20</sup>

### **8. Protection and Conservation of Sonadia Island:**

In the year of 2003 a writ petition was filed by the BELA for protecting the Sonadia Island. The matter was protecting the 4276 hectares land of the island. It was declared by the government as ECA area. Polluters pay principle was firstly applied in this case. In this case respondents were secretary of Environment Ministry and forest officers and DC of Cox's Bazar.

A writ petition (Writ Petition no. 4276 of 2003) was filed by BELA on 6 July, 2003 before the HCD for seeking special defensive steps to protect the 4918 hectares of Sonadia Island as an Ecologically Critical Area (ECA). This petition was for the first time relied on the principle of 'polluters pay'.

In this petition the respondents were the Secretaries, Ministry of Environment & Forest (MoEF) and Ministry of Land, the Chief Conservator of Forest, the Deputy Commissioner, Cox's Bazar, the Divisional Forest Officer, Cox's Bazar. The main fact is cutting the trees for shrimp cultivation. The HCD called the respondents of show cause.

This Rule was returnable within 4 weeks. This case is pending now for hearing.<sup>21</sup>

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<sup>20</sup> *"Bangladesh Environment Lawyers Association (BELA) vs Bangladesh and others, Contempt Petition No. 33 of 2001"*

<sup>21</sup> *Bangladesh Environmental Lawyers Association (BELA) v. Ministry of Land and others, Writ Petition No 4286 of 2003*



## **Chapter Seven**

### **Concluding Chapter**

#### **7.1 Findings:**

- Environment is now very much talked issue in Bangladesh
- The Environment of Bangladesh is being threatened by many types of natural calamities such as global warming, cyclones, tsunami, floods etc.
- Green house effects are most threatened for the environment of Bangladesh
- In addition there are a lot of manmade environmental problems in Bangladesh.
- The growth of population is also major cause of environmental problems.
- Unplanned Urbanization and Discharge of Untreated Sewage also cause of environmental pollution.
- Dumping of Industrial Wastes and Over Exploitation of Natural Resources are threatened for environment in Bangladesh.
- Till now there are few bars of the environmental laws in Bangladesh. Amendments of the legislation of environmental impact assessments show that the law has not been adequately implemented. Transparency and public consultation have been lacking in EIA implementation.
- Every important policy, National Environmental Policy of 1992 is also included has been formulated in the last decade and only a very few of them seem to corroborate well with the older legal instruments of the given sector. Although the need of amendment of existing laws and
- Beginning of policy are failed to make implementation from root level.
- There is influence of political leaders to make an environmental policy.

## **7.2 Recommendations:**

1. The provisions of sectoral policies should therefore be critically analyzed to synchronization and ensure synergy.
2. It is needed to be reconstruct environment policy with the climatic vulnerability considerations.
3. For policy reforms government can follow the developed countries.
4. reformation of initiatives must be taken for effective policy intervention by responsible public agencies through a coordinated effort among all the responsible agencies. To ensure the feasibility of all national policies relevant to climate change, concerned policy makers should take measures on mitigation and adaptation process to build up central database and Management Information System (MIS).
5. Existing Ganges Treaty should be reviewed comprehensively to establish that its governing principles are in line with UN Water Convention. However, Efforts need to be undertaken to promote a regional treaty to include all other international rivers shared by the SAARC and other regional countries. and process of the implementation of the Policy not only bogged down but also seem to have changed the directions and priorities;
6. Some environmental problems are created because of pure implementation of law, the legal system should be strengthened. There is an immediate need for the amendment of the environment related laws to make those meet the demand of the time. Taking examples from the region, Bangladesh should seriously consider the inclusion of provisions in the Constitution to provide broad guidelines to environment protection
7. There must be an alternative dispute settlement mechanism which can solve the problem.

### **7.3 Conclusion:**

Environment of Bangladesh is in serious threat of green house effect and global warming. The government of Bangladesh should take effective steps to save the Environment of Bangladesh. The non- government organizations also can play a good role in this regard. The judiciary of Bangladesh has to be stricter to save the environment. As a mass people we also can make contribution in this field. At last I can say it that the judiciary is trying to playing effective role to save environment and to ensure healthy environment for all with lack of sufficient laws in this regard.

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