

# ENVIRONMENTAL MANAGEMENT AND JUSTICE SYSTEM IN BANGLADESH: ISSUES AND LEGAL FRAMEWORK

**Kaniz Tania Bint-E-Basar,<sup>1</sup> Kazi Sonia Tasnim,\*<sup>2</sup>**

<sup>1</sup>Senior Lecturer, Department of Law, Bangladesh University, 15/1, Iqbal Road, Mohammadpur, Dhaka-1207 Email: kaniz.basar@bu.edu.bd

<sup>2</sup> Lecturer, Department of Law, Bangladesh University, 15/1, Iqbal Road, Mohammadpur, Dhaka-1207 Email: kazi.tasnim@bu.edu.bd

\*Corresponding author: kazi.tasnim@bu.edu.bd

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## **ABSTRACT**

This paper presents environmental justice in Bangladesh which is connected with the human development, implementation and enforcement of environmental laws, regulations and policies. Environmental justice means the fair treatment of all people without discrimination of race, color, national origin and also include the development, implementation and enforcement of environmental laws, regulations, and policies. Environmental justice is very essential for the human rights which effects human lives as well as sustainable development of the country. Environmental justice also include protection against natural disasters, mass displacement, maintenance of natural resources, protection against health threats and livelihood of the Human being. Environmental justice ensures all people's enjoyment of human rights, economic development, health protection above all healthy environment for life. There are also various environmental issues like global

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warming, over population, Waste disposal, Ocean acidification, loss of biodiversity, deforestation which are harmful for human lives. The Environmental problems in Bangladesh are climate change, cyclone, flood, drought, earthquake, riverbank erosion, air pollution, water pollution, soil pollution, and noise pollution etc. Environmental Justice System is the burning issues of the world and human existence depends on the sustainable development of the environment.

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### **INTRODUCTION**

The United States Environmental Protection Agency defines environmental justice that the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. Environmental Justice also include health and the environment pollutions. The concept of environmental justice began as a movement in the 1980s due to the realization of a disproportionate number of polluting industries, power plants, and waste disposal areas which located near low-income or minority communities. It ensures fair distribution of environmental burdens among all people regardless of their background. Environmental justice means legal protection from nuclear testing, production, hazardous waste and ensure fundamental right to clean air, land, water, and food. The major environmental problems in Bangladesh are climate change, cyclone, flood, flash flood, drought, earthquake, riverbank erosion, air pollution, water pollution, soil pollution, and noise pollution etc. Environmental justice ensures the legal aspect for all people for the development, implementation and enforcement of environmental laws, regulations and policies. The State shall endeavor to protect and improve the environment to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.” Environmental justice ensures healthy life, food, adequate transportation, clean air, pure water and safe environmental eco-system. To ensure environmental justice the Environment Court Act 2010 has passed to disposal environmental cases and establish Environment Courts in each district headed by a Joint District Judge and established a Special Magistrate's Court.

### **METHODOLOGY**

This research is based on environmental problems and identify the problems of the environmental justice system. Environmental justice is concerned with the equitable access to food, air and water but the injustice

takes place when harm to the lower-income people and also include animal. Methodologies are based on environmental legal issues and justice system of Bangladesh. Legal aspect is the main focus point to analyze the environmental issues. The research is based on statutes, cases, regulations, international conventions and protocols, articles, legal encyclopedias and treaties etc. The research paper is mainly based on quantitative method and primary and secondary sources have been applied for this research article. Law books, articles, journals, enacted laws, newspaper, media, national and international organizational functions, international activities, international statutes, conventions, protocols are also assisted to interpret and data analyses for this research articles.

### **ENVIRONMENTAL JUSTICE MANAGEMENT**

Environmental Justice management is vital for conserve, improvement of environmental standards, control and mitigation of environmental pollution . Environmental law is very important to maintain healthy environment. The environmental justice aims to create a legal policy, judicial framework so that justice can be ensured for all stake holders. The environmental victims may seek justice in the court for environmental damage in the legal framework. The Bangladesh Environment Conservation Act, 1995 conserve the environment and also improve, control and mitigate the environmental pollution. The Government is also empowered to make rules for carrying out the purposes of this Act. The courts exercise jurisdiction to take cognizance of an offense independently and also ensure sufficient punishment prescribed by the statutes.

The court compensate the victims and resolve the dispute in alternative ways. The poor and disadvantaged people may seek environmental justice who are affected by environmental pollution and also get legal aid. The public departments are rich of logistics support and human resources to control and coordinate with in decision-making of natural resource management. There are Special court to ensures efficient environmental justice by the Environment Court Act 2010 for ordinary people but ordinary people cannot file a case directly. If anybody want to file a case he has to go to the Department of Environment (DOE) for the complaint and it is possible only after getting a report from an inspector or the court can take cognizance the case. If the inspector doesn't take necessary steps within 60 days of the request of any individual and if the court is satisfied with the reasonability of the complaint only that reason the court can apply their jurisdiction. For that reason, mass people are not interested to file a case with environmental issues to the environmental court to avail environmental justice and a long duration is required to solve an environmental issue as well as required scientific and technical knowledge to make a judgment on those matters. judges are burdened to conduct cases related to the environment. Non-governmental Organizations, national and international working group BAPA has arranged several press conferences to address the environmental problem and discuss about the solutions. 'Bangladesh Environment and

Development Society (BEDS)' are working to promote sustainable development of environment especially global warming, sea level rising and natural disasters which are the major problems the world. Ain o Shalish Kendra (ASK), Environment Council Bangladesh, Bangladesh Youth Environmental Initiative, Environment and Social Development Organization (ESDO), United Nations (UN), SAARC are also concern with environmental issues. The UNFCCC secretariat (UN Climate Change) adopted by the United Nations Framework Convention on Climate Change (UNFCCC). It supports the implementation of the Kyoto Protocol and the Paris Agreement. The aim of the conventions assists, analysis and review of climate change information. The United Nations Convention on Biological Diversity, informally known as the Biodiversity Convention is a multilateral treaty opened for signature at the Earth Summit in Rio De Janeiro in 1992 for sustainable development in the light of the United Nations Environment Programme (UNEP). The Biological Diversity Act, 2002 was enacted for giving effect to the provisions of the Convention. (CBD.) and the government established the National Biodiversity Authority (NBA) in 2003.

The NBA is a statutory body as well as the convention is legally binding on its signatories. UNCCD is established in 1994 is the sole legally binding international agreement linking environment and development to sustainable land management. The Rio Conference's Agenda 21 focus on the arid, semi-arid and dry sub-humid and the most vulnerable ecosystem. There are some International Conventions like Convention on Biological Diversity (CBD), United Nations Framework Convention on Climate Change (UNFCCC), Stockholm Convention on Persistent Organic Pollutants (POPs). India has formed a permanent Constituency in the Executive Council of the GEF together with Bangladesh, Sri Lanka, Bhutan, Nepal and Maldives. The Green Climate Fund (GCF) is the world's largest dedicated fund helping developing countries reduce their greenhouse gas emissions and enhance their ability to respond to climate change. United Nations Framework Convention on Climate Change (UNFCCC) in 2010. The World-Wide Fund for Nature (WWF) is an international non-governmental organization founded in 1961, working in the field of wilderness preservation, and the reduction of human impact on the environment like food, climate, freshwater, wildlife, forests, and oceans. Intergovernmental Panel on Climate Change (IPCC) established in 1988 by two United Nations organizations, the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP), and later endorsed by the United Nations General Assembly are working on human-induced climate change, potential impacts and options for adaptation and mitigation.

International Union for Conservation of Nature (IUCN) are working on hundreds of conservation projects all over the world though governments, bilateral and multilateral agencies, foundations, member organizations and corporations. United Nations Environment Programme (UNEP) are working on UN's environmental activities, assisting

developing countries in implementing environmentally sound policies and practices regarding a wide range of issues regarding the atmosphere, marine and terrestrial ecosystems, environmental governance and green economy as well as environment related development projects' has aided in the formulation of guidelines and treaties on issues such as the international trade in potentially harmful chemicals, transboundary air pollution, and contamination of international waterways' is also one of several Implementing Agencies for the Global Environment Facility (GEF) and the Multilateral Fund for the Implementation of the Montreal Protocol. World Food Programme (WFP) are working to eradicate hunger, malnutrition and eliminating the need for food

### **ENVIRONMENTAL ISSUES IN BANGLADESH**

The environmental justice mainly focusses on inadequate access to unhealthy food, inadequate transportation, air and water pollution, and unsafe homes etc. which effects certain communities particularly lower-income people. In these regard Climate change causes severe flooding, droughts, cyclones rising sea levels and the effects of climate change are loss of lives, endangered livelihood. Displacement of people from their lands and coastal area effect of global on warming as a results saline intrusion causing steady destruction of crops and grains production. Beside this Deforestation, Heavy rainfall and subsequent flooding are the also major problems for climate change. Water salinity is hampering agricultural production and effect on mangrove forest Sundarbans, Sundari tree more over causes sever risk on biodiversity and wildlife in the coastal location. Bangladesh is a developing country but climate change is one of major threat for economic development and growth. Beside this air pollution is also major problem which caused due to increasing population, burning fossil fuels, industrialization and associated motorization. The water pollution caused due to industrialization and the underground water also has been polluted due to arsenic. Urbanization is also considered main reason behind for the environment pollution. Increasing vehicles, air conditioners, smokes and gases are responsible for air pollution which causes 'Green House Effect' and various machines or devices are also the reasons of destruction of natural environment. In this regard forest are very important to increase environment pollution.

### **PROBLEMS OF THE ENVIRONMENTAL JUSTICE IN BANGLADESH**

There are a number of problems to ensure the environmental justice in Bangladesh. Environmental justice for ordinary people is not easy in the court system because of some major legal barriers. These are-

- A person cannot file a case directly in the Environmental Court. The person has to go to the Department of Environment (DOE) for the complaint and after getting a report from a DOE inspector the court can take the case.

- The court can only directly take a case if the inspector doesn't take necessary steps within 60 days of the request of individual then the court take cognizance the environmental matter.
- The procedure is complex and takes a long time and so that mass people are not interested to come in the environmental court for environmental justice.
- Since environmental offenses require scientific and technical knowledge to make a judgment on such matter. The aggrieved person needs special knowledge or procedural aspect for the relevant environmental justice in Bangladesh.
- Penalty for an environmental offense is Tk10 lakh under the environment conservation act but adequate fine should be ensured.
- People cannot enforce their environmental rights most of the cases they are threatened by the polluters and they are faces unsecured to filling a case. Beside this the government and NGOs support are insufficient to file a case against polluters to fight for environmental justice.
- Filling procedure of the environmental issues are not easy for mass people who are affected by the environment pollution as environmental justice is difficult under the Environmental Court Act – 2010 as well as which are not friendly and accessible for the ordinary people to get environmental justice.
- The reason behind for not ensuring environmental justice are lack of specific environmental laws, procedural complexities, lack of accountability, partisan state mechanism, absence of environmental consciousness among the people etc.
- There are rapid urbanization and industrialization are also burning issues for environmental pollution. As a result, disposal of solid waste and noise are effect of the urbanization and industrialization.
- Litigation process are complex for environmental issues and implementation of the punishment and fine depend on the executive and there is also absence of monitoring mechanism by the court.
- A longtime administrative procedure to identify the environmental crime also major problem for environmental breaches and for this reason common people are not interested to filing an environmental case.
- Environment victim cannot sue directly and require administrative process and arbitrariness. As a result, affected people and environmental justice largely exists on paper.

### **ENVIRONMENTAL MANAGEMENT**

United Nations Environment Programme (UNEP) are working to protect natural resources but these issues are increasingly complex challenge. In the present world every state is interconnected with economies, environmental threats that cross political borders such as air pollution and biodiversity. These pollution effect global, regional, national and local responses which are also involving a wide range of stakeholders. The environment justice takes challenges to protect the environment from pollution. Environmental justice includes the rules, practices, policies and institutions that protect the environmental pollution. Environmental justice takes into account all the stake holder that impact on the environment. Governments, NGOs, the private sector and civil society, cooperation are in critical situation to achieving effective environment justice. Environment and Social Development Organization are working to promote environmental justice and governance. Specially it is mentioned that the program of Eco village, zero waste village and community based eco-tourism are various step for to ensure environmental justice and governance in Bangladesh.

### **NATIONAL ENVIRONMENTAL LAWS**

The Environmental Pollution Control Ordinance, 1977 superseded the Water Pollution Control Ordinance, 1970 and extended the control, prevention and abatement of pollution to the entire environment of Bangladesh and expanded the definition of “pollution” from that specifically relating to waters to “air, water or soil”. It also included nuisance of air, waters or harmful uses of soil, plants living species. The Ordinance also reconstituted the Environmental Pollution Control Board with and empowered the Board to appoint expert committees as they deem necessary. The Board included the Member-in-charge of the Physical Planning and Housing Sector of the Planning Commission; the Secretaries of the Local Government, the Rural Development and Cooperative Division, the Agriculture Division, the Forest, Fisheries and Livestock Division, and the Ministry of Industries, Ministry of Home Affairs, Ministry of Public Works and Urban Development, and Ministry of Power, Water Resources and Flood Control; the Flood Control and Water Resources Planning Commission; the Director of Health Services; the Director of Fisheries; the Chief Engineers, Public Health Engineering, and Bangladesh Inland Water Transport Authority and a representative from the Bangladesh Meteorological Department. The powers of the Board extended beyond permitting officers to inspect buildings and land to allow them to test any wastes, air, waters, soil and extended the power to control, prevent and abatement of pollution to the entire environment of Bangladesh. The 1977 Ordinance also established the Environmental Pollution Control Board so that the Board can exercise power to appoint expert committees as they deem necessary. The Board included the

Member-in-charge of the Physical Planning and Housing Sector of the Planning Commission; the Secretaries of the Local Government, the Rural Development and Cooperative Division, the Agriculture Division, the Forest, Fisheries and Livestock Division, and the Ministry of Industries, Ministry of Home Affairs, Ministry of Public Works and Urban Development, and Ministry of Power, Water Resources and Flood Control; Flood Control and Water Resources Planning Commission; the Director of Health Services; the Director of Fisheries; the Chief Engineers, Public Health Engineering, and Bangladesh Inland Water Transport Authority; and a representative from the Bangladesh Meteorological Department. There are a lot of enacted laws like the Water Pollution Control Ordinance, 1970; The National Environmental Policy, 1992; The National Environmental Management Plan, 1995; Environmental Conservation Act and Rules; The Environmental Court Act 2000; The National Water Policy, The National Environmental Policy (NEP) have drawn up for providing protection and sustainable management of the environment.

The objectives of the Policy include maintaining the ecological balance and overall development through protection and improvement of the environment; Identifying and regulate polluting and environmentally degrading activities; Ensuring environmentally sound development; Ensuring sustainable and environmentally sound use of all natural resources; and Actively remain associated with all international environmental initiatives. ;The National Environmental Management Plan (NEMAP) has developed as the framework of programs and interventions aimed at implementing NEP. Its activities attempt to lead to better management of scarce resources, reducing the rate of environmental degradation, improving the natural and manmade environment, conserving habitats and biodiversity, promoting sustainable development and improving quality indicators of human life (MoEF,1994). NEMAP proposed actions and interventions are for government agencies, NGOs and civil society include activities relating to fisheries and agriculture. The Bangladesh Environmental Conservation Act passed in 1995 and the accompanying 1997 Rules are the most important legislative documents for industrial water pollution. The Act has ensured conservation, improvement of quality standards, and control through mitigation of pollution of the environment. The 1997 Environment Conservation Rules made in accordance with the 1995 Act provide additional guidance for specific components of the Act. The Act is in theory enforced by the department of Environment (DOE) which has responsibility to Coordinate with other authorities or agencies that have relevance to the objectives of the Act. Adopting safety measures and determining abatement measures to prevent accidents that may cause environmental degradation. Advising persons on environmentally sound use, storage, transportation, import and export of hazardous material or its components. There has been taken various steps to conduct research and assist other authorities and agencies for conservation and improvement of the environment through



investigating locations, equipment, manufacture or other processes, ingredients, or materials and ensured improvement of the environment to control and mitigate of pollution. To achieve these targets public awareness is creating like Collecting, publishing and disseminating information regarding environmental pollution. In order to enforce the Act, the DoE has the right to enter, investigate, test, examine and seize, industrial plants, equipment, records, registers, documents or other significant objects, and to search places where it is believed an offence has occurred in contravention of this act. The DoE is empowered to collect water, air, soil or other material for analysis in the presence of the occupant and under conditions laid down by the Act. Under the rules of the 1995 Act the DoE has the power to enforce the Act through closure, prohibition or regulation of industries, initiatives or processes after due notification to the owner of the industry or process. The DoE can also initiate public hearings if any application is submitted by an individual or group of individuals who are affected by environment pollution. All industrial units or projects must obtain “Environmental Clearance” from the DoE. For the purposes of this all-industrial units and projects have been divided into four categories (Schedule 1 of the Rules) depending on environmental impact and location. In order to obtain Environmental Clearance, industries within these categories must submit applications containing several forms of documentation. Once Environmental Clearance has been granted it is valid for a period of 3 years. and establishment of environmental courts for the trial of offences relating to environmental pollution. It includes protocols for the establishment of the court, and defines the court’s jurisdiction, appropriate penalties, powers of search and entry, and procedures for investigation, trial and appeal. There are also incorporate ambient air quality and exhaust fan vehicles so that air pollution may increase for healthy air.

### **JUDICIAL PROCEEDINGS AND FUNCTIONS OF THE ENVIRONMENTAL COURTS**

The courts grant environmental remedies under the Bangladesh Environment Court Act, 2010 to ensure environmental justice and there are three environmental courts namely the Special Magistrate Court for petty offence, Divisional Environmental Court for major violation of environmental laws, Environmental Appellate Court to hear appeal and review petition. There are special Magistrate Court for taking cognizance of an offence without written report of an Inspector of the Department of Environment. The jurisdiction of the environmental courts is merits review, judicial review, civil enforcement, criminal prosecution. Criminal appeals and civil claims are found regarding planning, environmental, land, mining and other legislation etc. An aggrieved person can file petitions for enforcement of fundamental rights. PIL (Public Interest litigation) is a system to file a case to get a court order in favor of public interest or to protect the rights of public to the higher court. In the case of Mohiuddin Farooque v Bangladesh, the Appellate Division of the

Bangladesh Supreme Court has relaxed locus standi on the ground of violation of environmental issues so that environmental justice can be ensured for common people. The present Act is aimed to establish one or more Environment Courts in each district with a Joint District Judge and the judge shall have jurisdiction in addition to his ordinary function dispose of the cases that fall within the jurisdiction of an Environment Court. There are no separate or independent Environment Court but more Environment Court has not been established till now except the former three Courts and an Appellate Court. The establishment of one or more Special Magistrate Court with the Magistrates of the first class or Metropolitan Magistrates in each District to deal with offences punishable with less than 5 (five) years imprisonment or 5 (five) lac taka as fine or both. Except these two types of Courts there are Executive Magistrates functioning under the Mobile Court Act, 2009. They can take cognizance of some offences at spot and convict the accused on the basis of his confession and there are also has environmental laws to run Mobile Court so that environmental issues can be solved.

#### **INTERNATIONAL ENVIRONMENTAL LAW AND LEGAL SYSTEM OF BANGLADESH**

Environmental policy in Bangladesh is very vital for environmental protection for conservation of natural resources to achieve the policy goals though affordable energy for economic growth and employment. There are two environmental Courts established in both Dhaka and Chattagram to deal with environmental offenses. Bangladesh was actively involved with the UNCED and signed the Rio Declaration and also endorsed Agenda 21. To combat environmental damage, poverty, disease, there must ensure global cooperation on common interests for mutual needs and shared responsibilities of the local government should draw its own local Agenda 21. Both natural and the man-made environment there are essential elements to enjoy the basic human rights - even the right to life itself. As human life and environment are interdependent so the environment is damaged and polluted man may not survive on earth. Improvement of the human environment is also a major issue which affects the human being connected with the economic development throughout the world that bounden duty of all governments and also co-related with the international economic governance; trade; international cooperation; the role of corporations in the achievement of sustainable development; participation; access to the justice and the incorporation of long-term considerations in decision-making regarding environment. Bangladesh is committed for promoting environmental management and sustainable development as a signatory state of the Ramsar Convention on wetlands. Bangladesh has prepared a National Phase out Plan of Ozone Depleting Substances and also a party state of Treaty Banning Nuclear Weapon Tests in the Vienna Convention for the Protection of the Ozone Layer (Vienna, 1985.) Atmosphere in Outer Space and under Water (Moscow, 1963.); currently being implemented with assistance from the Montreal Multilateral Fund.

#### Recommendations.

- To establish environment court in every district that may ensure the environment justice and facilitate filing environmental case or suit as well as time and expenditure will be decrease for environmental affected people.
- Every environment court shall exercise both civil and criminal jurisdiction and take cognizance any kind of environmental breaches as well as judges shall independent to adjudicate the environmental breaches.
- Penalties are important to reduce this country's environmental issues as these regard necessary steps must be taken for filing, trial and execution for fine and imprisonment as the fine may not be enough as most polluters are financially strong and the fine does not stop them from committing the same crime in the future.
- Judges requires to take special knowledge and skills to deal environmental breaches and issues through adequate training programme regarding ecological issues.
- To implement environmental laws government, NGO, government pleader above all affected people must play important role to protect and promote healthy environment as only one stakeholder should not possible to ensure environment justice.
- To ensure environmental justice direct access to litigation will also fundamentally need to exercise sufficient autonomy to receive and adjudicate environmental cases and promoting environmental justice.
- To ensure environmental justice Alternative Dispute Resolution (ADR) should introduce among the stakeholders and that may save the affected person from expenditure of additional time, money and harassments.
- Citizen's awareness one of the most important fact to achieve the healthy environment which can acquire through the logistic support of the judiciary.

#### **CONCLUSION**

Environmental justice must be ensured for basic human right which impact on human lives. Without environmental justice environmental improvement, standard and mitigation of environmental pollution is impossible so it is very essential to save environment and human life. Environmental justice shall ensure the safe standards for the presence of various pollutants in the environment and shall prohibits the use of hazardous material unless prior permission of the Government. Environment justice may ensure environmental protection against World hunger, global warming, increasing natural disasters, polluted air, water and soil, pesticide use in the fields, Species extinction, crop failures etc.

To achieve the goal of environmental justice implementation of the environmental laws is fundamental need for every nation because some environmental pollution has no national boundaries like global warming and that's will affect the Earth. To enhance environmental justice existing environmental laws and environmental governance must be implement among the stakeholders who are directly affected by environment pollution. In this regard environmental justice system can play an important role for the protection and promotion of the healthy environment.

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