

Effectiveness and Challenges of the Environmental Courts in Bangladesh: A Critical Analysis on the Existing Laws

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Abstract: All over the world, environmental degradation and its effects on human life are now evident. In essence, the environment is currently a major global issue. Environmental risks are gradually getting worse every day in a variety of ways. The global community is very worried about it. Global treaties, conventions and principles are attempting to address the environmental crises and problems, such as ozone layer depletion, water pollution, air pollution, soil pollution, deforestation, and biodiversity degradation. Since gaining its independence in 1971, Bangladesh's government has passed the environmental legislations i.e. The Environment Conservation Act, 1995 and The Environment Court Act, 2010 and so on to safeguard the environment. The Environment Court Act, 2010, has been enacted by the government in response to this. Based on primary and secondary sources, the study examines the various aspects of the Environment Court's practices and challenges in Bangladesh. Additionally, in this study a descriptive, thematic, and doctrinal legal research method has been followed with integrative literature review on legal mechanisms for analyzing overall provisions on court practices in Bangladesh. Therefore, the study aims to analyze existing environmental remedial mechanisms and point out challenges of protecting environmental rights of the citizens. Moreover, role of existing laws on environment has been focused in the study as a significant objective of the study.

Keywords: *Environment Conservation Act, 1995; Environment Clearance Certificate; Ecologically Critical Area; Department of Environment (DoE); The Environment Court Act, 2010.*

Introduction: Bangladesh is a small yet highly populated nation with an abundance of natural ecosystems and biodiversity. It is one of the world's most ecologically significant and biologically diverse landscapes, home to a variety of forests, freshwater wetlands, and striking coastal and marine features. Some protected areas, like the Sundarbans, keep status of international world heritage. Additionally, Numerous direct risks to Bangladesh's biodiversity are produced by human-induced environmental actions and views towards the environment. Because of the continued economic and population increase, many of these dangers will worsen. In the chapter of fundamental principles of Bangladesh Constitution prescribed the importance of protection of bio-diversity. Likewise, along with the Environment Court Act 2010, the enactment of Environment Conservation Act 1995 is playing remarkable contribution legal structure of conserving balance of Environment. The government enacted the Environment Pollution Control Ordinance in 1977 for establishing environmental rights. Later this law was replaced by 'The Bangladesh Environment Conservation Act 1995' because it was insufficient. Now the new law covers the majority of the country's sectoral laws as per Environment Policy, 1992, 1972 Stockholm

Conference, UNFCCC, Kyoto Protocol 1992, Rio Declaration, 1987 Johannesburg Conference, Environment Action Plan, 1992 etc. Under the Bangladesh Environment Conservation Act 1995 and its Rules 1997, environmental offenses are currently being handled by three courts in Bangladesh. All people now have access to environmental liberties through the involvement of these courts. Three special courts were established in Dhaka, Chittagong, and Sylhet Division in accordance with the Environment Court Act, 2000 and later amended at 2010. For the entirety of Bangladesh, a court for environmental appeals was established in Dhaka.

Background of the Study: Bangladesh has passed environmental laws that establish specialized environmental courts, but they provide few opportunities for impacted people to receive justice. The Department of Environment is the Ministry's implementing body as Mijin stated. [1] The Ministry of Environment and Forest makes significant contributions to defining environmental policy and integrating it into the development of all public investment projects, in addition to overseeing the activities of the implementing agency. Hence, encroachment on the protected areas, degradation of wetlands and forests and unsustainable use of land resources are deteriorating due to improper legal structures of environmental laws in Bangladesh. [2] Shuvo opined that article 18(A) of the Constitution of Bangladesh narrates on preservation of the environment and protection of biodiversity.[3] In response, the Environment Conservation Act (section 5), 1995, which contains a provision to establish what is known as an Ecologically Critical Area (ECA), may be applied. Amin et al. narrated that the majority of British laws were carried over into Bangladesh after it gained independence in 1971 and are still in effect today.[4] Hasanat states that the executive has a monopoly

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on the laws, which limits the courts' ability to function. The laws also prohibit environmental victims from directly suing, and they mandate administrative procedures that frequently cause delays and arbitrary decisions. They are executed by executive bodies having the spirit of colony and only offer "controlled rights" for those who are affected and a "controlled jurisdiction" for the court. [5] As a result, environmental justice widely prevails only on paper and is with condition of political interference. As a result, environmental laws in Bangladesh do not effectively advance ecological justice. According to Razzaque, the proclamation, injunction, criminal penalties, and civil damages are the most frequent remedies used by the courts while addressing environmental issues.[6]The Bangladeshi judiciary has many opportunities to take similar creative decisions and independent action in environmental cases, such as, Dr. Mohiuddin Farooque v Bangladesh (1997) 49 DLR (AD) 1; Metro Makers and developers Limited and Others v BELA and Others (2013) 65 DLR (AD) 189; BELA v Government of Bangladesh and Others (2010) BLD (HCD) 30. Mohammad states that the idea of environmental justice was first recognized in the USA in the early 1980s.It is an effort to guarantee environmental justice for all living things.[7] Additionally, Brian Pretson stated that the approach of restorative justice has also been employed by the courts when dealing with environmental crime to give restorative justice in cases of environmental damage.[8] At the same time, the precautionary principle as a guiding concept in the policy of environmental protection was also made crystal evident in the London Declaration as per James Cameron and Juli Abouchar. [9] Faroque and South explains that global awareness of environmental crimes is rising as people become more aware of their short- and long-term effects. As a result, these crimes are recognized as a serious issue on a global scale in a variety of classifications, including some ranking among the most lucrative criminal enterprises in world. The most frequent environmental crimes involve waste disposal, pollution, and the unauthorized use of wild animals and plants. [10] Alam states that most of the causes of natural pollution are occurred by people. It is essential to maintain a balance between development along with environmental protection in order to safeguard the environment from different forms of pollution. [11] Chowdhury narrated that the Environment Court handles the related reimbursement issues in accordance with the "Civil Procedure 1908" section of the Code, which includes both criminal and civil jurisdiction. [12] Mannan stated that the Environmental Court should be set up with a framework that allows it to handle criminal and civil cases. Every citizen of a state has the right to get the Environmental Court in reaction to numerous environmental disputes.[13] Ashraful explains that injunctive or declarative relief, as well as civil or criminal penalties, are the main remedies available in Bangladeshi courts for environmental disputes.[14] Hassan shows that the Bangladesh Environment Conservation Act, 1995, as amended in 2010, was passed to establish strict liability for environmental pollution, provide for its control and mitigation, and to raise environmental standards generally by preserving the environment in its natural form. [15] Ivy states that to prevent the deterioration of the environment, it is urgently necessary to enforce and execute the aforementioned rules, laws, and policies. [16] Amirante shows that environmental law is unquestionably a cornerstone of environmental protection, but even after many years, it still suffers from inadequate implementation in the majority of the world.[17] Habib narrates that in order to overcome the traditional procedural shortcomings of criminal and civil courts and keep a creative contribution in attaining the target of environmental justice, the environment court, as an instrument of environmental governance in the setting of Bangladesh, must be designed.[18] Furthermore, as per Ernst Brandl and Hartwin Bungert that Courts are becoming more involved with these provisions and creating a common constitutional law of environmental rights as more and more nations around the world amend their constitutions to recognize environmental rights and duties relating to air, water, the use of natural resources, sustainability, climate change, and more. [19] Besides, as per Dr. Parvez Hasan and Azfar, there were only thirty-two environmental treaties in existence at the time of the Stockholm Conference of the United Nations in 1972. More than 900 international environmental law instruments are now in existence for protecting environmental rights both globally and nationally. [20] Hence, Bangladesh's development and environmental initiatives were greatly influenced by the Brundtland Report, which was published in 1987 by the United Nations World Commission on Environment and Development. The creation of a separate Ministry of Environment and Forest in 1989 as well as the restructuring and growth of the Department of Environment (DoE) are indicating that the government has begun to give environmental issues more significance since the late 1980s as evident by Khan and Belal.[21]

Objectives of the study: The study is conducted for analyzing actual practices of the environmental courts in Bangladesh. The objectives of the study are:

- a) To point out the existing situation of environmental courts in Bangladesh
- b) To explain the regulations of the Environment Conservation Act, 1995 for ensuring remedy
- c) To analyze provisions of the Environment Court Act, 2010 for finding out shortcoming of the Act.
- d) To find out the challenges of ensuring environmental justice in Bangladesh
- e) To develop potential guidelines for improving existing environment court system in Bangladesh.

Methodology: This research study, which is based on text analysis, was created with the goal of analyzing the state of environmental courts in Bangladesh. This work's methodology is founded mainly on doctrinal and legal research in order to achieve the objectives of the research. An integrative review of the literature has been done. The doctrinal legal research method includes, among other things, a careful reading and comparison of various documents in order to identify ambiguity, reveal

contradictions between laws and principles, find discrepancies, and exercise the legal analysis. The analysis draws on primary and secondary legal research to learn more about the constitution's clauses from books, scholarly articles, and other relevant internet sources. It is founded on legal rules discovered in legal texts and on regulations produced by court decisions. The laws that apply to environmental justice are the main topic of the paper. It is evident that law has its own distinctive legal analysis because it is a separate and independent subject. The doctrinal explanation and remarks in this article make conclusive claims about the nature and applicability of basic legal requirements and standards for the pertinent study-related issues. In order to evaluate and analyze the laws pertaining to the applicability of the Environment Conservation Act, 1995 and the Environment Court Act, 2010, and, legal documents are carefully evaluated. In order to develop opinions and pass judgments about the limitations of the legal systems in upholding legal frameworks and ensuring justice with regard to environmental protection issues, the research also uses a critical analysis technique. The research methodology also involves a critical evaluation of relevant laws and court rulings from various jurisdictions. Numerous pertinent arguments and perspectives presented by knowledgeable authors of books, journals, newspapers, and international documents are also closely examined in order to further the study's objective.

Situation of Environmental Courts in Bangladesh: The government has approved a number of laws to take prompt legal action against environmental contamination, but these laws do not include the right to sustainable development or a healthy lifestyle, unlike laws that were passed two or five decades ago as per Oikya. [22] In the current state of affairs in Bangladesh, cases must be heard by courts known as Green Courts or Environmental Courts for swift resolution of environmental offenses regarding violation of the laws relating to protection of environment. The establishment of these courts is urgently needed right now. For the purpose of handling offenses related to environmental pollution in Bangladesh, the government has founded environmental courts in both Dhaka and Chattogram. In essence, as per Nargis and Hasanat, Bangladesh has passed environmental legislation that establish specialized environmental courts, but they provide little opportunities for impacted individuals to receive justice. [23] Additionally, Bangladesh Environment Conservation Act, 1995 and Code of Criminal and Civil Procedure and Bangladesh Environment Conservation Rules, 1997 keep the role as basis for the Environment Court Act. Moreover, the purposes Environmental court Act are restricted to natural environment, and Environment Court is responsible for adjudicating violations of environmental laws for the preservation and upkeep of the concept of natural environment in Bangladesh. It is not restricted to the social setting. Despite the close connections between these two environments. The role of environmental court is a strong mechanism to safeguard environment in order that people or other living things cannot harm directly or indirectly. Likewise, as per Jona Razzaqe public interest litigation appears to be the most frequently employed instrument used by community groups in India, Pakistan, and Bangladesh to protect the environment, despite there being multiple procedural channels to bring proceedings in court. [24] The Bangladesh Environmental Conservation Act, 1995 and its Rules, 1997, are intended to be carried out in accordance with the environmental court Act's objectives. The "right to life and personal liberty" is a fundamental right supported by Articles 31 and 32 of the Bangladeshi Constitution, and the Supreme Court has ruled that this right also includes the "right to a healthy environment." Therefore, all stakeholders including constitution and Supreme Court have given the Bangladesh Police the authority to uphold these rights for ensuring clean as well as healthy environment. However, economic and political opposition and unfavorable aspects of accountability may make it difficult for agencies to work together and exercise their police powers. Hasnat et al. states that while the Ministry of Home Affairs is in charge of criminal justice institutions, the Ministry of Environment, Forestry, and Climate Change oversees both the Department of the Environment and the Bangladesh Forest Department. This is crucial to comprehending why the establishment of Environmental Courts, which seemed to be a progressive development. [25] Faroque and South state that the establishment of particularly framed Environmental Courts to settle the disputes regarding the environment and to enforce environmental principles and laws has been especially remarkable development in Bangladesh's system environmental issues. [10] Following evaluation of Bangladesh's environmental Laws, it is discussed below how these courts function and what they contribute to society. Ullah states that though the precise beginning cannot be identified, Bengal in ancient times served as the foundation for environmental justice in Bangladesh. [26] Thus, Environmental courts have the legal authority to hear, process, and decide matters under environmental legislation, such as the Bangladesh Environment Conservation Act (ECA) 1995 and the Environment Court Act 2010 as evident by Abul Hasnat. [5] Some remarkable aspects of the Environment Court have been analyzed based on two existing legal bases of the Environment Court Systems in Bangladesh:

The Environment Conservation Act, 1995: Ahammed and Harvey narrate that the Environment Conservation Act of 1995's main provisions are as follows: a. Declaring ecologically critical areas and restrictions on the activities that can or cannot be carried out there. b. Environmentally harmful vehicle emissions are subject to regulation. c. All industrial projects and units must receive clearance certificate of environmental safety, d. Setting standards for soil, water, air, and noise quality for various uses, and e. f. The establishment of a standard limit for waste discharge and emission. g. Creating and announcing environmental standards. h. Sanctions for failing to comply. [27] Oikya opines that it has brought environmental awareness and is necessary for addressing environmental hazards. The Conservation Rules for protecting the environment are passed to ensure the efficient and effective implementation of the conservation Act of 1995. [22] Hence, Environment Conservation Act of 1995 of Bangladesh

contains provisions regarding control of every pollution which is the reflection of the principle of sustainable development. [28] Cletmett narrates that the DoE has the right to enter, investigate, test, examine, and seize industrial facilities, equipment, records, registers, documents, or other significant objects in order to enforce the Act. [29] Furthermore, Mohammad narrated that the Bangladesh Supreme Court is actively involved in the growth and preservation of the environment in Bangladesh. Having effective involvement of the BELA (Bangladesh Environment Lawyers Association), a remarkable number of judicial judgements have been provided for protecting the environment in Bangladesh. [30] In addition to this, to implement the Environmental Conservation Act, 1995, the Government founded the concept of DoE which is conducted by DG. Director General and the staff play a big part in making this act effective one. Without taking the environment clearance certificate, no one can establish any industrial unit which is provided by DG as per the Conservation Rules, 1997. By determining the location and impact the units for industry or projects have been categorized into four i.e. green, orange, orange B and red. Thus, for every active unit the environment clearance certificate is issued. [31]

The Environment Court Act, 2010: In the Environment Court, 2010 every cases regarding environment pollution would be filed and settled in compliance with the provision under the environment conservation Act 1995. [32] Mia and Islam state that the cases relevant to environmental issue must be done at the Environmental Court. [33] Sajal and Rhythm opines that the existing Act expects to frame one or more Environment Courts in every district with a Joint District Judge, who will also conduct problems that fall under the area of an Environment Court along with his regular responsibilities. [34] It is vivid that the existing Act does not need establishment of an independent Environment Court. [35] As a result, only preceding three Courts and an Appellate Court have been established as Environment Courts to date. [36] Moreover, to provide environmental justice, Bangladesh's Environment Courts must take initiative and demonstrate activism. [37] For the purpose of asserting their environmental rights, an individual, group of individuals, or NGO should be given direct access to the Court as a counsel. [38] Additionally, the Courts should have exclusive authority to resolve environmental disputes, and the Judges should have some level of environmental expertise. Judges who lack specialized knowledge of environmental issues are frequently appointed from the regular Court. As a result, they should receive specialized instruction on environmental law and developing environmental jurisprudence. [39] Akkas states that the primary goal of this law is to establish a court nearby to expedite environmental crime trials. As a result, the Environmental Court has the authority to punish offenders who violate environmental laws and to rule on just compensation when necessary. [40] Having said that, to speed up the trial, a set deadline should be maintained for the conclusion of the investigation and submission of the report. In environmental cases, provisions should be made for the safety of witnesses. For resolving environmental disputes, there ought to be unique rules of evidence as evident by A.A. Faruque. [41]

Findings of the Study: The comparative analysis and study of national legal frameworks regarding environmental courts in Bangladesh show some issues to be considered with importance. The following issues are supposed to be focused for developing legal strengths of the condition of environmental justice in in Bangladesh:

- In fact, individuals are less likely to turn to the Environmental Courts for assistance as a result of negative public responses. Albeit, it is a fundamental privilege for Bangladeshis, the institution was unable to live up to public expectations.
- The jurisdiction of the Environment Court is unclear. The Environment Court may redirect violations of the law and compensation claims. Environmental law is defined in Section 2(c) of the Act and includes the Bangladesh Environment Conservation Act, 1995, as well as any additional laws that the government may later specify in the official Gazette. However, the government hasn't published a gazette notice in the previous 16 years to include any other act.
- As provided in Section 5 sub-clause 3 in the Environmental Court Act 2010, no Environment Court will take cognizance of a crime or receive any suit for compensation, unless on a written report of an environmental inspector or any other person authorized by the Director-General of Department of Environment.
- For the general public, the complaint procedure is challenging. The environmental court is therefore more user-friendly for the government agency and more complicated for the general public, we can say with some degree of certainty.
- Polluters who are actually from the upper class are typically able to employ their own attorneys and have the political connections necessary to escape such cases. In contrast, the impoverished or rural communities are typically the ones who suffer the most from pollution.
- The use of data from science and expert evidence to determine appropriate legal remedies in environmental cases should be allowed by the environmental laws. More specifically, by enhancing the court's internal expertise and facilitating interdisciplinary decision-making, the inclusion of environmental experts in environmental courts or tribunals can promote "decision making quality, effectiveness, and efficiency."

- Recognizing that the role of environmental experts plays a crucial role in ensuring that litigants have access to justice, the majority of environmental courts and tribunals around the world have pertinent procedures for introducing and managing scientific and technical information.
- People have thus lost interest in environment courts as a result of their difficult and drawn-out process for bringing lawsuits as well as their standard trial procedure.

Recommendation: By this study some remarkable and functional insights are recommended to make a comprehensive framework for protecting the environmental justice through the environment court system prevalent in Bangladesh:

- The jurisdiction of the environment court as per the Environment Court is supposed to be more unequivocal.
- For the benefit of the general public, all restrictions on access and participation should be lifted. Enabling anyone who feels wronged, including any representative body or organization, to file a lawsuit directly in the Environment Court.
- Punitive provisions may be added to curb baseless, pointless, and frivolous lawsuits, but they should not restrict the ability of regular people to file lawsuits in a way that prevents them from seeking justice for actual losses and damages.
- Subsequently, national courts can supplement or even correct legislative efforts by incorporating international standards into domestic law through their judgments.
- To enhance the role of legal Aid meaningfully essential. Creating offices across all areas and bolstering DoE with more competent and sufficient officers.
- As local and international environmental NGOs should concentrate on the environmental rights problem by adopting more development programs, the government should take more appropriate measures to guarantee environmental justice to the country's marginalized populations more particularly.
- More training is required for the court personnel, and environmental consciousness campaigns should be highlighted in the media.
- The current environmental laws and policies must be properly implemented and enforced by giving rural residents preference for the advancement of their way of life. Thus, the court can help the country's most vulnerable populations.
- A strong participatory mechanism should be strengthened by adequate information accessibility. Every person should have appropriate access to information kept by public authorities about the environment, including information on activities involving hazardous materials in their communities and the chance to engage in decision-making.

Conclusion: More significantly, it is the most crucial to enhance natural laws and policies to establish balance between development and protection of environment. This is an important aspect for Bangladesh because it is a developing nation. Likewise, Institutions linked to national environmental legislation, both governmental and non-governmental, are regarded as crucial components of the capacity-building process for sustainable development. However, it would be preferable to include a clause titled "Polluter Pay Principle" for the protection and improvement of Bangladesh's environment. Furthermore, by developing appropriate institutional and legislative frameworks, building capacity, and putting rules and laws into place, the difficulties that currently present may be overcome. Priority should be given to timely reporting and environmental legislation monitoring. More importantly, it was once believed that Bangladesh's current legal framework is insufficient for dealing with environmental issues. The fact that various people can interpret the same law differently could be the cause. Nonetheless, the progressive interpretation provided by the Supreme Court of Bangladesh in a writ petition filed by BELA (Bangladesh Environmental Lawyers Association) relating to "Locus Standi" of Article 102 of the Constitution of Bangladesh, the idea of Public Interest Litigation (PIL) is now legally recognized in our nation. Despite the fact that Article 102 has been a part of our Constitution since 1972, it has not always been read in a progressive manner.

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