

**"RIGHTS TO HEALTHY ENVIRONMENT : LEGAL  
EFFORTS IN BANGLADESH"**

by

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At present environment and its relation with development have become matters of growing concern for the modern world. This concern has got connection with the revolution of post-second world war era in science and technology. During this period due to the rapid development of the productive forces of the society, human intervention in natural environment has been intensified alarmingly. Consequently the delicate balance between man and environment has been disrupted severely. In the backdrop of the fear of further deterioration in natural environment, the questions of saving it and achieving harmony between development and environment are receiving utmost attention in national, regional and international forums all over the world now.

Global environmental concern led to the first United Nations Convention on "Human Environment" in 1972. In recognition of Sweden's contribution in first proposing the idea of holding a UN conference on human environment, that conference was held in Stockholm. The most remarkable aspect of Stockholm declaration is that it for the first time proclaims the right to a healthy living environment to be a basic human right. At that time "Environmental Pollution" was considered as the only culprit, but economic and development issues were poorly addressed to find out their relationship with environmental degradation, living standard etc<sup>1</sup>.

The Declaration of Stockholm conference was criticised for its poor concern about the fundamental environmental problems of developing countries, the poverty and population.<sup>2</sup>

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1. M. Monirul Qader Mirza, "Agenda 21: Will It Make Our planet Green or Hunger Free" Grassroots, Adab Quarterly, Vol. 2 issue V/VI, 5(1993).
  2. For details, see Indira Gandhi on Global Environment and Development. The International Journal on Sustainable Development New Delhi, India, Vol. 1 No. 2, P. (137-140.)

The second UN conference correctly linked the development issue with environment. That UN conference On Environment and Development (UNCED) was held in 1992 in Rio-de-Jenerio, the capital city of Brazil. Participated by 172 countries, the conference stressed on the balance between development and environment. That conference underscored the need for sustainable development, the conception which connotes the strategy of development without depletion and destruction of national resources. Rio conference has adopted a broadbased programme of action covering development and environmental issues, a programme commonly described as Agenda 21. The core chapters of Agenda 21 relates to the financing of its implementation and to the institutional follow-up to the UNCED. The conference recommended that the General Assembly would establish a high power commission on sustainable development and that commission would be accountable to the General Assembly through UN Economic and Social Council (ECOSOC). This commission will particularly monitor the action programme of individual government in the spirit of the Agenda 21.<sup>3</sup>

Apart from the question of international integrated effort to save environment Rio summit expected every state to take measures to save environment at the national level also.<sup>4</sup> Among these measures that summit paid a great importance to the effective environmental legislation.

Rio declaration provides that "State shall enact effective environmental legislation ....."<sup>5</sup> It further provides that "State shall develop national law regarding liability and compensation for the victims of pollution and other environmental damages. State shall also co-operate in an expeditions and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused

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3. M. Monirul Oader Mirza, "OP. Cit, 7--8.
  4. Brundtland Bulletin. The centre for our common future/1 (1992).
  5. Principle 11, Rio declaration cited in The Bangladesh Observer. July 16, (1992).

by activities within their jurisdiction or control to areas beyond their jurisdiction.<sup>6</sup>

So Rio declaration stressed on two aspects of legal efforts to save environment- firstly concerning extra-territorial environmental effects, to one state arising from activities of another state, secondly concerning inter-territorial environmental problems affecting nationals of a state.

So far as second question is concerned, many states have strengthened and still is strengthening their national laws to discourage the reasons of environmental hazards. National laws and legal frameworks have been developed in these states to fix the liabilities of the person or bodies causing pollution and to ensure compensation for the victims of pollution and other environmental damage.

In this essay an attempt will be made to evaluate the legal efforts Bangladesh has taken domestically to ensure right to healthy environment. For that purpose the environmental challenges Bangladesh is facing now, should be mentioned firstly.

### **BANGLADESH : VULNERABILITY TO ENVIRONMENTAL CHALLENGES :**

Like all other third world countries, the environmental problems Bangladesh faces are based on poverty, illiteracy and ignorance of a majority of population. These environmental problems are the consequence of absence of development rather than the outcome of any development strategy. Being economically and technologically backward, having non-accountable administrative machinery, the vast population of this country are largely dependent on nature for their livelihood and are helpless while facing the disturbance in the balance of nature. Observing this type of socio-economic conditions Yezid sayingh remarked: "Instead of attaining the conventional task of Socio-economic development and political stability, the challenge facing a number of them (the developing

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6. Principle 13, Rio declaration, Ibid.

countries) in the 1990s and early twenty first century is likely to be one of ensuring mere physical survival.<sup>7</sup>

In case of Bangladesh this observation bears special importance as only a few countries are faced with environmental challenges that could be compared with one faced by Bangladesh. Bangladesh is vulnerable to environmental degradation at all levels-global, regional and national.<sup>8</sup>

While global environmental threats are remote in nature Bangladesh is facing acute environmental hazards at regional and national levels. At the regional level Bangladesh's vulnerability to environmental problems is basically due to its geographical location. Bangladesh is the lower riparian country of its three most important rivers- The Ganga, the Brahmaputra and the Meghna- The rivers whose water courses are mainly dominated by upper riparian states Viz, India and Nepal. Consequently activities like deforestation in India and Nepal and construction of numerous dams and barrages on the common river by India are causing annual food and alternate drought in Bangladesh. Diversion of water flows and unilateral control over water share result in decreased water level in dry seasons which leads to the problem of agriculture, industry, navigation fishery and domestic use. Hydrology change due to upstream diversion are causing some other serious environmental problems like siltation, rise of river beds, demolition of river embankment, changed river course, decreased soil moisture and salinity leading to desertification, damages to the mangrove forest, unexpected change in water pattern etc.<sup>9</sup>

At the national level the root of the environmental problems of Bangladesh lies in its socio-economic structure. The booming population and chronic poverty of the country are seriously effecting the limited natural resources as well as the ecological balance.<sup>10</sup>

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7. Yezid sayigh, "Confronting the 1990s: Security in the Developing countries". Adelphi papers, No. 151 summer, 42 (1990)

8. Nahid Islam, Environmental challenges to Bangladesh. BISS Papers, Number-13. 4 (1991)

9. Ibid, 23.

10. Ibid, 37.

Deforestation, water, air and industrial pollution, Unsustainable land use, intense use of fisheries, soil and water resources<sup>11</sup> might be traced as the most acute environment challenges Bangladesh is facing domestically. But in fact there are so many other environmental hazards people of this country are facing which can never be assessed without proper administrative efforts. While addressing these issues, the national legislations of Bangladesh lack in clarity due to absence of any environment quality and impact assessment.

#### LEGAL RESPONSE TO ENVIRONMENT ISSUE

Since environmental problems at the national level are largely caused by human behavior, perception and conduct, legal response has a great role to play to combat environmental problems, Specially pollution. Bangladesh echoing the voice of most advanced countries, is vocal in the UN and other international conferences on environmental issues. Bangladesh is signatory to a number of international conventions also. But at the national level its legal framework has done very little to save its citizens from environmental pollution which on many occasions costs thousands of lives. But we know environment is inextricable from life. To ensure the vary basic needs of that life, like all other law our environmental laws are for the most part silent. Before discussing those laws the international conventions to which Bangladesh is a signatory can be mentioned relevantly.

#### INTERNATIONAL CONVENTIONS RELATED TO ENVIRONMENT : BANGLADESH AS A SIGNATORY :

The international conventions, to which Bangladesh is a signatory, in many cases deal with the advanced aspects of environment. These conventions are as follows :-

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11. Bangladesh: Environment and Natural Resources Assement," Final Report, prepared by the World Resource Institute, Centre for International Development and Environment, Washington, U. S. A. 1 (1990).

- a) International plant protection convention : to maintain and increase international co-operation in controlling pests and diseases of plants and plant products and in preventing their introduction and spread across national boundaries.
- b) International convention for the prevention of pollution of the sea by oil : to take action to prevent pollution of the sea by oil discharged from ship.
- c) International convention relating to intervention on the High seas in oil pollution casualties : to enable countries to take action on the high seas in cases of a maritime casualty resulting in damage of oil pollution of sea and coastlines, to establish that such action would not affect the principle of freedom of the high seas.
- d) UN convention of the Law of the sea : To set up a comprehensive new legal regime for the sea and oceans and as far as environmental provisions are concerned to establish national rules concerning environmental standards as well as enforcement provisions dealing with pollution, of the marine environment.
- e) Convention of the prohibition of military or any other hostile use of environmental modification techniques.
- f) Convention concerning the protection of the world cultural and natural Heritage.
- g) Convention on international trade in endangered species of wild Fauna and Flora.

Bangladesh has also become a signatory to five additional international maritime conventions, primarily dealing with passenger safety, navigation, load and space requirements.<sup>12</sup>

From the nature of the above mentioned conventions it is clear that these conventions are of less importance in respect of the

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12. The Environment and Development in Bangladesh; An Overview and strategy for the future, Wit Treygo and P. B. Dean, Canadian International Development Agency, 16 (1989).

environmental problems Bangladesh is facing. Furthermore the conventions are merely declaratory, Bangladesh Government has not taken any step to have an effective implementation machinery to comply with the convention. Neither has it enacted proper national laws with the specific intention of meeting the purposes of these conventions.

### ENVIRONMENTAL LAWS OF BANGLADESH

The first and till now the only law in Bangladesh which has been promulgated for the specific purpose of controlling, preventing and abating environmental pollution is the Environmental Pollution cont. of ordinance of 1977. Besides that, there are more than 100 laws in Bangladesh which have relevance to environment, Though, in most of the cases the primary objectives of these laws are not necessarily resource oriented or concerned with environmental pollution these laws can be invoked to cover different aspects of environment. These laws cover different sectorial aspects of environment like pesticide, land use, fisheries, forestry, food stuff, human health, black smoke, sanitation, local administration, urban facilities, industrial pollution, wild life protection, environmental quality and pollution control etc. Laws having bearing on environment of Bangladesh can broadly be divided into four categories :

- i) Laws relating to duties of local authorities
- ii) Laws relating to protection of environmental health
- iii) Laws relating to conservation of natural resources
- iv) Laws relating to control of environmental pollution.

i) Laws relating to duties of Local authorities :

The old local government laws like Bengal local self Government Act of 1919, Bengal Village Self Government (Amendment) Act 1935, Bengal Municipal Act of 1931 were revised, updated and to some extent developed in the form of the pourashava ordinance 1977, the Local Government (Upazila Parishad and Upazila Administration Reorganization) ordinance 1982 and the Local Government (Union

Parishads) Ordinance 1983.<sup>13</sup> These laws have assigned the local authorities like municipal corporations, upazila administrations and union parishad, some responsibilities relating to assurance of environmental facilities. The concerned legislations expect the local authorities to deal with issues like sanitation, water supply, public bathing, public garden, plantation and preservation of trees etc. to satisfy the environmental need of the people. The pourashava ordinance has specifically laid down that a pourashava shall be responsible for the control of environmental pollution in the municipality area and for that purpose it may cause such measures to be taken as are required by or under this ordinance. However the ordinance has not gone into details to clarify those requirements.

The Town Improvement Act provides for some environmental facilities in large cities like Dhaka, Chittagong, Rajshahi and Khulna. This Act established a development authority in each city which may pass resolutions and frame improvement schemes in respect of ventilation, sanitation water supply, drainage and sewerage system.

ii) Laws relating to protection of environmental health :

The Acts passed to deal with the environmental health in industrial areas, are mainly Factories Act of 1965 and The Factory Rules of 1979. The Factory Act contains adequate provisions for health and hygienic working atmosphere. This law requires every factory employing ten or more workers to be kept clean and free from effluvia arising from any drain privy or other nuisance and in particular to regularly wash and clean all accumulated dirt and to provide for drainage wherever the factory premises accumulate water that can not be drained.<sup>14</sup>

The Factory Rules 1979 specify some responsibilities relating to disposal of waste water and supply of drinking water to be shouldered by the factory management.

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13. Overview of Environmental Legislations, Their Constraints and suggested Measures for Effective Implementation. An article prepared by Risalat Ahmed, Director General, Department of Environment, Government of Bangladesh, 387.

14. Ibid, 390



The Tea plantation labour ordinance 1962 and Rules of 1977 require adequate supply of drinking water, arrangement of sufficiently clean latrines and urinals and maintenance of medical facilities for the labourers. Shops and Establishment Act of 1965 provides for clean and hygienic atmosphere in shops or commercial establishments. Pesticide ordinance, 1971, Agricultural pesticides (Amendment) Act of 1980 and the Agricultural Pesticides (Amendment) Ordinance of 1983 are intended to save people, animals and vegetation from import manufacture, sale and distribution of pesticides harmful in nature. Bangladesh pure Food ordinance 1959 provides for the prevention of adulteration of food and prohibition on sale or distribution of food injurious to health. The penal code 1860 proscribes certain acts viz. 'Voluntary corrupting or fouling the water of any public spring or reservoir', selling impure food, drinks, noxious drugs and medicines, The purpose of the relevant provisions of B.P.C. can be interpreted to protect environmental health of the public at large. Air pollution from vehicles is intended to be restrained by the Motor Vehicle Ordinance of 1939, as modified in 1983 to curtail "black smoke". The other important laws which can be interpreted to deal with issues of environmental health are - Water Supply and Sewerage Authority Ordinance, 1963, Boiler Act 1923, Poisons Act 1919, Embankment and Drainage Act 1952, Water Hyacinth Act 1936, Agriculture and Sanitary Improvement Act 1920, Bengal Smoke Nuisance Act 1905 etc.

iii) Laws for the conservation of Natural resources :

Protection of natural resources like forest, fisheries, wild life etc are very important to ensure environmental balance and the substantiality of future generations. Some important laws which aim at preventing destruction and depletion of these natural resources are cited below :

The Forestry Act provides for reserve forest over which the government has an acquired property right. This Act has made any type of unauthorized use or destruction of forest produce punishable. The supplementary Rules to Regulate Hunting,

shooting and Fishing within the controlled and vested Forests of 1959, have empowered the concerned governmental bodies to restrict totally or for a specified period the shooting, hunting or catching of various species of birds, animals and reptiles. Again Bangladesh wildlife (preservation) order, 1973 aims at protecting some wild animals from being hunted, killed or captured. For the protection and conservation of Fish and other Aquatic Resources in the inland waters of Bangladesh, East Bengal protection and Conservation of Fish Act was passed in 1950 and the protection and conservation of Fish (Amended) Ordinance was passed in 1982. According to these laws the government may frame rules to save fish and aquatic resources, which shall apply to any water or waters save private water. Marine Fisheries ordinance was passed in 1983 for the management, conservation and development of fisheries of territorial waters and exclusive economic zones. Territorial water and Maritime Zones Act of 1974 provides for conservation zones in territorial waters to protect the living resources of the sea from indiscriminate exploitation, depletion or destruction.

in) Law relating to control of Environmental Pollution :

Pollution control issue was first directly dealt with by "The Water Pollution Control Ordinance, 1970. After independence, some nonsignificant change was brought in this ordinance by the Water Pollution Control (amendment) Order of 1973. This order was restricted to water pollution only, having no regard to air, industrial or drug pollution. At that time increased awareness about environment at home and abroad led the government to adopt an ordinance - The Environment Pollution Control Ordinance-1977. At the preamble, this Act is proclaimed to be passed for the purpose of control, prevention and abatement of pollution of environment of Bangladesh. The EPC Ordinance provides for the establishment of an 'Environment Pollution Control Board'.<sup>15</sup> This board is entrusted with the responsibility of formulating policies for the control prevention and abatement of environmental pollution. It is given the responsibility of suggesting measures for implementation of its

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15. Section 3, Environment Pollution Control Ordinance 1977.

policies also.<sup>16</sup> This board can require commercial or industrial establishments to adopt such measures including construction, modification, extension or alternation of any disposal system in order to prevent, control and abate existing or potential pollution of environment. By virtue of the EPC ordinance such establishments can also be required to furnish information as to wastes, sewerage system or treatment work in any land or building owned by that establishment.<sup>17</sup>

EPC ordinance also provides that in case of disposal of solid wastes and control for radioactive substances supervisory powers have been vested in the Environment pollution control Board. It makes its provisions binding, the penalty for their violation may extend to one year of imprisonment or a fine of five thousand taka or both.<sup>18</sup>

#### EFFECTIVENESS OF THE EXISTING LAWS TO SAVE ENVIRONMENT :

Though the number and contents of environmental laws in Bangladesh might seem impressive, an analysis of their effectiveness reveals a contrary picture. At the outset of this discussion it should be said that the majority of environmental laws were developed under substantially different population and industrial development condition.<sup>19</sup> Many of the laws are only recently being revised and updated or are yet to be updated.<sup>20</sup> As for example the Boilers Act 1923, Agriculture and sanitary improvement Act 1920, Water hyacinth Act 1936, Embankment and Drainage Act 1952, The Town Improvement Act 1953, Shops and Establishment Act 1965, Factories Act 1965, Bangladesh pure Food

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16. Section 4, EPC Ordinance 1977

17. Section 6, EPC Ordinance 1977

18. Section 11, EPC Ordinance 1977

19. Malcolm Forles Baldwin, "An Assessment of Governmental Laws and Institutions Affecting Natural Resource Management in Bangladesh". cited in the Final Report, 55. op. cit

20. Final Report, 31. op. cit

Ordinance 1953, these important environmental laws have not been updated yet. These outdated laws and other improperly and incompletely updated laws are neither adequate to meet the present day needs of the country nor consistent with the changed environmental scenario of the world. A law passed two to five decades back can not incorporate the concept of 'sustainable development' or 'right to healthy environment' which are the outcome of very recent concerns about environment. Such a law can't play any effective role in combatting environmental pollution in today's Bangladesh, where overpopulation, poverty and illiteracy are aggravating this crisis day by day.

Moreover most of the existing laws are incomplete, ineffective and unenforceable. Very often the implementation mechanism is not clear and the functions of implementing authority are not well defined or the implementing authority is institutionally very weak.<sup>21</sup>

The local governmental laws speak about facilities relating to environmental health, but these are of bookish nature. Because these laws have not clarified the enforcement procedure of those facilities, leaving the question of accountability of the concerned governmental bodies. These laws do not spell out the steps which could be taken in case of the failure of those bodies to carry out the responsibilities assigned to them.

The laws relating to environmental health suffer from non-implementability because of two main reasons (a) absence or institutional weakness of controlling authority (b) absence of statutory environmental quality standards. The Factory Act has aimed at protecting workers from occupational health hazard, but it, in fact, does not make any provision as to industrial pollution control. Furthermore the supervising authority of enforcing health facilities is institutionally very weak. The shops and Establishment Act even does not specify the duties of the controlling agencies to ensure its provisions. On the other hand Bangladesh Pure Food Ordinance does not clearly settle the question what will the particular organisation do to ensure its implementation. The Tea Plantation

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21. Risalat Ahmed, Overview of Environmental Legislations : 394 op. cit.

Labour Ordinance 1962 and subsequent rules of 1977 are not being implemented properly because of lack in inspectorate responsibility.

The laws for conservation of natural resources have largely failed to meet their purpose mainly because of institutional weakness of enforcing authorities. The Forestry Act of 1927 categorized forest land when enforcement against deforestation was manageable. But that Act and subsequent law or governmental policies have not bolstered the enforcement authority when uncontrolled use of forest produce is mounting day by day. In respect of protection of wildlife fish and other aquatic resources, the relevant legislations do not provide scope for creation of a strong organisation which can take appropriate steps to protect these natural resources.

The EPC ordinance is basically an insufficient attempt to fight pollution. It uncertainly and inadequately covers some aspects of air and water pollution. This Act created two bodies Environmental pollution control Board and the Department of Environment, but these bodies are not well equipped to define, investigate and central pollution. It has failed to provide for a strong framework of administrative mechanism, having powers and standards for its effective implementation.

The EPC ordinance keeps silent in respect of some important environmental issues. It does not contain any provision to cover the operation of shipping or pollution of the marine environment in the sea adjoining the coast of Bangladesh and pollution of the marine environment from land based sources. It does not comprehensively cover matters like land use, planning, zoning rules, regulations to control production, registration, transportation, storage, disposal of potential pollutants or economic and development activities affecting water, air quality.<sup>22</sup>

Apart from these aspects the existing environmental laws can be criticised for their non-punitive approach. Only some legislations like Penal Code, EPC Ordinance, Tea Plantation Labour Ordinance, Bangladesh Wildlife (preservation) Order etc. provide for punishment

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22. 347. Ibid

to the persons responsible for pollution, which are also too marginal to influence the people's tendency of causing pollution.

Another remarkable thing is that except Workman Compensation Act of 1923 and Employers Liability Act of 1938, there is no law providing any monetary compensation to any victims of environmental pollution. This is a very important matter to be concerned with. Bangladesh is a country where deaths of thousands of people are caused by impure food and polluted water, where thousands of children have to ingest harmful drugs, where millions of peasants suffer because of environmental degradation, where many workers are vulnerable to industrial pollution. Recently in poisonous paracetamol and in diarrhoeal cases. We have seen how environmental pollution plays havoc with human life.

Keeping the question of compensating the victims of environmental pollution in mind some innovative legal approaches are being attempted in many commonwealth jurisdictions.

Among them incorporating the 'polluter pays principle for damages' in the environmental legislations, application of principles of tortious liabilities, liberalising the concept of locus stand are very important to be mentioned. But these approaches are also being ignored in our legal systems.

#### CONCLUSION :

in line with current worldwide concern about environment, Bangladesh Government has already vowed to protect environment and keep it safe for future generations. This led to the establishment of a separate Ministry for Environment and Forest in 1989 and declaration of 1990 as the year of Environment and the decade of the nineties to be the Decade of Environment. As an important part of legal efforts to save environment, a new ordinance called, Bangladesh Environment Preservation Ordinance has already been drafted, which is going to be promulgated soon.

But as far as legal efforts to save environment is concerned, that effort must be made integrated. Uncoordinated, adhoc, patchwork

legislative approaches to the problem and the solution are not enough for that purpose. Identification, examination and necessary amendment of all laws relating to environmental aspects are necessary to remove the existing ineffectively and lacunae in legal provisions. At the same time appropriate institutions capable of implementing environmental laws and supporting institutions competent to implement environmental protection and management programme have to be developed. The Government can seriously think about establishing environmental courts having specialist assessors to assist the courts, with exclusive jurisdiction in environmental matters. But before taking these steps the government has to adopt realistic national environment quality standards, pollution regulation guidelines and legislation regarding environmental impact assessment.

One of the serious problems in respect of non-enforcement of law in third world countries is lack of knowledge about the law at the operational level. So an attempt should be made to train the people manning different bodies dealing with environmental issues in order to make them competent enough to shoulder their responsibilities. Simultaneously mass awareness and publicity of legal standards and requirements relating to environment have to be promoted.

It is true that many of the environmental problems people of Bangladesh are suffering from, have been caused by activities in neighboring Countries But this can not be a logic to avoid the hard need of combatting environmental problems being caused internally. And in this respect a vital role can be played by the legal framework of our country. Because this is the machinery which can directly enforce rights of citizen including a right to healthy environment also. To strengthen the potentiality of that enforcement, Bangladesh Government can recognise a citizen's right to healthy environment as a fundamental human right by making constitutional provision.