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Environmental Crimes and Judicial Response in the Context of Bangladesh

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ABSTRACT

The environmental spectrum in Bangladesh is exceedingly vulnerable. The norm of environmental crimes in this country is prolific. Environmental crimes have skyrocketed over the decades and it is an area of increasing concern. This concern is not owing to its globalized nature but these green criminal activities have extensive impacts that are beyond the capacity of the justice system that comprehend and address accordingly. Hence, a question can be raised, How would criminal justice agencies, specifically the global South mitigate these alarming environmental threats? This paper takes Bangladesh's case into account and illustrates a range of examples of anthropogenic activities that are horrendously destroying ecological biodiversity and polluting the green landscape in this country. This paper also reviews these prolific crimes and environmental harms in line with the environmental law, and activities of the law enforcement agencies and environmental agencies in Bangladesh.

Keywords: Bangladesh, Judiciary response, Action of law enforcement agencies, and Environmental court.

INTRODUCTION:

Environmental crimes in Bangladesh are on the rise despite enacting multiple environmental laws (Raroque & South, 2020). There are various forms of environmental crimes for instance, encroachment, hill cutting, river grabbing, illegal installment of brick kilns, unauthorized access of the waste, forest wood, and chemical dumping in the water body and so on. Moreover, illegal wildlife hunting, wildlife smuggling and cruelty against wildlife as well as illegal fishing in the river are occurring on a regular basis in the environmental spectrum in Bangladesh. It is evident that environmental crimes are committed by individuals, groups of culprits, government organizations and corporate offenders. Land development and transfor-

mation are on the prevalence and this practice is not conducive for the ecological resources (Oikya, 2017). It is believed that environmental crimes occur because of loopholes of existing environmental laws. Moreover, law enforcement agencies such as police and environmental agencies are also largely responsible for committing environmental crimes. There is lacking in relation to coordination among the stakeholders, ambiguity and insufficiency about legal clause explanation. Furthermore, scanty knowledge among the people with respect to environment, absence of eco-ethics as well as less investment on green technology are claimed to have orchestrated a role to harm the environment. South in his research states that preventing environmental crimes has never been prioritized and the concerned authority does not act accordingly to

halt it (South, 2016). It implies, green policy and effective environmental laws are crucial in order to lessen the environmental crimes.

In addition to that stakeholders specifically the law enforcement agencies need to act on implementing the laws with iron hand. Common people can be educated in this regard therefore; environmental awareness campaigns can be conducted across the country.

Background

Environmental degradation is taking place across Bangladesh in an extensive scale. Larger extent of industrialization is leading to massive pollution in the green landscape. Green criminology is unsought but an obvious form that surfaces many hazards in the green landscape spectrum around the country by eclipsing effective implementation of the environmental laws. Loopholes in the legislation pave the ways of the invading in the ecological resources in Bangladesh (Saleh, 2015). The Stockholm Conference 1972 and the Rio Conference 1992 played a significant role to build global awareness and enhance international commitment toward the environment. Even constitutional provision shows the importance of controlling and protecting the environment (Ahmed, 2017). There was an emphatic influence that resulted in incorporating environment protection clauses in the constitutions in hundreds of countries across the world. However, Bangladesh as well as a few other countries was too slow to take necessary steps. In contrast, the court took the initiative and recognized the right to the environment. According to the Environmental Conservation Act (1995), Bangladesh Supreme court acted in absence of enforceable provision in the constitution on the basis of *Dr. M Farooque V Bangladesh* case. However, the environmental court is largely ineffective. It is not functional to serve the expected purpose. According to the provision of environmental court Act, any application in relation to compensation or complaint will not be received unless it is forwarded by an inspector of the environment department. It is an extensive drawback as common people or victims do not have any direct access to complain about the harm of the environment.

However, specialized environmental is becoming increasingly popular across the world (Sajal, 2015). The Environment Acts to some extent denies the

coherent right of citizens to express their dissatisfaction and file cases against the culprits in the environment courts. Therefore, environment crimes related lawsuits are filed in the High Court by the common citizen though the High Court is already burdened with many other prosecutions, as a consequence; environment related crimes are prolonged to deliver the judgment. Forming a special environmental judiciary is imperative to protect the environment (Sajal, 2016). This paper will look into all the relevant aspects of environment and legislation to develop a comprehensive understanding in order to protect and control the environment.

Defining Environmental Crimes

Environmental crimes centric debate is constant in different schools of thoughts. A group of environmental think tanks define it to the viewpoint of various epistemologies. On the other hand, the conventional criminologists coin it out by focusing on the “anthropocentric” perspective to define the environmental crimes, whereas critical criminologists try to characterize it to the lens of “ecocentric” viewpoint to outline environmental crimes (White, 2016). There are a range of issues that are causing environmental harms. In fact, environmental crimes are occurring in different forms. Over the decades, Bangladesh has been experiencing larger scale threats to its biodiversity and the cruel approach towards the environment. Rising population, economic development and continuing growth are intensifying threats which resulted in illegal encroachment in protected areas, biodiversity damage from infrastructural development, forest and wetland degradation, illegal extraction of land resources, unsustainable fishing, hill destruction, hunting wildlife and selling in the international market, controlling hydrological regimes and the dumping waste materials and chemical in the water body. Unwanted activities impact comprehensively on the ecology, biodiversity & environment (UNDP Bangladesh, 2018). Precisely these are defined as environmental crimes.

Legal Provision to Conserve Environment

Environmental laws were formulated in order to conserve and protect the ecology, ecosystem and the environment. Apparently, this law expedites the citizens' awareness and public agencies of their duties and responsibilities in line with the global call for a

sound and sustainable environment. As Alexandra Clemett states, environmental laws lay down in the Indian subcontinent in the 19th century however, remained unenforced or ineffective to a larger extent for the century and public agencies were in the dark in implementing it to protect the environment (Clemett, 2016). Continuous practice and activities about the environment were gravely harmful for the environmental resources. Even some laws have been redundant as those laws did not serve the purpose anymore. Albeit, the government enacted a national conservation strategy as well as adopted the national environmental policy in the year 1992. A large number of environmental laws and policies have however, none of them implemented properly (Business Standard, 2021). In the following years, a couple of more Environment laws were formulated which will be discussed in the following.

Environment Conservation Act 1995

This Act was enacted in the year 1995 for the protection, conservation and improvement of the environment and control it by means of mitigation of pollution in Bangladesh however, this Act was amended in the following years a couple of times. This Act mainly focuses on a range of components such as environment, Department of Environment, environment pollutant, pollution, occupant, ecosystems, hazardous material, environment conservation, as well as wastage and the Director General (Oikya, 2017). Before formulating this Act, the Environment Pollution Control Ordinance, 1977 was passed, but that ordinance did not take all the elements of the environment into account. The peripheral aspects in particular to the 1977 ordinance were not strong enough. Therefore, a new environmental Act was required to develop by keeping in mind all the contemporary issues. To make the Act more effective, every aspect of the environment and natural resources were brought into under purview of the Environmental Conservation Act 1995.

In its provisions, various rules have included for instance, providing with related clearance certificates, determining the environmental impact, provision of strong punishment for the individuals who are violating the Act as well as developing a way of implementation comparatively easier in the application of the Act. This Act was formulated to eclipse the various

stymies for promoting the environment, protecting it through sustainable exploration of natural resources, pollution protection and incorporation of environment for the development (Momtaz, 2002). A well-structured framework is provided in this Act as to shape social behavior and develop sustainable development regulations that are enforceable to conserve the environment.

One of the great aspects of this law is that it expedites the government to stand in consonance with the international laws and develop capabilities to address national, regional and global environmental challenges. To the environmental context this law is considered a milestone for achieving sustainable long-term development in terms of the environment in Bangladesh. Environment and environment related components have been defined in this Act and these are regarded as interdisciplinary. In addition, pollution, manner and approach of pollution are clarified; moreover, ecology, biodiversity, ecosystem as well as environment are considered as life supporting systems. This Act developed greater understanding about the environment and its components and outlined importance to stop stymieing of the hazards. The Environment Act 1995 clearly identified for the first some crucial aspects of the environment, even it laid down regulation to use environmental resources to a particular approach. Legal provisions have been encapsulated in appropriate manner wherever required in an effort to protect the environment (Azad, 2016). Human life, natural ecosystems and biological diversity have been considered through the same lens which is scientific formulation for protecting and conserving the environment in a sustainable manner. Quantitative and qualitative improvement is suggested in Environmental Act 1995 to harness the best sustainable outcomes and to prevent harms and degradation of the environment.

The Environment Conservation Act 1995 also defines specific environment related offences and prescribed certain punishment for the offender. In addition, the Environmental Conservation Rules 1997 was enacted to strengthen in line with the section 20A of the ECA as a supplement and to fulfill the objectives ECA 1995. However, there is controversy about the maxim "Prevention is better than cure" which implies it is post

harm oriented legislation. The punishment related provisions even make it difficult to implement as it requires magisterial power exercise.

Environmental Conservation Rules 1997

The Environmental Conservation Act was enacted in the year 1995 and two years later an accompanying legislation namely, the Environmental Conservation Rules 1997 was passed which arguably a landmark law to protect from the industrial water pollution. The legislation mainly focuses on the conservation, improvement of quality standards, and control through lessen pollution of the environment (Faroque & South, 2020). The Environmental Conservation Rules 1997 was enacted on the basis of the Environmental Conservation Act 1995 by specifying some guidelines about different components and the Department of Environment is irresponsible to carry out these assigned responsibilities. As a means of implementing the Environmental Conservation Act, the DoE is empowered to enter, investigate, test, examine and seize, records, registers, industrial plants, equipment, documents or other significant objects, and to search locations where it is thought an offense has committed in contravention of this act. Moreover, the Department of Environment is responsible to collect air, water, soil and other material's sample in front of the occupants to analyze it as per the jurisdiction of the Act. If any plant, industry or individual is found involved in unauthorized activities that contravene the rules of the Act 1995, the Depart of Environment has power to take necessary steps such as, issuing show cause letter or asking for explanation and to a greater extent taking punishment measure through closure and prohibition. These steps will be implemented with due procedure in line with the delegated power of the Act (Oikya, 2017). The DoE is empowered to arrange a public hearing if there is dissatisfaction among the common people or if any individual or a group of individuals submit an application who is being or about to get affected with pollution or environmental degradation. Since the implementation of the Environmental Conservation Rules 1997, all the plants, industries or other relevant establishments are required to obtain "Environmental Clearance" from the Department of Environment. In this regard, plants and industries or other establishments have been classified into four categories on the

basis of environmental impact, activities and location. Category based industries, plants or establishments are required to submit applications along with various forms in order to obtain Environmental Clearance (South, 2016). After receiving a clearance certificate, it will remain valid for three years for the green category's establishment and one year for the rest of other categories.

Air Pollution Control Rules 2022

Bangladesh, specifically Dhaka and its adjacent cities have seen extreme degrees of air pollution in recent years. As Tasnim Nusrat Reza opines in her article in the Daily Star, motorized vehicles' emission coupled with unplanned urban infrastructure development, industrialization and deforestation are the leading cause of air pollution (Saleh, 2015). Dhaka positioned top polluted city in the world in the AQI index of the Tribune Desk, (2018) according to the Dhaka Tribune report. The Environment Conservation Act 1995 envisaged a solid outline by defining the air pollution and developed a clear framework to address this problem. A few clauses were incorporated in this very legislation in relation to operation of motor vehicles and industries that produce unhealthy smoke and harm public health as well as environment. Section 9 of the Act instructed the responsible individual to take necessary steps to lessen or mitigate environmental impact, even the section 12 shows the requirement of the Environmental Clearance Certificate for the concerned individual.

The Air Pollution Control Rules 2022 was enacted in Bangladesh in the consonance with the global trend to bring the air pollution in the central attention. This separate law has been laid down to combat the air pollution which has become an extreme concern in recent years. However, there is a resonance of the spirit of the Environmental Conservation Act 1995 as well as the Environmental Conservation Rules 1997 as the Department of Environment is the core responsible entity to address the air pollution related challenges. As per clause 4, the Director General of the Department of Environment is empowered to formulate a scheme for national air quality standards in order to mitigate and control alarming air pollution. The DG is vested with power according to Rule 5 to declare a certain area as a "Degraded Air Shed" if air quality

exceeds the prescribed limit so that extreme air degradation can be slashed by this measurement (Ahmed & Ferdausi, 2012). Rule 6 expedites responsibility to the DG to catalog activities that are responsible for the air pollution. In addition, this law categorizes the sources of pollution such as, industries, motorized vehicles, development projects, infrastructure development and so on.

Landmark Environmental Law Verdicts

Meaningful access to the judiciary system envisages a person aggrieved to settle any disputed issue ethically. Dr Mohiuddin Farooque is an iconic individual who first filed a petition in relation to the environment against the government in 1995. The landmark case is recognized as *Farooque v Government* (1995) case in the judiciary arena. The petition was filed against the government by challenging the legality of an experimental project namely Flood Action Plan (FAP) was about to be built in Tangail. Obeying the court verdict, the government revised the project from the initial plan and initiated an environmental impact assessment by consulting the local people. It was the first landmark environmental case in the history of Bangladesh. In the following year, Dr. Mohiuddin Farooque v Bangladesh, (1997) filed another writ petition for the protection of the environment. This petition was by challenging the nuisance and sound pollution during the election campaign in 1996. The court recognized it and instructed the attorney general to take necessary steps to ensure protection from sound pollution and damage of private and public property during the election campaign (Mia *et al.*, 2022).

To another instance, Dr. Mohiuddin Farooque filed writ petition by urging to implement the Motor Vehicle Ordinance, 1983 as the three-wheeler two stroke engines vehicle produces excessive sound and injurious smoke that the causes environmental hazards (Mashraf, 2023). The court also recognized it and instructed the concerned authority to phase out the three-wheeler two stroke engines vehicle by December 2003. Because of this writ petition the CNG vehicle was introduced in the Bangladesh (*Farooque v Bangladesh*, 2003). Regarding the tube-well arsenic contamination, *Rabia Bhuiyan, MP v Ministry* (2007) of LGRD & others 2007, filed the writ petition for the failure of the government to seal affected tube-well

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and sought protection on the ground of environment pollution. The court considered it as a grave health concern and recognized it as an extreme environmental hazard. This case linked to the environment and constitutional right of every citizen to ensure a secure and healthy life and thus, instructed the responsible authority to safeguard the environment pollution and uphold the chartered citizen right. Additionally, in *BELA v Bangladesh*, (2008) writ petition sought for setting up an impartial committee to look into the ship breaking industry that was causing serious environmental hazards for the public. As per the verdict, the government took necessary steps in this regard and formulated specific guidelines for this very industry as the public health remains safe from the ship breaking hazards. Apart from that another writ petition *HRPB v Bangladesh* challenged earth-filling, construction of structures and encroachment along the bank of river Turag. The High Court started delivering verdict in the year 2019 and recognized the river as “Legal Person” which is a historical and landmark verdict in Bangladesh (Lubaba, 2019).

Analysis

As Tahseen Lubaba states in an article in the Daily Star newspaper, Bangladesh is a natural disaster-prone country due to imminent climate change impact, on the other hand; environment was being deteriorated because of the illegal action towards environment (Law Desk, 2019). Owing to the environmental vulnerability, the legal framework was required to address the challenges effectively. The Environment Conservation Act 1995 is believed to be a landmark legislation that paved the way of forming the Department of Environment and appointing Director General in this department. On the basis of this Act, environmental impact assessment is carried out as well as biodiversity and ecological critical areas are determined and declared. In the later years, the Environmental Conservation Rules 1997 was formulated to introduce an emphatic change by developing standards of the air, water and soil quality, the main components of the environment. However, the legislation is criticized because of the provision of extensive power of the DG. Nevertheless, appointed officers' technical capability was not outlined and the sentence term for the culprits is believed to be too insufficient (Ahmed &

Harvey, 2004). In addition, some loopholes are left in the conservation Act for the “national interest” and “good faith” that makes the law ineffective to a certain extent. Moreover, the weakest point is that an individual cannot seek justice straightforward in relation to the environment related crimes. Common people even cannot complain about the harms of the environment. Only appointed officials of the Department of Environment can investigate and complain in the court. In addition, judicial system of Bangladesh is playing a vital role in conserving and preventing the environment. However, more effective role of the judicial department will expedite better scope of conserving and controlling the environment. Air Pollution Control Rules 2022 was enacted to address the alarming air pollution in an effective manner in Bangladesh. Although the Environmental Conservation Act 1995 laid down the solid ground by inserting various provisions in this Act. However, controlling air pollution was a far cry, as air pollution aggravated in different parts specifically, Dhaka, Gazipur and Narayanganj comprehensively. This legislation stemmed from the failure of the previous Acts since those Acts could not curtail or control the pollution significantly (Kabir & Momtaz, 2013).

CONCLUSION:

In recent decades, Bangladesh saw a massive rise of environmental hazards across the country. Owing to increasing population growth, industrialization and infrastructural development, the environment became comprehensively vulnerable to a greater extent. Therefore, the ecosystem, biodiversity and ecology experienced havoc which to certain extent put human life in danger. On the other hand, global initiative in relation to the environment brought this issue to the central attention. Imminent climate disaster is another reason to be concerned about the protection of the environment. Because of those reasons, the government stepped forward and formulated various legislation for the protection of the environment. Defining environmental crimes is crucial to the viewpoint of experts that envisages outlining main challenges in this regard. Different schools of thought put forward their opinion in terms of environmental crimes however; various think tanks opined it from their own point of view. The Environmental Conservation Act 1995 is believed to

be one of the biggest milestones to combat the environmental challenges. Its rock-solid provisions for the first time outline clear guidelines for controlling and protecting the environment. In addition, other legislations also contributed to protect and control the environment to a larger extent. Judicial system in Bangladesh also played significant role for conserving and controlling the environment through various landmark verdicts. Most importantly, judicial verdicts have brought the environmental issues in the central attention for the first time in Bangladesh.

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CONFLICTS OF INTEREST:

I, here by, declare that there are no matters of conflict of interest in the content of the article.

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