

Prospects and Challenges of Sustainable Development through enforcement of Domestic Environmental Laws in Bangladesh.

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ABSTRACT

Environment is now not only a national issue but also an international concern. The preservation of environment must be ensured for the existence of the human beings in this world. Actually right to environment is a fundamental human right and ensuring right to environment depends on the conservation of environment. Movement towards conservation of environment started all over the world. Every country must come forward to prevent the components of environment and to improve the existing situation of environment for the purpose of sustainable development. Therefore, Bangladesh must come forward to the progress of the conservation of environment in Bangladeshi region. Actually, indeed, there is a discerning trend both at the national and international levels to adopt and recognized legal principles specially to meet the normative need of environmental regulatory system. In an unceasing process of formulation over the last few decades, the international community has adopted a significant number of principles of International Environmental law and policy which are reflected in various international legal and non legal binding instruments addressing major global environmental issues. These principles of international environmental laws are an expression of ideals of international community. Although these principles have rooted in various sources of national and international laws, it is frequently difficult to define parameters or precise legal status of these emerging principles, due to lack of effective judicial authority or conflicting interpretation under state practice. But this practice should not be allowed in the concept of sustainable development of environment. And in these issues all the people should be unanimously agreed for the proper use of the environmental resources and ensure the same for the future generation.

Key Words: Sustainable Development of environment, domestic and international Environmental laws, loopholes, challenges of implementation.

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I. Introduction:

Sustainable development is a common agenda for global concern. Environmental law is one of the first growing fields of national law. Environmental law in Bangladesh, being an emerging field, attracts cross disciplinary studies, like law, environmental science, history, sociology, international relations, political science, economics etc. The sources of environmental law are moral, social, economic, political, and even spiritual beliefs and obligations. Since last few decades, environmental law has been evolving rapidly both nationally and internationally. In 1990s, Bangladesh formulates environmental policy, enacted environmental law, rule and established environmental court. The year 1990 was observed as “Year of Environment” and the following decade has been identified as “The Decade of Environment”. United Nations declared 1990s as “Environmental Decade”. One of the reasons for this was that significant development took place in the decade. Many treaties, conventions, protocols, declarations were signed among the states of UN. Bangladesh, as a member of world family, signed numerous environmental treaties, conventions, protocols, declarations and participated in the negotiation of these instruments. In this decade Bangladesh enacted national rules and regulations in order to protect environment. This study examines the historical background of the gradual development of environmental laws, policies and institutions of Bangladesh. This study is a new of its kind, covering both law and history on Bangladesh perspective. This study provides a comprehensive analysis of history, environmental policy, environmental law and regulation, case law relating to environmental protection, and environmental organization in Bangladesh.

II. Background:

The term environment is very wide which implies the natural world and green world in which people, animal and plants live side by side with balance, pollution free and natural atmosphere. Actually, the place

where we live should be and must be favorable and suitable to live and everyone should use all the environmental resources as trustee and preserve and developed the same with sincere and cautious means. So, we can say that sustainable development must be ensured. The term sustainable development is a highly controversial concept that comes into legal parlance after the publication of Brundtland Committee Report in 1987. Its predecessor was “eco-development”, a concept developed by Maurice Strong at the time when he was Secretary General of Stockholm Conference. However, due to some obstacles such as lack of integrated planning and management, the concept lost some of its popularity. In a word, it means the development that meets the needs of the present without compromising the ability of future generation to meet their own needs (Rahman, 2012).

For such development every country must respect the international treaties, agreement, conference, conventions, protocols etc. relating to the conservation of environment and its resources along with need to frame some laws and through the proper implementation of which it will possible to maintain the sustainable development of environment. In addition, we also need to find out the means and ways of implementation of laws and scrutinize the challenges for the implementation of dimensions of environmental laws i.e. both the domestic and international laws. It is the duty of each and every people in this world to ensure a better environment for their future generation by making a green world through using and preserving the environment like trustee and we also need to feel the necessity and the importance of green world. The protection of environment must be ensured for the existence of the human beings in this world. Right to environment is a human right, is a well-established principle in present world and ensuring right to environment depends on the conservation of environment. Movement towards conservation of environment started all over the world (<http://en.banglapedia.org>). Every country must come forward to prevent the degradation of the components of environment and to improve the existing situation of environment for the purpose of sustainable development. Therefore, Bangladesh must come up to the advancement of the protection of environment in Bangladeshi area.

III. Objectives:

The main object of this paper is to focus on the necessity of and importance to be maintained sustainable development of the environment and the process of using and maintaining the sound environment for the future generation and to find out the lacuna in the present environmental laws at large and what steps must take to fulfill thereof.

IV. Methodology:

It is very important to do the study on this topic because the importance of preservation, conservation and development of the environment cannot be described in a word. Without adopting any methods, it is very difficult to complete a study. The optimum outcome of the research depends largely on adopting of the proper method related to the topics in the field of the proper investigation. Basically this particular study is written on the basis of qualitative method. The techniques of data collection followed in this study are from various International Agreements, Conference, Covenant, and Treaty, the other domestic laws of the developed countries relating to environment and other sources from the website etc. In respect of stylistics, internationally recognized styles have been followed.

V. Causes:

Sustainability means the capacity to maintain some entity, outcome or process over time. The country has made substantial progress in developing environmental policies, guidelines, and legislation. Despite this progress, Bangladesh has faced severe environmental degradation and natural capital loss over the past decades affecting human health, agriculture, forests, fisheries, industrial productivity, and environmental services.

The world has given us a lot of resources to enjoy and use. We have been utilizing those resources from the beginning of our arrival in this world without paying attention to any sort of conservation. For this cause the environment has been deteriorating to the extent that has become unbearable for the earth. The overall global environment is declining fast and for Bangladesh it has been doing so more rapidly during the last few decades because of many noticeable reasons. (Rahman, 2012).

A major cause of environmental degradation is the failure of the regulatory regime to control indiscreet private and public actions. Moreover, the rise of sea level, global warming, greenhouse effect, loss of habitat of animals and wildlife, drought in various regions are the consequences of environmental deterioration. Due to this reason the protection and conservation of environment has become a global concern for the existence of life on earth. And for the conservation, improvement of environmental standards and control and mitigation of environmental pollution various countries are enacting laws for their own protection (<http://en.banglapedia.org/index.php?title=Environment>).

Globally Bangladesh has great importance for its exceptional hydro-geographical setting. Three mighty rivers, the Padma, the Brahmaputra and the Meghna drain a total catchment area of about 1.5 million sq km, of which only 8 percent of the drainage area lies within Bangladesh. Most of the drainage basin is located in the neighboring countries. Bangladesh has been formed over ten of thousands of years, composing a very thick layer of sedimentary deposition as the heavily laden rivers slow down in the Bangladesh delta. The following aspects made Bangladesh noteworthy from the environmental point of view. Bangladesh has the world's largest mangrove forest and the longest sandy beach in the world. A major ecological change is taking place in the Sundarbans because of the activities of man. A change in land use has brought about changes in biodiversity and biogeochemical cycles leading to a change in the weather pattern as a whole. The top dying of sundari, the principal commercial tree species is a matter of grave concern. Oil spill, increasing salinity and reduced river discharge and illegal activities are greatly destroying the ecological balance. The climatic system of Bangladesh is interlinked with the weather system of the Sundarbans area. Any change in the Sundarbans weather system is bound to produce an adverse impact on the climate and life of the people of Bangladesh; again the highest population density in the world and a very high demand on natural resources; vast variations in amount of surface water availability between wet and dry seasons such as extreme flood and drought; the rate of water flow through Bangladesh is incredible. The above-mentioned characteristics of Bangladesh make the country vulnerable to natural disasters as well as environmental hazards (Liaquat, 1998).

Development of Environmental laws in Bangladesh:

Environment is the surrounding atmosphere around us. It is the ground of living where all species and organisms can survive and maintain their life. Environment is not only composed of living organisms but also nonliving things and forces. Somebody says that environment is the mixture of two that means 'Ecology + Society'. That means, we have two aspects of environment. One is the natural environment consisting of natural resources, natural forces, wildlife, fauna and flora. And another is social environment consisting of basically human being and all elements used by them. The subject matter of the environmental law is both of them, because they are critically inter dependent to each other. (Alam, 2002-2003). Social environment and the members of the society sometimes behaves ruthlessly towards the natural environment for which it takes its revenge to the social environment and reason various kinds of disasters.

Many international conventions, treaties and protocols were evolved to protect the world environment, and Environmental law is one of the most rapidly expanding areas of study. Appropriate laws both at the national and the international levels are necessary for the protection of environment. Bangladesh has taken some measures to protect our environment. The protection and improvement of man's environment arise directly out of a vital need to protect human life, to assure its quality and condition and to ensure the fundamentals indispensable to safeguarding human dignity and development of human personality.

Bangladesh has accountability, along with all other nations, to adopt, implement and enforce policies that protect and restore the global commons. This indissoluble edge between human rights and the environment is also recognized in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. The expert Group on Environmental Law of World Commission on Environment and Development developed the 'concept of sustainable development' as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs and suggested a list of legal principles including the right to a healthy environment as fundamental human right". Therefore, to ensure conservation of environment, sustainable development must be there. Principle 1 of the Rio Declaration, 1992 declares that human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature. Besides the Framework Convention on Climate Change, 1992 also refers to the sustainable development principle in the preamble by recognizing that all countries, especially developing countries need access to resources required to achieve sustainable social and economic development. (Ian, 1999).

Bangladesh is rich in natural resources and beauties. That is why it is called the 'Queen of the Universe.' But with the process of industrialization and urbanization along with the whole world its environmental soundness and riches are under threat. For this reason many environmental laws have been passed from time to time. The history of environmental law corresponds with the history of our country. At least 200 laws have passed regarding environmental protection in many names. The need for rapid industrial and economic growth introduced such a situation in Bangladesh that has resulted into a situation whereby healthy environment has become a huge task. After establishment of independent of Bangladesh, we have at least 143 Acts, Ordinances, Orders and Rules with one Environment Policy. The development of International Environmental law was started whole heartedly from 1970s. From that point of view the Bangladesh wildlife (Preservation) Order 1973 and Environment Pollution control Ordinance 1977 were passed. The Environment Pollution Control Ordinance 1977 was repealed due to its ineffectiveness. In order to proper implement and

execute of the environmental issues, the Government passed the Bangladesh Environment Conservation Act, 1995 amended in 2010, the Bangladesh Environment Conservation Rules 1997 and the Environment Courts Act 2010 etc. to provide for strict liability for environmental pollution, control, and mitigation of environmental pollution and overall improvement of environmental standard by conserving its natural state. Therefore, the conservation of environment is the pre-condition of right to environment. Article 18A of the Constitution of the People's Republic of Bangladesh states that the state shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens. Here the term 'improve the environment' refers to the principle of sustainable development. Therefore, development activities should take place with due consideration of environmental concerns is widely approved by the national instruments and that is the core of article 18A of the Constitution of Bangladesh. The Constitution of Bangladesh does not explicitly provide for the right to healthy environment either in the directive principles or as a fundamental right. Article 31 states that every citizen has the right to protection from 'action detrimental to the life liberty, body, reputation, or 'property', unless these are taken in accordance with law. It added that the citizens and the residents of Bangladesh have the inalienable right to be treated in accordance with law. If these rights are taken away, compensation must be paid. Article 32 states: "No person shall be deprived of life or personal liberty saves in accordance with law". These two articles together incorporate the fundamental 'right to life'. The following discussion suggests that this right to life includes the right to a healthy environment capable of supporting the growth of a meaningful existence of life. (Miah, Islam, and Jamal 2012).

VI. Loopholes and criticisms:

Actually the nature and scope of environmental laws should also be extensive. To identify the nature of environmental laws in Bangladesh, a close inspection of all the environment related laws should be made. There is no exhaustive code relating to environment in Bangladesh. The laws are scattered and made for different purposes rather than environment. The only law which provides a direct address of environment is the Bangladesh Environment Conservation Act 1995. This law says about some specific matters very shortly and does not define the environment in its wider sense. The Bangladesh Environment Conservation Act, 1995 and Rules, 1997 are not free from a number of loopholes or shortcomings. There is a maxim that "prevention is better than cure", but the BECA of 1995 by the terms "improvement of environmental standards" and "mitigation of environmental pollution" in its preamble indicates that it is cure-oriented and it only copes with the curative measures rather than the preventive measures. The BECA, 1995, in true sense, deals with the post-harm situations. In Section 3, the term "Government" is a vague one. It creates the question in our minds – who is the Government under the BECA, 1995? There is no reference to any specific criteria for determining the "Government" who would set up the Department of Environment (DoE) headed by the Director General (DG). But the environment Conservation Act 1995, in its section 15, gives scope to the court to adjudge for the affected party a small amount of punishment and fine to be paid by the violator. The highest punishment is 10 years imprisonment and fine not exceeding 10 lac taka. If we think of environmental losses caused by Hazaribagh tannery, Tengratilla gas blast, Chevron's seismic survey we can come to know the loss was thousands of crore taka. The loss of gas caused by Tengratilla gas blast was about 13630.50 crore taka. And the environmental damage was about 3175 core taka. The trivial amount of punishment which can be imposed by the environment court is not adequate. This loss cannot be redressed properly and sufficiently through a certain amount of money. The Act specifically enumerates that the court should follow Criminal Procedure Code. But it engages a joint district judge who is mainly a civil Court judge. So, criminal proceeding is followed by a civil court Judge, which creates confusion (<https://www.slideshare.net/ShankorPaul/lecture2-environmental-laws-and-policies-in-bangladesh>).

However, it is said that there are some constraints and problems such as the non-coordination, shortage of expertise, lack of commitments, corruption etc. in this regard. These problems should be solved by enacting co-coordinating Act and developing other mechanism.

Effectiveness of Environmental Court Act 2010

Environmental court Act, 2010 is an Act which establishes a specialized court to deal with the cases regarding environment. This is a noble initiative take by the government. But there are some accusations against it that this court is not properly competent to serve the purpose for which it was framed. A person cannot file a suit directly in the environment court. He has to make a complaint to the Director General. A person is entitled to file a suit directly to the environment court, if the Inspector or Authorized Person does not take any action within 60 days after a written requisition is filed to the DG. So, we can see that it is a very perilous process for an aggrieved person (Miah, Islam and Jamal, 2012).

The Environment Court has to follow the Code of Criminal Procedure, 1898, the Code of Civil Procedure, 1908 and the Procedure described in the Act itself. So, it can be said that the Act is not exhaustive. Due to this reason the Environment Court sometimes makes some confusion in the mind of general people.

VII. Recommendation:

Now-a-days, environmental protection has become a priority agenda of the Government of Bangladesh. The government as well as the civil society is showing and increasing concerns about the rapid degradation of both urban and rural environments. Implementation of the government's commitments to the environment and the mitigation of other environment-related problems are possible only through a well-defined national policy. Various Government organizations and Non-government organizations should come up with different activity packages with the aim of the protection and conservation of environment. The judiciary in Bangladesh should also be healthy to the environment by applying and encouraging the public interest litigation and gradually developing in this regard (Ali, 2010).

The Government of Bangladesh and civil society should give importance on population control, sustainable resource exploitation, environmental conservation and rural development for preserving our environment. The Government should also celebrate and promote a number of environmental awareness days, including: World Environment Day, International Ozone Day, and World Desertification Day for making awareness among the people of Bangladesh. Actually people should be able to understand the importance of the preservation and development of the environment, the very concept of sustainable development and its usefulness, the way and the means of establishing the green world, the challenges for the enforcement of domestic and international laws relating to the environment for ensuring sustainable development along with the steps which are necessary to implement the laws.

VIII. Conclusion:

From the above discussion we can reach to a conclusion that environment is one of the most important factor for every living being to live peacefully and healthy manner. It is not possible to think a better, developed and safe world without sound environment. So, we should ensure the healthy, good and peaceful environment by implementing both the domestic and international laws relating to the environment. Because without a better and secure environment it is totally impossible to live and expect good things from the future generation, who are the future leader and take all the responsibilities for the proper management of the world community.

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