

A Critical Evaluation of Environmental Dispute Resolution Mechanisms in Bangladesh: Addressing Challenges and Insights

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ABSTRACT: Pollution is now the greatest dangerous threat to humanity. Nowadays, everyone is scared of pollution more than nuclear blasts. Human well-being and economic prosperity have made environmental conservation a critical global issue. Bangladesh is dealing with a number of environmental issues, including deforestation, land degradation, air pollution, water contamination, and biodiversity loss. In Part II (Fundamental Principles of State Policy) of the Bangladesh Constitution, Article 18A states, "The State shall strive to protect and develop the environment, as well as preserve and safeguard natural resources, biodiversity, wetlands, forests, and wildlife for current and future inhabitants." However, Article 8(2) of the aforementioned Constitution stipulates that the fundamental principles outlined in Part II of the Constitution are not judicially enforceable. As a result, it is apparent that Bangladesh's Constitution does not contain any direct environmental protection. Furthermore, Bangladesh's Constitution does not recognize the right to a healthy environment as a fundamental right. Despite the adoption of several laws and regulations, environmental pollution in the country persisted. This paper is qualitative in nature. The main purpose of this paper is to deliver a brief outline of the current legal regime dealing with the environment, as well as to identify environmental dispute resolution procedures within Bangladesh's existing legal framework. It will also investigate the legal hurdles to pursuing environmental justice. This study presents some observations on achieving access to environmental justice for all population groups in Bangladesh.

KEYWORDS: Environmental Justice, Environmental Dispute Resolution, Constitution of Bangladesh, Environmental Pollution.



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I. INTRODUCTION

Bangladesh is the least developed country. As the denizens of the extensive deltaic ecosystem's floodplains, the people of Bangladesh have always lived in peace with nature.¹ As a consequence, the values, life cycles, traditions, usage, proverbs, and idioms reflect this close connection to the environment.² In Bangladesh, a significant portion of the population relies heavily on agriculture and the country's natural resources for both food and income. As a consequence, Bangladesh's agricultural assets are already under a great deal of stress from the environment.³ Unplanned industry expansion without due consideration of environmental preservation and degradation problems has occurred in the nation.⁴ Several industries in residential neighborhoods discharge untreated effluents and emit smoke, which pollute the air and water. Rivers, canals, and other bodies of water have become contaminated by industrial pollution. As a result of high levels of heavy metals, such as chromium, in tannery effluent, human health is severely affected.⁵ It is estimated that 303 hospitals, diagnostic facilities, and 1,500 clinics discharge 50 tons of hazardous garbage every day, 92 percent of which is dumped in open areas.⁶

Bangladesh is experiencing a turning point in its industrial growth, so we need to learn from the past and execute mollification strategies. The 3R philosophy and practice of reducing, reusing, and recycling rubbish are currently being heavily stressed in the industrialized world. Unplanned urbanization in Bangladesh is causing serious environmental harm.⁷ The current urbanization structure is causing a variety of issues such as alterations in land use, inadequate shelter, a scarcity of fresh water, poor sanitation, and a lack of essential utilities in slums and other urban areas.⁸

¹ Md. Iqbal Hossain, *International Environmental Law: Bangladesh Perspective*, 5th ed (Dhaka: Ain Prokashon, 2014) at 474.

² *Ibid*

³ *Ibid*

⁴ *Ibid*

⁵ *Ibid*

⁶ *Ibid*

⁷ *Ibid*, 475

⁸ *Ibid*

Bangladesh is dealing with a slew of environmental issues, both naturally occurring and generated by human activity. The principal environmental problems of Bangladesh can be addressed by - the high population density on a limited resource base undermining the carrying capacity, deforestation, deteriorating water quality due to poor sanitation, industrial effluents, and pesticide runoff, imbalanced use of chemical fertilizers, and so on.⁹ In Bangladesh, there are a growing number of NGOs that aim to educate the public about environmental concerns.¹⁰ They are attempting to put stress on the government to enact and enforce environmentally sound national laws.¹¹ Yet, Bangladesh is also attempting to implement ecologically friendly regulations and policies in order to maintain a healthy and clean environment.

Bangladesh, located in the deltaic area of South Asia, faces a diverse array of environmental issues, which encompass water and air pollution, deforestation, climate change, and the loss of biodiversity. These challenges are not solely of local significance but also carry global repercussions. This research is primarily focused on conducting a legal evaluation of the environmental laws in Bangladesh as referenced in this paper. Furthermore, the study will investigate apparent legal obstacles within the current legal framework, while also offering suggestions to address these hindrances and enhance environmental justice for individuals.

I. RESEARCH METHOD

This paper employs a qualitative research approach, drawing on a diverse range of sources including academic journals, books, relevant case references, online resources, and statutory documents. The methodology is designed to provide a comprehensive understanding of the interplay between environmental laws and the promotion of environmental justice in Bangladesh. To delve into the specifics, this research involved a thorough analysis of the environmental laws mentioned in this paper. The laws mentioned in this paper were meticulously examined to assess their provisions related to environmental justice. Notably, this paper will exhibit whether

⁹ Ibid

¹⁰ M.Z.Ashraful, "Application of the Principles of International Environmental Law in the domestic legal System of Bangladesh: A Critical Study on the legal framework and the position of judiciary" (2014) 19:5 JHSS 18 at 18.

¹¹ Ibid

citizens of Bangladesh have direct access to environmental justice or not by utilizing existing environmental laws in Bangladesh. Getting insights from legal documents, this paper offers a comprehensive analysis of how the existing legal framework in Bangladesh contributes to or hinders the advancement of environmental justice goals. This qualitative method enabled a detailed investigation into the challenges and opportunities linked to the enforcement of environmental laws for the purpose of advancing justice.

II. ENVIRONMENT AND ENVIRONMENTAL POLLUTION

The environment is the atmosphere that surrounds us. In addition to living creatures, the environment also consists of non-living substances and forces.¹² The natural environment and the social environment are the two components of the environment.¹³ The natural environment encompasses of wildlife, plants, animals, and natural forces. The social environment primarily consists of people and all the things they utilize.¹⁴ Sometimes, the social environment and its inhabitants act callously against the natural environment, and as a result, the natural environment retaliates by causing various kinds of calamities.¹⁵

According to Section 2 (d)¹⁶ of the Environment Conservation Act 1995, environment means the interconnectedness of soil, water, air, and physical property, as well as their connections with humans, other animals, plants, and microbes. Section 2 (b)¹⁷ of the mentioned Act defines pollution as the presence of impurities or alteration in the physical, chemical, or biological attributes of air, water, or soil. This includes changes in temperature, taste, odor, density, or any other qualities, as well as any activity that causes harm to the environment by releasing liquids, gases,

¹² Md. Jahid Hossain Dolon & Sanjida Sarwar, *International Environmental Law with Bangladesh Perspective*, 4th ed (Dhaka: Titu Publications & University Publications, 2017) at 224.

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ The Bangladesh Environment Conservation Act, SB 1995, s 2(d)

¹⁷ Ibid, s 2(b)

solids, radioactive materials, or other substances into the air, water, soil, or any other part of the environment.

The environmental situation in Bangladesh is far from conducive to sustaining a healthy living environment. It faces significant challenges from severe air, water, and noise pollution, all of which pose threats to both human well-being and the sustainability of ecosystems, as well as hindering economic growth.¹⁸ Air pollution stems from factors such as a growing population, the combustion of fossil fuels, industrial development, and the proliferation of motor vehicles.¹⁹ On the other hand, water pollution primarily arises from industrial activities, and the contamination of underground water sources with arsenic has become a pressing issue.²⁰

Water pollution poses significant health risks in Bangladesh. It results from the disposal of municipal waste, medical waste, and harmful industrial emissions, contaminating both surface water and groundwater reservoirs.²¹ The alarming levels of environmental pollution in Bangladesh are endangering not just the well-being of its population but also its economic progress. Urban residents are predominantly affected by air pollution, which leads to immediate symptoms like headaches, dizziness, eye irritation, sneezing, nausea, fatigue, and coughing when exposed to smoke inhalation.²²

A. Environmental Dispute Resolution Mechanism

In Bangladesh, environmental issues and disputes are addressed through a combination of legal, administrative, and regulatory mechanisms. In the context of judicial enforcement, environmental rights can be categorized into two main types: substantive and procedural.²³ A substantive environmental right entails having an independent entitlement to a clean and healthy environment.²⁴ In contrast, a procedural environmental right encompasses three key elements: the right to access

¹⁸ Towfique Hassan, Environmental pollution in Bangladesh and its effects (May 2022), online: The Business Post < <https://businesspostbd.com/editorial/environmental-pollution-in-bangladesh-and-its-effects-2022-05-06>>

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ Psymhe Wadud, Determining the extent of right to safe environment (June 2019), online: The Daily Star <<https://www.thedailystar.net/law-our-rights/news/determining-the-extent-right-safe-environment-1753363>>

²⁴ Ibid

information, the right to participate in decision-making processes, and the right to seek environmental justice.²⁵

In the context of Bangladesh, the seminal legal decision in the case of *Dr. M. Farooque v. Bangladesh* extended the interpretation of the right to life as enshrined in Articles 31 and 32 of the Constitution to include the right to a healthy environment.²⁶ This landmark case emerged from a challenge to the legitimacy of certain flood action programs implemented by the government in 1995. Dr. Farooque's case marked a pivotal moment in legal jurisprudence, as it expanded the scope of the right to life beyond its previously established boundaries. In the aftermath of the Farooque case, subsequent litigants have achieved favorable outcomes in petitions related to issues such as vehicular and industrial pollution, unauthorized construction of brickfields, commercial shrimp farming, gas explosions, encroachments on rivers, and numerous other environmental matters.²⁷

If an individual's environmental rights are violated, they have the recourse to seek remedies under the existing legal framework of Bangladesh. For instance, if a dispute arises where Article 32 of the Bangladesh Constitution is breached, individuals who feel aggrieved can seek redress by invoking the provisions outlined in Article 44 of the same constitution. The interpretation pertaining to Article 32 can be found in this paper, where the constitutional framework regarding environmental rights is discussed. In the event that a person ignores the directives outlined in the Bangladesh Environment Conservation Act of 1995, the Director General has the authority to initiate legal action in the relevant court. This action may take the form of a civil lawsuit, a criminal accusation, or a combination of both approaches. According to the Environment Court Act, 2010, criminal proceedings in a Special Magistrate Court or the filing of a First Information Report (F.I.R) at a police station for the trial of any violations under environmental law can only be initiated by the Director General or an authorized individual designated by the Director General.

On February 3, 2019, within the context of Writ Petition Number 13989 of 2016, the High Court Division (HCD) of the Supreme Court of Bangladesh issued a

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

declaration stipulating that the Turag River and all other rivers coursing through the nation possess the status of 'living entities' endowed with legal personhood.²⁸ Following this attribution of legal personality to the rivers, the Court appointed the National River Conservation Commission (NRCC) of Bangladesh as the official legal custodian responsible for safeguarding the interests of all these rivers.²⁹ The National River Conservation Commission was founded in September 2014³⁰ in accordance with the National River Conservation Commission Act of 2013. The preamble of this legislation articulates its primary objectives,³¹ which encompass the establishment of a commission aimed at preventing unlawful encroachment on rivers, addressing issues related to water and environmental pollution, mitigating river pollution arising from industrial activities, curbing the unauthorized construction of structures, and rectifying various irregularities. Additionally, the Act is designed to facilitate the multifaceted utilization of rivers for socio-economic development, including the restoration of natural river flows, the proper upkeep of rivers, and the promotion of navigability in waterways.

B. Environmental Dispute Resolution Mechanisms under the Legal Framework of Bangladesh

1. The Constitution of the People's Republic of Bangladesh, 1972

The right to a healthy environment is not stated directly as a fundamental right in the Bangladesh Constitution. According to Article 31 of the Constitution of Bangladesh:³² “Every person has the right to be shielded from actions that endanger their lives, liberties, bodies, reputations, or property”, unless prohibited by law. In addition, Article 32 of the aforementioned Constitution³³ states that: “No individual shall be deprived of life or personal liberty save in compliance with the law”. In this context, the question is whether the right to life includes the right to a healthy environment. The Appellate Division stated in *Dr. Mohiuddin Farooque vs.*

²⁸ Imtiaz Ahmed Sajal, Strengthening the National River Conservation Commission of Bangladesh (October 2019), online: The Daily Star < <https://www.thedailystar.net/law-our-rights/law-watch/news/strengthening-the-national-river-conservation-commission-bangladesh-1813927>>

²⁹ Ibid

³⁰ Ibid

³¹ National River Conservation Commission Act, SB 2013

³² The Constitution of the People's Republic of Bangladesh, SB 1972, article 31

³³ Ibid, Article 32

Bangladesh & others³⁴ that "The right to life is protected as a fundamental right in Articles 31 and 32 of the Constitution". It includes environmental conservation and preservation, an ecological balance free of pollution of air and water, and sanitation, without which life is hard to appreciate. Any act or omission that contradicts this will be a violation of the right to life."

Another concern is whether Bangladesh's constitution would acknowledge the right to the environment as a fundamental right. In this regard, Article 7B of the said Constitution³⁵ states that all articles of Part-III (Fundamental Rights) shall not be added to, changed, replaced, repealed, or altered in any other manner. Inferentially, the right to a healthy and sound environment might be seen as a fundamental right based on the preceding case reference and interpretation provided by the Appellate Division. This implies that an injured party may indirectly seek environmental justice under the aforementioned Constitution. But, if we examine how Article 7B is expressed, there is no space for pursuing direct environmental protection under the Constitution of Bangladesh.

2. The Bangladesh Environment Conservation Act, 1995

The rationale for enacting this Act was to protect the environment, enhance environmental standards, and manage and alleviate pollution. The Ministry of the Environment, led by the Director General, has executive jurisdiction over this statute.³⁶ The Director-General has been given specific authority and oversight³⁷ for the implementation of this law, such as combating conceivable incidents that can lead to adverse environmental effects and contamination, doing research and surveys to safeguard, enhance, and improve the environment, and carrying out efforts for tracking and providing information on the quality of drinking water, and calling on the government to depart from such production methods and materials that could potentially lead to environmental degradation and pollution.

³⁴ Dr. Mohiuddin Farooque vs. Bangladesh & others 17 BLD (AD) 1

³⁵ Supra Note 18, article 7B

³⁶ The Bangladesh Environment Conservation Act, SB 1995, s 3

³⁷ Ibid, s 4

According to Section 7 (1)³⁸ of the Bangladesh Environment Conservation Act, 1995, if any act or omission is causing or has caused mischief to the ecosystem or to a person or group of people, regardless of how it occurred, the Director General may decide the amount of reparation and order the responsible party to pay it and, if necessary, also command the said party to take remedial action or may order the party to take both measures. In the case where an individual disregards the instruction provided under Section 7(1), the Director General may bring a civil claim, a criminal complaint, or both types of proceedings in the appropriate court. Based on the expression of section 7, it appears that in case of injury to the ecosystem, an aggrieved person has to rely on the Director General for remedy rather than the court. Furthermore, an injured party in this circumstance cannot pursue a direct compensation claim or a criminal case with the appropriate court. That is entirely at the discretion of the Director General. At the same time, it goes against Article 27 of the Constitution of Bangladesh. The said Article states that “All citizens are equal before the law and are entitled to equal protection of the law.”³⁹

According to Section 15A⁴⁰, the Director General may initiate an indemnification lawsuit on behalf of a person, group of people, or the general public if they suffer as a result of a breach of this Act's provisions or a direction given under Section 7. This clause shows that an individual or aggrieved has no direct scope for pursuing compensation, instead, an aggrieved party has to count on the Director General.

As per section 17, a court is prohibited from issuing an award regarding a claim for reparation or the adjudication of a crime unless it is supported by a written report from the Divisional Inspector or another individual who has received approval from the Director-General. The allegation or claim, subsequently, is deemed to be subject to cognizance for the aim of holding a trial if no action takes place within sixty days after a person submits a request in writing to the said inspector or empowered person to entertain an allegation about an offense or a demand for reparation and after being given a reasonable opportunity to be heard, the inspector or empowered person may accept the complaint or claim without requiring a report, or they may be instructed to look into the crime or claim. Given the context of section

³⁸ The Bangladesh Environment Conservation Act, SB 1995, s 7

³⁹ Supra Note 18, article 27

⁴⁰ The Bangladesh Environment Conservation Act, SB 1995, s 15A

17, it is clear that the clause creates legal impediments for anyone seeking direct access to justice. Simultaneously, this Section authorizes the stated inspector or authorized person by the Director General to retain the written report for two months, which may frustrate an aggrieved party and cause delays in the process of seeking environmental justice.

Pursuant to section 14⁴¹, if a person is displeased with any notice, order, or instructions issued under this Act, he or she may appeal to the Appellate Authority constituted by the Government. This authority's decision is binding and cannot be challenged in court. The accountability of an Appellate Authority in the case of a flawed or biased decision is absent from this clause.

According to Section 18,⁴² if a decision was made in good faith in accordance with this Act, it is prohibited to bring a civil, criminal, or other legal action against the Government, the Director General, or any other Department employee. However, the definition of “Good Faith” is missing in this Act. According to the Section 52⁴³ of the Penal Code, 1860, “nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.”

3. The Environment Court Act, 2010

The ultimate focus of enacting this Act is to form environment courts for the expeditious trial of environmental offenses and things ancillary thereto, as well as to revise and consolidate existing laws. It mandates the formation of Environment Courts in each district, each of which will be presided over by a Joint District Judge⁴⁴, as well as the formation of Special Magistrate's Court.⁴⁵ As per Section 6(1),⁴⁶ only the Director General or any other person empowered by him shall file criminal proceedings in a Special Magistrate Court or lodge F.I.R in a police station for trial of all infractions under the environmental law.

⁴¹ Ibid, s 14

⁴² Ibid, s 18

⁴³ The Penal Code, SB 1860, s 52

⁴⁴ The Environment Court Act, SB 2010, s 4

⁴⁵ Ibid, s 5

⁴⁶ Ibid, s 6(1)

The term "Environmental Law" refers to the Bangladesh Environment Conservation Act, 1995, as well as any other legislation listed by the Government in the official Gazette for the purposes of this Act and the rules enacted under it.⁴⁷ This clearly demonstrates that the preceding section imposes a legal hurdle for the individual in the case of bringing a criminal case with a Special Magistrate or submitting an F.I.R at a police station. The concept of "Environmental Law" does not offer a clear picture of the jurisdiction of the Environment Court. It means that, aside from the offenses listed in the Bangladesh Environment Conservation Act of 1995, the Environment Court has no jurisdiction over other environmental offenses under different environmental legal regimes; rather, it is entirely reliant on the laws specified by the Government in the official Gazette. According to Sections 10⁴⁸ and 14⁴⁹ of the Act a case must be resolved within 180 days, albeit this deadline may be extended by an additional 90 days by providing a documented justification. Regarding additional delays, several other actions are also envisaged.

This renders the legislation ill-equipped to accomplish a prompt and effective disposal mechanism, coupled with the application of the Code of Civil Procedure (CPC) and Code of Criminal Procedure (CrPC) rules for the procedural features of the cases. Some offenses under the Bangladesh Environment Conservation Act, 1995 may be compromised, as stated under Section 18,⁵⁰ if the Director General is satisfied. Despite the fact that this section addresses compounding offenses, neither the engagement of a party that feels wronged nor the option of assigning a neutral third party are mentioned.⁵¹

4. Bangladesh Water Act, 2013

The reason for enacting this Act is to create provisions for integrated water resource advancement, administration, abstraction, ordination, usage, safeguard, and conservation. The term "Water Resources" as defined in Section 2(14)⁵² of this Act, comprises any surface water, groundwater, atmospheric water, as well as water from an estuary, aquifer, flood-plain, wetland, water source, foreshore, coast, and any

⁴⁷ Ibid, s 2(c)

⁴⁸ Ibid, s 10

⁴⁹ Ibid, s 14

⁵⁰ Ibid, s 18

⁵¹ Ibid

⁵² Bangladesh Water Act, SB 2013, s 2(14)

other similar reservoirs or places. To achieve the aims of this Act, a council to be known as the "National Water Resources Council" shall be established.⁵³ The stated Council shall be the highest decision-making body, according to this Act.⁵⁴ Following that, the stated Council shall undertake some mandatory responsibilities, such as developing policies and issuing instructions for the integrated development of water resources, effective water resource preservation, conservation, and distribution, and so on.⁵⁵

An "Executive Committee" under the aforementioned Council shall be in place to ensure the effective discharge of its duties.⁵⁶ Section 36,⁵⁷ states that no court shall entertain cognizance of any offense punishable under this Act unless the Director General or any official designated by him submits a written report. This means that under this Act, an individual or an aggrieved person has no access to justice. Although conservation and the preservation of water resources are mentioned in the preamble of the law, there is no particular clause regarding water pollution. The Bangladesh Environment Conservation Act 1995 is instead applicable in the context of preventing water contamination, according to Section 28.⁵⁸

5. The Forest Act, 1927

This Act was created with the intention of codifying the regulations regarding forests, the movement of forest products, and the taxation of timber and other forest products. Yet, it does provide safety procedures that may be implemented to protect forest resources. It defines forbidden activities in conserved forests and penalizes infractions of the restrictions.⁵⁹ The Act also contemplates the formation of village forests,⁶⁰ as an efficient means of ensuring people's involvement and community rights.

⁵³ Ibid, s 4

⁵⁴ Ibid, s 5

⁵⁵ Ibid

⁵⁶ Ibid, s 9

⁵⁷ Ibid, s 36

⁵⁸ Ibid, s 28

⁵⁹ The Forest Act, SB 1927, c 2, s 26

⁶⁰ Ibid, c 3, s 28

According to Section 66, it is obligatory for every forest officer and police officer to dissuade the commission of forest offenses.⁶¹ In accordance with a report submitted under this Act, the magistrate shall take the appropriate procedures to capture and trial the criminal, as well as dispose of the property.⁶² By proclamation in the Gazette, the Government may appoint one or more first-class judges as Forest Judges to prosecute solely violations under this Act.⁶³ Such a forest Magistrate shall have the authority to impose any penalties set forth in this Act.⁶⁴ The government may provide authorization to any forest official not below the level of deputy forest warden to attend, plead, and lead the prosecution in court proceedings connected to a forest infraction.⁶⁵

Under Section 68, the Government can assign a forest officer not lower than the rank of ranger for compounding offenses, if he has a reasonable suspicion that a person has carried out a forest crime; in this case, a forest officer may receive redress from the person suspected of committing the forest crime.⁶⁶ In the event that such an officer seizes any property, it will be returned upon payment of the value determined by the officer⁶⁷ and validated by another official not lower than the level of Divisional Forest Officer.⁶⁸ Upon the completion of such an amount of money or value, no further legal action shall be taken against the person or property in question, and any confiscated property as well as the suspected person, if they are both in custody, shall be released.⁶⁹ The wording of Section 68 makes it clear that the clause is of an administrative character. Furthermore, there is a strong likelihood that this provision would be abused. Additionally, there is no role for a neutral third party, nor is the Court involved in the compounding offense.

⁶¹ Ibid, c 9, s 66

⁶² Ibid, c 9, s 54

⁶³ Ibid, c 9, s 67A

⁶⁴ Ibid

⁶⁵ Ibid, c 9, s 69A

⁶⁶ Ibid, c 9, s 68 (1) (a)

⁶⁷ Ibid

⁶⁸ Ibid, c 9, s 68 (1) (b)

⁶⁹ Ibid, c 9, s 68 (2)

6. The Wildlife (Conservation and Security) Act, 2012

Wildlife is essential for keeping environmental equilibrium. This Act was passed to fulfill the constitutional obligation outlined in Article 18A⁷⁰ of the Bangladesh Constitution, which compels the state to take adequate steps to safeguard and preserve the environment, biodiversity, forest, and wildlife. This legislation aims to uphold the ecological equilibrium in Bangladesh by safeguarding, preserving, and effectively overseeing the country's biodiversity, forests, and wild animals while ensuring their safety. As per this statute, the government is mandated to establish the Wildlife Advisory Board⁷¹ through a notification in the official gazette. This board consists of a chairman and other individuals who possess expertise in the conservation of forests, wildlife, and biodiversity.⁷²

In Section 2(25) of the Act, "wild animals" are defined as different types and species of animals or their different stages of life that originate from the wild.⁷³ Section 43⁷⁴ states that the offenses related to wild animals are non-cognizable, meaning they cannot be investigated without a warrant, and can be granted bail. These offenses can also be settled through a process called compounding, where the accused agrees to provide compensation. However, offenses outlined in Section 36 are categorized as cognizable and non-bailable.⁷⁵ Although Section 43 mentions the possibility of compounding offenses not listed in Section 36, it does not provide explicit regulations for these particular offenses.⁷⁶ Unless a formal complaint is lodged by the designated official or the affected individual specified in this Act, no court shall initiate legal proceedings for any offense under this Act.⁷⁷ It is apparent that, aside from the two individuals mentioned, no other party is authorized to lodge

⁷⁰ Supra Note 18, article 18A

⁷¹ The Wildlife (Conservation and Security) Act, SB 2012, c 2, s 3(1)

⁷² Ibid

⁷³ Ibid, c 1, s 2(25)

⁷⁴ Ibid, c 9, s 43

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ The Wildlife (Conservation and Security) Act, SB 2012, c 9, s 44 (1)

a complaint with the relevant court. The trials for violations under this Act shall be overseen by either a Judicial Magistrate of First Class or a Metropolitan Magistrate.⁷⁸

However, cases involving offenses listed in Section 36 shall be heard by a Court of Session.⁷⁹ This law holds the abettor equally accountable as the main perpetrator.⁸⁰ Furthermore, the Act states that any authorized official who engages in harassment, contrary to the Act's provisions, shall be considered to have committed an offense and shall face a maximum punishment of six months' imprisonment or a fine of up to 50,000 taka.⁸¹ According to this Act, if the accused person is found not guilty after a charge hearing and trial, and the court explicitly states in the judgment that the accusations against the accused person are false, baseless, and malicious, the complainant shall be deemed to have committed an offense. In such cases, the complainant shall be sentenced to imprisonment for up to one year, a fine of up to one lac taka, or both.⁸² Based on the above explanation, it can be concluded that this Act serves the dual purpose of protecting wildlife and acting as a deterrent against those seeking to exploit it.

7. The Bangladesh Biodiversity Act, 2017

This Biodiversity Act was enacted in accordance with the international standards of the Convention on Biodiversity and Bangladesh's constitutional obligation under Article 18A. The Act controls who has access to biological resources and traditional knowledge as well as the methods for their legitimate transmission. This Act confers authority upon the National Biodiversity Committee to grant access and determine the equitable distribution of benefits derived from biodiversity, biological resources, and traditional knowledge.

Engaging in various activities such as collecting biodiversity, living resources, or indigenous knowledge within Bangladesh, carrying out commercial use, bio-survey, bio-testing, extraction activities, or transferring and sharing research findings derived from Bangladeshi biodiversity or biological resources without prior approval from the National Committee is considered an offense under this Act.⁸³ The

⁷⁸ Ibid, c 9, s 44 (2)

⁷⁹ Ibid, c 9, s 44 (3)

⁸⁰ Ibid, c 9, s 41

⁸¹ Ibid, c 9, s 42 (1)

⁸² Ibid, c 9, s 42 (2)

⁸³ The Bangladesh Biodiversity Act, SB 2017, c 2, s 4

penalties for such offenses include a fine not exceeding ten lakh, imprisonment for a maximum of five years, or both.⁸⁴ However, if the damage caused to biodiversity exceeds ten lakh, the fine will be increased accordingly.⁸⁵

Additionally, seeking intellectual property rights for anything created using living resources from Bangladesh, either within the country or abroad, without obtaining permission from the National Committee, is a violation of this Act.⁸⁶ The consequences for this offense involve a maximum prison term of five years, a maximum fine of ten lakhs, or both.⁸⁷ Engaging in activities that have a negative impact on endangered species, harm or potentially harm the environmental factors of endangered or threatened ecological communities, or adversely affect the environment and its characteristics in designated wetland areas under the Ramsar Convention is considered unlawful according to this Act and offenders shall face a maximum prison sentence of five years, a fine of up to 10 lakhs, or both.⁸⁸ If any individual violates or disobeys a government direction or order, or any committee's directives, for which this Act does not explicitly specify a punishment, they shall be deemed guilty of an offense and shall face a fine of up to one lakh taka, for subsequent offenses, the fine shall be increased to a maximum of two lakhs.⁸⁹

Offenses committed in contravention of Section 42 are not actionable, bailable, or compoundable. However, offenses committed in violation of any other section, except the aforementioned Section 42, are actionable, non-bailable, and compoundable.⁹⁰ If the court acquits any accused person in a case filed under this Act and explicitly declares in its judgment that the charges against the accused are false, baseless, and malicious, the individual who filed the case shall be considered to have committed an offense and shall face a maximum imprisonment of one year, a fine of up to one lakh taka, or both as a punishment.⁹¹ No court has the authority to

⁸⁴ Ibid, c 8, s 39

⁸⁵ Ibid

⁸⁶ Ibid, c 8, s 40

⁸⁷ Ibid

⁸⁸ Ibid, c 8, s 41

⁸⁹ Ibid, c 8, s 42

⁹⁰ Ibid, c 8, s 43

⁹¹ Ibid, c 8, s 44

handle violations of this Act unless the government or a designated government officer initiates legal proceedings, or a beneficiary who is eligible to claim benefits files a lawsuit, provided that the said person informs the government or designated officer about their intention to file a case regarding the violation within 30 days of its occurrence.⁹² This indicates that the avenue to seek justice is accessible to either the government, its appointed officials, or a beneficiary. However, it is important to note that the Act does not provide a specific definition or explanation for the term "benefit claimant."

In accordance with Section 48(1) of this Act, if an individual is dissatisfied with a decision made by the National Committee, they have the right to request a reconsideration of that decision. They can do so by submitting an application to the Committee within a specified time frame of 30 days from the date of notification of the decision.⁹³ The resolution of the application, as outlined in Section 48(2), shall be determined within 30 days from the date of submission, in accordance with the regulations.⁹⁴ Once the National Committee reaches a decision regarding the reconsideration request, it will be considered final.⁹⁵ However, the Act does not specify any time frame or process if an aggrieved person fails to submit the review application within the designated period.⁹⁶ Furthermore, it does not address the accountability of the National Committee in cases where biased or erroneous decisions are made by the committee.

8. The Brick Manufacturing and Brick Kilns Establishment (Control) Act, 2013

This legislation was enacted in 2013 in order to oversee the process of brick production. The Act levies diverse limits on the locations of brick kilns, which have been criticized as being overly ambitious and, to some extent, unsustainable.⁹⁷ The Act also specifies bans on the use of raw materials evolved from agricultural land, hills, and hillocks, as well as the use of wood as fuel. Regrettably, practically no

⁹² Ibid, c 8, s 45

⁹³ Ibid, c 9, s 48 (1)

⁹⁴ Ibid, c 9, s 48 (2)

⁹⁵ Ibid, c 9, s 48 (3)

⁹⁶ Ibid, c 9, s 48

⁹⁷ Tahseen Lubaba, An Overview of Environmental Laws of Bangladesh (June 2019), online: The Daily Star <<https://www.thedailystar.net/law-our-rights/news/overview-environmental-laws-bangladesh-1753360>>

compliance with these regulations can be found.⁹⁸ According to Section 19(1) of the Act, the Mobile Courts, as specified in the Mobile Courts Act, have the authority to consider and adjudicate offenses punishable under this Act.⁹⁹ However, in accordance with the requirements of Section 19(1), no court other than an Environment Court established under the Environment Court Act or a Court of Special Magistrate is allowed to take cognizance of and conduct trials for offenses punishable under this Act.¹⁰⁰ Any offenses penalized by this Act are non-cognizable and bailable.¹⁰¹ The term "mobile court" mentioned in this section refers to the mobile court defined in Section 4 of the Mobile Courts Act, 2009.¹⁰²

9. The Protection and Conservation of Fish Act, 1950

This Act applies to the entire territory of Bangladesh.¹⁰³ The Government has the authority, through a notification, to prohibit the capturing, transportation, movement, display, exhibition, or possession for the purpose of sale or exchange of fish below the specified size for any designated species across Bangladesh or specific areas within it.¹⁰⁴ Regardless of anything in the Code of Criminal Procedure, 1898, an offense under this Act shall be a cognizable crime within the meaning of that Code.¹⁰⁵ Unless upon the allegation or report of a fisheries officer or a police officer not below the level of Sub-Inspector, no court shall take cognizance of such an offense.¹⁰⁶ That means common people or an individual don't have the option to seek legal action in case of an infraction of this Act. An offense under this Act shall not be tried in a court other than one of a Metropolitan Magistrate or Magistrate of the first class.¹⁰⁷ A Court may conduct a summary trial of an offense under this Act

⁹⁸ Ibid

⁹⁹ The Brick Manufacturing and Brick Kilns Establishment (Control) Act, SB 2013, s 19(1)

¹⁰⁰ Ibid, s 19(2)

¹⁰¹ Ibid, s 19(3)

¹⁰² The Mobile Courts Act, SB 2009, s 4

¹⁰³ The Protection and Conservation of Fish Act, SB 1950, s 1(2)

¹⁰⁴ Ibid, s 4

¹⁰⁵ Ibid, s 7 (a)

¹⁰⁶ Ibid, s 7 (b)

¹⁰⁷ Ibid, s 7 (c)

in accordance with the rules outlined in the aforementioned Code for summary trials, with the exception of an offense under clause (a) of sub-section (2) of section (5).¹⁰⁸

10. The Penal Code, 1860

There are various sections in the Penal Code's Chapter XIV, titled "Offenses harming the Public Health, Safety, Convenience, and Morals,"¹⁰⁹ that are pertinent to the prevention of pollution and the preservation of public health. A person who intentionally contaminates or pollutes the water of a public spring or reservoir, rendering it unsuitable for its intended use, can be sentenced to imprisonment for a maximum of three months, or a fine of up to five hundred taka, or both.¹¹⁰ Similarly, intentionally causing environmental pollution in an area that poses a health hazard to the nearby residents, businesses, or pedestrians along a public road can result in a fine of up to 500 taka.¹¹¹ If an individual, while possessing a poisonous substance, acts recklessly or negligently in a manner that endangers human life or potentially harms others, or knowingly or negligently fails to take necessary precautions to prevent harm from a poisonous substance, they may face a fine of up to one thousand taka or imprisonment for a period not exceeding six months.¹¹²

11. The Conservation of Play Ground, Open Place, Park, and Natural Wetland in Metropolitan City, Divisional Towns, and Municipal Area of District Town including All Municipal Area Act, 2000

This legislation plays a vital role in safeguarding the integrity of urban and suburban environments by protecting and conserving natural wetlands and parks. It aims to ensure environmental sustainability and maintain ecological equilibrium. The category of land designated as a playground, open space, park, or natural water body shall not be altered, or such land shall not be utilized in any other way, or be rented, leased, or otherwise transferred for a similar purpose, unless in conformity with the terms of this Act.¹¹³ Every person who breaches any provision of this Act faces imprisonment for a term not exceeding 5 years, a fine of not more than 50,000

¹⁰⁸ Ibid, s 7(d)

¹⁰⁹ The Penal Code, SB 1860, c 14

¹¹⁰ Ibid, c 14, s 277

¹¹¹ Ibid, c 14, s 278

¹¹² Ibid, c 14, s 284

¹¹³ The Conservation of Play Ground, Open Place, Park, and Natural Wetland in Metropolitan City, Divisional Town, and Municipal Area of District Town including All Municipal Area Act, SB 2000, s 5

taka, or both.¹¹⁴ Every person who breaches any provision of this Act faces imprisonment for a term not exceeding 5 years, a fine of not more than 50,000 taka, or both. If there is a violation of Section 5 whereby the classification of a place or a specific area is changed without authorization, the regulatory authority has the power to issue a notice directing the landowner or the violator to prevent the change and demolish any unauthorized construction as prescribed by law and no compensation shall be provided for such violations, regardless of any other laws in place.¹¹⁵

In cases where construction or infrastructure has been carried out in contravention of this Act, the authorities responsible will seize all such structures upon a court order.¹¹⁶ A formal complaint from the Chairman, Head, or their designated representative is required for any violation of this Act to be brought to trial.¹¹⁷ The penalties for offenses under this Act are considered cognizable offenses, regardless of the provisions in other laws.¹¹⁸

IV. FINDINGS AND RECOMMENDATIONS

The findings and recommendations presented here are a direct outcome previously discussed. This section specifically illustrates the legal obstacles within the current environmental legislation examined in this paper. Furthermore, it offers several recommendations that the policymakers of Bangladesh could consider in order to overcome the legal challenges associated with achieving environmental justice.

1. The Constitution of the People's Republic of Bangladesh, 1972: Based on what has already been discussed, it is clear that under the stated constitution, an individual can seek redress indirectly from the apex court in the case of an infringement of an environmental right.
2. The Bangladesh Environment Conservation Act, 1995: The accountability of the Director General and the Appellate Authority established under this Act should be ensured through amendments to this Act in order to ensure that

¹¹⁴ Ibid, s 8(1)

¹¹⁵ Ibid, s 8(2)

¹¹⁶ Ibid, s 8(3)

¹¹⁷ Ibid, s 12(1)

¹¹⁸ Ibid, s 12(2)

individuals' claims for compensation or the filing of a compensation lawsuit or criminal case to the appropriate court by an aggrieved person.

3. The Environment Court Act, 2010: This Act grapples with a handful of legal drawbacks. An individual or a party that feels aggrieved cannot file an F.I.R. at a police station or commence a criminal case in the relevant court without the permission of the Director General or the person he has designated. The environmental jurisdiction is also ambiguous. Additionally, under this Act, compounding crimes is a discretionary matter. Amendments to this Act are necessary in order to get over these legal obstacles.
4. Bangladesh Water Act, 2013: No court shall entertain cognizance of a crime under this Act without a written report from the Director General or the person he has appointed. A person cannot get justice under this statute, like the two Acts that came before it. Although the protection and conservation of water resources are explicitly mentioned in the preamble of this Act, it also specifies that the Bangladesh Environment Conservation Act, 1995, shall apply when preventing water pollution. That indicates that it adds an additional legal hurdle for the person seeking remedy for water contamination under the applicable legislation. By amending the law, it is feasible to include a sanctioned clause for the prevention of water pollution and provide the individual the chance to file a lawsuit in the appropriate court.
5. The Forest Act, 1927: The fundamental statute that governs how forests are managed in Bangladesh is still the British-enacted Forest Act of 1927. The British's primary goal was to expand their economy by taking resources from the Indian subcontinent. The fact that the Forest Act contains no provision for forest protection, conservation, or quality enhancement is one of its most fundamental flaws. Rather, because it was drafted from a British colonial viewpoint, this legislation is primarily concerned with how you might make money. Even now, we are poorly utilizing this Act's benefits. Since that time, we have been unable to repeal this law and replace it with one that is environmentally friendly and enduring.¹¹⁹ Therefore, it is obvious that this Act has to include specific provisions related to the preservation and protection of forests.

¹¹⁹ Nadim Zawad Akil, Forest Management in Bangladesh: Loopholes and Inadequacies (August 2021), online: The Daily Star < <https://www.thedailystar.net/law-our-rights/law-watch/news/forest-management-bangladesh-loopholes-and-inadequacies-2143756>>

6. The Wildlife (Conservation and Security) Act, 2012: Only the officials designated by this Act or the aggrieved individual have the authority to begin legal procedures under this Act. It shows that an individual's right under this Act is conditional on whether or not the individual gets aggrieved. This Act should incorporate individual rights.
7. The Bangladesh Biodiversity Act, 2017: The sole authority over biological resources and traditional knowledge is given to the bureaucrat-run National Biodiversity Committee, which even lacks a legal personality. This Act does not recognize any collective or individual rights of indigenous or local communities in determining access to their resources. Even the Act uses the phrase "local community or people" rather than the term "indigenous." The majority of Bangladesh's indigenous groups live in forests, yet they lack recognition for their rights to use and manage forests on their ancestral grounds. It has rejected indigenous peoples' sovereignty over their resources by placing a lot of emphasis on state sovereignty.¹²⁰

In the Mro language, the term "SungAw" encompasses both nature and the environment, reflecting the Mro people's view that there is no separation between these two concepts. According to Mro women, they articulate that all elements of the natural world are inherently interconnected and in harmony with one another.¹²¹ Globally, Indigenous traditional knowledge is recognized as current and valuable, holding equal importance to other forms of knowledge.

Nevertheless, in Bangladesh, the profound wisdom of Indigenous women regarding the natural world and the significance of their traditional knowledge and practices remains insufficiently acknowledged by the scientific community, development practitioners, and policymakers.¹²²

¹²⁰ Imtiaz Ahmed Sajal, How far the Biological Diversity Act 2017 complies with International Obligations? (November 2019), online: The Daily Star <<https://www.thedailystar.net/law-our-rights/news/how-far-the-biological-diversity-act-2017-complies-international-obligations-1829140>>

¹²¹ Rani Yan Yan, Indigenous women know how to nurture nature. We need to listen to them. (August 2022), online: The Daily Star <<https://www.thedailystar.net/opinion/views/news/indigenous-women-know-how-nurture-nature-we-need-listen-them-3090771>>

¹²² Ibid

Indigenous knowledge among Mro women is deeply rooted in nature and closely connected to their land, forests, and the environment. Therefore, when these communities face land dispossession, whether through forced eviction for military purposes, converting Jhum land for tourism, or encroachment by outsiders on community forests, Mro women perceive it as a dire threat to their coexistence with nature and the preservation of their traditional wisdom.¹²³ They believe that in the past, they didn't rely on doctors for medical care. Instead, they crafted their own remedies using forest plants, effectively treating their ailments. However, with the disappearance of the forests, these medicinal plants have also vanished.¹²⁴ A change should be made to this Act in order to address the aforementioned drawbacks, namely the part respecting indigenous rights and their access to biological resources.

8. The Brick Manufacturing and Brick Kilns Establishment (Control) Act, 2013: The Environment Court Act of 2010¹²⁵ and the Environment Conservation Act of 1995¹²⁶ respectively, are defined in this Act as the Environment Court Act and the Environment Conservation Act. In simpler terms, this Act, much like its two predecessors, does not recognize an individual's right to seek environmental remedy in a court of law. This legislative impediment should be removed through revision in order to provide environmental justice for the residents of Bangladesh.
9. The Protection and Conservation of Fish Act, 1950: This Act does not recognize an individual's right to initiate legal proceedings in court. Only the fisheries officer or police officer can initiate legal proceedings under this Act. This legal roadblock should be eradicated to ensure individual rights.
10. The Penal Code, 1860: Based on the preceding discussion in the Penal Code of 1860, it is apparent that the penalties for endangering human health in cases of environmental degradation are inadequate. The severity of the penalty for environmental and public health-related crimes should be enhanced.
11. The Conservation of Play Ground, Open Place, Park, and Natural Wetland in Metropolitan City, Divisional Town, and Municipal Area of District Town including All Municipal Area Act, 2000: This Act also creates a legal obstacle

¹²³ Ibid

¹²⁴ Ibid

¹²⁵ Supra Note 86, s 2

¹²⁶ Ibid, s 2

for an individual in the case of filing a complaint. By removing this legal barrier, every individual may play an active role in the conservation of the environment.

The aforementioned discussion finally concludes that Bangladesh has established a diverse range of legislative frameworks to address and regulate environmental matters. Instead of passing yet another environmental legislation, a reassessment of the present regulatory framework governing the environment is urgently required to safeguard the environment and provide environmental justice for Bangladesh's citizens as well as for future generations. Ensuring fairness in environmental matters for the population of Bangladesh hinges on the resolute and effective enforcement of environmental laws.

V. CONCLUSION

The existing laws discussed in this paper do not provide direct avenues for individuals to access environmental justice. To remove these legal barriers, revision of current environmental legislations is imperative. The Ministry of Law, Justice, and Parliamentary Affairs must ensure fairness in addressing individual environmental rights. This can be achieved by incorporating specific guidelines for alternative dispute resolution into environmental laws. ADR is essential for amicably resolving environmental disputes. Additionally, comprehensive public awareness campaigns are needed to educate citizens on their rights, responsibilities, and the importance of environmental protection. An informed public can play a crucial role in advocating for and complying with environmental laws. Furthermore, the government should organize training programs for judges, lawyers, and relevant stakeholders involved in environmental oversight to enhance their understanding of environmental regulations.

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75 | A Critical Evaluation of Enviromental Disputes Resolution Mechanism in Bangladesh:
Addresing Challenges and Insight

National River Conservation Commission Act, SB 2013

Dr. Mohiuddin Farooque vs. Bangladesh & others 17 BLD (AD) 1