

Review of the Current Legal and Institutional Mechanisms in Relation to the Environment Pollution Control in Bangladesh

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Part of the Environmental Law of Bangladesh course work

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PREFACE AND ACKNOWLEDGEMENT

Environment cannot be separated from the domain of human rights. Rather environmental rights are seen as the third generation of human rights. Denial of sound environment shall mean less agricultural protection. Pollution of the water-bodies will mean less fish for the fishermen, no water for drinking, bathing and irrigation. Barren and degraded forestland shall mean depriving the forest dwellers of their livelihood.

In developing this assignment titled Review of the Current Legal and Institutional Mechanisms in relation to the Environment Pollution Control in Bangladesh, I have consulted and received assistance from many persons and organizations. The writings that have been placed in this compilation consist of a number of legal instruments of home and abroad, court decisions and commentaries of different authors and commentators, which are published in various books and journals. I am immensely grateful to a number of people who have helped me collect the unreported or untracked information regarding environmental pollution in Bangladesh. I would specially like to thank Dr. Md. Nazmuzzaman Bhuiyan, Associate Professor, Department of Law, University of Dhaka, and course mentor of the Environmental Law of Bangladesh for his cordial help in many ways.

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ABBREVIATIONS AND JARGONS

AIR	All Indian Reports
AQMP	Air Quality Management Project
BECA	Bangladesh Environment Conservation Act 1995
BELA	Bangladesh Environmental Lawyers Association
BLD	Bangladesh Legal Decisions
BRTA	Bangladesh Road Transport Authority
BSTI	Bangladesh Standardization and Testing Institute
CJ	Chief Justice
CNG	Compressed Natural Gas
de facto	Actually/ In fact
DCC	Dhaka City Commission
DG	Director General
DLR	Dhaka Law Reports
DoE	Department of Environment
e.g.	Example given
EC	Election Commission
ECC	Environment Clearance Certificate
EQS	Environment Quality Standard
FD	Forest Department
FAP	Flood Action Plan
GoB	Government of Bangladesh
HCD	High Court Division
i.e.	That is

LGAs	Local Government Authorities
MoEF	Ministry of Environment and Forest
PIL	Public Interest Litigation
PPP	Polluter Pays Principle
SC	Supreme Court
VIC	Vehicle Inspection Centre
WP	Writ Petition
WHO	World Health Organisation

ABSTRACT

Increasing industrialization and lack of waste treatment is leading to major environmental pollution problem in many parts of Bangladesh, impacting on both aquatic and non-aquatic ecosystems and the population who depend on them for their livelihood activities. Environment, the message of which has a strong correlation with the subtle human existence, are a burning issue around the world. Every country desires to have a better environment for which all possible efforts are being adopted to make the people aware and educated about the environment, to control unwise use of resources, to keep environment pollution free. Legal framework is also being made wherever necessary, with an appropriate augmentation of individual country efforts, supported and appreciated by international communities. Now relevant aspects of environment policies are being considered as a sectoral component of all major international treaties. Thus, now a day, enforcing congenial environment condition free from pollution has become a pre-condition for all development activities.

Key Words: Environment, pollution, conservation, development, policy, Corporate Social Responsibility (CSR), polythene, tannery, medical waste, Bangladesh

CHAPTER ONE

1. INTRODUCTION

The existence of life on earth is threatened due amongst other things to climate change as a result of continuous environment pollution. Over the past several decades, growing public awareness of threats to the environment, informed by warnings of scientists, has led to demands that law protect the natural surroundings on which human well-being depends. Under growing pressure from national and international public opinion, governments began to demonstrate concern over the general state of the environment during the 1960s and introduced legislation to combat environmental pollution and to bring sustainable development into reality.¹ Simultaneously, they established special administrative organs, ministries or environmental agencies, to preserve more effectively the quality of life of their citizens.²

Developments in international environmental law are reflecting a growing consensus to accord priority to resolving environmental problems particularly pollution. Environmental problems stem from two main categories of human activities: ³

- a) Use of resources at unsustainable levels, and
- b) Contamination of the environment through pollution and waste at levels beyond the capacity of the environment to absorb them or render them harmless.

Therefore, environmental laws often call for restricting or banning hazardous products, processes or activities,⁴ which present a substantial risk of environmental harm.

In addition to being affected by global environmental problems, Bangladesh is a victim of local and regional problems. Bangladesh faces many environmental problems both naturally occurring and those caused by humans.⁵ They are:

¹ Mohammad Ali, "Status of Environmental Legislation in Bangladesh", The Chittagong University Journal of Law, Vol. 2: 1997, p. 59.

² For example, one of the first internationally collaborative efforts was the Stockholm Conference on Human Environment in 1972. These efforts were given a new impetus in 1992 with the Earth Summit in Rio de Janeiro, Brazil.

³ Dinah Shelton and Alexandre Kiss, *Judicial Handbook on Environmental Law*, United Nations for Environment Programme (UNEP), (2005), p. 3.

⁴ See e.g., Convention and Montreal Protocol on the Ozone Layer (March 22, 1985, September 16, 1987); Convention on the Prevention of Marine Pollution by Dumping of Wastes (December 29, 1972); Antarctic Treaty (December 1, 1959) and Environmental Protocol (Oct. 4, 1991); Sofia Protocol to the 1979 Convention on Long-Range Trans boundary Air Pollution concerning the Control of Emissions of Nitrogen Oxides (October 31, 1988)

⁵ The major environmental problems in Bangladesh can be traced to the problems of over-population and poverty.

deforestation, deteriorating water quality, natural disasters, land degradation, salinity, unplanned urbanization, discharge of untreated sewage and industrial wastes, and so on.

1.1 ENVIRONMENT AND POLLUTION: TRACING THE LEGAL LINKAGES

The advent of modern state with system of statutes witnessed a blend of “revenue” and “resources” oriented regime with some significant prohibit of acts dangerous to human environment and health and the ecology. Hence, we find environmental provisions in different statute books. Therefore, the provisions having direct, indirect and causal link with environment and ecology have been in place as regulatory regime in the forms of policies, legislations, institutions and traditions. Pollution, of both air and water are huge problems for many urban environments in Bangladesh.⁶ Again with new development in the energy sector and rapid urbanization and industrialization, it is surely a demand of time and pragmatic step to enact reforms at this point of time if not earlier. Roughly, the environmental laws can be categorized as follows:⁷

Pollution	Fishery
Conservation	Forestry
Dangerous substances and Public protection	Wildlife
Displacement, Relief and Rehabilitation	Energy and Mineral resources
Management of Land	Rural and Urban planning
Agricultural Resources Management	Transportation and Safety
Water Resource Management	Occupational Hazard and Safety
Food and Public Health	Climate Change

This paper, however, would try to review the topic of environmental pollution and its current regulatory legal mechanisms, identify loopholes therein, and to suggest possible recommendations. This review is the legal one, so it lacks scientific aspect.

⁶ It was estimated by an Air Quality Management Project (AQMP) that poor air quality in Dhaka was contributing to 15,000 premature deaths, as well as millions of cases of pulmonary, respiratory and neurological illnesses.

⁷ This is not the absolute one but for the time being it can be considered.

CHAPTER TWO

REGULATORY FRAMEWORK ADDRESSING ENVIRONMENTAL POLLUTION IN BANGLADESH

Today, an investigation into laws of Bangladesh, having relevance to environment, leads to the existing identification of about 200 laws and by-laws covering substantive and procedural rules.⁸ But the existence of these laws has neither been able to sustain the environment nor any of its components. Unregulated human behavior has depleted and deteriorated the conditions that have recently become a major concern and an area of immediate action for mankind. Causing environmental pollution or contamination is one of the rude aspects of unregulated human behavior.

2.1 DEFINITION OF POLLUTION UNDER THE BANGLADESH ENVIRONMENT CONSERVATION ACT 1995

The Bangladesh Environment Conservation Act 1995 is the only piece of legislation where the definition of “pollution”⁹ has been showcased under sub-section (b) of section 2. It runs as follows:

“ ‘pollution’ means such contamination, or other alteration of the physical, chemical or biological properties of air, water or soil, including change in temperature, taste, odour or any other characteristics of these or such discharge of any liquid, gaseous, solid, radio-active or other substances into air, water or soil or any elements of the environment as well or is likely to create nuisance or render such air, water or soil harmful, injurious, detrimental or disagreeable to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational or other benefit uses, or to ecosystems including livestock, wild animals, birds, fish, plants or other forms of life.”¹⁰

The debate about properly defining the term “pollution” in the legal arena is a perennial debate and ubiquitous in all jurisdictions. As a whole, the debate is not as complex but definitely multi-dimensional as we often attempt to think over it. Until recently, however, standard legal definition of it we can locate in the above stated

⁸Dr. Mohiuddin Farooque and Dr. Saleemul Huq, “Regulatory Framework and Some Examples of Environmental Contamination in Bangladesh”, In S. Rizwana Hasan (ed.), *Selected Writings of Mohiuddin Farooque: Environmental Order & The Security of Survival*, (BELA), 2004, p. 20.

⁹ Here, we are referring to the pollution of both physical and human environment.

¹⁰ This is an unofficial English version of the section since the bare Act is in Bangla. The original text of the Act was published in the Bangladesh Gazette, extra-ordinary issue of 16-2-1995 and amended up to 2010. See Department of Environment and Bangladesh Environment Management Project, *Poribesh Ain Sankalan (A Compilation of Environmental Laws)*, Dhaka, p.155 (2002).

Act of 1995.

2.2 DEFINITION OF POLLUTION IN A GLOBAL CONTEXT

The definition of „pollution“, as adopted by the International Law Association in the Committee on Legal Aspects of the Conservation of the Environment in the Montreal Conference in April 1982, are as follows:

“Pollution means any introduction by man, directly or indirectly, of substance or energy into the environment resulting in deleterious effects of such a nature as to endanger human health, harm living resources, eco-systems and material property and impair amenities or interfere with other legitimate uses of environment. Trans-frontier pollution means pollution of which the physical origin is wholly or in part situated or located within the territory of one state and the deleterious effects of which flow to another state or states.”¹¹

The definition of pollution as given above has referred to human health.¹² From the legal point of views, pollution, as defined in the American Jurisprudence¹³ is “wrongful contamination of the atmosphere, or of water, or of soil, to the material injury of the right of an individual.”

2.3 POLLUTION CONTROL IN BANGLADESH: A CONSTITUTIONAL APPROACH

Before reviewing the statues, it is important to look at the constitutional provisions. The Constitution of the People’s Republic of Bangladesh has few provisions that can be connected with the instance issue. It declares that the State shall regard improvement of public health as among its primary duties.¹⁴ By the very recent amendment of the Constitution in 2011, a new article has been inserted which talks of the responsibility of the State to conserve and develop the environment for present and future citizens and also to make provisions for the conservation and safety of natural resources, bio- diversity, forest and wildlife.¹⁵

Mandating the primary duty of improvement of citizen’s health collectively as enshrined in our Constitution can be attained by taking various steps, the pollution control and management is an integral part of it and if not handled properly would

¹¹ Cited from Dr. R.G. Chaturvedi and Dr. M.M. Chaturvedi, Law on Protection of Environment and Prevention of Pollution (Central and States), The Law Book Company (P) Ltd., India, p. 64 (1996).

¹² The world Health Organisation (WHO), which is the International body on Health, has defined health as “a state of perfect physical, mental and social well-being and not merely the absence of disease and infirmity.”

¹³ 61, Pollution Control, 2nd edition, p. 817

¹⁴ Article 18(1), The Constitution of the people’s Republic of Bangladesh

¹⁵ Article 18A, The Constitution of the People’s Republic of Bangladesh

lead to further deterioration of public health. Effective steps in pollution control and management must be taken in improving public health. The holistic interpretation of the Constitution mandates the responsibility of the State on the one hand and of the people on the other to protect the environment from pollution.

Bangladesh has a well-developed set of environmental policies, Acts and Rules that deal with environmental pollution of water, soil and air. Now, we would like to discuss in brief several past legal instruments relating to pollution for the better understanding of whole picture of environmental pollution and legislation to combat this threat.

The first environmental activities in Bangladesh were taken soon after the Stockholm Conference on Human Environment in 1972. As a follow up action to the Stockholm Conference, the Government of Bangladesh funded, under the aegis of the Department of Public Health Engineering and with a staff level of 27 and after promulgating the Water Pollution Control Ordinance in 1973¹⁶, a project primarily aimed at water pollution control. In subsequent years, various events took place as described below.

In 1977, Environment Pollution Control Board¹⁷ with 16 members headed by a Member of the Planning Commission and Environment Pollution Control Cell headed by a Director with staff complement of 26 was established. This was followed in 1977 by the establishment of the Environment Pollution Control Project, in 1985 by the establishment of the Department Pollution Control and finally, in 1989 by the restructured and renamed the Department of Environment the activities of which are overseen by a Director General.¹⁸

¹⁶ East Pakistan Ordinance No. V of 1970, It was repealed by the Environment Pollution Control Ordinance 1977. It required that any persons or commercial or industrial undertaking; adopt measures for the prevention, control and abatement of existing or potential pollution of any waters, including construction, modification, extension or alteration of disposal systems; provide information to the Water Pollution Control Board regarding wastes, sewerage or treatment works; and permit any officer to inspect and search land and buildings. The Ordinance provided the term „pollution“ which means “such contamination, or other alteration of the physical, chemical or biological properties of any waters, including change in temperature, taste, colour, turbidity, or odour of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substances into any waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses or to livestock, wild animals, birds, fish or other aquatic life”.

¹⁷ Established by the Environmental Pollution Control Ordinance, 1977 (Ordinance No. XIII of 1977 and repealed by Bangladesh Environment Conservation Act 1995). This Ordinance expanded the definition of “pollution” from that specifically relating to waters to “air, water or soil”. It also further included “contamination or other alteration ... likely to, create a nuisance or render such air, waters or soil harmful to ... bonafide uses and to plants and forms of life other than those previously specified.”

¹⁸ See for details, available at: <<http://www.doe-bd.org/overview.html>> (Last visited on 14.11.2012).

Now we would like to present and dissect the current legal regime those are relating to the environmental contamination in many ways.

2A. LAW ADDRESSING POLLUTION AS TO AIR

1. THE SMOKE NUISNACE ACT 1905

Object and purpose: An Act to amend the laws relating to the abetment of nuisances arising from the smoke of furnaces or fire-places in certain areas in Bangladesh.

Smoke Nuisance Commission: Section 4(1) provides that the government shall constitute a commission for supervising and controlling the working of this Act. Moreover, section 5(1) provides that the government also may appoint a Chief Inspector of Smoke-nuisances and so many Assistant Inspectors as it may think fit.

Prohibition as to certain activities: Section 6 provides the prohibition as to, within any specified area,-

- a) the erection or use of any specified class of brick tile or lime-kilns, or, clamps for making bricks, or
- b) the erection or use of furnaces to be used for the calcining or smelting of ores or minerals, or for the casting, puddling or rolling of iron or other metals, for the conversion of pig-iron into wrought-iron, or
- c) the manufacture of coke, in ovens, or with special appliances, or
- d) the making of coke without ovens or special appliances.

Section 6(2) provides a small penalty for violation of the above-mentioned prohibitions. The highest fine be imposed is Tk. 250, which may turn into double for the subsequent violation and conviction.

Offences and punishments: Section 8(1) provides for the penalty when smoke is emitted to a greater extent than is permitted by rules on a first conviction, to Tk. 50, on a second conviction to Tk. 100, and on any subsequent conviction to Tk. 200.

Section 10 further states about the rule making power. Such rule may regulate the transaction of business by the Commission (rule 10(1) (a)), the emission of smoke from the furnaces of vessels (rule 10(1)(f)), a scale for the purpose of determining the density of smoke (rule 10(1)(c)), time during which smoke of such density may be emitted from a furnace (rule 10(1)(e)).

2. THE BRICK BURNING (CONTROL) ACT 1989

Especially the huge number of brick-kilns and the indiscriminate felling of trees for use as firewood there of affecting the environment a lot, these are because the laws are not in action. Parliament of Bangladesh passed the Brick Burning Control Act in 1989 which provides that a brick field can be set up on 1.5 acres of land but many brickfield owners use 3 to 6 acres of land, in some cases more than that, for setting up brickfield. Certainly, the land should be fallow land but in most cases, it is not. It is also mandatory to install a minimum 50 feet high chimney with filter in every kiln for emission of smoke. But the owners are violating the law using lower chimneys and sending vaporous waste, dust, carbon dioxide, carbon monoxide, sulfur dioxide, fluorine etc in the immediate atmosphere. According to Brick Burning Control Ordinance of 1992 and 2001 (revised), the owners are prohibited from using all kinds of firewood in kilns and that a law breaker will be fined Tk. 50,000 or sentenced to six months imprisonment.

3. THE SMOKING AND TOBACCO PRODUCTS USAGE (CONTROL) ACT 2005

Object and purpose: The Act¹⁹ aims to make a law relating to the control of production, usage, sale-purchase and advertisement of the smoking and tobacco products.

Prohibition on smoking in public place and public transport: Section 4(1) provides that no person shall be accepted to do smoking in public place and public transport. The definitions of "public place" and "public transport" have been given in section 2. It provides that "public place" refers to educational institution; governmental, semi-governmental and autonomous office; library; lift; hospital and clinic; railway station; bus terminal; ferry; cinema hall; covert exhibition center; theater hall; market place; public toilet; children amusement park managed by government or non-government. On the other hand, "public transport" means motor vehicle; bus; rail vehicle; tram; ship; launch; mechanical all public vehicles; air-plane. Both the definitions have kept the scope of declaring any other place or vehicle as the "public place" or "public transport" respectively by the government in the official gazette notification.

Punishment: Under section 4(2), if any person smokes in "public place" or "public transport" violating section 4(1), s/he shall be punished with fine up to Tk. 50.

Exception to prohibition: Section 7 provides that any owner, caretaker/controller or manager of any "public place" or "public transport" may specify or determine any place for doing smoking

¹⁹Repealing the East Bengal Prohibition of Smoking in Show Houses Act 1952 and the Tobacco Manufactured Products Marketing (Control) Act 1988 by section 18

2B. LAW ADDRESSING POLLUTION AS TO WATER AND FISHERY

1. THE PORTS ACT 1908

Object and purpose: This Act aims to consolidate the enactments relating to Ports and Port-charges.

Power to make rules: Section 6(1) provides that the government may, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes, namely:-

[.....]

(ee) for regulating the manner in which oil or water mixed with oil shall be discharged in any such port and for the disposal of the same;

[.....]

(p) for the prevention of danger arising to the public health by the introduction and the spread of any infectious or contagious disease from vessels arriving at, or being in, any such port, and for the prevention of the conveyance of infection or contagion by means of any vessel sailing from any such port.

Health Officer: Section 17 provides for the appointment of the health-officer.

2. THE TERRITORIAL WATERS AND MARITIME ZONES ACT 1974

Object and purpose: This Act aims to provide for the declaration of the territorial water and maritime zones. It provides for the conservation, use and exploration of maritime resources and for the control of marine pollution.

Control of Pollution: Under this Act, the government may, with a view to preventing and controlling marine pollution and preserving the quality and ecological balance in the marine environment in the high seas adjacent to the territorial waters, take such measures as it may deem appropriate for the purpose.²⁰ The Act of 1974 is not backed by effective institutional set-up. The Department of Fisheries, the Port Authority, Department of Shipping etc. collectively make efforts to implement the Act unsuccessfully.

3. THE TERRITORIAL WATERS AND MARITIME ZONES RULES 1977

Prohibition as to dynamiting and poisoning: Every person shall be abstained from using dynamite or other explosive substance or poison, lime or noxious material for fishing or destroying fish in the economic zone.

²⁰ See section 8 of the Territorial Waters and Maritime Zones Act 1974.

4. THE COAST GUARD ACT 1994

Object and purpose: This Act aims to make a law relating to the constitution of the Coast Guard Force.

Provision as to pollution control: Section 7(e) provides that the function of the force is to inquire into the activities of pollution occurring within the water boundary of Bangladesh and to take preventive measures.

5. THE PROTECTION AND CONSERVATION OF FISH ACT 1950

Object and purpose: Although this Act aims to make provisions for the protection and conservation of fish in Bangladesh, provisions could be found relating to pollution of environment.

Provision as to pollution control: Section 3 spells out that the Government may make rules for the purpose of "prohibiting the destruction of, or any attempt to destroy, fishes by poisoning of water or the depletion of fisheries by pollution, by trade effluent or otherwise."

Punishment: Section 5 provides that "the breach of any rule made under section 3, shall be punishable with rigorous imprisonment for a term which shall not be less than one year and may extend to two years, or with fine which may extend to five thousand taka or with both."

The punishment appears very petite in nature and not harsh. Because the business organizations or industrial companies in our country such as tannery or garments industries, etc. release the highly extensive quantity of wastages and effluent in the river or water following aside the industry consequently poisoning water and depleting fisheries. In that sense the punishment is a lenient one for the mighty industrialists.

6. THE PROTECTION AND CONSERVATION OF FISH RULES 1985

Destruction of fish by explosives: Rule 5 prohibits the destruction or any attempt to destroy any fish by explosives in inland waters or within coastal territorial waters.

Destruction of fish by poisoning: Rule 6 prohibits the destruction or any attempt to destroy any fish by poisoning of water or the depletion of fisheries by pollution, by trade effluents in inland waters.

7. THE MARINE FISHERIES ORDINANCE 1983

Object and purpose: Like the previous Act, although this ordinance aims to make

provisions for the management, conservation and development of marine fisheries in the Bangladesh fisheries waters, provisions could be found relating to pollution of environment.

Provision as to pollution control: Section 26 prohibits the (a) the usage of, or attempt to use of, any explosive, poison or other noxious substances for the purpose of killing, stunning, disabling or catching fish, or (b) the carriage of, or the possession or control of, any explosive, poison or other noxious substances with the intention of using such explosive, poison or other noxious substance for any of the purposes referred to in clause (a).

But this section has a relaxation in case of a person who has been authorized in writing by the Director. That means with authority any person in Bangladesh can violate the law and endanger the environment.

Again section 26(2) is saying about the presumption of, existence and intention of, using any explosive, poison or other noxious substance if found on board any vessel unless the contrary is proved.

Punishment: Section 26 also provides the punishment for using explosives, poison or other noxious substances a fine not exceeding Taka one lakh or fifteen times the value of the fish, whichever is greater. This law contains the rules for controlling marine pollution, but the penalty provision in the regulation is very nominal. There is no guide line for exacting compensation from the offender.

2C. LAW ADDRESSING POLLUTION AS TO FOOD AND AGRICULTURE

1. THE BANGLADESH PURE FOOD ORDINANCE 1959

Object and purpose: This Ordinance provides for the prevention of adulteration of food and prohibition of sale or distribution of food injurious to health. Bangladesh Standardization and Testing Institute (BSTI) is entrusted with responsibility of checking and testing quality.

Definition of "Adulteration": Clause 3(1) of the Ordinance has defined an article of food as "adulterated" if-

- a) any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength, or
- b) any substance has been substituted wholly or in part for it, or
- c) any of the normal constituents has been wholly or in part abstracted so as to render it injurious to health, or
- d) it is mixed, coloured, powdered, coated or stained in a manner whereby damage or inferiority is concealed, or

- e) it does not comply with any standard provided by or under this Ordinance or any other law for the time being in force, or
- f) it contains or is mixed or diluted with any substance in such quantity as is to the prejudice of the purchaser or consumer or in such proportion as diminishes in any manner the food value or nutritive qualities which it possesses in its pure, normal, undeteriorated and sound condition, or
- g) it contains any poisonous or deleterious ingredient including radiation²¹ which may render it injurious to health, or
- h) It is not of the nature, substance or quality which it purports to be or which it is represented to be by the manufacturer or the seller.

Special Features:

- i. Section 4 provides for the appointment of public analysts.
- ii. Section 4A provides for the constitution of the National Food Safety Advisory Council.
- iii. Section 6: Prohibition of manufacture or sale of food not of proper nature, substance or quality
- iv. Section 6A: Prohibition of sale or use of poisonous or dangerous chemicals, intoxicated food colour, etc.
- v. Section 7: Prohibition of manufacture or sale of food not of proper standard of purity
- vi. Section 17: Prohibition of sale of diseased animals and unwholesome food intended for human consumption

2. THE PESTICIDES ORDINANCE 1971

Object and purpose: The Ordinance aims to regulate the import, manufacture, formulation, sale, distribution and use of pesticides.

Under this Ordinance, no provision exists to ascertain liability for polluting air, soil or water from the use of chemicals. The law regulates the import, manufacture, formulation, sale, distribution, and use of pesticides in order to prevent injury to public health or to animal or vegetarian.

2D. LAW ADDRESSING POLLUTION AS TO TRANSPORTATION

1. THE MOTOR VEHICLES ORDINANCE 1983

Black smog is mainly produced by the old and unfit vehicles. And so to haul old and unfit vehicles under section 47 of the Motor Vehicles Ordinance, 1983 seems the only option to check it.

²¹The phrase "including radiation" was inserted by section 2 of the Bangladesh Pure Food (Amendment) Act, 2005 (Act No. XXVII of 2005)

Object and purpose: This Ordinance aims to consolidate and amend the law relating to motor vehicles

Establishment of BRTA: This Ordinance has the mandate of establishing of an authority called Bangladesh Road Transport Authority (BRTA); and the government has already established this authority.

Under this Ordinance, there is a system of carrying a fitness certificate (section 47). It can create a very positive impact for reducing air pollution in Dhaka city. But a section of corrupt officials of BRTA are allegedly issuing fitness certificates to unfit vehicles. So, in fact, the environmental laws could not be enforced for the corruption, which seems to be the main national problem of Bangladesh.

Fitting and using of prohibited horns or other sound producing device: Section 139 provides that if any person uses or being the owner or person in charge of motor vehicle fits, causes or allows fitting of any horns or any sound producing devices prohibited by any competent authority or prohibited under the provision of this Ordinance or any rules or regulations made there under or uses horn or any sound producing device where its use is prohibited shall be punishable with fine which may extend to Tk. 100.

Using of motor vehicle emitting smoke: Section 150 provides that whoever drives or causes or allows or lets out a motor vehicle for use in any public place, the smoke of which would constitute a health hazard, shall be punishable with fine which may extend to Tk. 200.

2. THE MOTOR VEHICLES RULES 1940

Usage of horn: Rule 41(1) provides that every motor vehicle shall be fitted with a horn or other approved device available for immediate use by the driver of the vehicle and capable of giving audible and sufficient warning of the approach position of the vehicle. It also states in sub-rule (2) that no motor vehicle shall be fitted with any multi-tuned horn giving a succession of different notes or with any other sound producing device giving an unduly harsh shrill, loud or alarming noise. Every transport vehicle shall be fitted with a bulb horn.

This Rule is related to emission of gas and reduction of noise, but there is no definitive or scientific basis for acceptable level of smoke or noise. Also, the laws do not mention the role of Department of Environment or Bangladesh Road Transport Authority towards enforcing the provisions.

2E. LAW ADDRESSING POLLUTION AS TO TOXIC AND HAZARDOUS SUBSTANCES WASTE

1. THE BANGLADESH PETROLEUM ACT 1974

Object and purpose: This Act aims to provide for the exploration, development, exploitation, production, processing, refining and marketing of petroleum.

Duties of persons engaged in petroleum operation: Section 6(1) provides that it is the duty of any person engaged in any petroleum operation- first, to ensure that such petroleum operation is carried on in a proper and workmanlike manner and in accordance with good oil-field practice; secondly, to carry on petroleum operation in any area in a manner that does not interfere with navigation, fishing, and conservation of resources of the sea and sea-bed; and thirdly, to consider factors connected with the ecology and environment.

In particular, and without prejudice to the generality of the foregoing provision, a person engaged in any petroleum operation shall, in carrying on such operation in any area,-

- a) control the flow, and prevent the waste or escape, in that area of petroleum or water;
- b) prevent the escape in that area of any mixture of water or drilling fluid with petroleum or any other matter;
- c) prevent damage to petroleum bearing strata in any area, whether adjacent to that area or not.
- d) keep separate each petroleum pool discovered in the area; prevent water or any other matter entering a petroleum pool through wells in that area, except when required by, and in accordance with, good oil-field practice.

CHAPTER THREE

THE BANGLADESH ENVIRONMENT CONSERVATION ACT 1995 AND RULES 1997

3.1 AN OVERVIEW

Bangladesh Environmental Conservation Act, 1995 (as amended up to 2010) is undoubtedly the flagship legislation in the environment sector. Being the most important legislative documents for environmental especially air, water and noise pollution, it is dedicated to the “conservation, improvement of quality standards, and control through mitigation of pollution of the environment”.²² Then Rules 1997 made in accordance with the 1995 Act provide additional guidance for specific components of the Act. The Act is in theory enforced by the DoE, which has responsibility for:

- Coordinating with other authorities or agencies that have relevance to the objectives of the Act.
- Adopting safety measures and determining abatement measures to prevent accidents that may cause environmental degradation.
- Advising persons on environmentally sound use, storage, transportation, import and export of hazardous material or its components.
- Conducting research and assisting other authorities and agencies in conservation and improvement of the environment.
- Investigating locations, equipment, manufacture or other processes, ingredients, or materials, to ensure improvement of the environment, and control and mitigation of pollution.
- Collecting, publishing and disseminating information regarding environmental pollution.
- Advising the Government on manufacturing processes and materials that may cause pollution.
- Ensuring potable water quality.

Since the gazetting of the 1995 Act, all industrial units or projects must obtain “Environmental Clearance” from the DoE. For the purposes of this all industrial units and projects have been divided into four categories (Schedule 1 of the Rules) depending on environmental impact and location. In order to obtain Environmental Clearance, industries within these categories must submit applications containing several forms of documentation. Once Environmental Clearance has been granted it is valid for a period of 3 years for Green Category industries and 1 year for all other Categories. Applications for renewal must be made 30 days before expiry.

²² See preamble of the Act 1995.

3.2 BANNING POLYTHENE: EFFICENCY OF THE BEC ACT 1995

Uncontrolled production and use of the polythene bags has threatened sewerage, drainage, garbage disposal system, land fertility and human, animal health.²³ The 2002 amendment of the Act incorporated a new provision in the form of section 6A under which the polythene products are banned afterwards. An analysis of this section suggests that:²⁴

1. Government may issue direction imposing absolute ban on the manufacture, import, marketing, sale, stock, distribution, commercial carriage and commercial use of (i) all kinds or any kind of polythene shopping bag, or (ii) any other article made of polythene or polypropylene, or (iii) any other article.
2. Alternatively, Government may allow conditional operation and management of the above activities.
3. Government may issue above directions if it is satisfied, on the advice of the DG or otherwise, that the aforesaid articles are injurious to the environment and such direction would be issues by notifications in the official Gazette.
4. Such direction shall not be applicable to export items or to any kind of polythene bags that would be exempted by the direction itself from its application.
5. "Polythene shopping bag" means a bag, thonga or other container made of polythene or polypropylene or any compound or mixture thereof and is used for purchasing, selling, keeping or carrying another article.

Table 125

Conformity of the Notifications with the Act of 1995

FIRST NOTIFICATION: PARTIAL BAN ON POLYTHENE BAGS	The First notification ²⁶ was issued by the DG of DoE under section 4 of the Act 1995. It imposed ban only on the use and marketing, in the Dhaka metropolitan areas, of polythene shopping bags (up to 20 micron of density) from 1 January of 2002. For this purpose, all were
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²³ According to a study conducted in 2001 by SMEC (Bangladesh) Ltd., a study on control and management of polythene bags in Bangladesh, for the Ministry of Environment and Forest (the MoEF), around 10 million polythene bags were used every day in Dhaka City alone. The SEMC study therefore suggested a number of measures, for control and management of polythene bags, including "new legislation for control and management of polythene bags in Bangladesh; and legislation to manage and control solid waste in Bangladesh; and legal framework for alternative technology."

²⁴ Dr. Md. Nazrul Islam, "Banning Polythene: An Analysis of the Efficiency of the Legal Regime", The Dhaka University Studies, Part-F, Vol. XV (2): 1-16, December 2004, p. 5.

²⁵ This table has been prepared based on the above-mentioned article of Dr. Md. Nazrul Islam.

²⁶ This notice of 25 December 2001 was published in the additional volume of Bangladesh Gazette dated 30 December 2001, For text, see, Department of Environment/BEMP, Poribesh Ain Sankalan (Compilation of Environmental Laws), N.5, Dhaka, DoE, p. 297 (2003)

	requested not to use and market, in all Dhaka metropolitan areas, polythene shopping bags (up to 20 micron of density) from 1 January 2002.
SECOND NOTIFICATION: INCONSISTENCY WITH THE BECA 1995	The Government issued the Second Notification on 8 April 2002 whereby polythene bag was totally banned in the whole of Bangladesh. The definition of „shopping bags“ in this notification includes not only bags, thonga (tiny bags) or containers but also any type of polythene and polypropylene that was not meant in the text of 1995 Act. It imposed the total ban on polythene products indicates shift of government's previous stand for partial ban as it was reflected in the First Notification. ²⁷
THIRD NOTIFICATION: LOOPHOLES ADDRESSED	The Third Notification ²⁸ limited the application of the Second Notification for certain products. ²⁹ It, however, clarified that <ol style="list-style-type: none"> i. the density of polythene used as wrapper shall not be of below 100 micron and ii. it cannot be used shopping bag in wholesale or retail market or as repacking or in the market. It thus confirmed the confusion made by the previous one regarding the definition of polythene shopping bags. It purported to mean wrapping materials as shopping bags although the attributes of the shopping bags as defined in the Act of 1995 (i.e. selling, purchasing, keeping, or

²⁷ These loopholes are attempted to be remedied in a subsequent Notification of the MoEF dated 11 August 2002 (the Third Notification)

²⁸ See the next in Poribesh Ain Sankalan, N. 5, p. 298 (2003)

²⁹ It provides that the ban imposed by the Second Notification shall not be applicable for the use of polythene shopping bag as wrapper of the following products:

1. Biscuit, chanachur, flour, wheat, lachacha semai, tea, chocolate, milk (powder and liquid), naphthalene
2. Inner liner of fertilizer and cement bag, and
3. Oral saline, various necessary things used for medicine industry including disposable syringes.

	carrying) did not include wrapping anything. ³⁰ It reflected another deviation from previous position of the government for banning bags of only up to 20 micron density. It imposed more stringent requirement by specifically determining the permissible density as 100 micron and by specifying the products that were permitted to use polythene wrapper.
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3.3 POLLUTION RELATED IMPORTANT PROVISIONS OF BEC ACT 1995

a) RESTRICTIONS ON VEHICLES EMITTING SMOKE INJURIOUS TO ENVIRONMENT

Section 6 provides restrictions regarding vehicles emitting „smoke or gas injurious to environment“, which refers to any smoke or gas exceeding the standards fixed by rules. Form 4³¹ of the Rules 1997 underlines the limits of standard and schedule 2 provides the standards of air for healthy environment.

b) INFORMATION TO THE DG REGARDING ENVIRONMENTAL POLLUTION OR DEGRADATION

Section 8 spells out that any person affected or by likely to be affected as a result of pollution or degradation of the environment may apply to the DG for remedy of the damage or apprehended damage. Rule 5 prescribes the manner in which an application has to be made. The DG is bound to dispose of the application within 3 months of receiving it.

c) DISCHARGE OF EXCESSIVE ENVIRONMENTAL POLLUTANT ETC.

Section 9 states that where due to an accident or other unforeseen incident, the discharge of any environmental pollutant occurs or is likely to occur in excess of the limit, the person responsible and the person in charge of the place of occurrence shall take measures to control or mitigate the pollution. They must immediately inform the DG of the occurrence. On receipt of information, the DG is mandated to take necessary remedial measures to control and mitigate the pollution. The said person is bound to render sufficient assistance and co-operation as required by the DG.

³⁰ The last line of the said notifications, however, indicates that the government was aware of the fact that the use of polythene as shopping bags is different from its other uses including its use as wrapper. Given that, the government failed to explain why the second or third notification should be understood to mean polythene wrappers as one kind of polythene shopping bags.

³¹ This form was inserted in the rules by gazette notification S.R.O. 29-Law/2002 w.e.f. 28/2/2000.

Now we will discuss two newly enacted Rules under the BEC Act 1995 in the following:

I) THE NOISE POLLUTION (CONTROL) RULES 2006³²

According to the Noise Pollution (Control) Rules, 2006, motor honking within a 100-metre radius of a hospital, school and office is prohibited. The rules also do not allow use of brick crushers and cement mixers within 500-metre radius of a residential area. Besides, prior permission is mandatory for using loudspeakers or megaphones.

The law has provisions to punish the first-time offenders with a maximum of one month's jail or Tk. 5,000 in penalty or both. For the second-time offenders it is six months' jail or Tk. 10,000 fine or both.

But lack of proper enforcement of this law has kept the capital seriously exposed to noise pollution, which is rapidly decreasing the quality of life here.³³ Such environment is affecting people's health and behaviour. The capital's noise pollution is driving its citizens crazy. The most common sources of noise pollution here are the construction and transportation systems.

II) COMBATING MEDICAL WASTE: A NEW EMERGING POLLUTION

Definitions: In 2008, the Government framed the Medical Waste (Management Waste and Processing) Rules.³⁴ It provides a definition of the "medical waste" as "any solid, liquid, gaseous, radio-active substance produced, emitted, dumped due to medical treatment of human being, immunization process, pathological diagnosis or any medical research, which causes adverse impact on environment and also includes different categories of wastes mentioned in the Schedule-1 of this rules".

The classifications of medical waste as given in the Schedule-1 are: i) General Waste (non-infectious/non-toxic); ii) Anatomical waste; iii) Pathological waste; iv) Chemical waste; v) Pharmaceutical waste; vi) Infectious/Toxic waste; vii) Radio-active waste viii) Sharp waste; ix) Re-usable/recycled waste; x) Liquid waste (infectious/non-infectious); and xi) Pressurized waste. This rule has fairly included all sources of wastes and their places of generations.

³² This rule has been published in the Government Official Gazette notification in pursuant to section 20 of the Environment Conservation Act 1995.

³³ See the details of the report "Dhaka too noisy: Call for tough action against polluters". Available at <<http://www.thedailystar.net/newDesign/news-details.php?nid=249291>>. (Last visited on 08.10.2012).

³⁴ This rule has been published in the Government Official Gazette notification in pursuant to section 20 of the Environment Conservation Act 1995.

Licenses: There are three types of licenses under this Rule:

- a) Segregation, packaging, storage, destruction and incineration;
- b) Collection and transportation;
- c) Treatment, decontamination and disposal.

The license, if granted, is given for 3 years which can be renewed. "Experimental license" can be issued to an applicant to assess its capacity on medical waste and processing for maximum 1 year.

Flaws: As mentioned earlier that until recently, the medical waste has not been treated as a serious issue in Bangladesh. This specific Rule on it is a timely initiative to manage medical waste in a proper manner. This Rule has no mention of regulating medical waste generation and no proper provision of liquid medical waste and radio-active waste management. It needs revision to include these matters along with increasing the amount of fine, inclusion of civil society in the licensing and monitoring mechanism and binding the LGAs to follow this Rule if they manage medical waste by themselves.

III) TOXICTANNERIES: THEHEALTH REPURCUSSIONS OF BANGLADEH'S HAZARIBAGH LEATHER³⁵

The New York-based Human Rights Watch (HRW) in its recent report (October 2012) has pointed to how workers' rights are being ignored and irreversible damage wreaked on the environment and public health by the tannery industries of Hazaribagh. The endless foot-dragging of the government over implementing court order compounded by apathy of the tannery owners to shift their units is in an unaccepted situation. The government's utter callousness over the issue is encouraging the tannery owners to maintain status quo, while local inhabitants continue to suffer.³⁶ Huge amounts of chemicals flow off the tannery floor, into open gutters in Hazaribagh streets, and then into a stream leading to the Buriganga, one of Dhaka's main rivers. The government estimates that tanneries release 21,600 cubic meters of untreated effluent each day in Hazaribagh, endangering the health of local residents.

³⁵ This report titled Toxic Tanneries: The Health Repercussions of Bangladesh's Hazaribagh Leather, is based on research conducted in Bangladesh between January and May 2012, and interviews with 134 people, including past and current tannery workers, slum residents, healthcare professionals, workers with nongovernmental organizations (NGOs), trade union and government officials, leather technologists, and chemical suppliers.

³⁶ Many workers complained to Human Rights Watch that their tannery did not supply protective equipment such as gloves, masks, boots, and aprons, or if it did, failed to supply sufficient quantities. Other workers told Human Rights Watch they suffered serious accidents working old and poorly maintained tannery machines for which they had scant training.

CHAPTER FOUR

POLLUTION CONTROL AND ROLE OF INSTITUTIONS

4.1 EXTRACTING THE JURISPRUDENCE: ANALYSES OF LEGISLATURE'S STANCE

The state of regulatory framework prevailing in Bangladesh is perhaps identical with those existing in many countries where the legal systems have been transplanted by, with conceivable motives, and inherited from colonial regimes. Historically, the law and institutions dealing with natural resources in Bangladesh were "use oriented" to extract maximum economic benefit even foreclosing the interests of the succeeding generations.

It is to be noted that although the number of legislation dealing with environmental issues like air, water, air and etc. directly or indirectly is quite large³⁷, the case law is equally few and as such there is a general lack of direction. The juridical reasons for the gloomy environmental scenario include:

- 1) Lack of appropriate law and non-application;
- 2) Historical legacy of ownership pattern and transfer;
- 3) Conflicts between law and traditional practice;
- 4) Institutional weakness and inadequacy, leading to non-enforcement and malpractice; and
- 5) Non-reflection of reality in jurisprudence of the prevailing law.

4.2 THE EXECUTIVE

4.2.1 NATIONAL ENVIRONMENTAL POLICY 1992

The Cabinet adopted this policy in November 1992 that provides some general guiding statements and then goes on describing sectorial policies following the Ministries. It would be worth to note that topics being briefed in the said policy under its Article 4 and 5. The talking about legal framework is to amend all laws and regulations related [...] to control of environmental pollution and degradation, to suit the needs of present time. Moreover, to frame new laws in all necessary sectors to control activities related to environmental pollution and degradation.

³⁷ Say, for example, earliest legislation dealing with pollution of the environment is the Penal Code 1860. It contains various provisions relating to the offences affecting the public health, safety and convenience and offences affecting human body and life through pollution in the environment. The Code of Criminal Procedure 1898 also has provisions against occurrence of public nuisance through environmental hazard.

4.2.2 MINISTRY OF ENVIRONMENT AND FORESTS

The Ministry of Environment and Forests is the modal agency in the administrative structure of the Central Government, for the planning, promotion, co-ordination and overseeing the implementation of environmental and forestry programmes. MoEF oversees all environmental matters in the country and is a permanent member of the Executive Committee of the National Economic Council.

The Ministry also plays a pivotal role as a participant of the United Nations Environment Programme (UNEP). The principal activities undertaken by Ministry of Environment & Forests consist of conservation & survey of flora, fauna, forests and wildlife, prevention & control of pollution, forestation & regeneration of degraded areas and protection of environment, in the frame work of legislations.³⁸

Department of Environment

According to the provisions of the law, the Department of Environment shall be responsible for the implementation of the projects and policies of the government for the control of environment pollution. It may pass orders to require any person or commercial or industrial undertaking to adopt such measures as may be specified for the prevention, control and abatement of existing or potential pollution of environmental to furnish information relating to wastes, sewerage systems or treatment works; to inspect and test any waste, air, water, soil and plants, materials or disposal systems. The Department is also empowered to prosecute any violator of the provisions of the Act.

DOE's vision and mission³⁹ is to help secure a clean and healthy environment for the benefit of present and future generations:

- Through the fair and consistent application of environmental rules and regulations;
- Through guiding, training, and promoting awareness of environmental issues; and
- Through sustainable action on critical environmental problems that demonstrate practical solutions, and that galvanize public support and involvement.

³⁸ See for details, available at: <<http://www.moef.gov.bd/>> (Last visited on 14.11.2012)

³⁹ *Ibid*, last visited on (14.11.2012)

Table 2
Legislation related to Environmental Pollution and Implementing Agencies and
their Environmental Perspective

No.	Legislation	Implementing Agency	Environmental Perspective
1.	THE SMOKE NUISANCE ACT 1905	Ministry of Home Affairs, Inspection of Factories, Bangladesh Road and Transport Authority	Air/ Noise quality
2.	THE BRICK BURNING (CONTROL) ACT 1989	Ministry of Environment and Forest, Ministry of Land, Department of Environment, Department of Forest	Land use, Toxic substance, solid waste
3.	THE SMOKING AND TOBACCO PRODUCTS USAGE (CONTROL) ACT 2005	Ministry of Home Affairs, Ministry of Health and Population Control, Directorate of Health	Smoking/tobacco related air pollution and disease
4.	THE PORTS ACT 1908	Ministry of Ports, Shipping and Inland Water Transport	Port management
5.	THE TERRITORIAL WATERS AND MARITIME ZONES ACT 1974	Ministry of Ports, Shipping and Inland Water Transport, Ministry of Fisheries and Livestock	Coast management, conservation of marine and aquatic resources
6.	THE COAST GUARD ACT 1994	Ministry of Ports, Shipping and Inland Water Transport	Do
7.	THE PROTECTION AND CONSERVATION OF FISH ACT 1950	Ministry of Fisheries and Livestock, Directorate of Fisheries, Fisheries Development Corporation	Conservation of Fish and Aquatic Resources
8.	THE MARINE FISHERIES ORDINANCE 1983	Do	Do
9.	THE BANGLADESH	Ministry of Food and Relief, Ministry of Science	Occupational health and Consumer safety

	PURE FOOD ORDINANCE 1959	and Technology	
10.	THE PESTICIDES ORDINANCE 1971	Ministry of Agriculture, Department of Agricultural Extension	Toxic/solid waste occupational health and consumer safety
11.	THE PESTICIDES RULES 1985	Do	Do
12.	THE MOTOR VEHICLES ORDINANCE 1983	Ministry of Home Affairs, Ministry of Environment and Forest, Bangladesh Road and Transport Authority, Department of Environment	Air/Noise quality
13.	THE BANGLADESH PETROLEUM ACT 1974	Ministry of EMR, Petroleum Corporation	Coast management, mine development
14.	THE BANGLADESH ENVIRONMENT CONSERVATION ACT 1995	Ministry of Environment and Forest, Ministry of Home Affairs, Department of Environment, Department of Forest, Bangladesh Road and Transport Authority	Pollution and conservation of environment

4.3 THE JUDICIARY

Neither the fundamental rights nor the preamble or the fundamental state policies in the Constitution of Bangladesh mention any right to healthy and clean environment.⁴⁰

The approach adopted in Bangladesh is two folded. The lawyers want to amend and develop the existing fundamental rights in order to pressure the government to implement the environmental policies. On the other hand, the judiciary stressed the need of harmonious interpretation of the Constitution to ensure environmental

⁴⁰ The fundamental rights are directly enforceable in the court and consistently used in Bangladesh and India to protect the environment. Some related rights that are or could be used in Bangladesh for the protection of environment: right to life (Art.31), liberty (Art. 32), equality (Art. 27), guarantee of human rights and freedom (Art.11), steady economic growth (art. 15), improvement of the standard of living (Art. 16), improvement of public health (Art.18). The preamble and the state policies have entrenched basic human rights and are silent about the protection of the environment. The state policies can't be enforced directly. However, the directive principles in the Indian Constitution imposed a direct responsibility to the people and the State to protect and improve the environment.

protection. This attitude was reflected in the FAP case⁴¹, where the judiciary adopted a holistic approach, and while interpreting the fundamental rights, took account of the policy statements, preamble and other provisions of the Constitution. Both the High Court Division and Appellate Division expanded the meaning of fundamental right to life to include protection and preservation of the ecology and right to have pollution free environment.⁴² However, the court declined to interfere with the FAP project as foreign assistance was involved and the whole project was meant to be for the benefit of the public. Moreover, it took account of the substantial amount of money that has been spent and that the project has been partially implemented. From the judgement, it is not clear how much environmental damage the court was prepared to tolerate in the name of development.⁴³ While dealing with environmental matters, the most common remedies offered by the court are injunction, declaration and, civil and criminal damages.⁴⁴ The judiciary of Bangladesh, in at least four environmental cases, granted injunctive relief to reduce environmental harm or pollution.⁴⁵

⁴¹ (1997) 49 DLR (AD), 1 and (1996) 48 DLR, 438: the legality of an experimental structural project of the Flood Action Plan was questioned. Co-ordinated by the World Bank, the project aimed to plan, design or undertake construction of dams, barrages and embankments in order to control flood. According to the petitioner, FAP was an anti-environment and anti-people project.

⁴² The Appellate Division [(1997) 49 DLR (AD) 1] stated: Article 31 and 32...encompass within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto would be violative of the said right to life. (Para 101, Chowdhury J.). The High Court Division [(1996) 48 DLR (HC) at 438] states: „right to life...includes the enjoyment of pollution free water and air, improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent with human dignity.“ In India, this right has been extended to include right to have a balanced ecology (AIR 1985 SC 652), right to healthy environment (AIR 1987 AP 171), right to have pollution free air and water (AIR 1990 SC 1480 and AIR 1991 SC 420) and right to livelihood (AIR 1986 DC 180).

⁴³ Jona Razzaque, “Access to Environmental Justice: Role of the Judiciary in Bangladesh”, 4: 1&2 (2000) Bangladesh Journal of Law, p. 2-3.

⁴⁴ In India, the court applied absolute liability in cases of environmental pollution. In H-Acid case (AIR 1987 SC 1086), the Supreme Court while allowing the fertiliser plant to restart ordered the management to deposit a large sum of money by way of security for payment of compensation claims made by the gas victims in this case. For Bangladesh, the court has not awarded compensation or damages to any environmental victims.

⁴⁵ Sharif N Ambia vs. Bangladesh (W. P. No. 937 of 1995): the High Court Division, after issuing a show cause notice, granted an ad interim injunction on the construction of a 10 storied market in violation of the Dhaka Master Plan causing environmental obstruction to its neighbourhood. In Dr. M. Farooque, BELA vs. D.G. Bangladesh Medical and Dental Association (WP No. 1783 of 1994): The petitioner submitted that the people of the country would suffer, especially the poorest who rely on the public health facilities, because of the unlawful strike and the failure of the authorities to restore the same. There is a constitutional breach of duty to ensure health services and medical care to the general public. The court issued mandatory injunction compelling BMDA to call off a national strike. M. Farooque vs. Bangladesh (W.P. 92/1996): Injunction on government body to prevent them from releasing radioactive milk in open market. M. Farooque vs. Bangladesh (W.P. No. 948/1997): Injunction on government body to prevent them from filling up public lake as they deviated from the Master Plan.

4.4 NON-GOVERNMENTAL ORGANISATIONS (NGOs) AND SOCIO-ENVIRONMENT MOVEMENT

In Bangladesh, a good number of environmental NGOs are active. Many large, general-purpose NGOs also now have environmental components. However, it is clear from the continued environmental deterioration that these efforts are not proving adequate for the challenge that Bangladesh faces. The efforts have to be raised to an entirely different level. It is a mistake to think that the government will by itself do all that is necessary to protect Bangladesh's environment. If that were the case, then environmental degradation would not have proceeded to this extent in the first place. Solution to environment problems does not always require costly projects, which in Bangladesh tend to be donor-financed. Sometimes correct policies with proper implementation are what are needed. However, such policies will not always be adopted and properly implemented unless there is a social pressure to do so. The common people of Bangladesh are inherently environment-friendly. However, they are overwhelmed by their daily struggle for survival. It befalls upon Bangladesh's civil society (intelligentsia) to take the lead in generating such social awareness and pressure.⁴⁶

Numerous citizens' groups and organizations such as Bangladesh Environment Lawyers' Association (BELA), Bangladesh Poribesh Andolon (BAPA), Poribesh Andolon Bangladesh (POBA), Bangladesh Environment Network (BEN) etc. are working hard to bring about these changes. It is because of their continued work that a strong social pressure now exists in the countries for protection of environment.

4.5 CORPORATE SOCIAL RESPONSIBILITY (CSR) AND POLLUTION CONTROL

There has been an upsurge of interest and enthusiasms in the dilations and debates about Corporate Social Responsibility (CSR) in the recent years. It is now almost unequivocally recognised that business firms must move beyond just the strict considerations of profit maximisation, and address the wider interests of the society in general and the environment in particular within the context of which they operate.⁴⁷

A large majority of companies (82%) found in a study did not make any environmental disclosures.⁴⁸ In sum, the majority of studied companies have

⁴⁶ Nazrul Islam, "Protecting Bangladesh's Environment: The Role of the Civil Society", See for details, available at: <www.eng-consult.com/BEN/papers/Paper-NIslam.PDF> (Last visited on 14.11.2012).

⁴⁷ Ataur Rahman Belal and Niaz Ahmed Khan, "Corporate environmental reporting in Bangladesh", Available at: <<http://www.thefinancialexpress-bd.com/2009/03/09/60850.html>> (Last visited on 18.07.2012).

⁴⁸A. R. Belal , 2008, Corporate Social Responsibility Reporting in Developing Countries: The Case of Bangladesh, Ashgate Publishing, Aldershot, England, p. 170.

adopted a rhetorically bold but practically obscure approach to the wider issues of environment and society. The corporate attitude towards environmental issues appears to be of interim in nature as evidenced by the lack of long-term commitment.

CSR and Robi⁴⁹: Exceptionally, as a socially responsible corporate, Robi has in place an extensive CSR program aimed at contributing to social uplift and environmental upkeep. With the vision of enabling opportunities to improve lives, Robi drives its CSR activities in the domain of education, ICT, Health and environment. A remarkable feat in the sector is the installation of purified drinking water supply facilities at key railway stations in the country. Robi in collaboration with the global organization Water Aid has set up or setting up water treatment plants at major railway stations in the country.⁵⁰

⁴⁹ A private mobile operator company functioning in Bangladesh

⁵⁰ See for details, available at: <<http://www.robi.com.bd/page/view/104>> (Last visited on 15.11.2012)

CHAPTER FIVE FINDINGS AND RECOMMENDATIONS

5.1 MAJOR BARRIERS IN PROTECTION OF ENVIRONMENT FROM POLLUTION

Although many laws can be identified as valid law prevailing in Bangladesh, there are instance where laws are not or cannot be enforced. The major reasons are, inter alia,

- Outdated environmental laws as well as ignorance about these laws: All the important policies including the National Environmental Policy of 1992 have been formulated in the last decade and only a very few of them seem to corroborate well with the older legal instruments of the given sector. Although the need of amendment of existing laws and formulation of new laws were the main cause of having many of the policies revised or declared a fresh, only a very few laws could be tabled in this regard. Some of the environmental rules and related laws are outdated laws and others are improperly and incompletely updated are neither adequate to meet the present day needs of the country nor consistent with the changing environmental scenario of the world. Such laws cannot play any effective role in combating environmental pollution in today's Bangladesh.⁵¹
- Non-punitive approach of laws: The existing laws can be criticized for their non- punitive approach. Only a few legislations like the Penal Code 1860, the Bangladesh Environment Conservation Act 1995 etc. provide for punishment, but these are also too marginal to influence people's attitude.
- Politician- Polluter nexus⁵²: Available evidences suggest that in most cases the environment polluters are very powerful both financially and politically. There is an unholy nexus among a section of public bureaucracy, leading political elites and the polluters.⁵³
- Lack of regulatory and Institutional capacity: Institutional capacity for implementing the various action measures against pollution identified by the environment policy and law is still weak. Coordination between the DOE, MOEF and line ministries is fragile. Most of the concerned ministries and departments including the MOEF lack institutional capacities in terms of human, technological and financial resources needed for proper implementation of the policies. It lacks essential baseline data on resources

⁵¹ For example, the maximum punishment under the Penal Code 1860 for fouling water is only three months' imprisonment and that for making atmosphere noxious is only Tk.500 in fines. Under the Agricultural Pest Ordinance, 1962, punishment for transport or sale of infested crop is a maximum Tk. 500 fine and that under the Agricultural Pesticides Ordinance, 1971 is a maximum Tk. 1000.

⁵² Salahuddin M. Aminuzzaman, "Environment Policy of Bangladesh: A Case Study of an Ambitious Policy with Implementation Snag", This paper was presented to South Asia Climate Change Forum, organized by Monash Sustainability Institute, Monash University, Australia, 5 - 9 July, 2010.

⁵³ *ibid*

and areas of environmental concern. Although it now acts as a "clearing house" for all development projects put forward by the different line ministries, it lacks the necessary basic technical expertise to effectively assess and monitor projects for their environmental impact and it suffers from a shortage of basic facilities, equipment and logistic support. Besides due to the absence of an overall monitoring authority of MOEF, no progress or suggestions for the improvement in this area has yet been achieved. The Department of Environment and Forest faces similar weaknesses. They have a shortage of adequate and trained manpower. There is lack of an information management system supported by a strong data bank to back up planning, policies and monitoring activities. DOE is a regulatory and enforcement department but it is highly centralized and lacks significant presence at regional and local level.

5.2 GIVEN THE SITUATION AS IT SATNDS NOW, THE FOLLOWING WAY OUT CAN BE AVAILED OF REGARDING POLLUTION CONTROL

- Strengthening the legal system: Since many environmental problems are partly due to non-enforcement of existing laws, the legal system would be strengthened. There is an immediate need for the amendment of the environment related laws to make those meet the demand of the time. Taking examples from the region, Bangladesh should seriously consider the inclusion of provisions in the Constitution to provide broad guidelines to environment protection.
- Coordination between the DoE and other department to stop noise pollution and strengthen the monitoring system is very important.
- Regarding CSR reporting: As voluntary CSR reporting initiatives often fail to generate the required responses amongst the companies, one cogent view is to argue in favour of mandatory reporting of social, ethical and environmental information as the way forward.
- Changes in institutional, administrative and organizational arrangements would be necessary to enhance the effectiveness of political decisions. This would be preceded by an examination of the existing bodies in charge of climate change issues: national climate change committees, their degree of representativeness and corresponding power and functions.
- Strengthening fiscal measures: The introduction of public policies to encourage and support adaptation of individuals and the private sector, particularly through the establishment of fiscal incentives or subsidies, would be used as an option.
- Identification and examination of all laws, by-laws and case laws having impact on the environment to remove ambiguities and lacuna in legal provisions are needed.
- Functional and operational overlapping or contradictions of law and

institutions should be identified and examined from overall national environmental policy and strategy perspectives. Moreover, the mandate, that is, power and authority of MoEF and DoE must be prioritized and elaborated to monitor, execute environmental standards and ensure compliance.

- Judicial activism needs to consider the global emerging principles while administering environmental justice.

5.3 CONCLUSION

Making new laws, having the old traditional institutions responsible for enforcement, would not bring in the desired change in the environmental order. The failure of the existing law is overwhelmingly attributable to the negligence of the implementing agencies. Strict accountability with compatible sanction needs to be well-stipulated and practiced together with massive awareness program. Enforcement of environmental legislations and standards has to begin with public agencies and sectors that control the key resources of the environment. A definite role can be played by the legal mechanism as a tool for the protection of the environment and the enforcement of environmental rights and duties for common people.