

Implementation of Environmental Regulations and Ensuring Justice through Judicial Activisms

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ABSTRACT

There are so many laws in Bangladesh for the protection of the environment but these contain the same-type provisions again and again. There's the scope of filing writ petitions before the High Court Division where there's no efficacious legal remedy, but this is a lengthy procedure and the court directions are not implemented properly. Environmental activists sometimes arrange different movements but continuity is unseen in those movements. So relevant departments for environmental protection don't feel they should be prompt in implementing environmental laws and court directions. Thus, this present study has provided insightful information about the causes and the impacts of violation of Environmental laws and its solution for ensuring justice by judicial activisms for the present & upcoming Environment & ecology all over the world.

INTRODUCTION

Environmental pollution began with rapid industrialization many years ago. Now it's a headache for almost all the states, so they are enacting laws, arranging seminars, and trying to find out a possible solution. It's a problem that can affect all the living species in this world, though it may be caused by only a small portion of people. Judicial activism is one of the recent innovations through which ensuring environmental justice can be possible, but only to a degree. State and non-state actors should be more active in protecting the environment as this is high time to check the degradation. Otherwise, the future world will be dangerous for not only humans but for all living species.

LITERATURE REVIEW

What does the concept of judicial activism mean?

Judicial activism is not seeking remedy in the court of justice under the existing law of the country. If so, that will simply be the rule of law that is different from the concept of judicial activism. When the court goes beyond the applicable laws in providing a remedy to parties that is judicial activism. The judiciary plays an important role in upholding and promoting the rights of citizens in a country. The active role of the judiciary in upholding the rights of citizens and preserving the constitutional and legal system of the country is known as judicial activism. This entails, sometimes overstepping into the territories of the executive. Candidates should know the judicial overreach is an aggravated version of judicial activism. Kmiec, K. D. (2004). Judicial activism is seen as a success in liberalizing access to justice and giving relief to disadvantaged groups, because of the efforts of justices V R Krishna Ayer and P N Bhagwati. The Black's Law Dictionary defines judicial activism as "judicial philosophy which motivates judges to depart from the traditional precedents in favour of progressive and new social policies." The term "Judicial Activism" as

“Judicial activism is a judicial philosophy holding that the courts can and should go beyond the applicable law to consider broader societal implications of its decisions. It is sometimes used as an antonym of judicial restraint.[\[1\]](#)” [Wikipedia]

Mohammad Sohikul Islam (2018) describes this issue in his writing- “courts are activists when they change the law, overstep their role of dispute resolution, and decide on policy and other broad questions. Courts exercise judicial activism either by judicial review of administrative actions, or by testing the constitutionality of statutes, or by involving in the shaping of public policy.” (Mohammad Sohikul Islam, 2018, P. 180) Sometimes judicial activism is important as tackling future problems isn’t possible by the legislature. Court also applies ordinary environmental laws and we can consider applying such laws performing ordinary tasks imposed on the judiciary. If the judiciary gives any direction or so for the greater protection of the environment going beyond what the law mentioned, that can be judicial activism for the protection of the environment. Thus, this present study has provided insightful information about the causes and the impacts of violation of Environmental laws and its solution for ensuring justice for the present & upcoming Environment all over the world.

What is Environmental justice?

The United States Environmental Protection Agency defines **environmental justice** as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. In other words, your health should not suffer because of the environment where you live, work, and play or learn. [Definition, Principles, Examples & Issues. (2013, September 13)]

The concept of environmental justice began as a movement in the 1980s due to the realization that a disproportionate number of polluting industries, power plants, and waste disposal areas were located near low-income or minority communities. The movement was set in place to ensure fair distribution of environmental burdens among all people regardless of their background. Environmental justice usually means the consideration of human rights and equality issues in environmental regulation, particularly the impact of pollution on disadvantaged communities.

“In deciding questions of land use.....human communities, or their representative institutions, have a responsibility to do justice to non-human inhabitants of the habitats which are liable to be altered by human action.” (Benton 1993: 212) Such thinking grows the concept of environmental justice though this concept is a newer one in third world countries like Bangladesh. To describe the concept of environmental justice, Andrew Dobson (1998) states that “Environmental justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.....Environmental justice mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.” (Andrew Dobson, 1998, P. 23) That means creating safe earth for all living species and saving the natural resources from destruction may be treated as environmental justice. Just doing a certain type of act is not enough for environmental justice rather over time the number of human actions has broadened. Now, most of the countries are dependent on a large number of industries which eventually cause environmental degradation. So, total destruction of all such environment-destructing industries is just the destruction of the world economy.

Environmental justice movement- nothing but a fashion

When anyone hears about environmental degradation they commonly feel that they should do something. Due to this sense, when an environmental movement starts such people support it, or sometimes join in the movement. They feel they just do the needful-ensuring environmental justice that will keep the next

generation safe. Feinberg (1981) explained this sensation in his writing- “protecting our environment now is . . . a matter of elementary prudence, and insofar as we do it for the next generation already here in the persons of our children, it is a matter of love. But from the perspective of our remote descendants it is basically a matter of justice, of respect for their rights.” ’ (Feinberg 1981, P. 139)

But commonly the acts of these environmental activists are limited in some routine works like arranging seminars, human chain, or something like that. They ordinarily criticize “bureaucratic indifference, political double-speak and scientific equivocation” (Edwards 1995, p. 44) By doing such easy work (mildly criticizing someone), many people become environmental activists. Those so-called environmental activists know very well, mild criticism will not yield any fruitful result. Interestingly, such criticized quarters don’t pay any heed to the mild criticism because this type of criticism will not stop their environment-destructive business. This is like a win-win scenario- so T called activist are happy because they become socially recognized activists, and environment-destructive business owners run their business year after year.

Enforcing existing laws or judicial activism- which is important?

Like many other countries, Bangladesh has a good many laws regarding the environment. But educational institutions give importance mainly to the laws which are directly related to day-to-day activities. For that reason, people are not well-known about environmental laws, and thus environmental justice is just a fishy concept to even many people, even people in the legal arena. So while people are not well informed about the law it is simply unexpected that we’ll be able to implement the provisions of that law perfectly. It is also true that there are also ambiguities in the provisions of environmental laws, and that’s really a barrier to protecting the environment. “The concept of enjoying a sound and healthy environment as a human right is yet to be firmly grounded in our juridical landscape. Though we have a large number of legislations, but access to environmental justice is hampered due to the uncertainties or ambiguities in the provisions.” (Badsha Mia, and Kazi Shariful Islam, 2014, P- 63) If we can implement most of the provisions of these environmental laws, the current situation would be far better. If we can ensure the proper implementation of environmental laws provisions, there’ll be almost no need for judicial activism. The reason is that judicial activism indicates going beyond applicable laws for the greater benefit of people. When applicable laws are enough for protecting the environment, why will it be necessary to go beyond the applicable laws?

It’s a heinous crime to only a few people

Arranging seminars or programs for ensuring environmental justice is obviously praiseworthy, but the discussion must be informative in such a manner that can affect anyone immediately. But that is commonly not happening in the movement for saving the environment. In the case of other crises people respond differently especially if that crisis causes any immediate effect. “When we acknowledge that this is a human crisis, we have to analyze it the way we analyze other social crises: who benefits, who suffers, what is at the root of the crisis? And how do people’s race, class, gender, or nationality help determine how they are affected?” (Bigelow and Dankbar 2016, p. 3) But environmental degradation is not a problem that affects immediately, so top-level policymakers don’t try to find an effective solution at any cost. Even law enforcement agencies or adjudicating authorities don’t feel the environmental degradation as a crime that must stop immediately. But incidents like the brutal murder of a minor can easily create repercussions because people can feel immediately what is actually happened. This is how sensation is created, and people can feel we should stand against such heinous incidents. But when we hear news of setting up a brick-burning machine or an incident of large-scale water pollution, we commonly think that’s a mild irregularity. Or if we have enough time we commonly say some common sentences like “it’s unjust,” “people are unconscious,” or something like that. Such practice is rightly pointed out by Rachel Massey (2004)- “Protecting the environment is sometimes viewed as a luxury — something people care about only when they have plenty of leisure time and disposable income.” (Rachel Massey, 2004, P-1)

THE AIM OF THE STUDY

This study aimed to examine the provision of environmental laws in Bangladesh and the scope for judicial activism here. The aim also includes finding out the cause of continuing environmental degradation and possible solutions to this problem.

METHODOLOGY OF THE STUDY

Gathering Information

To conduct this study, different environmental laws enforceable in Bangladesh have been examined. Scope of judicial activism in Bangladesh and some incidents of judicial activism have been mentioned here. For finding out relevant information, there are mentions of some reports published in The Daily Star, Dhaka Tribune, and some international news media like bbc.co.uk, or Reuters. The root cause of environmental degradation and possible solution is given here in the light of some writings by Shudipta Sharma, Rachel Massey, Mohammad Sohidul Islam, and some other scholars.

Legal provision and scope for judicial activism

Syeda Rizwana Hasan (2005) writes “An investigation into the statutory laws prevailing in Bangladesh would reveal that there are about 180 laws, which deal with or have relevance to environment.” Syeda Rizwana Hasan (2005, P- 89)

Sometimes in the same subject, a good many laws are enacted by the legislature. Suppose, in The Canals Act 1864^[2], creating any obstruction to a line of navigation has been made punishable, under section 16. After almost a decade, the Irrigation Act^[3] was enacted in 1876, where damaging, altering, or obstructing any canal or drainage work had been made punishable under section 93(1). But after more than 100 years, in independent Bangladesh, The Bangladesh Irrigation Water Rate Ordinance^[4] was made in 1983. And in that Act, “free passage of water for irrigation or drainage” has been ensured in section 8, and “diversion of normal flow of water” has been made punishable in section 9. Though there are few differences in provisions the subject is more or less the same: ensuring water for irrigation or drainage.

To prevent smoke nuisances, The Smoke-Nuisances Act, 1905^[5] was enacted, and in this Act, the government is powerful to prohibit making bricks in any specified area, under section 6(1)(a). While the law of 1905 is still in force, parliament passed The Preparation of brick and kiln establishment (control) Act^[6] in 2013. And in the Act of 2013, sections 4, 4A, 5A, and 8 provide the same provisions as section 6(1)(a) of the Smoke-Nuisances Act, 1905. All these provisions provide the same thing: empowering the government to prohibit making bricks in some cases.

About 180 laws relating to the environment cover all the possible areas of environmental pollution. Besides these legal provisions, a writ petition can be filed before the high court division for the protection of the environment. “When a PIL is concerned with an environmental issue i.e. how an environmental issue is going to affect the public, it becomes Public interest environmental litigation (PIEL). In Bangladesh, PIL is filed in the form of a writ petition under Article 102 of the Constitution. PIL got its threshold in Bangladesh in the case of Dr. Mohiuddin Farooque vs Bangladesh, 49 (1997) DLR (AD) 438.^[7]”

Sometimes this writ petition disposal period becomes very lengthy; BLAST and Mrs. Zohora Khanum vs. Bangladesh^[8] can be an example in this regard. This writ was filed in 1997, against a decision of Rajdhani Unnayan Karttripaksha (RAJUK) to lease some lake areas for development affecting people’s right to access to the open space (lakes area). But till now (2021), this writ is pending for hearing and such incidents are

many.

In these writ petitions, the court can go beyond the strict provision of law and can provide directions to concerned authorities, or even examine the constitutionality of existing laws, so this can be treated as judicial activism.

Enforcement of laws & court directives, and continuity in environmental movements

“Pursuant to its responsibilities under Bangladesh Environment Conservation Act 1995, the Department of Environment is entrusted to oversee the air quality.....Other laws are also aimed at preventing air pollution – these include the Bangladesh Environment Conservation Act 1995, the Brick Manufacturing and Brick Kilns Establishment (Control) Act 2013. Some sections of the Road Transport Act 2018 also regulate the emission of harmful gases from motor vehicles.[\[9\]](#)” All these laws have been passed years ago, but the implementation of those is almost unseen.

While all these laws are still in force in Bangladesh, air quality is worsening day by day. World Air Quality Report (IQAir) 2020 shows that “South Asia remained the most polluted region of the world with Bangladesh, India and Pakistan sharing 42 of the 50 most polluted cities worldwide.....the average annual PM 2.5 concentrations in Bangladesh was 77.1 micrograms per cubic meter (mcg/m³) of air, which is seven times above WHO exposure recommendation.[\[10\]](#)” This phenomenon sufficiently shows that a good number of laws cannot prevent something if there are problems with implementation.

In Bangladesh, there're environment courts, and these are presided by a joint district judge who is responsible for regular cases in his court and with the cases of environment court.[\[11\]](#) That means being only a joint district judge is enough to be a judge of an environment court, his knowledge relating to the environment is irrelevant here. The trial in environment court is to be concluded in 180 days, and if failed to do so, the environment appellate court may allow further 90 days. If the court fails to conclude the trial in such further 90 days the case then may be transferred to another court.[\[12\]](#)

In January 2020, the high court division directed the government that “No forest land, reserve or not, can be allocated or leased out if that could damage the country’s forest.[\[13\]](#)” But according to the global forest watch report 2020, “In 2010, Bangladesh had 2.22Mha of tree cover, extending over 16% of its land area. In 2020, it lost 21.5kha of tree cover, equivalent to 11.6Mt of CO₂ of emissions.[\[14\]](#)”

In 2017, some left-wing political organizations arranged a demonstration at Dhaka for saving the largest mangrove- sundarban. Thousands of people participated in that movement, and seeing the number of participants, the Daily Star called it “historic” and reported, “For the first time in history, Bangladesh is experiencing a mass movement to save a forest – the largest mangrove in the world.[\[15\]](#)”

A researcher named Shudipta Sharma examined thoroughly the participation of this movement. She uncovers some happenings that are most important to understand the psychology behind participating in an environmental movement. “Owing to the interactive characteristic, SNS (Social Networking Sites) users can acquire a sense of belonging to an imagined environmental community.....Along with political parties, many non-partisan members who often avoid political programmes also joined the programme. SNS played an important role here in motivating them.” (Shudipta Sharma, 2014, P. 390) seeing the participation of Facebook friends, many people participated in the movement as they feel that they belonged to an “imagined environmental community.”

But after this movement, the government didn't change the decision and continued the establishment of the power plant. In May 2021, the Dhaka Tribune published a report on Rampal- “the project was supposed to achieve 80% progress by April this year (2021) and finish the work by December.[\[16\]](#)” And sadly, those

people who joined in the mass movement in 2014 against the Rampal power plant, remain silent in this regard. Such incidents are happening worldwide, some people show sudden anger against environmental degradation, and only after some days they become silent. Due to such a rapid angering and silencing mode of movement, government machinery in Bangladesh doesn't feel that they should protect the environment. Because they feel there's nothing to compel them to do the needful.

On 17 October 2009, Maldives arranged an underwater cabinet meeting in protest of sea-level rise due to climate change. The then President of The Republic of the Maldives Mohammed Nasheed and 11 cabinet members joined the meeting.[\[17\]](#) After a few months, on December 4, 2009, Nepal arranged a cabinet meeting at the Mt. Everest base camp. The reason was the same: highlighting the climate change impact.[\[18\]](#) But almost nothing has been changed in Maldives and Nepal.

Analysis of the current situation

About 180 laws regarding the environment are still in force in Bangladesh, and these laws cover all the necessary areas. Even there's more than one law in most of the environmental issues. Suppose to ensure free passage of water, enforceable laws are The Canals Act- 1864 (section 16), Irrigation Act- 1876 (section 93-1), The Bangladesh Irrigation Water Rate Ordinance- 1983 (section 8, 9). This multiplicity of laws on the same subject creates complexity as in this situation, common people get confused towards a legal provision. And most importantly, such multiplicity is really a barrier to raise public awareness as people have to know the law first and then they feel that they should do something.

Besides seeking remedy under existing legal provisions, anyone can file a writ petition before the High Court Division. So here remedies are available which one may seek for the protection of the environment. There're many incidents of filing PIEL by NGOs, or some other interested quarters. Commonly the apex court gives direction to stop the environment degradation when a PIEL is filed before it. But in many PIELs, the implementation of the court order cannot be possible because of the lengthy appeal procedure, or due to want of follow-up. But in comparison with environmental degradation, the number of filing of such writ petitions is very low. It is also true that a private organization or individual can't oversee industrial activities (harming the environment) all over the country.

Raising large-scale public awareness of environmental degradation is necessary, it is also important for compelling the government to protect the environment. Generally, such awareness grows due to continuous campaigns, movements, or so. But, it is the reality that people join the environmental movement for becoming a part of the movement, or environmental community. After some days it is seen that the environment degrading incident continues, but the movement doesn't, Rampal is a good example in this regard.

Even states are not interested in continuous action against environmental degradation, rather commonly states are interested in headline-hitting incidents. Underwater meeting of Maldives, and meeting at the Mt. Everest base camp by Nepal are sufficient to understand that. These incidents make history but cannot stop environmental degradation permanently anywhere.

MAJOR FINDINGS

1. There're a huge number of laws addressing environmental issues in Bangladesh. Among these environmental laws, many laws are for the same issue and containing the same-type provisions.
2. Environmental laws in Bangladesh cover all the possible areas of environmental degradation. Besides ordinary suits, anyone may file a writ petition before High Court Division if any efficacious remedy is not available in any law, so remedies are available.
3. There're many directions provided by the apex court in different PIEL cases, but the implementation

level of those directions is not satisfactory.

4. Environmental activists may ensure proper implementation of the environmental laws and related court directives. But their action is commonly not continuous and thus such action cannot create any pressure on the government.

CONCLUSION & RECOMMENDATION

All the recent reports reveal that the environment of Bangladesh and the world is deteriorating day by day. In the near future, it will almost be impossible to live on this planet easily if pollution continues now. It may be done by a small portion of people but it affects every living species. So that degradation should be stopped immediately at any cost, and the following recommendations may help stop the environmental degradation immediately.

- To address an environment-related issue, the law should not be more than one. Multiple laws in one subject create ambiguity resulting in ignorance or avoidance of law.
- The trial conducting time of environmental court is 180 days plus further 90 days (with permission of the appellate court), which is lengthy and it should not be more than 100 days.
- Government machinery should be more cautious about implementing the existing environmental laws and court directives even if no one arranges a movement.
- The Department of Environment should monitor the environmental laws and court directives implementation level in the whole country at least once a month.
- Training sessions should be arranged for the training of the environment court judges to show them the newer gravity of environmental degradation and the effect of that.
- There should be continuity of the environmental movements otherwise Government departments will not be prompt in preventing environmental degradation.

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FOOTNOTES

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