



“On the prospect of converting the existing Environmental Court into Tribunal: analysis of the existing laws & practical difficulties.”

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Background:

The significant Rio Conference of 1992 introduced an all-inclusive action program called ‘Agenda 21’, which was formulated to integrate the goals of continued economic development and environmental protection. In light of this Agenda, Bangladesh passed the first Environment Court Act, 2000 (hereinafter referred to as the Act of 2000) wherein to deal with environmental offences, only 2 (Two) special courts with Joint District Judges were established at Dhaka and Chattogram Division, along with an Environment Appellate Court was set up at Dhaka, having jurisdiction all-over of Bangladesh.

The Act of 2000 was amended in 2002 to permit the Joint District Judges of a Division to perform as the judge of an Environment Court in addition to his usual judicial functions. From 2005 the Joint District Judge Court of Sylhet is working as Environment Court, in addition to its regular functions.

In 2010, a new enactment being Bangladesh Environment Court Act, 2010 (hereinafter referred to as the Act, 2010) was introduced and the Act of 2000 been abolished. The present Act, 2010 is designed to launch one or more Environment Court(s) in each District with a Joint District Judge and the said judge, on top of his normal function, shall deal with the cases that fall within the purview of an Environment Court.

Limitations under the existing laws:

Dedicated environmental judicial system is becoming more popular than ever in the entire world. But the circumstances are entirely opposite in Bangladesh. That the Environment Courts are failing to protect the environmental rights of common people. Where the regular courts of Bangladesh are swamped with excessive suits/cases and troubled with heavy masses but lack of cases in the Environment Courts is truly mind-boggling.

That the significant reasons behind the people’s less-participation before the Environment Courts are as follows:

- i. No Direct Case: The Act, 2010 did not allow the ordinary people’s right of access to Environment Courts directly. Combined reading of Section 6(3) and Section 7(4) of the Act, 2010- neither the Special Magistrates Court nor the Environment Court can entertain any case/claim, except on the written report of an Inspector of the Department of Environment (hereinafter referred to as the DoE). As opposed to, Section 17 of the Bangladesh Environment Conservation Act, 1995 dictates that, where a person or a group of persons or the public suffers loss due to violation of a provision of this Act or the rules made thereunder that person, group of persons, the public or the Director General on behalf of that person, group of persons or the

public may file a suit for compensation before the Environment Court. Even though there is an exception of this embargo which is more complex; that is, if the Environment Court and/or Special Magistrate Court is satisfied that a person submitted a written plea to the said Inspector to admit a demand for compensation and/or complaint and no initiative was made within 60 (Sixty) days after such demand, and that such claim and/or complaint warrants to be taken into cognizance for trial, then the Court may, after giving the Inspector or the Director General a reasonable opportunity of being heard, straightway accept the demand for compensation and/or complaint in the absence of such written report, or may, if it considers fitting, direct the said Inspector to examine the claim and/or wrongdoing. So it is apparent that the ordinary people has been restricted from either suing or filing a case in the Environment Court directly.

- ii. Lack of administrative support: That it is clear from the mandate of the Act, 2010 that Environment Courts have been set-up only for DoE. Since key duty to either file or investigate a suit/case is vested upon the DoE and as such effective operation of the Environment Courts is relying on the DoE. Though the Act, 2010 intended to set-up one or more Environment Court in 64 districts but actually there the DoE has offices in only 21 districts, with only one inspector in each office. So, it is well-nigh improbable to set-up Environment Court, without the administrative support of the DoE.
- iii. Jurisdictional shortcomings: Jurisdiction of Environment Court is rather vague. Since any offences and claims for compensation under 'environmental law' can only be entertained by the Environment Court. Section 2(c) of the Act, 2010 describes 'environmental law' to cover the Bangladesh Environment Conservation Act, 1995 as well as such other laws as may later be included by the Government in the official Gazette but in the last decade or so, no other Act had been included by the Government by issuing any gazette notification. That the Brick Manufacturing and Brick kilns Establishment (Control) Act, 2013 explicitly prescribes under its Section 19(2) that, only Environment Court or Special Magistrate's Court shall take cognizance of any offence punishable under this Act. Moreover, the Environment Court possesses no authority to take cognizance of offences involving forest/forest resources, wildlife-biodiversity, fisheries, water resource and other natural resources etc.
- iv. socio-economic factor: That the issue of environmental justice is depended upon socio-economic aspects. In majority of the cases, often contaminators belong to the elite class of the society and they enjoy the backing of monetary influence as well as muscle power. On the other hand, the sufferers of environmental contaminations are poor and underprivileged and hence they typically are reluctant to lodge suit/case against those strong contaminators. Sometimes the instrumentalities of the Government involved maintains a view/tie in favour of influential contaminators and hence the unfortunate complainants always sense being deprived and want of justice.
- v. Lack of technical knowhow: As per the Act, 2010 Environment Courts can take recourse to the provisions of the Code of Civil Procedure, 1908; the Code of Criminal Procedure, 1898 as well as the Evidence Act, 1872- during its legal process and under these existing laws, the litigant/plaintiff bears the burden of proof and hence he has to supply proof/evidences to prove his case/claim. In establishing environmental contamination, demands technical knowledge as well as institutional

support, which is neither possessed by ordinary people nor such institutional support are available to them. So, the Environment Court has lost its charm in front of the common people/litigants for its intricate and prolonged procedure of lodging suit/case and usual process of trial.

Practical scenario:

The rivers around Dhaka are darkened and mucky with industrial waste. Among the countries of the world, Dhaka sits at the top with the worst air pollution. Hearing problems owing to the rate of sound pollution is widespread among the residents of the capital city Dhaka. Dhaka's water bodies are being taken-over and developed for personal gains. Polythene which is banned, is still being sold openly.

While Dhaka is in such a woeful condition, the three environmental courts of the country are scarcely receiving any case for environmental breaches. These courts are instead being ran to conduct trials of other cases.

“There are 7,002 cases at the three environmental courts in the country. Only 388 of these cases have been filed under the Bangladesh Environmental Conservation Act 1995, that is, just 5.5 per cent of the total cases. The Department of Environment (DoE) has a propensity to use the mobile courts instead. Between July 2015 and August 2020, the department has filed 8,756 cases with the mobile courts and has imposed fines of around Tk 530 million (Tk 53 crore). Of this, Tk 465.40 million (Tk 46.54 crore) was recovered.

Concerned persons say that the department of environment is reluctant to ensure stern punishment of the polluters and grabbers. They impose fines by filing cases with the mobile courts and the polluters get most of this back through appeals. As a result, there is no decrease in either pollution or illegal encroachment.

According to the Columbia University's Environmental Performance Index 2020, Bangladesh ranks at 162 among 180 countries of the world in protecting the environment. Countries industrially ahead of Bangladesh – Thailand, China and Vietnam – are also ahead of Bangladesh on the index. In fact, even Pakistan and Nepal rank higher than Bangladesh. India, though, lags behind Bangladesh. The index is based on 11 indicators.

Concerned persons say that the absence of any provision to file a case directly with the environment court is the main reason why there are so few cases. Chief Executive of Bangladesh Environmental Lawyers Association (BELA), Syeda Rizwana Hasan, told Prothom that- ‘under the prevailing laws, if persons try to file a case directly with the environment court, they are beset with bureaucratic tangles. This must be rectified. The law must be amended and the environment court be given full power to conduct the trial of all environmental cases’.

Concluding remarks:

The Environment Court set-up under the Act, 2010 should have been organized in such way that it could counter the adversarial disadvantages faced by the ordinary civil and criminal courts. But, the Act, 2010 is inept to confirm prompt and real environmental safety owing to some dormant flaws and some of these being:

- I) Relinquishing the Environment Court from trying other civil suits and criminal cases and delegating it with the solitary role of hearing environmental disputes;
- II) authorizing it with suo moto and judicial review power;
- III) broadening its scope of coverage and jurisdiction; and

- IV) eradicating all other ambiguities, to make the Environment Court capable of consistently providing environmental justice in Bangladesh.

That in order to achieve such feat/outcome, it is high time that not only the substantive Act, 2010 is being updated to counter the deficiencies faced currently but also to set-up a special Tribunal along with an Appellate one (i.e. at least in all of the Divisions in Bangladesh), which will be equipped with the technical expertise as well as logistic support required- to deal with the burning issue of this country, that is 'Environmental Pollution', so that we as a generation responsible for such environmental atrocities, could leave a safeguard/defense mechanism in place to secure a better environmental condition, for our upcoming generation to lead a healthy and better life.

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