

LAW OPINION

CELEBRATING NATURE

The legal framework on biodiversity conservation

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THE ongoing Covid-19 pandemic reminds us the fact that if we destroy biodiversity, we actually collapse the system that supports human life to exist. The significance of biodiversity to ensure human well-being and to achieve sustainable development is undeniable. The UN Human Rights Council, in its 34th session, underscored that the full enjoyment of human rights depends on biodiversity, and the degradation and loss of biodiversity undermines the ability of human beings to enjoy their rights. The role of biodiversity conservation is highlighted with utmost importance in numerous goals and targets of the Sustainable Development Goals (SDGs). The international legal framework relating to the conservation of biological diversity is comprised of various international treaties and conventions. The 1973 Convention on the International Trade in Endangered Species (CITES) and the 1992 Convention on Biological Diversity (CBD) are the two fundamental conventions that deal with the sustainable management of biological resources including fauna and flora. The Cartagena Protocol on Biosafety being a supplementary agreement to the CBD is an international treaty that seeks to protect biological diversity from the potential risks posed by living modified organisms (LMOs) resulting from modern biotechnology. In addition, the Convention on the Conservation of Migratory Species of Wild Animals 1979 aims to protect the species of wild animals that migrate across or outside of national boundaries.

The CITES identifies the people and States as best protectors of their own wild fauna and flora. It reflects the significance of international cooperation which is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade. The CBD pledges to ensure conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising from genetic resources. It identifies conservation of biological diversity as an integral part of the sustainable development including the social, economic and environmental aspects of development. The CBD asserts couple



of established principles of international environmental law including the principle of responsibility for transboundary harm, precautionary principle and principle of international cooperation which have significant bearing on the making of environmental laws at the domestic level. The Convention also imposes responsibility on the State Parties to develop national strategies for the conservation and sustainable use of biological diversity, and to integrate biodiversity considerations into all activities.

Bangladesh has signed and ratified all the major international treaties, conventions and agreements in relation to biodiversity including the CBC. The Constitution of Bangladesh explicitly mandates to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wildlife for the present and future citizens (Article 18A). In line with the spirit of the Constitution, the Government of Bangladesh enacted a comprehensive law titled as the Bangladesh Biodiversity Act 2017. While complying with the international instruments relating to biodiversity, this piece of legislation expressly refers to the CBD in its preamble. With the same tuning of the

CBD, the Act of 2017 pledges for protection of biodiversity, sustainable use of its components and equitable sharing of benefits accrued from biological resources. The Act underscores the importance of protecting traditional knowledge on biological resources. It also makes the adverse activities on biodiversity as punishable offence with imprisonment up to five years or fine up to ten lakh taka or both. The biodiversity law refers to establish biodiversity management committees in country's all City Corporations, Districts, Upazilas, Municipalities and Unions. The Committees are mandated to assist the Government in implementing the objectives of the Act. The Act asserts to formulate a 'Biodiversity Conservation Fund' for the conservation and management of Biodiversity Heritage Sites.

The Wildlife (Conservation and Security) Act 2012 is another significant law that aims for the conservation and safety of biodiversity, forest and wildlife of the country. Under this law, a "Wildlife Advisory Board" shall be established which will assess the existing condition and give direction from time to time in relation to development and management of biodiversity, wildlife and forest. According to the Act, the Government is authorised to declare any

area as sanctuary, community conservation area, safari park, eco-park, botanical garden, wildlife reproduction centre, landscape zone, buffer zone, core zone in relation to wildlife and plant preservation, protection and their smooth growth. The Government can also declare any government land, land or trees under private ownership or reserved forest, khas land, wetland, river, sea, canal, or pond used for special purpose as special biodiversity conservation area. The law while reflecting indigenous perception of environment has introduced co-management system for proper utilisation, conservation and management of natural resources of the sanctuary involving forest department and minor ethnic-community living in the forests.

The Brick Manufacturing and Brick Kilns Establishment (Control) Act 2013, while imposing restrictive measures to control brick manufacturing and brick kiln establishment, pledges for the conservation and development of environment and biodiversity. The Act of 2013 strictly prohibits the use of wood as fuel

Natural Wetland Conservation Act 2000 contains provisions for the protection of the play-ground, open space, park and natural wetland in all mega cities, divisional towns and district town's municipal areas including country's all the municipal areas. The law imposes conditions to take approval from the concerned authority while altering the nature of the abovementioned places which may cause ecological imbalance.

The Environment Conservation Act 1995, being the core law for conservation of environment, was amended in 2010 to broaden its horizon to protect wetlands, Ecologically Critical Areas and to prevent hill cutting that causes massive adverse effects on biodiversity.

To comply with Article 6 of the CBD, Bangladesh has formulated couple of National Biodiversity Strategies and Action Plans (NBSAPs) out of which the latest action plan was adopted for a period of 2016-2021. The Bangladesh National Conservation Strategy (2016-2031) has also reiterated the importance of making people aware of the value of biodiversity and asserted to integrate the benefits of biodiversity in the development process and planning based on knowledge, science and technology.

The legal framework for conservation of biodiversity while complying with international standards reflects the paramount commitment of Bangladesh. However, there exist challenges to implement the legislative framework for biodiversity conservation and consequently the protection of environment is being threatened. Legislative framework alone cannot protect biodiversity unless we change our actions considering the values of biodiversity. This year, the theme of World Environment Day 2020 is 'biodiversity' – a concern that is both urgent and existential. The theme refers to restore the harmonious relationship between humans and nature while abating the delicate balance between human demands and ability of the nature. It is submitted that the effective implementation of the legislative framework on conservation of biodiversity accompanied with public awareness of nature can execute the 2050 Vision of Living in Harmony with Nature.

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RIGHTS ADVOCACY

Children's right to environmental protection

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RIGHT to safe environment is a prerequisite to ensure right to life as it is closely related with the standard of life, health and overall development of a human being. Environmental damage adversely affects all, specially children's lives today and in the future. Failure to protect the natural environment also leads to violations of children's human rights which may threaten their rights to health, food, water, sanitation, education, culture, recreation, etc.

The UN Convention on the Rights of the Child (CRC) 1989 sets out civil, political, economic, social and cultural rights of the children including the principles of non-discrimination, the right to life, survival and development, best interests of the child, etc. While pointing out the impacts of environmental degradation on children's lives, the CRC states that environmental pollution poses 'dangers and risks' to nutritious foods and clean drinking water for children.

Environmental hazards have been recognised as the barriers towards the right to health and other rights through numerous reports of the Committee on the Rights of the Child. The whole population is affected by environmental regulations, however, the Committee affirms that a greater level of protection and detailed procedures should be maintained in the decision making process as it may have a major impact on children and their best interests should also be ensured.

Children are particularly vulnerable to the impacts of environmental degradation, due to their evolving physical and mental development. Their organs and their immune systems are still developing and they absorb more pollutants than adults because of their smaller body weights. They need more food and water per unit of body weight because of the immaturity of the blood-brain barrier and nervous system and for having a different rate of organ systems growth. If a child is exposed to environmental pollutants during a period of potential growth and development, this may put the child at a greater risk of developing future diseases.

In three ways the term environment can be applied in relation to children's rights. Firstly, the living conditions – housing, and community spaces of children which should ensure a decent standard of living, shelter, recreation, health, etc. Secondly, the natural environment – which includes plants, animals and people. Lastly, children's access to natural resources as they need nutritious foods and clean drinking water to combat disease and malnutrition.



Therefore, it can be easily understood that some children are extremely vulnerable to the harmful environmental effects, including girls, children with disabilities, poor children, and children belonging to the minority groups or marginalised communities. They live at a higher risk than others and this ultimately raises the question of environmental injustice.

States have general obligations to respect and ensure rights under the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) in order to completely secure of the rights recognised in the CRC. Bangladesh completed accession of the CRC on August 3, 1990 and it was ratified by the Parliament later on September 2, 1991 with reservations on Articles 21 and 14(1). These two provisions deal with the adoption of children and children's rights for freedom of thought, conscience and religion, respectively.

Article 18A of the Constitution of the People's Republic of Bangladesh asserts State's responsibility to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wild life for the present and future citizens. Some constitutions, however, empower independent offices for monitoring human rights violations. For instance, Article 34 of El Salvador's Constitution specifically guarantees State's protection to ensure children's right to live in familial and safe environmental conditions. Also, Namibia's Constitution specifies the need to investigate problems related to environmental damage and authorises the Ombudsman for this purpose.

The issues regarding children's access to sustainable nature and their protection from multiple factors of vulnerability should be crucially addressed to avoid environmental injustices. Legislators and policy makers should pay specific attention to safeguard the children from environmental health risks, through effectively enforced environmental policies, planning, investigation, monitoring and research, etc. Additionally, non-government organisations, child development experts, civil societies and others dealing with child health and environmental issues should take steps and coordinate with each other to act towards a sustainable, safe and healthy environment for children.

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LAW VISION

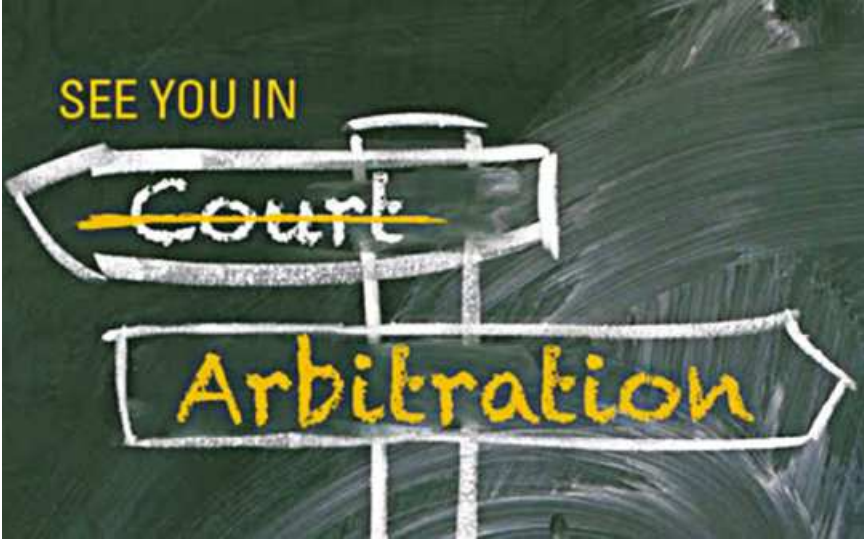
Covid-19: Time to introduce virtual ADR

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CONSIDERING the emergency circumstances that has emerged from COVID-19 pandemic, the Bangladesh judiciary has lately started to conduct court proceedings via video conferencing. However, we are yet to hear about any initiative regarding the virtual form of judicial or formal Alternative Dispute Resolution (ADR). Hence, this write up advocates for wide ranged introduction of virtual ADR practices covering not only judicial or formal ADR, but also quasi-formal, and informal ADR practices in Bangladesh. Such virtual ADR practices can either be based on phone-conferences or be based on internet supported video-conferences.

In Bangladesh, ADR practices that consist of mediation, arbitration, conciliation, traditional *salish* and NGO modified *salish* can be broadly grouped into three groups – formal or judicial ADR practice, quasi-formal ADR practices, and informal ADR practices. Formal ADR practices include arbitration or mediation under the Code of Civil Procedure (Amendment) Act, 2003 or under the Money Loan Court Act, 2003 or under the Muslim Family Laws Ordinance, 1961 or the Family Courts Ordinance, 1985. ADR that takes place under the Conciliation of Dispute (Municipal areas) Board Act, 2004 or under the Arbitration Act, 2001 or the Village Court Act, 2006 or the Labour Code, 2006 can be considered as quasi-formal ADR. However, traditional *salish*, NGOs modified *salish* can be considered as informal ADR practices. Besides these, the Contract Act 1872, the Specific Relief Act 1877, the Bank Companies Act 1991, the Chittagong Hill Tracts Dispute Settlement Commission Act 2001 either explicitly or implicitly refer to ADR practices.

To introduce phone-based ADR, it is understandable that only access to a land phone or a mobile phone will be enough for parties to participate in mediation or arbitration. Many countries have already started this practice. For example, being funded by the Australian Government under the Family Support Program (FSP), Queensland province of Australia initiated Telephone Dispute Resolution Service (TDRS) in 2007. Providing telephone-based mediation needs some specific set of skills connected with telephone environment. We need to provide training to our mediators to those specific issues. For instance, employees working in TDRS receive training as to their appropriate behaviours with co-mediators during telephone environment, rapport building



techniques during phone conversation, active listening, controlling language, time management, interpreting silences and taking notes at the same time. Besides, conducting telephone based mediation also needs to take into account that telephone calls might face call drop or unintentional interruption deriving from micro level household issues of the participants (e.g. necessity of immediate attention to a child, finding out any undisclosed person in the room, etc.). The telephone-based family mediators, community mediators or workplace mediators in Bangladesh must also be taught or given training about how to deal with the above stated issues.

For online or internet-based virtual mediation, two kinds of internet-based communication methods are possible to apply: synchronous communication and asynchronous communication. Synchronous technology refers to conversation in real time through using web-based technologies which support online calls or video conferences. An asynchronous communication refers to communication via email. Both methods of communication can be employed for establishing online-based ADR system.

Before wide range introduction of these methods and mechanisms in Bangladesh, it would be wise to conduct some studies on similar methods which have been introduced globally by others. For instance, the World Intellectual Property Organisation (WIPO) introduced online dispute settlement system for domain name disputes and intellectual property related disputes (WIPO e-ADR). Online dispute settlement systems also exist for online consumer purchases that take place through e-commerce sites. In addition to the just mentioned instances, there are

also instances of online arbitration and mediation under the Virtual Magistrate and Online Ombudsman programmes of the USA. Besides these, there are number of private initiatives which provide online dispute resolution services across the world.

All of the above-mentioned internet-based initiatives require some common accessories or technologies which must contain a delivery mechanism, a receiving mechanism, and a medium of discussions. Sometimes it may also be essential to have facilities of video conferencing. It is essential that all parties to the mediation or arbitration or conflict coaching also have access to email for conducting initial communication. Hence, the technologies essential to avail or run online based dispute resolution may involve – internet, intranets, desktop or smartphone, video conference service providing app or technology or satellites. Since all these technologies are moderately available here, it will not be a difficult task – at least from technological point of views – to initiate and popularise virtual ADR services in Bangladesh.

Till date, experts are unable to predict when the necessity of maintaining physical distancing rules will end. Considering the ongoing pandemic, we all have to be prepared for such a 'new normal' scenario that might help ourselves protecting from Covid-19. For ADR practitioners, it means we might require avoiding face-to-face meeting for an indefinite period of time. Hence, as like as other countries of world, the ADR practitioners of Bangladesh should also immediately shift their focus to virtual modes of ADR.

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