

FOCUS

Law and Our Rights

Environment and the Law

At the global level, the main thrust on universal commitment to combat environmental issues emerged out of the Stockholm Declaration on Human Environment in 1972 although international non-governmental organization such as The World Conservation Union (IUCN) began its programme earlier. In Bangladesh, environment as a distinct issue assumed remarkable momentum in the wake of the two consecutive floods of 1987 and 1988. Traditionally, the people of Bangladesh, being the inhabitants of the flood plains of the huge deltaic ecosystem, lived in harmony with the nature as a result of which the values, life-style, customs, usage, proverb and idioms resound the tune of the cord of bond with the ecology. The advent of modern state with system of statutes witnessed a blend of "revenue" and "resource" oriented regime with some significant prohibition of acts dangerous to human environment and health and the ecology. Hence we find environmental provisions in the Penal Code of 1860, law reflecting natural phenomenon in the Bengal Aluvium and Diluvian Regulation 1825, law to protect future generation in the Juvenile Smoking Act, 1919 and so on. 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.

Nonetheless, many of the available laws and mechanisms remained unutilized, unexplored and barely expounded. The system of regulatory regime is "sectoralized" under various Ministries, and as such the components of the environmental regime are also conceptualised, managed and governed in the same style. This sector based compartmentalization of environmental regulatory framework developed uncoordinated, competing and often adversarial approaches unfriendly to sustainable management of resources and ecological governance.

Perhaps the study of environmental regulatory regime and the role of law in that process have received late recognition in many jurisdictions including Bangladesh for various inadvertent reasons. For other organs of the State, talking about environment was mostly customary and paper jargons. The history of law making and amendment is dominated by more authoritarian approach than being an instrument of social engineering for the people.

This is a bird eye view of a huge canvas to present some salient features on Environment and the Law in the Bangladeshi context.

National Environment Policy:

The Policy was adopted by the Cabinet in November, 1992 which provides some general guiding statements and then goes on to describe essential sectoral policies for the concerned Ministries. It would be worth to note the policies on the topic being briefed in the said Policy:

Legal Framework:

4.1 Amend all laws and regulations related to protection of environment, conservation of natural resources, and control of environmental pollution and degradation, to suit the needs of present time.

4.2 Frame new laws in all necessary sectors to control activities related to environmental pollution and degradation.

4.3 Ensure observance of all clauses of relevant laws/regulations and create wide spread mass awareness in this regard.

4.4 Ratify all environment related international laws/conventions/protocols those Bangladesh considers ratifiable and amend/modify existing laws/regulations in line with

the ratified laws/conventions/protocols.

5. Institutional Arrangements:

5.1 The Ministry of Environment and forest would coordinate the implementation of this policy.

5.2 A National Environment Committee with the Head of Government as the Chairperson would be constituted to give overall direction for implementation of the Environment Policy.

5.3 The Ministry of Environment and Forest would take timely steps for appropriate amendment and adjustment of these policy in the backdrop of changes in the state of environment and socio-economic and other needs of the country.

5.4 Department of Environment will make final review and approve all Environmental Impact Assessments."

Besides the Policy, a National Conservation Strategy which has identified all the sectoral issues, the strategies and actions required, has been lying before Cabinet for half a decade. A National Environment Management Action Plan has been prepared with the participation of people and civil society recently.

Institutional Set Up:

A. Resource management laws are provided in the sectoral statutes and Rules of Business of various Ministries and public agencies.

B. Most of the civic and anti-nuisance rather environment related provisions are provided in the powers and functions of various statutory local government bodies. Tortious liability is included in these laws besides some specific laws such as the Criminal Procedure Code, 1898, the Smoke Nuisance Act, 1905. Besides, there is the Department of Public Health Engineering.

C. A water pollution control project turned into Department of Environment Pollution Control following an Ordinance of 1977 on Environment Pollution Control, and the said Department was under the Department of Public Health in Ministry of Local Government, Rural Development and Cooperatives.

D. In 1989, a separate Ministry of Environment and Forest (MOEF) was created bringing under it the Department of Environment Pollution Control renaming the same as Department of Environment, subsequently mandated by the Environment Conservation Act, 1995, and the Forestry Division of the Ministry of Agriculture as Forest Department empowered by the Forest Act, 1995.

E. The environmental issues relating water resources is looked after by the Water Resources Planning Organization by an Act of 1992, the Bangladesh Atomic Energy Commission is entrusted to regulate radio activity under the Nuclear Safety and Radiation Control Act, 1993. There are other agencies too who are vested with the duty to protect specific aspects of environment.

Major Environmental Issues Facing Bangladesh:

A. Regional/Global:
— Ecological changes due to shared water disputes

— Maritime boundary dispute and a weaker regime on Marine resources

— Green house effect and its consequence on Bangladesh

— Refugees and migration

— Ecological effect caused by transfrontier activities

B. National:
— Population and Poverty

— Degradation of Resources (anti-people and uncoordinated)

— Conflict of Development with Environment: illiteracy vs ignorance

— Pollution: water, air and soil

— Destruction of mangrove, tree cover and firewood

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