GREENING JUSTICE IN BANGLADESH: A ROAD TO SUCCESSFUL ENVIRONMENTAL COURT

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ABSTRACT

Greening Justice connotes a justice system where the environmental rights are best protected by the executive, legislature and judiciary. Internationally, this concept was strongly backed in the Rio declaration on Environment and Development in 1992. As a signatory state, Bangladesh took many effective initiatives including enacting environmental legislations and establishing environmental courts. Establishing Environmental Courts in Bangladesh is remarkable for ensuring environmental justice but the purposes behind it have not been fulfilled due to some statutory and practical hurdles. This paper is intended to explore some statutory and practical limitations hindering the proper functioning of the environmental courts and to suggest some realistic and useful measures for successful environmental courts in Bangladesh. After due analysis of relevant legal provisions and practices, attempts have been made to identify the factors hindering the proper functioning of the environmental courts in Bangladesh. To ensure successful environmental courts in Bangladesh, the author recommends some practical and useful measures by taking the positive experience from the successful model courts and tribunals of foreign jurisdiction. Extensive jurisdiction, wide the locus standi, one stop access to justice and inclusion of environment literate judge and experts in the environment court would be key indicators to accomplish the projected outcome.

Key Words: Green Justice, Third Generation Rights, Environment Court, Environmental Laws in Bangladesh, Model Green Court, PIEI, Environment Literate Judge and Expert.

1. INTRODUCTION

The Human rights have been developed in three generations. Civil and political rights are known as first generation rights and economic, social and cultural rights are known as second generation rights. However, Green rights have been recognized as third generation rights. Third generation rights include the right to development, the right to peace, the right to a healthy environment, and the right to intergenerational equity. The concept of greening justice has emerged to hold up these rights. The greening justice is a process where environmental rights are ensured in the legislations, executive actions and most importantly in adjudication system. The Rio Declaration, 1992 explains and illustrates this concept mandating the state parties to be armed with “appropriate access to information”, “the opportunity to participate in decision making processes” and “effective access to judicial and administrative proceedings, including redress and remedy” for “all concerned citizens”.

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The starting point of greening justice in Bangladesh cannot exactly be identified. However, this process was recognized from ancient Bengal, some of which references are located in the Vedic, Epic and Puranic literature as well as on the available archaeological evidence. The Muslim rulers were significantly influenced by the principles of Islam to take necessary measures for protecting and preserving environment. Islam promotes universal common good of creatures and mandating protection and development of environment and natural resources as religious duty. Most notable development of greening justice can be pinpointed during the British period when about 58 relevant laws were enacted and the forest department was established. In post-British regime, considerable measures were adopted to mitigate the environmental pollution and its impact. As many as 40 Acts were enacted and soil survey department and forest research institute were established in the federal government.

Immediately after the independence of Bangladesh, Bangladesh became the parties to different international environmental treaties and conventions. However, the Rio Declaration influences Bangladesh to make the National Environment Policy (NEP), 1992 for integrating the development with environmental protection. Following the NEP, the Environment Conservation Act, 1995 and Rules 1997 were enacted, which set a new standard for the conservation of the environment and the mitigation of environmental pollution. With a view to ensuring environmental justice in Bangladesh, many external and internal actors play significant role. In certain points they are working together to win the common goals. Besides the governmental agency like the Department of Environment (DoE), many NGOs like BELA and BAPA are working relentlessly for the protecting and improving the environmental standard and justice. Public Interest Environmental litigation (PIEL) and judicial activism widen the area of environmental justice mechanisms.

The Environment Court Act, 2000 opens the door of specialized environmental adjudication system. Under this Act though it was supposed to establish an environment court in each district, only three environment courts and one appellate court were established to try environmental offences and claims. Due to many statutory and practical limitations, the achievements of the courts were negligible. However, the Environment Court Act, 2000 was so extensively replaced by the Environment Court Act, 2010 that it got a new look with an effective adjudication system for protecting, conserving and preserving the environment and promoting the environmental justice. Besides the environment courts, special magistrates courts are given jurisdiction to try environmental offences. Deadline of 180 days have been set for disposal of cases. Alternative Dispute Resolution process is also incorporated in
Ironically, the Environment Court Act, 2010 could not satisfy the demand of the sustainable development and sustainable development goals-2030 due to some inbuilt and practical limitations. The environment courts in Bangladesh were not armed with effective adjudication mechanisms and jurisdictions to meet the challenges of 21st century. The courts were encumbered for the limited jurisdiction, delayed and costly procedure, want of environment literate judges, absence of scientific and technical experts and inadequate remedies. Restricted access to justice and locus standi, overdependence on the executive discretion make the environment courts unworthy of suitable green justice. Resultantly, very few cases were filed and fewer were disposed of in environment courts and appellate court.

To create a triumphant road to successful environment courts in Bangladesh, authors would suggest a number of constructive measures need to be adopted taking the experience from the model courts of foreign jurisdiction. Extensive jurisdiction, measures for just, speedy and affordable disposal, wide locus standi, one stop access to justice and inclusion of environment literate judge and experts in the court proceeding can make the environment court a palace for environmental justice. Independence of environment courts and effective remedies and enforcement mechanisms are mandatory requirements for model environment court in Bangladesh.

2. THE CONCEPT OF GREENING JUSTICE

Greening Justice is a term which refers to a justice system where the green rights are recognized and enforced. Green rights refer to the people’s rights to sound and pollution free environment, an inseparable part of right to life. Green Justice System includes protective environmental laws, administrative arrangement for providing green rights and the best mechanism for the enforcement of environmental rights and legislations. Rio Declaration is the efficacious stage of greening justice. The way to green justice is best reflected in this declaration. In the 1992 Rio Declaration on Environment and Development, 178 governments pledged to open environmental decision-making to public input and scrutiny. The Principle 10 of Rio Declaration on Environment and Development opens the door of greening justice by recognizing that those environmental issues are best handled with “appropriate access to information”, “the opportunity to participate in decision making processes” and “effective access to judicial and administrative proceedings, including redress and remedy” for “all concerned citizens.” The literature of the principle is:
“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

Since 1992, over a great number of states including Bangladesh have been enacting laws that provide citizens greater access to environmental information. The new challenge is to implement these laws effectively. Even while some of them have recognized the implementing mechanisms by establishing environmental courts and tribunals (ECT), they have done less well in facilitating their citizens to participate in decision-making process or offering new means to resolve environmental disputes justly and efficiently. If such institutions are effective, they could provide greater accountability for decisions on environmental matters and pave a pathway to reconciling competing interests necessary for achieving sustainable development. At this stand, the most important aspect of greening justice is decision-making process through judicial organ of the state which might be served by promoting environment courts and tribunal with effective enforcement mechanisms.

3. HISTORICAL BACKGROUND OF ENVIRONMENTAL JUSTICE

The basis of environmental justice in Bangladesh originated from ancient Bengal though the exact starting point cannot be specifically pinpointed. The evolutionary development of environmental laws and policies has been analyzed from ancient Bengal period till liberation of Bangladesh.

The environmental laws and policy down to 4th century, few references are found in the Vedic, Epic and Puranic literature as well as on the available archaeological evidence. During the ancient Bengal, the protection of the environment was accepted as of duty. In view of Muslim rulers, the protection, conservation and development of the environment and natural resources are a mandatory religious duty. Mint Towns and administrative headquarters were located on riverbanks in consideration of sound environment. Sher-Shah (1540-45) for the first time considered environment as essential issue for the welfare of the state. During the Moghul period, many royal orders (farmans) were circulated by the Muslim rulers to protect and conserve environment.
The environmental law and institutions in British period are yet the central components in the management of environmental resources. The forestry, wildlife and water pollution attracted their attention in particular. There were several laws and policies introduced in British era to protect and conserve the environment and adopted mitigating measures to minimize the environmental pollution and its impacts. One Act enacted between 1757 and 1857, around 57 Acts enacted between 1857 and 1947. In 1865, the Forest Act was enacted. The Forest Act, 1927 covers forests and forest management.

There were several laws and policies introduced in Pakistan era to protect and conserve the environment and to mitigate and minimize the environmental pollution and its impacts. About 40 Acts were enacted before the independence of Bangladesh between 1947 and 1971. A Forest Research Institute was also created to carry out studies on forest, range and wildlife management. Forest Policy was announced in 1955 which was further revised and the Forest Policy of 1962 was introduced. In 1959 the Private Forests Ordinance was to provide for the conservation of forests and for the afforestation of waste lands where such forests or lands are not the property of the Government. The Protection and Conservation of Fish Act, 1950 was adopted to prohibit the catching, carrying, transporting, offering or exposing or possession for sale or barter of fishes below the prescribed size of any prescribed species.

2. GREENING JUSTICE IN INDEPENDENT BANGLADESH

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. In tackling the environmental problems of the country, various environmental laws have been enacted from time to time in Bangladesh. There are more than 200 primary laws that are in force dealing with environmental issues. Some of these laws, now in force, such as Forest Act of 1927; Motor vehicle Ordinance of 1939 etc. are inherited. Other laws were enacted after 1971 due to changed scenarios.

2.1. International Conventions Motivating Bangladesh

international environmental law motivating Bangladesh towards greening justice. According to the world progress, Bangladesh has taken measures to lead itself toward sustainable development to meet the needs of the present without compromising the ability of future generations to meet their own needs.

2.2. Vital National Legal Instruments

The Legislative instruments in Bangladesh have turned into a fruitful shape immediately after the Rio Declaration in 1992. The National Environmental Policy (NEP) was framed in 1992 for ensuring the protection and improvement of the environment in Bangladesh. On the basis of broad objectives of environmental laws existing in Bangladesh, laws may be categorized as follows:

i) Protection of Environmental health;
ii) Control of Environmental pollution; and
iii) Conservation of natural and cultural resources intended to lead our acts toward sustainable development.

The constitution of Bangladesh did not, in its original version, incorporate the provision for protection and preservation of the environment. It is because of the said limitation, the High Court Division issues directions to protect the environment by invoking the power conferred on them for the enforcement of the right to life, which is a fundamental right. In a judgment dated 1 July, 1996 the Supreme Court has given judicial recognition that “right to life” includes right to sound environment. In Dr. Mohiuddin Farooque Vs. Bangladesh and Others, the “right to life” has been expanded by the High Court Division to include everything supportive to an expected normal longevity including right to clean air and water which was confirmed by the Appellate Division of the Supreme Court of Bangladesh.

The Constitutional 15th Amendment is remarkable from view point of environmental protection. Through this amendment, the national commitment of environmental protection and improvement was explicitly incorporated into our constitution in newly added article 18A. The overriding concern for environmental protection with this amendment has now been steered in fundamental principles of state policy. This provision imposes the duty on the government to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wildlife for the present and future citizens. However, the above article being the fundamental principle of the state policy is not judicially enforceable by constitutional courts by issuing a writ to enforce them.

National Environmental Policy (NEP) focuses on some interrelated different sectors including agriculture, industry, health, energy, water, land, forest, fisheries, marine, transport, housing, population, education and science. However,
their uniting point is environment. Thus, the main theme of the policy is the conservation, preservation and improvement of the environment of Bangladesh. The policy requires amongst other, the amendment of the existing legislations, formulations of new laws and implementation thereof. National Environment Management Action Plan (NEMP) 1995 is the major policy document that recognized links among environmental degradation, poverty, and population growth. National Biodiversity Strategy and Action Plan 2004 put due priority on the recovery and conservation of degraded ecosystems.

To fulfill the requirements of the National Environmental Policy (NEP) the Environment Conservation Act was enacted in 15 February, 1995 for the conservation, improvement of environmental standard and control and mitigate the pollution of the environment in Bangladesh and later on, this Act has been amended for several times for effective conservation and development of the environment.

The Environmental Conservation Act, 1995 (ECA ‘95) is currently the main legislative framework document relating to environmental protection in Bangladesh. ECA-1995 and other related environmental laws, it appears, are ‘polluter-pays-principle’ biased. Though ultimate aim of all the environmental related laws is the protection of environment, the issues of pollution control have received better attention than those of the resource conservation needs. The main objectives of ECA, 1995 are conservation and improvement, and control and mitigating pollution of environment. The earlier Act, namely, the Environment Conservation Act 1995 was amended by the name of the Bangladesh Environment Conservation Act (Amendment) 2010. The Environment Conservation Act (Amendment) 2010 has given new direction of ship breaking industries not to cause any environmental pollution by hazardous waste or creating risk on health. Environment Conservation Act (Amendment) 2010 has given few restrictions as cutting and/or razing of hills; manufacture, import, stock, loading, transport of hazardous waste and filling reservoir of water. It has also given a direction of environmental clearance certificate as “in case of an industrial unit or project established before the enforcement of this Act. According to the Act, the government can declare ‘Ecologically Critical Area’ if eco-system of an area reaches critical stage due to environmental degradation and the government will prepare the management planning to overcome the situation.

The Environment Court Act, 2000 was replaced by the Environment Court Act, 2010. We got a new Environment Court Act, 2010. The main objective of this Act is the speedy trial of the environmental offences. The Act provides for setting up environment courts in all districts to prevent environmental pollution. It also allows setting up more than one court if required at the districts.
tioned setting up a special magistrate court for processing such complaints. It also proposed setting up a deadline of 180 days within which special magistrates will have to complete the case procedures.\textsuperscript{43}

2.3. Majors Actors for Greening Justice

In the formulation of Environmental Law, different actors and factors played some direct and indirect roles. The actors were basically of two types, external and internal. Among external actors, United Nations General Assembly, international forum, international organizations, donor agencies (IDA, USAID, UNDP, ADB) were major players. Internal actors include, environmental NGOs, government agencies i.e. Ministry of Environment and Forest (MoEF), Department of Environment (DoE), Ministry of Law, concerned ministries, consultants, bureaucrats, and civil society and so on.

2.3.1. Governmental Agency for Greening Justice

Ministry of Environment and Forest (MoEF), Department of Environment (DoE), Ministry of Law, concerned ministries, consultants, bureaucrats, and civil society etc. are responsible for preserving, conserving and improving the environment. Department of Environment (DoE) is main actor in these perspectives. As a technical arm of the Ministry of Environment and Forest, the DoE encompasses nearly everything related to environmental management and conservation in the country.\textsuperscript{44}

The Department of Environment (DOE) is responsible for conservation of environment and enhancing its quality through prevention and mitigation of pollution in Bangladesh. The DOE, under the Ministry of Environment and Forest (MoEF) is a special government body for environmental management in our country. The DOE is the authority with mandate to regulate and enforce various environmental activities which are assigned. Supporting laws under which the DoE performs are Environment Conservation Act (ECA) of 1995 and the Environment Conservation Rules (ECR) of 1997. The ECA has set a new standard for conservation of the environment. The DoE is implementing the Act. DoE is headed by a Director General (DG), who has complete control over the Department. The powers of DG are given with specific enforcement mechanism in the Act.

2.3.2. The Role of NGOs for Conserving Environment

In alliance with the Government, a good number of national and international NGOs have been working to address environmental problems and to improve environmental system of the country since 1980s. The NGOs play an important role in motivating people at the grass root level to protect environment and to take coordinated efforts in solving environmental problems. There are NGOs
which are playing commendable role in projecting environment. Including among them are: International Union for the Conservation of Nature (IUCN), Centre for Sustainable Development (CSD), Bangladesh Centre for Advanced Studies (BCAS), Environmental Conservation Management Centre, Waste Concern, Bangladesh Paribesh Andolon (BAPA), Bangladesh Youth Environmental Initiative, Environment Council Bangladesh and Bangladesh Environmental Lawyers Association (BELA).

Belgium Environmental Lawyers Association (BELA) is a society of lawyers active in the field of environment for establishing a sound ecological order using legal mechanism as a tool. It has already created wide sensation for obtaining a number of important decisions in cases affecting the interest of the greater public. Judicial recognition of the need of a sound environment was first made in the writ petition filed by the organization. Bangladesh Poribesh Andolon (BAPA) is a common forum of citizens and organizations concerned with the environment of Bangladesh. BAPA, acting as a pressure group against any kind of environment degradation, is trying to create a broad-based citizen’s movement for protection and betterment of environment in Bangladesh.45

2.4. Public Interest Environment Litigation (PIEL) and Judicial Activism:

Environmental law and public interest environment litigation being an emerging subject, it may be proper to say that the principles are functionally developing on identical and oriented approach. How to draw a balance between the so-called ‘economic growth’ mostly implying industrialization given the western experience and ‘conservation of environment’. The use of legal mechanism as a tool produced various means and ends. The agenda of PIL were mainly based on strategic issues to generate awareness amongst the common people and all the actors including the judiciary for developing a realistic regulatory framework and environmental jurisprudence. BELA has expanded the idea of PIL by focusing it to the environmental matters and has initiated some landmark Public Interest Environment Litigations (PIEL).46 It has widened the scope of right to file case on behalf of others who are debarred because of their various inabilities of getting access of justice. A concept of Public Interest Environmental Litigation (PIEL) has developed and moulded over the last three decades.

The statutory laws and bye-laws are the primary sources of environmental legislations. However, there are case laws, which operate as mandatory precedents in some sectors including environment related sectors.47 The Higher Court in Bangladesh seems to be very proactive in upholding environment rights i.e. the directives in the ship breaking yards, reviving the Buriganga, replacement of tannery from Dhaka city etc being the recent examples. The Supreme Court of
Bangladesh has dealt a good number of environmental related cases for the conservation and development of the environment and environmental jurisprudence in Bangladesh. The courts may exercise its powers and functions depending upon the constitution, treated as fundamental rights conferred by part –III of the constitution of the People’s Republic of Bangladesh. The court can ensure these rights through the public interest litigation. The first environmental litigation, in the form of writ petition was filed in 1994 against four authorities of the government responsible for the enforcement of various civic rights. The Bangladesh Environmental Lawyers Association (BELA) has been leading in this regard. However, there are a number of cases which the court took initiative suomoto for the protection and conservation of environment. BGMEA vs. Bangladesh &ors is a recent illustration where the court has given direction to demolish the illegally constructed building for restoring the natural flow of Hatirzeel Lake.

3. THE FUNCTIONING OF ENVIRONMENT COURT IN BANGLADESH

The Environment Court Act, 2010 provides for effective and expeditious disposal of law suits in respect of all types and sources of environmental issues. The environment Courts have been established for the purpose of trying offences and matters speedily and expeditiously relating to environment and matters incidental thereto.

3.1. Constitution and Jurisdiction of Environment Courts

For the speedy and expeditious trial and inquiry of environmental causes of action, the government, may, by notification in official Gazette, establish environmental courts and special magistrate courts in each district. The environmental court shall be constituted with one Joint District Judge in addition to his ordinary jurisdiction in consultation with the Supreme Court. The Court shall sit in district headquarters or in any other place as notified by the government. Special Magistrate Court shall be constituted by any Metropolitan Magistrate or Magistrate of first Class in consultation with the Supreme Court. The Special Magistrate Court may deal with environmental matters exclusively or in addition to its ordinary function.

Environmental Court or Special Magistrate court is competent to impose penalty for offence under environmental law, including section 8 and 9 of this Act, to confiscate or distribute equipment, transport, article etc or pass order for compensation. In addition, in the same judgment may give direction/injunction not to repeat or continue or to do any act or omission, to take any preventive or remedial measures or to submit a progress report of such compliance. An aggrieved may apply to review such direction within 15 days which must be disposed of within 30 days. A Special Magistrate may impose penalty of imprisonment not exceeding 5(five) years or fine not exceeding 5(five) lac taka or both.
3.2. Prosecution and Investigation:

The director General or any other authorized person may institute cases in special magistrate court or environmental court or lodge an FIR in local police station for trying offences under environmental law. The environmental court is competent to dispose of any case transferred from the special magistrate court. In addition, a case for compensation may directly be instituted in the environmental court for cognizance and trial. No court can take cognizance of any offence or claim for compensation except written report of the inspector. However, if the magistrate or the court satisfies that the inspector has not taken any necessary steps within sixty days of request by the aggrieved person or there is reasons for taking cognizance of such complaint, the court or magistrate may, after giving the inspector reasonable opportunity of being heard, directly take cognizance of the offence or direct the inspector for investigation in appropriate case.54

Upon the direction of environmental court or Director General, an Inspector may, at any reasonable time enter any place, search into, or seize anything or collect sample or inspect for assessing compensation. Upon the application of the Inspector, the environmental court or magistrate may issue search warrant.55 The Environment Court may inspect physically the property, object or place of occurrence in appropriate case giving the parties, pleaders and inspector or authorized officer reasonable notice and record the findings which shall be evidence in the trial.56 An offence under this law shall be investigated by Inspector or any officer authorized by DG upon any complaint or information after obtaining approval of DoE. The Investigating Officer (IO) shall, before formal inquiry, prepare a preliminary inquiry report holding an inquiry and collecting information and submit thereof to the higher officer who shall, considering facts and circumstances, give his decision within 7 days as to initiating further steps. If the decision is affirmative, inquiry report shall be submitted as FIR and investigated thereinto. Investigation report shall be considered as Police Report by the court according to the provision of the Code of Criminal Procedure (CrPC), 1898. Provided that when the Special Magistrate conducts mobile court, he may take cognizance of an offence directly upon complaint by the inspector or authorized officer without following further formalities.57 The Environmental court is competent to order the Investigation Officer (IO) or any person to hold further investigation of pending case specifying the time thereof.58

3.3. Trial and Punishment:

The cases triable by environmental court shall be represented by Special Prosecutor or Special Government Pleader in civil suits appointed by DG and Inspector or authorized officer shall assist him. Any other offence connected with environmental offence may be tried by environmental court, if the end of justice requires doing so.59 In trying the suit for compensation, the court shall be deemed
to be civil court and the Code of Civil Procedure (CPC), 1908 shall be applicable therein. No witness shall be released or returned without taking evidence. The Special Magistrate or environmental court shall conclude trial with one eighty days from framing of charge or issues, which may be extended for further ninety days informing the appellate court.60

For violating the direction issued by the court or special magistrate by repeating or continuing the offence for which the wrongdoer is sentenced, additional penalty shall be imposed which may extend to 5 (five) years and for the independent offence shall be sentenced not less than previous sentence.61

3.4. Alternative Dispute Resolution:
A case filed in environmental court or special magistrate court may be compromised at any time after filing in any stage; it may be even in appellate or revision stage. If the case is filed for non-compliance of S. 4 (2-3) of ECA, a compliance report must be submitted and minimum fifty thousand taka must be paid for compromise. However, for violation of S. 4(4) and S.5 (1), submission of a written undertaking not to stop and not to reopen permanently and payment fifty thousand taka is required. If DG or authorized officer is satisfied to compromise the offence, he shall submit the compliance report or written undertaking and fine within next 5(five) working days. On acceptance of such report and fine the concerned court shall conclude the trial at that stage releasing the accused if he is in custody or discharging him from bond if he is on bail or cancelling or recalling warrant of arrest if it is already issued.62

3.5. Appeal, Review and Transfer:
Appeal may be filed within thirty days from the order or decree or judgment or dismissal to the Environment Appeal Court. For appeal against the compensatory decree, half of decretal amount must be deposited in the court. Revision may also be filed in the Appeal Court against non-appealable orders prescribed in the Act. Government shall, by Gazette notification, establish one or more Environment Appeal courts constituted with District Judge exclusively or in addition to his ordinary duties in consultation with Supreme Court. In disposing of the appeal, the Environment Appeal Court shall exercise all powers of Sessions Judge and District Judge in appropriate cases. Environment Appeal Court is competent to transfer cases on application or other information from one environment court to another or one special magistrate court to another or to environment court or retransfer to it.63

3.6. The Progress of Environment Courts in Bangladesh
The Government is mandated to, by notification in official Gazette; estab

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lish environmental courts in each district for disposing of environmental issues more conveniently and speedily. However, only four courts have been set up, with two in Dhaka and Chittagong, an Environment Appeal Court in Dhaka, a Joint District Judge has been carrying out additional duty in an Environment Court in Sylhet. But the few Courts established under the Act are not functioning effectively due to the limitations mentioned in the next sections. To make the statements more evident a statistics of the filed, disposed of and pending cases up to 2015 have been collected and demonstrated in the following figure:

![Figure 1: Number of Cases filed and disposal of Environment Courts and Appellate Court till 2015](image)

From the above chart, it is seen that number of cases in environment court, Dhaka is though very low, the rate of disposal is satisfactory. In 2015 (till June) only 1 case has been filed in Dhaka Court. However, the rate of filing and disposal in Chittagong, Sylhet and Appellate Court is very alarming. In last two years only 1 appeal has been filed in the Appellate Court.

4. STATUTORY AND PRACTICAL LIMITATIONS OF ENVIRONMENT COURT

Agenda 21, a comprehensive action program adopted at the historic Rio Conference of 1992, was designated to integrate the goals of continued economic development and environmental protection. In pursuance of this Agenda, the first Environment Court Act was passed in 2000. However, to meet the challenge of time and to ensure the proper application of environmental laws of Bangladesh effectively, the Environment Court Act, 2000 has been repealed in 2010 and the new Environment Court Act, 2010 has been passed with the object of establishing environmental courts for speedy trial of environmental offences and matters incidental thereto. However, the Courts established under the Act are not functioning effectively (shown in figure 1 above) due to the following loopholes.
4.1. Constrained Jurisdiction

The jurisdiction of environment court is not clear. Environment Court can only entertain offences and claims for compensation under ‘environmental law’. Section 2(c) of the Act defines ‘environmental law’ to include the Bangladesh Environment Conservation Act, 1995 and such other laws as may be subsequently be specified by the Government in the official Gazette. But in last 16 years government has not issued any gazette notification to include any other Act. Environment Court has no jurisdiction to try offences relating to forest resources, wild life-biodiversity, fisheries, water resource and other natural resources. Another limitation is the maximum penalty of taka 10 lac irrespective of the gravity of environmental harm or tort for the influential groups or corporate bodies may not be always sufficient.

The Environmental cases should be adjudged in higher judiciary to get satisfactory justice. However, the decision of this district level court is final. The environment court has no suomoto or epistolary jurisdiction to take up an environmental cause and to try it. Thus the environment court can not extend its activism for the protection of the environment and cannot stand besides the vulnerable and poor victims undermining the muscle power. The court also lacks in possessing the power of judicial review which is necessary for the environment court to challenge the legality of anti-green activities. Thus, the victim has no access to judicial review by the Supreme Court in any form like Land Survey matters. The establishment of the Land and Environment Court of NSW as a superior court of record with comprehensive jurisdiction in environmental matters represented a public acknowledgment of the importance of environmental issues and a public pronouncement of the importance of the Court and its decisions.

4.2. Absence of Environmentally Literate Judges and Technical Expertise

Specialization is an inevitable character of a successful environment court. Environmental issues and policies demand special knowledge and expertise of the judges of the environment court. Though the environment court is literally a special court but in practice it is run by ordinary judges. The environment court consisting of joint district judge is required to perform the functions of environmental court in addition to his general duties. Moreover, there is no provision for special training on environmental education and continuing professional development program for judges and other members appointed to this specialized court during their tenure.

Environmental litigation and dispute resolution relate some significant scientific and technical complexity in determining causation, damages of environmental harm. Since the environmental offences are of special nature involving scientific and technical implications of environmental violations, expert knowledge is specially required to determine the level or presence of pollution. Specially quali
fied persons having excellent knowledge, experience, reputation and communication skills are necessary to be appointed as members, either on a full-time or part-time basis, to provide expert assistance to judges or to hear, determine and dispose of environmental disputes. But the Environment Court Act, 2010 requires no such experts in the constitution of environmental courts.

4.3. No One Stop Access to Justice and Restricted Locus standi

The common people have no direct access to Environment Courts. Though ECA 1995 recognizes the right of individual or group of individuals to file a suit for compensation before the Environment Court, the Environment Court Act, 2010 imposes a bar on such right by providing that no Environment Court shall receive any claim for compensation under environmental law except on the written report of an Inspector of the Department of Environment (DoE). Even no Special Magistrate Court shall take cognizance of an offence except on the written report of an Inspector of DoE. However, if the magistrate or the court satisfies that the inspector has not taken any necessary steps within sixty days of request by the aggrieved person or there is reasons for taking cognizance of such complaint, the court or magistrate may, after giving the inspector reasonable opportunity of being heard, directly take cognizance of the offence as because most of the complaints are not investigated by the DoE. As there is no provision of accountability is ensured for such inaction of the inspectors, they usually do not submit any report on the fixed time. Thus, the aggrieved person has to undertake dual procedure and to wait for minimum sixty days for access to justice.

On the other hand the victims of environmental pollution are deprived and poor and thus they don’t dare to file case against those mighty polluters having enough money and muscle power. Thus for ensuring justice on behalf of vulnerable and poor victims, liberal approach of victim test is necessary. However, Open standing in the form of PIEL is, though being recognized in higher court of Bangladesh, no open standing for individuals, communities and NGOs is available in the environmental courts. Only affected or likely to be affected person can file written complaint to the executive authority for taking action.

4.4. Overdependence on the Executive Authority

The environment courts are unnecessarily dependent on the decision of the executive bodies, namely DoE for filing suit, investigating into the cause of actions, prosecution and taking appropriate action for smooth trial and execution. Designing the environmental courts dependent on the written report of an inspector of the DoE to take cognizance of a cause gives the executive preference over the judiciary. Besides, the inspector or IO has to wait for the affirmation of DoE for filing case, initiating the investigation and filing report in the court. DoE has become as ‘gate
keeper representing itself as major obstacle to access to environmental justice.  

4.5. Excessive Delay and Cost for Complex Procedure:

“Justice delayed is justice denied” and “Only the rich can afford court” are two common impediments to the common people in getting justice. The high costs of litigation are a bigger barrier to access to justice than standing for relief. Speedy trial is the main objective behind the establishment of Environment Court but the environment court consisting of joint district judge performs the functions of environmental court in addition to his general duties. Thus the environmental cases follow lengthy and complex procedure.

Besides, DoE takes unnecessary long time to decide on filing suit, investigating into the cause of actions, prosecution and taking appropriate action. The Act 2010 nowhere provides for any time-limit within which the investigation is to be concluded. As a result the Inspectors frequently delay in submitting reports to the court. Lengthy procedure in filing, investigating and disposing of the environmental cause involves excessive cost for prosecution and defence. Thus the parties are discouraged to come before the court for environmental justice. Moreover, environmental courts have no adequate civil, criminal and administrative enforcement power required for successful disposal of environmental matters.

4.6. Ineffective Remedies

An environmental court cannot prevent and protect the environment and settle the environmental disputes efficiently without having diverse adequate remedies. However, existing legal frameworks in Bangladesh have only a limited range of remedial powers authorizing judges little scope to articulate discretionary remedy. Fines and compensations provided in environmental laws are not too rigid to deter the polluters and restore the damages in all cases. It is cheaper for the corporate polluter that they do not care to pay the fines in lieu of keeping polluting. Moreover, jail time and fines that deposited into government treasury do not repair the environment and restore the environmental damages. Environmental court cannot grant diverse reliefs including prerogative orders, specific performance, restitution, declaration, costs etc.

5. POTENTIAL WAYS OUT TO SUBDUE ROADBLOCKS

The existing challenges within the environmental courts may be lessened if not totally removed by adopting the appropriate policy and practical measures. To subdue the existing challenges before the environmental courts in Bangladesh, some specific way outs may be recommended. In focusing the possible roadmaps, some effective and successful environmental courts and tribunals from different
jurisdictions are assessed for uncovering suitable best practices for environment courts in Bangladesh.

5.1. Broader and Inclusive Jurisdiction

Many of the more successful ECTs located throughout the world have been characterized by a comprehensive jurisdiction. The jurisdiction of an environment court should be comprehensive in three respects. Beyond the courthouse hearing, conducting public hearing locally and visiting environmental site by the judges should be included in their jurisdiction.\(^81\)

It is a best practice to give the environment court jurisdiction over all environment-related laws. Environment court might have wide jurisdiction, which includes criminal, civil and administrative areas of the law. New South Wales, New Zealand, Kenyan environment court’s jurisdiction may be well cited. However, the jurisdiction of environment court has to immediately be widened by including all environment related laws by official gazette notification\(^82\) or by annexing a schedule with the Environment Court Act, 2010 incorporating all environment related laws.

To get satisfactory justice, the High Court Division and Appellate Division should have jurisdiction over environmental cases decided by the environment appeal court in any form like those of Land Survey Tribunal and Land Survey Appellate Tribunal.\(^83\) Like the Kenyan Constitution environment court should be given the status of the High Court Division to avail the epistolary jurisdiction and judicial review power.\(^84\)

5.2. Presence of Environmentally Literate Judges

Specialization is an inevitable character of a successful environment court. Environmental issues and policies demand special knowledge and expertise of the judges of the environment court. In order to promote the excellence of environment court, judges and other members of the court have to be educated about and attuned to environmental issues and the legal and policy responses. There is a need for special training on environmental education and continuing professional development program are essential for judges and other members appointed to this specialized court during their tenure.\(^85\) Moreover, for continuous professional education and development of knowledgeable and experienced judges in environmental law and environmental profession is an essential best practice.\(^86\)

5.3. Access to Scientific and Technical Expertise

Environmental litigation and dispute resolution relate some significant scientific and technical complexity.\(^87\) Specially qualified persons are necessary to be appointed as members, either on a full-time or part-time basis, to provide expert
assistance to judges. The Court may obtain the assistance of any person specially qualified on any matter in the proceedings to hear, determine and dispose of environmental disputes and may act upon the expert opinion.88 They improve the availability of expert assistance to parties in resolving complex environmental disputes and improve the quality of decision-making on environmental matters.89 The environmental court of New South Wales may be noted as an ideal illustration. It comprises judges as well as commissioners with qualifications, knowledge and experience in environmental or town or country planning; environmental science or matters relating to the protection of the environment and environmental assessment.90

5.4. Free Access to Justice and Open Locus Standi

No court can take cognizance of any offence or claim for compensation except written report of the inspector.91 To promote the free access, there is need to bring changes in both law and practices. The victims should have direct access to the court for redress and compensation. The PIEL should be allowed accepting the liberal interpretation. Public hearing on the spot by the court should be institutionalized for greater participation of the local people and getting real scenario for true assessment. The Bangladesh research team recommends the following recommendations for better access to justice:92

i. assisting victims to access justice through legal assistance
ii. amendments to the existing evidence laws to ease the burden of proof of the environmental activists;
iii. MoEF and DoE should immediately frame rules for “public hearing” as mandated under section 8 (2) of the ECA Act, 1995.
iv. EIA93 rules should be framed accommodating requirements for public participation and disclosure and engage with the relevant agencies to get the same promulgated;

Broader standing to the interested parties in the form of public interest litigation (PIL) to put up the environmental issues is considered as key factor for a functional environment court.94 The European Commission (EC) and Compliance Committee for Aarhus Convention strongly recommend such wide standing in EU member state.95 PIEL should be opened for individuals, community and NGOs liberalizing victim test96 to increase the necessary representation of environmental issues considering the public interest following the environmental courts of Philippines, Keneya and India.97

The poor and weak victims usually don’t dare to file cases against mighty polluters.98 In this context, the poor and weak sufferers should be extended adequate legal aid for appointing lawyer and ensuring the attendance of the
witnesses under the Legal Aid Services Act, 2000.

5.5. Independence of Environmental Court

Independence of environmental courts and adjudicators is pillar for fair and impartial justice in environmental cases.99 The researchers discovered through interview that the decision of the court is controlled by the administrative agency.100 For litigation and prosecution, executive as the main actor and judiciary cannot get out from executive’s intention. Independent jurisdiction can improve judges’ confidence to exercise discretionary power and to use emerging principles of International environmental law and try out with innovative ways out.101

5.6. Provision of Just, Speedy and Affordable Resolution of Dispute

For the better environmental justice, procedures for minimum costs in time and money must be ensured. The high costs of litigation are a bigger barrier to access to justice than standing for relief. A number of successful strategies for reducing or eliminating time and costs may be adopted for successful environmental courts, including:

• Permitting self-representation without lawyer
• Consolidating similar complaints into one adjudication process
• Setting reasonable or no court fees for litigants
• Providing court-appointed experts
• Efficient case management process
• Providing support for indigent parties and PIL

5.7. Effective Remedies and Enforcement Mechanisms

Adequate remedies can relieve and prevent the environmental problems in an environment court. The legal frameworks relating to environmental justice in Bangladesh, permits only a limited remedial powers allowing a judges little space for to craft more effective remedies suitable with time and circumstances. Fines and jail-time should be multiplied for the corporate polluters to deter them from continuous pollution. A list of up-to-date remedies must be annexed with the laws giving the flexibility to environment court to make some more effective remedies focusing on restorative justice. Kenya Environmental court grants many relieves importantly prerogative orders, specific performance, restitution, declaration, costs etc.102 Flexible remedial powers widens the scope of creative, effective solutions by the parties through mediation, by the judge through “principled sentencing”103 or by the community through restorative justice.104 The state environment court in Manaus, Brazil, has the enforcement flexibility to order the individual to go to “environmental night school,” poachers to do “volunteer” work for wildlife organizations and
illegal developers and loggers to renovate public parks and replant forest with great success and little recidivism.105

Necessary civil, criminal and administrative enforcement powers are inevitable for environment court to execute its decisions and remedies.106 The list of enforcement powers given to the Kenyan environment court is exemplary. The jurisdiction of the environment court over the case should continue even after the ruling or direction for monitoring the compliance thereof. Such post-direction monitoring system is practiced in many countries like philiphines107 and India.108

5.8. Adequate Resources
Adequate budget, judges, staff, IT and facilities for their workload are necessary to enable the environment court to work effectively. Adequate financial grants for providing free or subsidized services to the needy litigants will ensure equal justice for all. Adequate budget is necessary to facilitate the judges and staff to travel remote areas for site visits and hearings as they do in Queensland, Ontario, Ireland, New Zealand and other jurisdictions.109 For reduction caseload, adequate resources and necessary financial support must be provided to promote the public confidence and access to justice.

5.9. Justice within Public Outreach
For improving efficacy and credibility of the environment court, it is necessary to create people’s perception over the proceedings of environmental court to ease the access to justice for all and to increase the efficiency of manpower. For these ends, the environment court must be equipped with IT, including a user-friendly, regularly updated, interactive website with FAQs and contacts that can promptly respond and online filing system. The website of land and environment court of New South Wales110 and New Zealand111 may be model for this perspective. Availability of cause list, judgments and orders in the website will help the litigant to get speedy justice as maintained in the website of National Green Tribunal, India.112 Time to time meetings with stakeholders groups have to be arranged to assist, design, evaluate and improve the environmental court as practiced in New Zealand, Hawaii.

5.10. Efficient Case Management Service
Streamlined case management process from filing a case to judgment minimizes the time, cost and resources of the court and parties. Queensland, New South Wales113 and New Zealand114 amongst other have exemplary case management systems.
Introducing the efficient case management service, the following systems may be considered by the environment court and the monitoring authority thereof:

- Front-desk complaint review to determine suitability of the case
- Intake identification of issues and suitability of ADR
- Accessible and frequently updated court website with available case progress
- Digital case tracking to protect the case records, deadlines having the accessibility of judges and parties
- Notices and decisions issued in writing as well as updated on website

6. CONCLUSION

Green rights are considered as third generation human rights in many countries’ constitutions like South Africa of developing world, which can be enforced and implemented by the process of greening justice. Though this process got its popularity in 20th century, it has been continuing in this territory at least since ancient Bengal period. British period may be signified as landmark for the remarkable development of environmental justice. Immediately after the independence of Bangladesh, she adopted the necessary measures for the protection and preservation of the environment following the Stockholm Declaration. However, the ice breaking development in environmental legislations and justice system in Bangladesh was made after the Rio Declaration on Environment and Development, 1992. NEP 1992, ECA 1995, Rules 1997 and the Environment Court Act, 2010 (first enacted in 2000) are few noteworthy legal instruments.

The Environment Court Act, 2010 established formal forum for adjudicating the environmental offences and claims and enforcing the green justice. Both environment courts and magistrate courts are given jurisdiction to award penalty, fine and compensation giving a time frame for disposal of the cases and appeal. Provisions of settling the environmental issue through ADR may be termed as effective mechanism to dispose of the disputes amicably, less costly and speedily. Unfortunately, the purposes of the Act could not be satisfied due to some inherent statutory and practical limitations of the Act, lack of environmental literacy of judges and lawyers, limited jurisdiction and locus standi and inadequate remedies and enforcement mechanisms. Unwillingness and unnecessary interference of the executive in environmental litigation hinders the independence of the courts and cause delay and complexity in litigation, procedure and disposal of environmental cases.

For creating successful environmental courts in Bangladesh, jurisdiction of the environment court is necessary to be widened incorporating all environmental causes triable in these courts for giving uniform justice for all. Considering gravity
of green offences, the amount of penalty and compensation is required to be increased to prevent the corporate and muscled offender continuing the pollution and degradation of the environment. Like Kenya and India, status of the environment court is requisite to be upgraded to High Court Division empowering epistolary jurisdiction and judicial review power.

Appointing environmentally literate judges and scientific and technical expertise in the environment courts shall ensure the proper and sustainable environmental decisions. To assure just, speedy and affordable resolution of dispute, self-representation in the court, reduction of court fees, and legal aid for vulnerable and unconditional ADR are some vital measures to be incorporated in the court procedure. Streamlined case management processes involving dedicated staffs and judges for moving a case from filing through adjudication may save time, cost and resources of the court and parties. One stop justice, independence of the courts and liberal locus standi shall broaden the fruitful and comprehensive environmental justice for all including the marginal and vulnerable people. Using technology in litigation and adjudication, managing up to date website circulating the cause lists, notices, orders and judgments enhance the informed and convenient justice and bring the justice within public outreach.

Some effective and unique remedies like specific performance, restitution, declaration etc and enforcement procedures like to send to “environmental night school,” to do volunteer work for wildlife organizations and to renovate public parks and replant forests would ultimately serve the environmental protection and improvement. As new environmental causes are being emerged with the industrialization and economic development process, continuous training program for judges and lawyers and their commitment for continuous improvement will create new areas of improvement and ways out to subdue the novel challenges and roadblocks for successful environment court.

Endnotes:

5. Ibid, p. 93.
7. Sections 10(3) & 14(9), ibid.
8. Section 18, ibid.
9. Section 19, ibid.
10. Dr. Mohiuddin Farooque vs. Bangladesh and others,) 17 (1997) BLD (AD) 1 to 33.
11. 31(1992) ILM 874
14. Supra note 3.
16. Farid alias SherShah was born in 1472 A.D. He joined Babar’s camp and fought for the Mughals in the battle of Panipath (1526).
18. supra note 3, at p.16
20. supra note 4 at pp. 92-93.
21. supra note 3 at p. 21.
22. supra note 4 at p. 93
25. supra note 3 at p. 29.
26. Section 4, the Protection and Conservation of Fish Act, 1950.
30. The Brundtland Report,1987 defined sustainable development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’ See, Rio Declaration, Principle 27, Agenda
21.  
31. supra note 28 .  
32. 50 (1998) DLR (HCD) 84.  
33. supra note 10.  
35. The Environment Pollution Control Ordinance, 1977 has been replaced in 1995 by the Environment Conservation Act, 1995.  
37. The Polluter-Pays Principle is implicitly recognized in Principle 16 of The Rio Declaration.  
39. Added by section 4, ibid  
40. Substituted by Section 6, ibid  
41. Substituted by section 5, ibid  
42. Section 4, the Environment Court Act, 2010  
43. Section 5, ibid  
49. 9 (2017) SCOB (AD) 70 .  
51. Sections 4(1)&5(1), ibid.  
52. Under S. 2(c) environmental law means this Act, the Bangladesh Environmental Conservation Act, 1995, any other law specified by the Government in the official Gazette the purpose of this Act, and he rules made under these laws.  
53. Sections 6(2), 7 (3) & 9(1), Supra note 40.  
54. Sections 6-7, ibid.  
55. Section 7 (1) (2), ibid.  
56. Section 17 (1-2), ibid.  
57. Section 12, ibid.  
58. Section 14(2),ibid.  
59. Section 14(4-5),ibid.
60. Sections 10(1-5), 14(7-12), ibid.
61. Section 8(1-2), ibid.
62. Section 18 (1-3), ibid.
63. Sections 19-21, ibid.
65. Section 145C-D, the State Acquisition and Tenancy Act, 1950.
68. Section 4, the Environment Court Act, 2010.
73. Section 17 of the Bangladesh Environment Conservation Act, 1995 says 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.
74. Section 7, the Environment Court Act, 2010.
75. Section 6(3), ibid.
76. Supra note 12, at pp. 32-33.
77. Section 8, the Bangladesh Environment Conservation Act, 1995.
78. Ibid.
79. Supra note 12, at p. 27.
81. Recommended by Rackemann et al, supra note 70, p. 46.
82. Section 2(c), supra note 64.
83. supra note 64.
84. Article 162(2)-(3), the Kenya Constitution of 2010.
85. supra note 3, at pp. 73-75. As Pring and Pring note, many governmental and non-governmental organisations have supported environmental training for judges, lawyers, and others involved in ECTs all over the world, including, for example, the UN Environment Programme, the International Union for the Conservation of Nature, and the Environmental Law Alliance Worldwide.

86. Recommended by Hantke-Domasetal, Pring, supra note 70, p. 57.


90. Section 12(2), Land and Environment Court Act 1979, New South Wales.

91. Sections 6(3), 7(3), supra note 64.


94. Recommended by Bryan et al., supra note 70 at p. 51.


97. Section 18, the National Green Tribunal Act, 2010, India.

98. supra note 64.


100. Supra note 12, at p. 22.

101. Supra note 70 at p.45.


103. Practiced by the Manaus Environment Court, Brazil.

105. supra note 70, at p. 52.
106. Ibid.
108. Section 26, the National Green Tribunal, 2010, India.
111. Visit the website of Environment court of New Zealand at https://www.environmentcourt.govt.nz/ last visited 28.02.2018
112. Visit the website of National Green Tribunal http://www.greentribunal.gov.in/ last visited 28.02.2018
115. Section 24, the South African Constitution, 1996.

References:

Books:

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1. The Bangladesh Environment Conservation Act, 1995