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**Environmental Pollution & Challenges of Enforcement of Law in
Bangladesh: Analysis Under Tort Law Perspective**

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DECLARATION

I, Faria Anjum Khan Dhruba, hereby declare to state and certify that the research paper made for the undergraduate program as Law- 406 (Supervised Dissertation) of Department of Law, East West University was written entirely by me. Additionally, it is the only result of hard work and has not been submitted for examination for another academic or professional award. Each data source or content that was useful in finishing this study is appreciated and cited. My undergraduate degrees must be completed as a prerequisite of that research, so that is its prime purpose.

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ABSTRACT

The thesis commences with an overview of the main torts which are relevant in an environmental context and the difficulties which have been experienced by plaintiffs in establishing liability. This causation issue is made worse by the lengthy long lag between exposure and sickness as well as the abundance of additional illness factors. Due to these challenges and the high expense of litigation, environmental tort victims routinely receive inadequate compensation, while polluters routinely face insufficient deterrence. However, one benefit of the modern age is a significantly improved capacity to track environmental damage at an affordable price. The ability to follow a pollutant from its point of emission into the environment to the receptor that eventually absorbs it may become possible in the not-too-distant future. It can deliver the right cues for effective deterrence. Victims may be able to react or reduce dangers thanks to it. And it might encourage appropriate justice. This thesis is an analysis of legal responsibilities & Challenges for enforcement of Tort law in the course of environmental pollution.

Keywords:

Bangladesh, Law, Remedy, Damages, Enforcement, Environment, Pollution, Tort, Challenges

Chapter 1

Introduction

1.1 - Introduction

Bangladesh is a small but densely populated country with a wealth of natural environments and biodiversity. Current Acts, regulations, and policies that serve as the foundation for environmental crime policing, enforcement, and punishment in Bangladesh can be found to have a variety of gaps and flaws. Although there are quite a few environmental laws, it is still difficult to put them into practice because of, among other things, a lack of specificity, procedural difficulties, a lack of accountability, partisan state apparatuses, and a lack of environmental consciousness among the general populace. The regulations governing the environment are unclear in terms of their content and do not incorporate the idea of using power responsibly.

Environmental regulation aims to address inefficiencies and ensure that the general public has access to an appropriate supply of public goods like clean air, water and soil.¹ Without restrictions, firms potentially transmit the expense of pollution-related health problems and environmental harm to other individuals.² The harm or possible damage to health, property, and the environment caused by each violation is taken into account when determining the penalties for breaking certain statutes.³ Despite the fact that there are many environmental laws, implementing them is nevertheless challenging due to, among other things, a lack of specificity, procedural challenges, a lack of accountability, political governmental apparatuses, and a general lack of environmental awareness among the public. The rules governing the environment lack clarity in their content and do not take the concept of using power responsibly into consideration. Tort law is introduced when anything goes wrong. Therefore, when there is environmental damage, tort law will come into play. It is a cure for environmental pollution. Assessing the guiding principles and public policy

¹ Byrne JP, "Property and Environment: Thoughts on an Evolving Relationship" [2005] Scholarship@GEORGETOWN LAW <scholarship.law.georgetown.edu>

² Petroski K, "(PDF) Iqbal and Interpretation | Karen Petroski - Academia.Edu" ((PDF) Iqbal and Interpretation | Karen Petroski - Academia.edu) <https://www.academia.edu/15353478/Iqbal_and_Interpretation> accessed July 21, 2022

³ "Basic Information on Enforcement | US EPA" (US EPA, May 3, 2013) <<https://www.epa.gov/enforcement/basic-information-enforcement>> accessed July 21, 2022

goals of each area of law is essential to understanding how tort and environmental law interact. This is a significant challenge in terms of environmental protection.⁴

1.2 - Background of the History

From the beginning of the industrial revolution, people have generated enormous wealth through their intelligence and labor, tremendously advancing society. They pushed for industrialization and urbanization over many decades.⁵ Additionally, it badly harms the environments of the cultivated land, freshwater, forests, and minerals, which exacerbates the country's energy dilemma.⁶ Given this context, it is essential to research how environmental pollution levels and rates of economic growth affect employment. Conversely, people harmed by environmental pollution frequently struggle to pinpoint a cause of their harm that can be connected to the environmental pollution. These changes raise the question of whether tort law has the capacity to play a significant role in an overall system of environmental control, which is the focus of this study. The possibility that law could help solve the issue has drawn a lot of attention. Consequently, environmental law has emerged as a result. The creation of environmental law stems from a set of principles that aim to rethink how humans interact with the natural world.⁷ Its main purpose is to persuade people to take action in support of their surroundings and honor Natural Environment as a result. Environmental law's primary goal is to alter people's perspectives and instill in them a mindset that promotes sustainable development.⁸

⁴ Fisher E and others, "Maturity and Methodology: Starting a Debate about Environmental Law Scholarship" (2009) 21 *Journal of Environmental Law* 213 <<http://dx.doi.org/10.1093/jel/eqp012>>

⁵ "International Environmental Law: History and Milestones | Interamerican Association for Environmental Defense (AIDA)" (Interamerican Association for Environmental Defense (AIDA), March 30, 2020) <<https://aida-americas.org/en/blog/international-environmental-law-history-and-milestones>> accessed July 24, 2022

⁶ "Environmental Law | Britannica" (Encyclopedia Britannica) <<https://www.britannica.com/topic/environmental-law>> accessed July 26, 2022

⁷ PANDEY P, "History of Environmental Law - Law Times Journal" (Law Times Journal, February 24, 2020) <<https://lawtimesjournal.in/history-of-environmental-law/>> accessed July 29, 2022

⁸ *ibid*

1.3 - Research Question:

1. Whether the existing Environmental laws in Bangladesh are enough capable to prevent environmental pollution?
2. Whether the Tort law can run in the perspective of Bangladeshi scenario or not?
3. Whether the International Conventions are playing any practical rule for the cure of environmental pollution in Bangladesh?

1.4 - Research Methodology

This thesis can be described as qualitative research and prescribe by the database survey that depends on content analysis and focuses of existing Environmental law & the way of prevention of environmental pollution. Environmental pollution is a great concern for human and ecological health, which has adverse role on demographic change. Therefore, in order to achieve a sustainable environment, pollution should be either completely eliminated when possible or reduced both locally and globally.

In Bangladesh, the current situation of Environmental Legislation is addressed in a descriptive way. In addition to primary sources like national statutes, case law, rules, and regulations, this thesis also draws on secondary sources like blogs, online journals, newspapers, articles, magazines, and reports, as well as other internet sites.

1.5 - Conclusion

The existence of an environmental policy, the constitutional requirement to safeguard the environment, a flurry of laws, and an administrative framework for execution, the issue of environmental pollution still raises serious concerns in our nation. Regulation dominates environmental decision-making, but individual rights, interests, and relationships dominate tort law. However, given the general predominance of economic thought patterns, tort is hardly an exception. Investigating tort's beneficial influence on environmental decision-making may have benefits.

Society as a whole must see the future as a huge challenge that must be met by developing new approaches and strategies for dealing with the complicated issues brought on by the rapid growth of industry. The new methods and structures, such as the one we've proposed, would increase government accountability and openness while also introducing effective methods of dealing with offenses against the environment, which is the biggest common good enjoyed by all citizens. Tort law does not face the same difficulties in defining the field of environmental law and identifying its guiding principles.⁹ Although tort law has a similarly broad scope and has an impact on many other areas and fields of law, its primary goal has always been to provide restorative justice. Simply put, tort law is designed to offer a peaceful method of restoring injured parties to their previous position for harm brought on by another's unlawful behavior. Fundamentally, it is a fault-based compensation system that upholds individual rights.¹⁰

⁹ Wigmore JH, "Responsibility for Tortious Acts: Its History: Wigmore, John H.:Internet Archive" (Internet Archive, January 1968) <<https://archive.org/details/jstor-1321803>> accessed August 8, 2022

¹⁰ Seavey WA, "Principles of Torts" Principles of Torts <<https://www.jstor.org/stable/1334778>>

Chapter 2

Concept & Definition

2.1 - Introduction

Environment and Pollution is the two words than can define Bangladesh in both positive and negative way. Where our country is known and loved for the six seasons and its beauty, there is one Demon that casted a spell which is ruining the country is called Pollution. The country is developing but the pollution in environment is one of the major problems. The pollution is everywhere in Bangladesh like in the Air, soil, sound, water and its spreading in a massive way day by day and people are unapologetically letting this happen ignoring the dangerous consequence.

2.2 - What's environment?

To get into the Environmental pollution topic first we have to acknowledge what the environment is. There are many definitions, meanings, and interpretations for the word "environment," which is frequently used. Currently from where I am writing, or from where you will be reading it, everybody is a part of the environment and naturally surrounded by it.

Simply said, "environment" refers to nature, which includes all of the natural landscape's non-human aspects, traits, and processes. Environment is everything that surrounds us and influences our capacity to survive on the planet, including the air we breathe, the water that covers most of the planet's surface, the plants and animals, etc. The term "environment" describes the circumstances or surroundings in which a living creature including people, animals, and plants is found. Environment has a significant impact of our lives. Every person in the environment has an impact on it since the environment also affects how people behave. Not just people, environment has an effect on every living thing of earth. Therefore, clearly both environment and life have a connection in between. Because of the friendly environment we are still alive and damage of this would bring dangerous harm in the world as well. It assists living things and their various activities while also supplying natural beauty, maintaining the delicate balance of life, and maintaining the food chain.

Environment has categories. By research it is found that environment has two types. One is Geographical Environment and other is Man-Made environment.¹¹

2.3.1 - Geographical environment:

It may be referred to as the natural environment since it contains all the elements that come from nature. In relation to the physical necessities of life, it is also known as the physical environment. The existence of people is not necessary for certain geographical or physical circumstances. The

¹¹ "Types of Environment - Geographical, Inner and Outer Environment" (VEDANTU)
<<https://www.vedantu.com/biology/types-of-environment>> accessed August 9, 2022

terrestrial environment, or geographic environment, is a result of various natural and environmental factors. Despite its separate origin, it is the result of direct contact between human culture and nature. Examples of the geographical environment include the surface of the world, rivers, mountains, deserts, land, water, oceans, volcanoes, etc.

2.3.2 - Man-made environment:

This environment is the one that has been artificially constructed by man to regularly and continuously monitor particular environmental conditions. Some refer to it as a societal and cultural context. Man creates his own environmental conditions since it is tough to adapt the physical circumstances. The term "man-made environment" refers to the setting that man has created to control environmental conditions. It includes the social environment that has existed throughout history. It includes institutions, organizations, regulations, and traditions.

2.4 - What's environmental pollution

Environment pollution is the term used to describe pollution into the air, water, or soil that may have a negative impact on the environment's quality, human life, and health, as well as pollution that may harm the biological and geography diversity as well as other suitable uses of the environment. Environmental pollution occurs when pollutants damage our environment. Our current understanding of earth's development from centuries of resource exploitation. Environmental pollution keeps the earth from resuming to its natural balance. The destruction of the environment is strongly affected by humans. Humans account for only 0.01% of all life on Earth, yet our impact on the planet is profound.¹²

Both directly and indirectly, environmental pollution has an impact on how people and other creatures live. There are many different types of pollution, most of which are caused by human activity, which can be caused by both natural and man-made causes. The following categories of pollution are given to these:

1. **Air pollution** - When dangerous elements such as chemicals, toxic gases, particles, biological molecules, etc.¹³ are released into the earth's atmosphere, this is referred to as air pollution. the mass of air pollution is caused by human activity. According to theory, air pollution has an impact on the entire world. Even in an end-of-the-world scenario,

¹² Gordon A, "Environmental Pollution: Everything You Need to Know - AGRIVI" (AGRIVI, May 11, 2022) <<https://www.agrivi.com/blog/environmental-pollution/>> accessed August 9, 2022

¹³ "Types of Pollution - Effects of Various Types of Pollution" (BYJUS, January 4, 2020) <<https://byjus.com/biology/types-of-pollution/>> accessed August 10, 2022

according to scientists, the runaway greenhouse effect, which is a severe form of global warming, can be caused by air pollution if it is not controlled.¹⁴

2. **Water Pollution** - water is a valuable natural resource that is essential to all life on earth. Only 5% of the water on Earth is clean, usable, and drinking.¹⁵ Any pollution, including human waste and chemical discharge from factories, can easily contaminate water.
3. **Soil Pollution** - When human actions bring harmful chemicals, materials, or items into the soil in a way that harms the nearby earthly environment, that is considered soil pollution. Agricultural farming, land-based waste disposal, industrial activities, mining, and acid rain are some of the causes that lead to soil contamination.
4. **Noise Pollution** - When there is too much noise in the environment, it is referred to as noise pollution because it disturbs the natural balance. Vehicles, aircraft, social gathering places, and loudspeaker radio systems are a few of pollutant's causes. A distance away from the club, it is tough to concentrate due to the loud music being played.
5. **Light Pollution** - Light pollution is a global issue. Artificial outdoor lighting that is used excessively or inappropriately has an impact on wildlife behavior, human health, and our capacity to see stars and other celestial objects.

2.5 - Environmental pollution in Bangladesh

Bangladesh is a developing country. We have achieved success in many sectors such as, industrial sector, agricultural sector, economical sector etc. but our greatest enemy that has been dragging us backwards is the Environmental pollution. We might have developed many but this one thing has always been our biggest hazard. Bangladesh's current environmental situation is no way stable. In Bangladesh, severe pollution of the air, water, and noise is threatening ecosystems, human health, and economic progress.

Population growth, the burning of fossil fuels, industrialization, and the consequent motorization all contribute to air pollution. industrialization's effect to water pollution. Bangladesh's groundwater has been contaminated by arsenic. The population of Bangladesh's largest cities is also subject to a lot of noise pollution. Bangladesh's land pollution is partly a result of poverty,

¹⁴ "Types of Pollution - Effects of Various Types of Pollution" (BYJUS, January 4, 2020) <<https://byjus.com/biology/types-of-pollution/>> accessed August 13, 2022

¹⁵ Ibid see note 12

overpopulation, and a lack of environmental education. Deforestation, water damage, and natural disasters are some of its visible signs.

Bangladesh is the fourth worst country in curbing environmental pollution, according to this year's *Environmental Performance Index (EPI)*. The country is ranked the 177th in a list of 180 nations that were judged for their national efforts to protect environmental health, enhance ecosystem vitality, and mitigate climate change. Bangladesh scored 23.1 out of 100.¹⁶ The World Health Organization (WHO) reports that environmental pollution kills about 280,000 children in Bangladesh each year.¹⁷

Climate change and environmental damage are having a major negative effect on the country's ecological system. Rivers are running dry, floods and cyclones are happening a lot, and there are major changes in the country's average temperature.

2.6 - Conclusion

Environment is a very delicate subject for human being to live in the world and ignoring it can be severely harmful for the country and in the long run the world as well. Environmental pollution is not a new phenomenon in Bangladesh, but it is still the biggest threat to humanity and the main source of disease and mortality due to the environment. The way it is increasing day by day makes very clear assumption the fate of Bangladeshi's is going to be very frightening if not controlled in time.

¹⁶ Binte Islam H, "Bangladesh among Lowest Performers in Curbing Environmental Pollution" (The Business Standard, June 6, 2022) <<https://www.tbsnews.net/bangladesh/environment/bangladesh-among-lowest-performers-curbing-environmental-pollution-434466>> accessed August 21, 2022

¹⁷ Nurul Haque A n. m., "Environmental Pollutionin Bangladesh | Daily Sun |" (daily sun, September 5, 2022) <[https://www.daily-sun.com/printversion/details/211962/Environmental-Pollutionin-Bangladesh->](https://www.daily-sun.com/printversion/details/211962/Environmental-Pollutionin-Bangladesh-) accessed August 24, 2022

Chapter 3

Environmental pollution & challenges of enforcement of laws

3.1 - Introduction

A country population of 16.8 crore¹⁸ of people will face many troubles maintaining and there is no wonder about it. But yet the reasons have to be identified that what are the causes of mismanagement. Bangladesh having laws and policies about environmental law and facing problems enforcing it. We have to focus on the causes and who are liable for it.

3.2 - Environmental Laws in Bangladesh

Bangladesh being one of the most environmentally polluted country has very well-prepared set of laws and policies for the matter. But yet the country facing lot of challenges maintaining the environment.

There are laws in Bangladesh to preserve and protect the environment. Article 18A of the Constitution states that the State shall endeavour 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.¹⁹ The constitutional provision so shows the importance of environmental conservation in Bangladesh.

I will be shortly writing some of the laws regarding to Environment of Bangladesh to make the discussion clearer further.

- Environmental Pollution Control Ordinance, 1977
- National Environmental Policy, 1992
- National Environmental Management Plan, 1995
- Water Pollution Control Ordinance, 1970
- Environmental Conservation Act and Rules
- Ecologically Critical Areas
- Environmental Quality Standards
- The Environmental Court Act 2000
- The EIA Guidelines for Industry

¹⁸ "Bangladesh Population (2022) - Worldometer" (*Bangladesh Population (2022) - Worldometer*) <<https://www.worldometers.info/world-population/bangladesh-population/#:~:text=The%20current%20population%20of%20Bangladesh,the%20latest%20United%20Nations%20data.>> accessed August 26, 2022

¹⁹ "The Constitution of the People's Republic of Bangladesh" (*Bdlaws.minlaw*) <<http://bdlaws.minlaw.gov.bd/act-367.html>> accessed August 28, 2022

3.3 - Objective of the Environment policies of Bangladesh

Most of Bangladesh's environmental policy were adopted during times of significantly distinct population growth and development. The objectives of the environment policies are –

1. Through environmental protection and enhancement, to maintain ecological balance and general development.
2. To safeguard the nation against natural calamities
3. To recognize and control environmental degradation and pollution.
4. To ensure sustainable development across all areas.
5. To guarantee the long-term, environmentally responsible, and sustainable use of national resources.
6. To continue participating as actively as possible in all worldwide environmental projects.²⁰

3.4 - The challenges of enforcement of law

For developing nations with a high level of biological biodiversity like Bangladesh, environmental protection is a major concern. Natural resources are a big factor in the country's economic development and prosperity and it is necessary to maintain sustainable environmental development. But Bangladesh has been facing trouble maintaining the environment regarding many factors as Deforestation, global warming, population growth, land degradation, over fishing, waste pollution, industrial pollution and many more. But the real problem is why having two hundred laws and policies regarding this matter we are not being able to stay put. Instead, there are still challenges putting the laws into practice, including, among other things, a lack of explanation, difficult procedural requirements, a lack of responsibility, politicized applying the method, and a lack of environmental awareness among the overall public. Basically, according to me the common people and the government and policies are responsible for the challenges. And I will be showing that partly here.

3.5 - Flaws of the Government and laws

The laws regarding the environment are vague in terms of their purpose and do not reflect the idea of using power wisely. Mentioning some of the causes of challenges down here:

- **No Ordinary citizens involvement:**

Due to inadequacies in the legal and policy framework, ordinary man is unable to directly seek justice in court for environmental damage. The courts face a lot of difficulties, including workloads, ambiguous jurisdiction, and a lack of legal advisers. In this court, it is difficult for ordinary individuals to seek justice. Nobody can directly file a case if they

²⁰ "Environment Policy of Bangladesh" (*Assignment Point*) <<https://assignmentpoint.com/environment-policy-of-bangladesh/>> accessed August 29, 2022

wish to. The Department of Environment (DOE) must be contacted on the complaint, and the court cannot take the case until it has received a report from a DOE inspector.²¹

Only when the inspector fails to take action within 60 days of a request from any person and when the court is certain that the complaint is reasonable may it be taken immediately by the court. The process is difficult and dragged out, and these difficulties may discourage people from bringing environmental matters up in court to seek environmental justice.

- **Laws not being implemented properly:**

Our country has almost 200 laws and policies regarding environmental laws and still those are not being implemented. In Bangladesh, two environmental courts, one in Dhaka and one in Chittagong, have been formed specifically to deal with environmental violations. But to make a decision on environmental problems, one requires the necessary expertise, since environmental offenses require scientific and technological intelligence. Sadly, the judges from the regular court sit in the environmental court, but there is no environmental knowledge to guide their decisions.

The "Bangladesh Environment Conservation Act, 1995" formed the Department of Environment (DOE), designated a Director-General, and defined the department's duties. DOE was given the authority to take action against any environmental degradation. But still there is lack of importance in the matter. And laws empowering the DOE as the sole authority making it more difficult.

- **Insufficient penalty:**

The environmental court can issue a maximum penalty of 10 lac BDT, whatever the extent of the environmental harm, which is very little to polluters, particularly industrialists. As a result, they are hesitant to follow regulations and norms.

- **Vagueness in jurisdiction:**

The "Bangladesh Environment Conservation Act, 1995" and "Environmental Conservation Rules, 1997" did not specify the environment to be taken into account. Because of ambiguity in the jurisdiction, DOE has the right to apply its authority to the land, freshwater, coast, aquifer, sky, and marine environment. The DOE's vague regulations appear to result in overlapping authority with nearly other departments. The ambiguities cause jurisdictional overlapping, underlapping, and interest conflicts with other government agencies.

²¹ Ahmed R, "Barriers to Environmental Justice | Dhaka Tribune" (*Dhaka Tribune*, June 30, 2019) <<https://archive.dhakatribune.com/opinion/op-ed/2019/07/01/barriers-to-environmental-justice>> accessed August 30, 2022

- **Lack of speedy remedy:**

when a victim meets the lawsuit filing conditions after two months, he or she cannot expect a fast resolution since the court will not allow for a speedy trial. The court seeks written reports and inquiries from the Department of Environment, and it follows the same normal procedures as other civil and criminal cases. As a result, the sufferer must wait a long time for the remedial action.

3.6 - Flaws of the common people

- **Negligence and denial:**

We the citizens of Bangladesh are very negligent when it comes to caring about our environment. We are the people abusing the crowd, being the part of the crowd. Currently the literacy rate of Bangladesh is almost 74% yet we are so negligent about our environment. We don't think of it, we don't talk of it, even if we do talk about it somehow it never comes in our first priority. We are doing everything to ruin our environment knowing the consequences and that is where we are in denial.

- **Lack of awareness and study:**

even we reached in the literacy level in 74% still there is lack of awareness in term of environmental study. We might have talk about our environment but we still do not have the proper knowledge of keeping it in our safeguard. In primary schools we learn about environment and that's it. We never learn or get to learn more about the major problems or solutions or suggestions about this in our lifetime unless doing any research about it just like I am doing right now.

3.7 - Mechanism for Enforcing Laws Under a Legislative Framework

Procedural and substantive aspects Separate laws address Bangladesh's national laws pertaining to the environment and to human rights. It is remarkable that human health and safety issues as well as sustainable development were given priority in recent environmental legislation. A competent national authority is typically established and given jurisdiction under the universal environmental framework legislation to develop future strategies and regulations with greater specificity. When excessive pollutants are released, the cost of corrective actions to reduce and control environmental pollution may be recovered from the offending party upon public demand.²²

²² Mohammad N, "Environment and Sustainable Development in Bangladesh" (2011) 53 International Journal of Law and Management 89 <<http://dx.doi.org/10.1108/17542431111119388>>

The Environment Conservation Act of 1995 and the Rules of 1997 also serve as guidelines for environmental effects assessment (EIA) rules and practices.

The implementation of framework rules is not likely because numerous government entities are setting pollution standards. Furthermore, the implementation is the obligation of the authorities rather than the offended people. Citizens' access to justice through environmental legislation is quite rare. For example, in Bangladesh, the committee of Environment has identified some 903 polluting companies in 1989. However, no action was taken against them²³.

3.8 - Conclusion

Enforcing the law regarding environment shouldn't be even a tiny bit of issue in a country like Bangladesh. The country of rivers, natural resources, sea, world's largest mangrove Sundarbans and etcetera is not worthy of any pollution and negligence. It should be kept maintained and be taken as the first priority no matter what.

²³ ibid

Chapter 4

Environmental Pollution in relation with tort law in Bangladesh

4.1 - Introduction

The relation between Tort law and Environment is the second concern where the first one stand is whether there is any relation between this two! And if yes then what is the relation and how does that work should be our first concern. And to get into that we should understand what Tort law is. A Tort is basically defined as an act or omission that causes injury or harm to someone else and causes a civil wrong for which courts impose liability. In tort law, "injury" refers to the violation of any legal right, where "harm" refers to a loss or damage in reality that an individual experiences. Tort law's basic goals are to provide remedy to injured parties for damages committed by others, to hold persons responsible for the injury liable, and to prevent others from doing harmful acts. And the discussion we will be engaging in to this chapter is the relation between this tort and Environmental pollution.

4.2 - Relation between

Environmental Pollution is a major danger in our country as well as it is in globally. It is cause by us human by negligently, intentionally or unintentionally polluting the environment around us. And that has an impact on individuals either directly or indirectly. And a person's actions must not violate the rights of others. (And this is where Tort law comes by providing compensation to persons who have suffered as a result of environmental damage.²⁴

Environmental pollution is frequently caused by big corporations that harm an individual and/or his property. A litigation is a costly process, it is difficult for an individual to take the shelter of statutes. In other hand Tort law is a better option for individual claims as it focuses on compensating the injured person.

4.3 - Tort to Reduce Environmental Pollution

Bangladesh's current legal system is, for all practical purposes, based on the English common law that the British introduced to the country. From the eighteenth century, British colonial authorities eventually established a unified system of law on Asia because they needed a legal system that would ensure peace and order while also protecting property rights.

²⁴ Ahmed R, "Barriers to Environmental Justice | Dhaka Tribune" (*Dhaka Tribune*, June 30, 2019) <<https://archive.dhakatribune.com/opinion/op-ed/2019/07/01/barriers-to-environmental-justice>> accessed September 1, 2022

In Bangladesh, the majority of environmental tort actions fall into one of the following categories: trespass, nuisance, carelessness, or strict liability. Tort law focuses on remedy for breaches of personal privacy. Compensation for a breach of a person's private right is acknowledged. Since that tort law is concerned with remedies for violations of private rights, the topic of its factor is usually in pollution reduction is raised. Tort law distinguishes itself by the link between compensation and risk management.

Due to its bilateral form, tort law is most effective in the perspective of environmental law. It is a way of repairing injuries that is focused on responsibility. Its focus on damage limits its potential as a risk control.

In reality, a detailed examination of the tort system's features demonstrates how effective it is at preserving the environment. Tort law scenarios are –

- When something goes wrong, tort law is introduced. Therefore, when there is environmental damage, tort law will come into play.
- Instead of focusing on prevention, it is far more focused on treatment.
- It is more focused on compensation than punishment.
- The focus of tort law is on negative results that impact people and property.
- Injuries to the body and mind, destruction of tangible property, and monetary loss are the three basic types of harm that tort law recognizes.
- When an injunction may be granted to stop harm from happening in the future, the court will only do so if it determines that harm is imminent or extremely likely, not only because the defendant is engaged in a risky activity.
- In most cases, strict liability is regarded as being required by the polluter pays concept
- In tort law, fault is primarily a basis for responsibility, and negligence is the most common kind of fault.²⁵

4.4 - Environmental pollution remedy under tort law

These common law doctrines of nuisance, negligence, strict responsibility, and trespass, among other tort remedies, are the foundations of the remedies for environmental torts.

In Bangladesh, the following kinds of tort law can apply to environmental pollution:

- Nuisance
- Trespass
- Negligence

²⁵ Parikh M, "Tortious Liability for Environmental Harm: A Tale of Judicial Craftsmanship by Madhuri Parikh :: SSRN" (*Tortious Liability for Environmental Harm: A Tale of Judicial Craftsmanship by Madhuri Parikh :: SSRN*, February 21, 2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3121525> accessed September 1, 2022

- Strict Liability

4.4.1 Nuisance

We can claim that a tort of nuisance happens when another person's inappropriate use of his property causes an unlawful interference with his use or enjoyment of it, or with whatever rights he may have thereto or in connection with it.²⁶

A person must prove that he is experiencing unwanted disturbances in order to file charges for the situation. For an act to be regarded as a nuisance, the defendant's behavior must be unreasonable.²⁷

4.4.2 Trespass

Trespassing is an action that goes beyond the legal boundaries. It is an unreasonable interference with someone's person or property that is purposely directed²⁸.

General damages may be awarded if the claimant has pain, suffering, or loss of amenity. In most cases, general damages are minimal.

4.4.3 Negligence

A failure to act with the degree of caution that someone of reasonable caution would have displayed in the same situation.²⁹

Claims for damages and injunctions, or a combination of the two, are the main remedies for these environmental torts. Damages are payable costs person who commits a tort. These losses could be insignificant, significant, or extraordinary.³⁰

²⁶ India LS, "Nuisance: A Tort" (*Nuisance: A Tort*) <<https://www.legalservicesindia.com/article/825/Nuisance:-A-Tort.html>> accessed September 2, 2022

²⁷ "Environmental Pollution as a Tort: Overview and Analysis" (*iPleaders*, June 1, 2020) <<https://blog.ipleaders.in/environmental-pollution-as-a-tort-overview-and-analysis/>> accessed September 3, 2022

²⁸ "Trespass: Meaning, Nature, Types, Defenses and Case Laws - iPleaders" (*iPleaders*, June 23, 2016) <<https://blog.ipleaders.in/trespass-meaning-nature-types-defenses-case-laws/>> accessed September 3, 2022

²⁹ "Negligence | Wex | US Law | LII / Legal Information Institute" (*LII / Legal Information Institute*) <<https://www.law.cornell.edu/wex/negligence#:~:text=Definition,victims%20of%20one's%20previous%20conduct>> accessed September 4, 2022

³⁰ "Environmental Remedies Under Law of Torts" (*Environmental Remedies Under Law of Torts*) <<https://www.legalserviceindia.com/legal/article-768-environmental-remedies-under-law-of-torts.html#:~:text=The%20primary%20remedies%20for%20these,be%20nominal%2C%20substantial%20or%20exemplary>> accessed September 5, 2022

4.4.4 Strict Liability

Even if they did not intend to cause harm and were not at fault, strict liability holds a person responsible for any injuries or damages brought on by their products or conduct.

Under strict liability, the injured party does not need to prove negligence or fault in order to gain damages. Even if a defendant takes safety procedures and displays warnings, they could still be held accountable if the case is covered by the strict liability legal theory.³¹

4.5 - Common Law Remedies

The majority of environmental offenses are covered by tort laws. Environmental Pollution created by humans are the result of trespassing, negligence, or the doctrine of nuisance.

Therefore, a claim for damages for environmental wrongs may be made by relying on the common law concepts of negligence, nuisance, strict liability, and trespass. But unhappily, in our judicial system, attempts to obtain compensation under tort rules are frequently doomed to failure.

4.6 Statutory Remedies

Under Bangladesh's codified tort principles, environmental pollution can be avoided if it takes the form of a private nuisance. By using Section 91 of the Code of Civil Procedure (1908), which states that the attorney general or two or more people with his approval may bring a suit for a declaration, an injunction, or other appropriate remedies, environmental wrongs may be rectified.

³¹ "Strict Liability Tort Law & Examples | What Is Strict Liability? - Video & Lesson Transcript | Study.Com" (*study.com*, January 30, 2022) <<https://study.com/academy/lesson/strict-liability-torts-definition-and-examples.html>> accessed September 6, 2022

Chapter 5

Findings & Recommendation

5.1 - Findings

According to their general objectives and structure, resource management and pollution control are the two main environmental conservation issues that the environmental laws were expected to solve. But our expectation is not being fulfilled by the existing laws of the country. We find some problem assessing the research paper –

- **Complexity in filing suit**

A person cannot file a suit directly in the environment court. He has to make a complaint to the director general. That's the first bar to get complete justice by people for environmental pollution.

- **Not Exhaustive Act:**

The criminal procedure code, civil procedure code, and the Act's own procedure must all be followed by the court. So, it is possible to say that the Act is not all-inclusive.

Because of this, the environment court sometimes creates uncertainty in the minds of the general public.

- **Lack of Adequate Scope:**

Few common categories of environmental pollution are the sole focus of law and its enforcement. This indicates that environmental law does not properly define the environment or the offenses that are related to the environment. As a result, it has finally reduced the environmental Courts' jurisdiction.

- **Insufficiency of punishment:**

Environmental offenses can occasionally result in enormous environmental losses. A specific sum of money cannot properly and properly compensate for this loss. But the Environment Conservation Act of 1995, Section 15, allows the court to order a light penalty and fee that the offender must pay for the benefit of the harmed party. The maximum penalty is 10 years in prison and a fine that cannot exceed 10 lac takas. The minimal amount of penalty that the environment court can impose is insufficient.

5.2 - Recommendation

A key duty of the state to maintain environmental protection is the constitutional recognition of environmental protection. A concrete plan must be made in this area and the idea of sustainable development must be incorporated into the fundamental laws. In order to fulfill any duties to the international community arising from international treaties and conventions or other means, the general public must be made aware of environmental issues and sustainable development. Being a multidisciplinary issue, the environment necessarily requires action from all parties involved, and legislative measures can only strengthen that activism.

Environmental challenges must be addressed with the involvement of all parties, including the government and citizens at the appropriate levels. A comprehensive approach is required to maintain environmental techniques as a way to lower environmental pollution. Thus, to fully address the environmental pollution problem and get proper remedies for the victim's tort law must be applied.

5.3 Concluding Remark

The concept of the right to the environment is relatively new. No other country in the world recognizes this as a fundamental human right for an individual; instead, they prefer to view it as an adjunct to the right to life, or, at the very least, as a guiding principle of the state.

Even Bangladesh's judiciary has a strong conservatism when it comes to environmental issues. The constitution itself limits its scope to environmental issues. Therefore, the court has very few options to differ from the literal and historic meaning of the common law, particularly the constitution, in any given instance when the relevant parties have not argued on the basis of firm and sufficient relevant facts.

Additionally, not every district has established environmental courts. This poses a problem for environmental preservation as well. Compared to many other countries, Bangladesh needs extensive constitutional revisions in order to address challenges with Environmental pollution.

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