



**EAST WEST UNIVERSITY**

**DISSERTATION**

**ON**

**Environmental Negligence: A Proposal for Remedy and Action in  
Tort Law**

**Course Title: Supervised Dissertation**

**Course Code: LAW 406**

**Submitted To:**

**Dr. Md. Mehedi Hasan**

**Chairperson, Assistant Professor**

**Department of Law**

**East West University**

**Submitted By:**

**Tanvir Hassan Talukder Shawon**

**ID: 2018-2-66-042**

**Department of Law**

**Date of Submission: 18.09.2022**



## Consent Form

The dissertation titled “Environmental Negligence: A Proposal for Remedy and Action in Tort Law” prepared by Tanvir Hassan Talukder Shawon, ID 2018-2-66-042, submitted to Dr. Md. Mehedi Hasan for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for LL.B. (Hons.) degree offered by the Department of Law, East West University is approved for submission.

.....

Signature of the Supervisor

Date:

## **ACKNOWLEDGEMENT**

I value the opportunity to conduct this research and would like to thank Dr. Md. Mehedi Hasan, (Assistant Professor and Chairperson of Department of Law at East West University) for enrolling me in this course. I'm also thankful to him as my supervisor, who assisted me in determining my thesis topic and assisting me in many aspects of my study. The research has given me the opportunity to investigate my issue in more competent ways. And I am confident that it will continue to do so in the future.

I also thankful to all my respected faculty members of department Law, East West University for their sincere advice to complete my dissertation. Moreover, I'd want to express my gratitude to my family.

It is my pleasure to express my sincere thanks to several people who assisted me directly or indirectly in the completion of this thesis.

Finally, I thank my almighty to give me strength to conduct this research.

## **DECLARATION**

I, Tanvir Hassan Talukder Shawon declare and confirm that the thesis presented for the undergraduate program as Law- 406 (Supervised Dissertation) of Department of Law, East West University was written entirely by me. And it is entirely the result of my own efforts, and has not been submitted for any other degree or professional certification. Any information or content that helped with the completion of this study is specifically acknowledged and cited. The goal of this research is to complete my undergraduate studies because it is necessary and prerequisite.

## Table of Contents

<b>Serial</b>	<b>List of Content</b>	<b>Page No.</b>
i	ABSTRACT	1
ii	LIST OF ABBREVIATIONS	2
<b>Chapter 1</b> <b>Introduction</b>		3-5
1.1	Introduction	3
1.2	Background of the Study	3
1.3	Objective of the Research	3
1.4	Research Question	4
1.5	Methodology	4
1.6	Limitation of the Research	4-5
1.7	Literature Review	5
1.8	Conclusion	5
<b>Chapter 2</b> <b>Environment Negligence and Tort</b>		6-9
2.1	Introduction	6
2.2	Environment Negligence and Tort	6
2.2.1	Environment Negligence	6-8
2.2.2	Distinction between Environmental Law and Environmental Torts	8
2.3	Geographical Discussion	8
2.4	Conclusion	8-9
<b>Chapter 3</b> <b>Legal Protection of the Environment</b>		10-15
3.2	Introduction	10
3.2	What laws apply to the environment in Bangladesh?	10
3.3	Rights guaranteed under the Constitution	10-11
3.4	Protection of Environmental Rights in Context of Statutes	11-12
3.4.1	The Environment Conservation Act 1995	12

3.4.2	The Environment Court Act 2010	12
3.4.3	The Forest Act 1927	13
3.4.4	The Wildlife (Conservation and Security) Act 2012	13
3.4.5	The Brick Manufacturing and Brick Kilns Establishment (Control) Act 2013	13
3.4.6	The Bangladesh Biodiversity Act 2017	13-14
3.5	Judiciary's Approach towards Environmental Negligence	14-15
3.6	Conclusion	15
<b>Chapter 4</b> <b>Action Under Tort</b>		16-21
4.1	Introduction	16
4.2	Why do Environmental Negligence- related remedies require tort law?	16-17
4.3	Remedy	18
4.4	Doctrine of <i>Res ipsa loquitur</i>	18-19
4.5	Interests and Rights against Negligence	19
4.6	Polluters Pay Principle	19
4.7	Development of Environmental Tort Law	19-20
4.8	Environment Awareness and Sustainability	20
4.8.1	Public Awareness	20
4.8.2	Regular Inspection	21
4.8.3	Environmental Education	21
4.9	Conclusion	21
<b>Chapter 5</b> <b>Findings &amp; Recommendations</b>		22-24
5.1	Findings of the Research	22-23
5.2	Recommendations	23
5.3	Concluding Remarks	24
<b>Bibliography</b>		25-27

## **ABSTRACT**

The main goal of the study was to identify the issues that the current institutional, legal, and regulatory framework had with ensuring environmental negligence justice on an equal basis. The study found that because of gaps in the legal and policy framework, common people were unable to directly pursue justice in court for environmental damage. The courts suffer from several issues in the jurisdiction, and workloads. And Nobody can deny that negligence has damaged the environment. In addition to advancing progress, every innovation and technological advancement also increases the risk to human life. Accordingly, there arises an intense and an acute need of the law to keep pace with the need of the society along with individuals. As a result, the issue of environmental protection now affects the entire world and is not limited to any one nation or region. Nevertheless, I will make the legal point that tort law systems have certain significant characteristics that make them compatible with the objective of reducing environmental risks.

## **LIST OF ABBREVIATIONS**

BD : Bangladesh

DOE : Department of Environment

EN : Environmental Negligence

ET : Environmental Tort

FR : Fundamental Right

HCD : High Court Division

SC : Supreme Court

Vs. : Versus



## **Chapter 1**

### **Introduction**

#### **1.1 – Introduction**

The concept of Environmental Negligence is evolving in Bangladesh. Recently the trend of awarding compensation for the violation of the environmental rights of the citizen has emerged. The concept of Environmental tort introduces a new legal framework to Bangladesh's legal system. The concept of compensating the victims is developing. Due to the lack of defined laws regarding the compensation process, the court faces difficulties when determining damages.

#### **1.2 – Background of the Study**

This study is concerned with environmental negligence. And it aims to identify the duties of the Bangladesh government under its own domestic laws and the duties of the international community to aid Bangladesh in this effort under various international agreements and principles. And it aims to identify the problems regarding environmental negligence and the loopholes in the current laws. And to identify the solution under its own domestic laws and the duties of the community to aid Bangladesh in this effort under various arguments and principles.

#### **1.3 – Objective of the Research**

This research mainly tries to identify the recent scenario and position of the environmental negligence and tort in Bangladesh. And the method of remedy by which the victims can be compensated under tort law. The objectives of this research are as follows: To identify the background of the environmental negligence tort in our jurisdiction, to find out the growth of environmental tort e in our region and to identify the method by which the Damages are evaluated and decided. Most importantly the remedy which can be avail by a victim against the wrongdoer in the event of environmental negligence.

#### **1.4 – Research Question**

This research will try to find out the following questions:

- Whether the existing laws relating to environmental negligence are sufficient to provide remedy to the victims? If not, then what is the best possible solution? Is it necessary to using tort to protect interests in the environment negligence?
- What are the relative advantages of tort law related policies to deal with environmental negligence?

#### **1.5 – Methodology**

The research is done through a qualitative research methodology. Secondary sources have been used to get a proper idea on the research topic. Books, articles, newspaper writings were the main source of this paper. Some information regarding the research has been used from relevant newspaper reports though the number of references collected from journals and books is limited. Some scholarly legal articles and research papers from the electronic journals were also used. The approach was driven by “Qualitative Research Methodology”. The OSCOLA referencing style has made references to the bibliography and footnote.

#### **1.6 – Limitation of the Research**

The main limitation of this study is the lack of resources. No specific books exist for the research areas. The researcher will also get more results if there are no time restrictions. The time available is insufficient, and there is a lack of recent information. To come up with a fresh theme in such a short period of time, I may have tried my hardest. However, there were very few journals and essays on the subject. The ambit of this study is limited up to the analysis and criticism of the present environmental negligence in Bangladesh from a legal point of view. It broadly evaluates the tort law, which should be implemented to protect the environment of Bangladesh. Another limitation of this study is no interview from the Victims was collected, hence, this study is only based on the books, journal articles and other academic resources relevant for the discussion. Also,

no opinion from any renowned scholar or academics of Bangladesh was taken for the purpose of this study. Lack of available resources is a major issue.

### **1.7 – Literature Review**

Many books and Journals talk about tort law but none of them contain enough information about what recite necessary to know briefly on the topic of environmental negligence and its remedy and action in tort law. Sima K. Nahar of her book ‘Law of Torts’ point out the mechanism of remedial function in various type of wrong doing another book of G.S Pande which emphasize about the definition and some element of tort law. They all are discussed all those related issues by their own motion. I'll look into the reasons behind this in my work and attempt to make some suggestions.

### **1.8 – Conclusion**

The tort of negligence is particularly successful because it makes sure that people exercise the utmost caution in their fields of activity to prevent any harm or injuries from being inflicted on the common people. Despite environmental negligence tort, hardly anyone would uphold the duty of care required of them, and as a result, many individuals would sustain losses and injuries.

## Chapter 2

### Environment Negligence and Tort

#### 2.1 – Introduction

The most common way to define negligence is as behavior or inaction that violates a duty of care. It can be broken down into a number of components, each of which must be present in order for a duty to pay damages to arise. A responsibility must be owed. The degradation of natural environmental processes caused by the physical and biological contamination of the earth and atmospheric system is environmental negligence. When there is a duty to act, the conduct might also consist of omissions in addition to actions. A constructive theory of environmental torts requires the understanding and explanation of the changes that permit more successful claims in environmental tort litigation.

#### 2.2 – Environment Negligence and Tort

When one person or group injures another, the wrongdoer must pay damages to the victim. According to Salmond "Tort is a civil wrong for which the remedy is a common-law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of trust, or merely equitable obligation".<sup>1</sup> Tort is a twisted action rather than a straight action. A tort is a wrongdoing that occurs as a result of an act or omission that meets the requirements.

##### 2.2.1 – Environment Negligence

Environmental negligence typically focuses on concerns of careless environmental discharges. Lawsuits claiming negligent pollution releases are the main focus of environmental negligence cases. This is also environmental negligence when aerosols, fumes, light, noise, odor, particles,

---

<sup>1</sup> "Various Definitions of The Term Tort And Comment on Any One Better Known To You"  
<<https://www.legalserviceindia.com/legal/article-574-various-definitions-of-the-term-tort-and-comment-on-any-one-better-known-to-you.html>> accessed July 19, 2022

dust or smoke are emitted; When an environmental value is unreasonable interfered with or likely to be interfered with; or when contamination creates unsanitary, unpleasant or ugly conditions.

The environmental tort is unique in that it takes place after plaintiff has suffered physical injury, disease or damages caused and acts as deterrent to producers of unsafe environmental pollutants. The environmental tort is informed, in a way that general law is not, by environmental regulation. The following three things must be proven by the defendant in order to establish a tort claim: The plaintiff suffered suffering or loss as a result of the defendant's violation of a legal duty to act in a particular way, which was broken by the defendant acting unlawfully.

environmental torts are not merely a subset of the mass hazardous substance litigation that has transformed product liability law, but rather are completely distinct from the trespass-nuisance precedent that is a component of traditional tort theory. Academics are having a difficult time understanding environmental law as a field since it is becoming more and more dominated by oppressive technical laws. Due to these obstacles, an intriguing fusion of environmental law and personal injury law has developed without much research.<sup>2</sup>

Environmental negligence can be a part of tort law under the following cases.

There are cases where a company or person doesn't use reasonable care. Damage is done to another party as a result of a failure to uphold their responsibility and to conduct due diligence. Negligence is the action or omission of not exercising due caution<sup>3</sup>.

How can we tell whether or not proper care were taken?

- Knowing the degree of connection between the negligent act and the accident is crucial for determining whether reasonable care was used or not.
- It is essential to understand that the occurrence would not have happened if the party had actually been careful and not careless. As a result, the amount of damage must be taken into account when determining due care.

---

<sup>2</sup> Brennan TA, "Environmental Torts" (*Vanderbilt Law*) <<https://scholarship.law.vanderbilt.edu/vlr/vol46/iss1/1/>> accessed July 19 2022

<sup>3</sup> Juvekar B, "Environmental Pollution as a Tort: Overview and Analysis" (*iPleaders*, June 1, 2020) <[https://blog.ipleaders.in/environmental-pollution-as-a-tort-overview-and-analysis/#Environmental\\_pollution\\_under\\_tort\\_law](https://blog.ipleaders.in/environmental-pollution-as-a-tort-overview-and-analysis/#Environmental_pollution_under_tort_law)> accessed July 22, 2022

- Only when the threat is known and the harmful consequences might have been anticipated may reasonable care be taken. Therefore, the amount of harm done to the victims and the risk taken would be considered to determine what constitutes reasonable care.<sup>4</sup>

### **2.2.2 – Distinction between Environmental Law and Environmental Torts**

The primary distinction between environmental law and environmental torts is that regulations are upheld to safeguard the general public's health, whereas tort claims are made to make up for harms done to specific individuals. When it comes to hazardous waste, environmental law differs from environmental torts in that the burden of proof on whether one item caused another is shifted. In torts, it is the plaintiff's responsibility to demonstrate that the action resulted in damages.<sup>5</sup>

### **2.3 – Geographical Discussion**

Bangladesh is one of the States with the major environment vulnerability. Due to the escalating threat of climate change and the ongoing costs of declining habitability. It will be hard to solve the pressing environmental concerns without a solid legislative framework and effective implementation. A new class of torts that targets human injuries brought on by environmental contaminants has arisen over the past decades. Environmental regulation influences environmental torts in a way that general law does not. These torts are distinct because plaintiffs who have experienced physical harm or disease act as their deterrent signal to polluters of harmful environmental pollutants.

### **2.4 – Conclusion**

It is therefore reasonable to conclude that the development of tort law in regard to environmental contamination has created a means for people who are damaged by the same to obtain

---

<sup>4</sup> ibid

<sup>5</sup> bodla N, "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>> accessed July 24, 2022

compensation. Additionally, it has warned hazardous substance-related businesses of their legal responsibilities. Better judicial administration has become possible as a result of this growth. The evolution of the absolute liability principle calls for more accountability and safeguards rights through redress and compensation. It is acknowledged that endangering someone's life or living environment is a serious offense for which there is never an acceptable defense.

The general environmental obligation states that unless precautions have been taken to prevent or minimize the harm, a person must refrain from engaging in any activity that does so or is likely to do so.

## **Chapter 3**

### **Legal Protection of the Environment**

#### **3.1 – Introduction**

English common law is the foundation for the application of tort claims to incidents of environmental contamination. In the fourteenth century, English courts recognized harmful environmental claims for conflicts involving smoke emission and water diversion. Environmental law is related to the environmental and natural resources law. It is a phrase used to refer to the collection of treaties, laws, rules, common law, and customary law that address how human activity affects the environment. Environmental contamination is addressed by the significant environmental part in a series. Since the beginning of history, environmental protection has been a key issue. A country's prosperity is primarily supported by a secure and healthy environment. Consequently, it is crucial to protect the ecosystem.

#### **3.2 – What laws apply to the environment in Bangladesh?**

In the context of Bangladesh there are numerous national and international environmental regulations to provide guidance for the environment. The constitution of Bangladesh also provides an article to protect the environment. These rules not only give guidance but also penalize individuals who cause destruction of the environment. Those instruments are still merely a paper document, the fact is, that they are not fully enforced.

People are interacting with the environment whatever they like. As a result, they deal with environmental pollution, natural disasters, building collapses, and several other issues. Those issues must be resolved as soon possible. The circumstance allows for the imposition of new environmental regulations, or tort laws can be used for claiming remedies. Additionally, in this regard, successful foreign case laws and remedies can be applied.

#### **3.3 – Rights guaranteed under the Constitution**

In 2011, the Bangladesh government amended and added Article to the Constitution. Article 18A which states, "The State shall endeavour to protect and improve the environment and to



preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild-life for the present and future citizens.<sup>6</sup> The right to a healthy environment is not specifically stated in the Bangladeshi Constitution, either in the guiding principles or as a FR. The article 18A of the constitution of Bangladesh are in the part II which is a fundamental principles of state policy. The Fundamental Principles of State Policy are obviously not enforceable in court. Compared to the Fundamental Principles of State Policy, it appears to provide FRs a stronger legal status.

Again, from aspect of judicial enforcement, environmental rights can be separated into two categories - substantive and procedural. A procedural environmental right encompasses three pillars within its tenor: access to information, involvement in decision-making, and access to environmental justice. A substantive environmental right entail having a stand-alone right to a quality environment.

The two types of rights described above are not specified in the Bangladeshi Constitution. The Article (Article 18A) relating to the environment was recently added in 2011, and it states that the State shall make efforts to protect and improve the environment without a meaningful clause addressing the FR to a safe environment.<sup>7</sup> In the historic case of *Dr. M. Farooque v. Bangladesh*, the right to a healthy environment was interpreted to include the right to life protected by Articles 31 and 32 of the Constitution. In this instance, the government's 1995 flood control initiatives were contested as being lawful. Farooque's case allowed the right to life's principles to transcend their previously defined boundaries. After Farooque's case, petitioners have gone on to win favorable decisions in cases including industrial and vehicular pollution, illegal brick field construction, commercial shrimp farming, gas explosions, river encroachments, and many other issues.<sup>8</sup>

### **3.4 – Protection of Environmental Rights in Context of Statutes**

Some NGO's were working to address environmental issues in addition to some pioneers of this process. Such as *Bangladesh Environmental Lawyers Association* and *Bangladesh Poribesh Andolon*. In 1990 were able to establish a standard of Environmental Law in Bangladesh through

---

<sup>6</sup> The Constitution of the People's Republic of Bangladesh

<sup>7</sup> *ibid*

<sup>8</sup> Psymhe Wadud, "Determining the Extent of Right to Safe Environment" *The Daily Star* (June 3, 2019)

their judicial and extrajudicial activism as well as by the actions and remedies provided by the judiciary.

There are numerous laws relating to environmental protection. The Forest Act 1927, The Bangladesh Water Act 2013, The Protection and Conservation of Fish Act 1950, The Brick Manufacturing and Brick Kilns Establishment (Control) Act 2013, The Environment Court Act 2010, and others are a few of them. A precise definition of environment is provided in Section 2 of The Bangladesh Environment Conservation Act, 1995. The interrelationship between water, soil, and air is described as the environment. It also covers how these components interact with people, animals, plants, and microorganisms.<sup>9</sup>

### **3.4.1 – The Environment Conservation Act 1995<sup>10</sup>**

The Act outlines the criteria for the air, water, and other elements of the environment in the Environment Conservation Rules. The Act has been criticized for giving the DG a disproportionate amount of authority, for leaving the "national interest" and "good faith" loopholes open and for failing to specify the technical qualifications of relevant employees.<sup>11</sup>

### **3.4.2 – The Environment Court Act 2010**

The Act attempts to hasten the resolution of instances involving environmental harm. However, the inability for people to directly approach the court hinders its efficiency; instead, a report must be filed by the investigator assigned by the DG of the DOE before any action can be taken. The Act's objective to establish an environmental court in every district has generally not been carried out. Environmental justice has been hampered by this and the failure to ensure that the officers of the environment court are adequately informed on the necessary information.

---

<sup>9</sup> Bangladesh Environment Conservation Act, 1995

<sup>10</sup> *ibid*

<sup>11</sup> Lubaba T, "An Overview of Environmental Laws of Bangladesh" *The Daily Star* (June 3, 2019)

### **3.4.3 – The Forest Act 1927**

It does include safety precautions that can be used to preserve natural resources. It outlines activities that are forbidden in protected forests and sanctions violators of the rules. Additionally, the Act provides for the creation of village forests, which would be a powerful tool for protecting both individual and group rights. Unfortunately, there hasn't really been any use of this provision.

### **3.4.4 –The Wildlife (Conservation and Security) Act 2012**

This more recent law was passed with the intention of protecting the nation's forests, animals, and biodiversity. The Act specifies the permitted activities within sanctuaries, national parks, and community conservation zones and permits their declaration. The Act's recognition of national heritage, memorial trees, and sacred trees, while upholding local customs and cultural norms is one of its most striking features. This is a significant advancement in the acknowledgement of indigenous communities' rights.

### **3.4.5 –The Brick Manufacturing and Brick Kilns Establishment (Control) Act 2013**

This Act was passed in 2013 with the intention of controlling the brick manufacturing process. The Act places a number of limitations on the areas close to which brick kilns may be built; these limitations have drawn criticism for unduly ambitious and, impractical in some cases. The Act also lists restrictions on using raw materials obtained from places like agricultural land, hills, or hillocks, as well as using wood as fuel. Sadly, the reality shows that these provisions are rarely followed.

### **3.4.6 – The Bangladesh Biodiversity Act 2017**

The Act was passed in accordance with the international requirements of the Convention on Biodiversity and Bangladesh's constitutional obligation under Article 18A. The Act controls who have access to biological resources and traditional knowledge as well as the methods for their legitimate transfer. It assigns the National Biodiversity Committee, which will also decide on the

equitable distribution of benefits derived from biodiversity, biological resources, and traditional knowledge, the responsibility for granting permission for such access.

In addition to these Acts, there are other laws that cover environmental issues subtly. For instance, the 2009 Consumer Rights Protection Act and the Animal Welfare Bill both have measures that have an effect on the environment. The Bangladesh Water Act 2013 was also passed in order to safeguard and conserve water resources.<sup>12</sup>

### **3.5 – Judiciary’s Approach towards Environmental Negligence**

Numerous cases are still outstanding in Bangladesh, that are mostly concerned with the environment, according to studies. Some of them are *BELA v. Government of Bangladesh*, *BELA v. Ministry of Shipping, et al.*, and *Farooque v. Government of Bangladesh*, among others. All of these cases deal with diverse environmental concerns.<sup>13</sup>

In the case of *Dr. M. Farooque v. Bangladesh*, the right to a healthy environment was interpreted to include right to life protected by Articles 31 and 32 of the Constitution. In this instance, the government's 1995 flood control initiatives were contested as being lawful. Farooque's case allowed the ‘right to life’s’ principles to transcend their previously defined boundaries. After Farooque, petitioners have gone on to win favorable decisions in cases including industrial and vehicular pollution, illegal brick field construction, commercial shrimp farming, gas explosions, river encroachments, and many other issues. Although our higher judiciary lacks original jurisdiction over environmental issues, it has repeatedly used its writ jurisdiction in the previous few decades to safeguard and preserve our environment.

Several significant environmental court rulings from our highest court – The first time that environmental protection has received court recognition.

Before the enactment of Article 18A by the 15th Amendment, there was no law or rule for environmental protection. *Dr. Mohiuddin Farooque v. Bangladesh* (1996) became the first case of

---

<sup>12</sup> *ibid*

<sup>13</sup> “Protection of Environment & Relevant Environmental Laws in Bangladesh - SED Foundation” (*SED Foundation*, April 9, 2019) <<https://sedbd.org/protection-of-environment-relevant-environmental-laws-in-bangladesh/>> accessed August 19, 2022

legal acknowledgment of environmental protection. During the general election campaign in 1996, the petition was submitted to contest those loud and disturbing people. The Attorney General was mandated by the court, to take the appropriate actions to stop property damage caused by election campaigning to both public and private properties.

- Rivers are now deemed "legal persons" by HCD
- 'Locus standi' is being liberalized
- SC orders the government to provide clean water for drinking.
- In contravention of the Dhaka City Master Plan, SC forbids the establishment of multi-story commercial malls.
- The SC orders the removal of tanneries from Hazaribagh<sup>14</sup>

### **3.6 – Conclusion**

Though the environment is being tried to protect by these laws and regulations; the civil rights and personal damages and damages to the community are not being satisfied by the remedies. Polluting the environment, improper waste disposal, the use of illegal pesticides in agriculture, the release of particulates, sulfur dioxide, nitrogen dioxide, carbon monoxide in quantities greater than those allowed by regulation. Oil spills, the destruction of wetlands, etc. are additional common environmental law violations. In Bangladesh, these rules and regulations are not adequately implemented or upheld.<sup>15</sup> Though these regulations provide scope for the govt or other authorities to forbid or to file suit and get remedy but the scope for general/civil people are not seen. It might be argued that maintaining a country's healthy ecosystem depends heavily on having effective environmental laws. Additionally, action must be taken to ensure that such laws are strictly adhered to.

---

<sup>14</sup> Mashraf A, "Landmark Environmental Law Verdicts" *The Daily Star* (June 3, 2019)

<sup>15</sup> "Environmental Law Violations" *Wex Legal Information Institute (LII / Legal Information Institute)* <[https://www.law.cornell.edu/wex/environmental\\_law\\_violations](https://www.law.cornell.edu/wex/environmental_law_violations)> accessed August 21, 2022

## Chapter 4

### Action Under Tort

#### 4.1 – Introduction

Bangladesh having 200 pieces of environmental legislation, the global report on environmental rule of law (2019) shows a sad condition of law enforcement in the country.<sup>16</sup> In Bangladesh, law framework of environmental law fails to emphasize the essential elements of environmental law. On a scale of 180 countries, Bangladesh came in 177th place in the 2022 Environmental Performance Index (EPI). Bangladesh scored only 23.1 out of 100 as per the EPI report, based on a range of sustainability indicators.<sup>17</sup> <sup>18</sup> Environmental regulations would no longer just be based on the presumptions and theories of earlier times, but would instead take into account how nature and human behavior actually are. These laws would place a positive obligation on people to act in a way that respects ecological integrity and planetary bounds. In other words, laws should instruct or encourage people to act in a way that respects ecological integrity and planetary boundaries rather than the opposite.<sup>19</sup>

#### 4.2 – Why do Environmental Negligence- related remedies require tort law?

The Environment Conservation Act of 1995 permits an individual or group of individuals to file a lawsuit for any claim covered by the Act, the Environment Court Act fails to acknowledge the general public's right to direct access to the Environment Courts by requiring a non-judicial authorization.

In addition to the Environment Court Act, the majority of environmental laws also include restrictions on taking environmental offenses to court for resolution while seeking approval from

---

<sup>16</sup> Golam Sarwar M, “Making a Case for Environmental Rule of Law in Bangladesh” *The Daily Star* (June 7, 2021)

<sup>17</sup> “Bangladesh Ranks Fourth-Lowest - The Business Post” (*Bangladesh ranks fourth-lowest - The Business Post*) <<https://businesspostbd.com/back/bangladesh-ranksfourth-lowest-2022-06-09>> accessed September 1, 2022

<sup>18</sup> “Environmental Performance Index” (Environmental Performance Index) <<https://epi.yale.edu>> accessed September 1, 2022

<sup>19</sup> Laitos JG and Wolongevicz LJ, “Why Environmental Laws Fail” (*William & Mary Law School Scholarship Repository*, January 26, 2015) <<https://scholarship.law.wm.edu/wmelpr/vol39/iss1/2/>> accessed September 7, 2022

an executive authority before doing so. Such a limitation, it is contended, prevents environmental victims from seeking justice. Such a restriction runs counter to the rights to a fair trial and to equality protection provided by the Constitution of Bangladesh.<sup>20</sup> Even if it seems like the Environmental Protection Act can handle charges involving environmental negligence, but generally speaking, the act's scope is a little bit constrained. In essence, it suggests that the act is just preventive in nature and that tort law also functions as a remedy. Demanding compensation is the only way environmental contamination victims may obtain justice.

Large corporations frequently contribute to environmental pollution when they harm a person or his property. Statutory protection is insufficient. Tort law is a better choice for individual claims since it puts more of an emphasis on compensating the harmed party. As a result, when someone suffers harm as a result of environmental negligence that was committed by another, tort law in addition to statutes offers a legal way to pursue reparation. Tort law can play a variety of roles in the environmental decision-making process. Claims that are successful against actions that negatively impact people's lives and property can have an impact on the environment more broadly.

Furthermore, most tort proceedings are reactive and only take effect after harm has already been done, limiting their direct environmental impact. However, if the receiver of the damages award is able to repair environmental damage, tort law may continue to apply in the future due to any wider deterrent effects. The primary way that torts contribute to environmental protection is as a means of enforcing environmental laws. The idea that tort can offer a means of accountability is touched on by the availability of a legal procedure to confront the polluter directly. Accountability is a complicated matter, so we should look at the situations in which tort law can make the proper parties answerable to the right individuals for the correct actions.

Nevertheless, tort has the potential to place responsibility with the industry responsible for environmental harm. This may however be a good place to note that actions against environmental regulators are in any event very difficult in many common law jurisdictions.

---

<sup>20</sup> n 16

### **4.3 – Remedy**

In terms of remedies, tort law has two major categories. They are Judicial Remedies & Extra-Judicial Remedies. Claims for unliquidated damages and injunctions, or a combination of the two, are the main remedies for environmental torts. Damages are compensation due for committing a tort.

#### **Acceptance or Non-Acceptance of the Remedy**

Common people right have curtailed to sue in such a way which might make them reluctant to come to the Court for environmental loss and damage. Only 388 cases have reportedly been filed under the Environment Conservation Act of 1995, which has 7002 cases outstanding across the nation's three environmental tribunals<sup>21</sup>.

The judiciary faces a massive backlog of cases, but the seldom occurrence of environmental lawsuits points to an imbalance. The DOE's intervention not only falls short of successfully resolving the complaints of environmental litigants, but it also puts a barrier in the way of obtaining justice from the court, leading to a subpar handling of cases by the environment court.

#### **Insufficient Remedy**

The environmental court can impose a maximum of 10 lacs BDT as a penalty irrespective of the severity of the environmental damage, which is negligible to polluters, notably industrialists.<sup>22</sup> So in many cases the sufficient remedy can't be availed. In that case people who are sufferer or victims may have a cause not for go to the court for insufficient remedy or desired remedy. So, here the rule of tort is necessary for the sufficient remedy to avail from the wrongdoer for the victims.

### **4.4. – Doctrine of *Res ipsa loquitur***

In an action for negligence the general rule is that the plaintiff has to establish the existence of duty to care owed by the defended to him, the breach of that duty and consequent damage. In other words, it is the duty of the plaintiff to prove that he suffered injury because of the negligence of

---

<sup>21</sup> Deepto A, "Environment Laws and Courts Exist, but No Cases" *Prothom Alo* (March 13, 2021)

<sup>22</sup> Miah MdK, "Effective Functioning of Environment Court" *The Daily Star* (August 24, 2015)



the defended. However, there are certain situation where the doctrine of *Res ipsa loquitur* applies. In such situations the plaintiff has to only prove that the accident happened while things were under the defendant's control. He need not establish the defendant was negligent.<sup>23</sup>

#### **4.5 – Interests and Rights against Negligence**

Punitive damages, which are monetary awards intended to penalize the defendant for its crime and try to stop them from doing it again, are sometimes recoverable by the plaintiff. Another equitable remedy when the defendant is ordered to stop acting in one way or conduct another is an injunction.

#### **4.6 – Polluters Pay Principle**

According to the widely accepted "polluter pays" principle, individuals who cause pollution should be responsible for paying the costs associated with controlling it in order to protect public health and the environment. The "polluter pays" approach is a straightforward idea based on common sense: the party responsible for the pollution, which could be an individual or an institution, should pay to make things right. This might entail clearing the contaminated area or paying the affected individuals' care expenses.

Applying this polluters Pay Principle for availing remedy in tort law for environmental remedy would be great option for the victims of environmental tort. Compensation under tort law the precautionary principle won't work here; PPP will. As in tort law, it functions as a claim for damages, reparation, and restoration rather than as a means of prevention.

#### **4.7 – Development of Environmental Tort Law**

The values of tort law are unique. However, the protection of individual rights and interests, as well as the corresponding connection between the parties, are at least structurally relevant to tort law. When only public authorities may pursue compensation, legislative interventions might sometimes be better understood as bringing compensatory tools from tort law into administrative

---

<sup>23</sup> Pande G.S., *Law of Torts*

law rather than as tort law. If we believe that people should be compensated for harm done to them or to property or that outsiders can positively influence environmental decision-making, tort law will always be important. More tort style independence from regulators is introduced by allowing environmental interest organizations to file claims.<sup>24</sup>

The definition of "damage" as it is understood in tort law differs from tort to tort. However, in most cases, we'll be on the lookout for actual physical harm to either people or property. It is difficult to ascertain the moment at which pollution becomes 'damage' that can be identified in tort. We could picture the emergence of a practical connection between tort and regulation. In which regulation aids courts in completing broadly interpreted legal system standards, such as "damage".<sup>25</sup> Therefore, it is important that environmental tort law should develop.

#### **4.8 – Environment Awareness and Sustainability**

Creating environmental awareness among people through various way for claiming their right under tort law can be very effective for the safeguard for the environment. Here are some ways described –

##### **4.8.1 – Public Awareness**

Media is the widely effective pillar of the popular government. It contributes significantly to the nation's overall improvement and is quite important. By simply publishing them in their medium, the impact of media may be observed in the various trials that it has directed. Accordingly, the issue of environmental pollution can be checked by making mindfulness in the general population, in which media's part is extremely critical. The persuasive agency of communication has the power to shape people's beliefs and attitudes toward environmental protection in addition to simply influencing people's minds.

---

<sup>24</sup> Lee M, "The Intersection between Environmental Law and Tort Law by Maria Lee: SSRN" (*The Intersection between Environmental Law and Tort Law by Maria Lee :: SSRN*, March 4, 2015)

<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2572230](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2572230)> accessed September 3, 2022

<sup>25</sup> *ibid*

#### **4.8.2 – Regular Inspection**

There is a need for a standard review mechanism that can periodically inspect and examine all of the activities that pose a risk to the environment. This would be a successful step towards environment protection. Through the inspection the wrongdoer can be identified and can be made liable under tort law for their doings.

#### **4.8.3 – Environmental Education**

Any law cannot be implemented effectively and successfully unless the public is made aware of it first, which is a basic requirement. As such a reason, it is essential that there be proper awareness about the knowledge of the law and remedies. Environmental law should be added to the syllabus of the current ongoing educational syllabus. We have to cope with the effects of pollution, and climate change every day. People who study environmental law should be equipped with the knowledge necessary to comprehend these issues and devise original solutions. Students should have a solid legal foundation in environmental law classes. They would be able to consider the environment and its effects on society critically as a result.

#### **4.9 – Conclusion**

Bangladesh has adopted a range of laws, policies and national strategies that address threats to and protection of the Environment. Over the decade, several number of these have been amended to improve enforcement procedures and authority. Environmental laws and policies, however, are often not well stated in general or properly applied in fact. Tort law's primary goal is to make up for harm and stop recklessness, though. Tort has to be given the right to enforce these demands in the area of environmental negligence, especially considering the positive and profound effects it could have on public perception and strong commitment. In the long run, governmental growth might make tort law an effective element in Bangladesh to participate against environmental negligence.

## **Chapter 5**

### **Findings & Recommendations**

#### **5.1 – Findings of the Research**

##### **Lack of quick remedy**

Because the court cannot impose a speedy trial, a victim cannot expect any quick remedy. The court follows standard procedures in civil and criminal proceedings and requests written reports and enquiries from the Department of the Environment. As a result, the sufferer must wait a lengthy period for the remedial actions.

##### **Absence of clarity in compensation**

It's unclear if the victims will receive compensation or not. The money is often used by DOE to cover processing costs, but the victim may get a percentage directly from the court. No rules specify how the compensation will be given. Regarding the procedure of remedy and compensation, there is no further explanation.

##### **Absence of supervision, regulation, and monitoring**

An "Environmental Clearance Certificate" or "No Objection Certificate" must be issued from DOE under set terms and conditions prior to the establishment of any industrial unit or project. People believe that after the issuing of certificates, the terms and conditions are hardly inspected and monitored.

##### **Challenges with legal aid**

Bangladesh having constructed an administrative and legal structure to provide legal aid to poor and disadvantaged citizens, but due to a lack of a campaign, the majority of people are unaware that it exists. Then again, the appointed lawyers simply fail to assist the underprivileged and sometimes work for polluters.

##### **lack of awareness**

There is lack of awareness among the people of Bangladesh regarding the environmental tort. Most of the people actually don't know the problems regarding that and also about the remedies.

## **Corruption**

Before filing a suit to the judiciary, the victims have to go through the process, which falls under the DOE. Thus, corruption often times defeats the victims' claims with the help of corrupted people towards the rich polluters.

### **5.2 – Recommendations**

- The Required Reforms While it is essential to recognize these difficulties, I will make a recommendation here on how the proposed environmental torts Act might overcome them.
- To achieve equal access to environmental justice, legal reform is necessary. To enable anyone to directly seek justice or redress from a court, the ban on ordinary people's direct access to courts ought to be removed first.
- The court should have the "suo moto" authority to hear a case any case all by itself. Alternative dispute resolution should be promoted and the expenses and sufferings should be kept to a minimum.
- The provision of a speedy trial is strongly justified for immediate corrective action.
- There is no alternative option in Bangladesh's legal system besides enacting tort legislation. It will codify the existing tortious remedies under one umbrella, and it should be one single concrete piece of legislation by which the courts will entertain the tort law claims. It should be a single concrete piece of law through which the courts will consider the existing tortious remedies under one roof.
- A systematic and measurable way to examine damages. where the guidelines for losses calculation will be present for a thorough discussion of the complexity problem with regard to getting damages.
- The tort legislation requires a new, special forum where tort claims will be assessed. Environmental injustice will not be compensated if this is not done, and incidents of negligence would go unpunished as a result.

### **5.3 – Concluding Remarks**

In this short research paper, I tried to highlight some possible ways to approach ‘tort and environmental protection’. Regulation dominates environmental decision-making, but individual rights, interests, and relationships dominate tort law.

A much more comprehensive approach is necessary for current environmental contamination issues. We need a codified law because we fall short of other nations in terms of handling tort claims, which would not only help victims gain access to justice but also inspire confidence in the administration of justice.

Understanding tort's beneficial impact on environmental policy may have benefits. And it is definitely crucial to work toward enhancing our understanding of how tort law influences environmental policy as well as how environmental regulation influences tort. Many of the restrictions are avoided when addressing environmental negligence through a negligence-based claim. A more specific type of environmental tort can provide plaintiffs with a quicker and more efficient way to accomplish their ultimate objective.

## **Bibliography**

### **Books:**

Pande G.S., *Law of Torts*

Sima K. Nahar, *Law of Tort*

### **Statute/Legislation:**

Constitution of Bangladesh (bdlaws.minlaw.gov.bd)

The Bangladesh Biodiversity Act 2017

The Bangladesh Environment Conservation Act, 1995

The Brick Manufacturing and Brick Kilns Establishment (Control) Act, 2013

The Consumer Rights Protection Act, 2009

The Environment Court Act 2010

The Forest Act 1927

The Wildlife (Conservation and Security) Act 2012

### **Cases:**

BELA Vs. Government of Bangladesh

BELA Vs. Ministry of Shipping

Farooque Vs. Government of Bangladesh, WP 998 of 1994, CA 24 of 1995 (1996.07.25) (Flood Action Plan Case)

### **Journal Articles:**

bodla N, “Environmental Remedies Under Law of Torts” (*Environmental Remedies Under Law of Torts*)

Brennan TA, “Environmental Torts” (*Vanderbilt Law*)

<<https://scholarship.law.vanderbilt.edu/vlr/vol46/iss1/1/>> accessed July 19 2022

Lee M, “The Intersection between Environmental Law and Tort Law by Maria Lee: SSRN” (*The Intersection between Environmental Law and Tort Law by Maria Lee :: SSRN*, March 4, 2015)

“Protection of Environment & Relevant Environmental Laws in Bangladesh - SED Foundation” (*SED Foundation*, April 9, 2019) <<https://sedbd.org/protection-of-environment-relevant-environmental-laws-in-bangladesh/>> accessed August 19, 2022

“Various Definitions of The Term Tort And Comment on Any One Better Known To You” (*Various Definitions of The Term Tort And Comment on Any One Better Known To You*) <<https://www.legalserviceindia.com/legal/article-574-various-definitions-of-the-term-tort-and-comment-on-any-one-better-known-to-you.html>> accessed July 19, 2022

### **Newspaper article:**

“Bangladesh Ranks Fourth-Lowest - The Business Post” (Bangladesh ranks fourth-lowest - The Business Post) <<https://businesspostbd.com/back/bangladesh-ranksfourth-lowest-2022-06-09>> accessed September 1, 2022

Golam Sarwar M, “Making a Case for Environmental Rule of Law in Bangladesh | The Daily Star” (*The Daily Star*, June 7, 2021) <<https://www.thedailystar.net/law-our-rights/news/making-case-environmental-rule-law-bangladesh-2106989>> accessed September 4, 2022

Mashraf A, “Landmark Environmental Law Verdicts | The Daily Star” (*The Daily Star*, June 3, 2019) <<https://www.thedailystar.net/law-our-rights/news/landmark-environmental-law-verdicts-1753354>> accessed August 21, 2022

Miah MdK, “Effective Functioning of Environment Court | The Daily Star” (*The Daily Star*, August 24, 2015) <<https://www.thedailystar.net/law-our-rights/effective-functioning-environment-court-131956>> accessed September 6, 2022

Lubaba T, “An Overview of Environmental Laws of Bangladesh | The Daily Star” (*The Daily Star*, June 3, 2019) <<https://www.thedailystar.net/law-our-rights/news/overview-environmental-laws-bangladesh-1753360>> accessed August 17, 2022

Prothom-alo, March 13, 2021



Psymhe Wadud, “Determining the Extent of Right to Safe Environment | The Daily Star” (The Daily Star, June 3, 2019) <<https://www.thedailystar.net/law-our-rights/news/determining-the-extent-right-safe-environment-1753363>> accessed August 13, 2022.

**Blogs:**

“Environmental Law Violations | Wex | US Law | LII / Legal Information Institute” (*LII / Legal Information Institute*) <[https://www.law.cornell.edu/wex/environmental\\_law\\_violations](https://www.law.cornell.edu/wex/environmental_law_violations)> accessed August 21, 2022

Juvekar B, “Environmental Pollution as a Tort: Overview and Analysis” (*iPleaders*, June 1, 2020) <[https://blog.ipleaders.in/environmental-pollution-as-a-tort-overview-and-analysis/#Environmental\\_pollution\\_under\\_tort\\_law](https://blog.ipleaders.in/environmental-pollution-as-a-tort-overview-and-analysis/#Environmental_pollution_under_tort_law)> accessed July 22, 2022

**Website visited:**

“Environmental Performance Index” (Environmental Performance Index) <<https://epi.yale.edu>> accessed September 1, 2022

<http://bdlaws.minlaw.gov.bd/>