



EAST WEST UNIVERSITY

DISSERTATION ON

**The Role of strict liability for prevention of Environmental pollution and
balancing compensation in Bangladesh: A Critical analysis under Law of
Tort**

Course Title: Supervised Dissertation

Course Code: LAW 406

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Date of Submission: 13. 09. 2023

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Acknowledgement

My sincere thanks to several people and well-wishers. My friends and family who always motivated me directly or indirectly. First and foremost, I thank Allah for providing me with the power and ability to comprehend, learn and complete my thesis. I'm grateful to Dr. Mehedi Hasan Sir for enrolling me in this course, advised me, helped me to choose my thesis topic, also guided me to complete this and also my course mate, friends for giving me motivation. The research has enabled me to explore more knowledge relating to my issue and I am confident that it will continue to do so in the future. Finally thanks to my parents for always being so supportive.

Declaration

Myself, Mehazabin Tunmun, ID: 2018-3-66-018, declare that I am fully aware of my responsibility to identify which of the works in my article is my own original work and I want to declare that this research paper is only done by myself. I also acknowledge that this paper has never been used in any of my undergraduate Course work. I confirm that this research paper is being offered as a part of an undergraduate program of law 406 (supervised dissertation) of the Department of Law is East West University. This research paper is composed entirely by myself solely and I never submit this paper anywhere. All the information and contents contributed here is with references

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Abstract

This research will explore the key role of strict accountability in preventing environmental harm while achieving a balance between the various forms of compensation in Bangladesh. It dives into the efficiency of strict liability in preventing harmful actions, encouraging environmental responsibility, and guaranteeing just recompense for impacted parties by looking at legislative frameworks, case studies, and environmental legislation. The goal of the research is to advance our understanding of how legal frameworks might encourage actively involved environmental management and mitigate the negative ecological and monetary impacts of environmental harm in our country.

List of Abbreviations

BD: Bangladesh

VS: Versus

DOE: Department of Environment

UN: United Nation

ICJ: International Court of justice

ILC: International Law Commission

EPI: Environmental Performance Index

WHO: World Health Organisation

ETP: Effluent Treatment Plans

PPB: Parts Of Billion

EIA: Environment Impact Assessment

HCD: High Court Division

Chapter 1

Introduction

1.1 Introduction

A "tort" is a civil violation or hurt that someone intentionally commits against another person.¹ The party that has suffered such harm may file a lawsuit to obtain compensation. The word "tort" is a common law term from the English language that refers to "wrong." It comes from the Latin term 'tortum' which defines a twisted or unstraight state.² Although it is not codified into a specific law, a tort is regarded in English law as a significant sort of civil injury. Tort law's fundamental objective is to place the victim in the same condition that he or she would have been in if the wrong had not been committed.³ Both fields of law are concerned with violations of legal obligations, while tort law focuses mostly on damages.⁴

According to a legal principle known as strict liability, even if a person doesn't intend to hurt someone, they can still be held accountable. Therefore, even if someone did not intend to do anything wrong, they are still held accountable if their acts caused injury.⁵ That means that even if the defendant did not act intentionally or negligently, they could still be held accountable. They are responsible for the harm that results, even though they take precautions to ensure others' safety.⁶

Environmental law is one of the emerging fields that is growing both domestically and internationally. Environmental law has been quickly changing on a national and worldwide level during the last few decades. Now a days Environmental issues have become a matter of global concern. Today's society as well as the world are being updated by increasing industrialization, scientific technology and so on.⁷

¹ Garner, Bryan A, Henry Campbell Black: *Black's Law Dictionary* (Thomson Reuter, 2016)

² Bangia, R.K., Narender Kumar, and R.K. Bangia's: *The Law of torts: Including Motor Vehicles Act, Consumer protection Act and compensation Act.* (Allahabad Law Agency, 2018)

³ Sakif Alam, *Tort Law in Bangladesh* (1st edn, Routledge India 2021) 332

⁴ Vivienne Harpwood, *principles of Tort Law* (4th edn, Cavendish 2000) 521

⁵ Mohd Aqib Aslm, 'Liability (strict liability, absolute liability, and various liability) Under Law Of Tort'<https://www.legalserviceindia.com/legal/article-4532-liability-strict-liability-absolute-liability-and-vicarious-liability-under-law-of-tort.html>, accessed 24 July 2023

⁶ *ibid*

⁷ Maruf Ahmed, 'Development of environmental law policy and organization in Bangladesh'https://www.academia.edu/23946460/THE_UNIVERSITY_OF_DHAKA_HISTORY_AND_DEVELOPMENT_OF_ENVIRONMENTAL_LAW_POLICY_AND_ORGANIZATION_IN_BANGLADESH_A_DISSERTATION_SUBMITTED_TO_THE_FACULTY_OF_THE_ARTS_IN_CANDIDACY_FOR_THE_DEGREE

In this recent era, human are running to modernize and forget about the environment. Our environment is in danger because of negligence of the individuals and damage caused by human's activities. While attempting to improve the physical environment through materialistic growth, man is destroying the natural environment.

The concept of "strict liability of environmental tort law claiming" is evolving in Bangladesh, which is very significant and has been debated largely among the legal scholars, policymakers, and environmental activists. Recently, a new trend has emerged: awarding compensation for the violation of the environmental rights of the individuals. The concept of environmental tort introduces a new legal framework to Bangladesh's legal system. The spirit of behind strict liability is to divert the burden of environmental risks from the victims to the polluters so that it stimulates preventative measures and motivates responsible conduct. The role of strict liability in environmental tort law claims is to provide a mechanism for compensating victims and obstructing potential polluters. It's a key aspect which gives victims a way to seek compensation without proving negligence.⁸ This is the most challenging environmental issue because the environment and ecosystem have been damaged for a very long time. Moreover, strict liability serves as a tool where potential polluter will be aware that they must be liable for the impact of their acts without even a motive.⁹

1.2 Research question

This research will try to find out the following questions:

- How effective is strict liability in ensuring adequate compensation and preventing environmental harms?
- Why it is necessary to prevent further environmental damage under Tort law?

1.3 Aim and objective of the research

The main focus of this paper is basically to discuss the present scenario of law of tort in Bangladesh and the degradation of the environment. This research will take an easier direction, providing tort law compensation for the victims. The aim of this study is to understand the background of strict liability and negligence in tort law as well as how to provide adequate compensation for environmental damages. It also explores the growing significant of

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Accessed 24 July 2023

⁸ N 5

⁹ Ibid

environmental torts in our local jurisdiction and the process executed for determining and deciding on damages. The most important one is to ensure fair remedy for a victim of environmental negligence against the person who committed it.

1.4 Research justification

“There is a law; there is a remedy”. The aim of this research is ensure a fair remedy for the individuals who suffers for environmental damages. This is significant not only the individuals who suffer rather all of humans as well as animals on plane. The reason is Environmental pollution is a global concern in the present day. It is important to identify the problem and give a solution under tort law. This research aims to explore the application of tort law in Bangladesh, its concept, liabilities, and reasons for increasing environmental pollution. It will analyse the enactment of specific tort law statutes, the lack of adequate remedies for victims, and the shortcomings of existing laws in compensating victims. The focus will be on the impact of tort law on the environment and the potential for a better future for generations to come.

1.5 Research methodology

To accomplish its goals, the research uses a qualitative methodology and a variety of primary sources, including statutes, case law, and national and international legislation. Newspapers, journals, and articles from secondary sources are also used. In order to completely deal with the research question, the study examines a number of issues. Its main objective is to look at the connection between tort law and environmental tort law, especially how tort law may protect environment from risks. To further the inquiry, necessary data was also acquired from books, journals, and websites.

1.6 Research scope and limitations

The fundamental objective of this study is to evaluate how Bangladeshi tort law is used to mitigate environmental risks. Due to time limits and the necessity of addressing current limitations in the country’s legal practice, the research’s scope is restricted. Even though further study would have been appropriate the time and resources at hand allowed for an analysis of a few essential publications. The underlying goal is to look into Bangladesh’s current tort law situation with emphasis on preventing environmental damage and providing adequate compensation for harm. Here, I only focus on the major elements of the environment such as air, soil, water, noise. As these are the main elements, I showed how our Environment get

polluted. Further chapters will cover the legal analysis, effectiveness of the approach in question, and proposed solutions.

1.7 Literature review

There are so many books, articles, legal journals published regarding strict liability. The famous book of tort “The evaluation from strict liability to fault in the law of tort”¹⁰ it is the most recent study of fault and strict liability by Professor Grey that explores the growing significance and justifications of strict liability in modern discussions and predicts its potential extend in response to new responsibility areas, particularly those using new technologies. This gives a historical review of “strict liability” under common law and compares it with risk-based liability in European nations. The starting point of the book deals with the development of strict liability in common law, cases of trespass and defamation of the different types mentioned. The second half focuses on a particular kind of strict liability known as “liability under the rule in Ryland’s v. Fletcher.”¹¹ The key objective of the study is to examine how tort law has evolved from emphasising the claimant’s injury causation to a deeper evaluation of the defendant’s guilt and responsibility.

Furthermore another book is “Shift in compensation for Environmental damage”¹². The authors explores one particular change in the regime for controlling oil pollution and question whether it is a solid transition from individual law to public spending. They look into the causes, effects, and economic consequences of these transformations. The paper also examines current trends, such environmental damage insurance and voluntary compensation strategies, and critically analyses them.

Similarly, the book of “TORT LAW TEXT AND MATERIAL”¹³ by Mark Lunney deals with strict liability along with nuisance and the author addressed the term as a “Ryland V Fletcher”¹⁴ rule as the concept adopted from this landmark case laws decision. The Author focus the rationale of the concept of strict liability for defective products through the case “Escola vs. Coca cola bottling co of Fresno”¹⁵ The Coca-Cola burst as they were placing it in the refrigerator, injuring the plaintiff, therefore the defendant is responsible under strict liability in this case.

¹⁰ Anthony Gray, *The Evolution from strict liability to fault in the law of tort* Hart, (2021)

¹¹ Rylands v Fletcher [1868] Law Reports, English & Irish Appeals (LR) 3 (HL) 330.

¹² Michael Faure, Albert Verheij, *Shift in compensation for environmental Damage* (Springer, 2017)

¹³ Mark Lunney, Ken Oiphant, *TORT LAW TEXT AND MATERIAL* pg. 574

¹⁴ N 11

¹⁵ Escola V Coca-Cola Bottling Co of Fresno [1944] 150 P 2d 436

Overall, these studies reveal helpful details about the application strict liability. Also identifies the areas for development in order to expand the application of tort law in our judicial system.

1.8 Conclusion

The article will cover how we deal with disasters and damages to the environment. It will explore a provision known as “strict liability.” In order to determine whether strict liability is fair, the article will examine various previous cases, professional’s opinions, and new laws. It is trying to find the right balance between compensating victims and emphasising people to exercise precaution to protect the environment. The problems and challenges with applying strict liability in environmental matters will also be covered in the paper.

Chapter 2

Concept of Strict Liability and Environmental Pollution

2.1 Introduction

In the twenty-first century, environmental education is a critical problem since it affects our relationship with the environment. A positive interaction with the environment is essential for human life and health. Natural resources are being used and altered by humans, which is causing more natural disasters and contributing to environmental issues. States adopt the strict liability doctrine to make sure individuals accountable take action that is necessary. Usually, the government or a court will require remediation, with the cost sharing coming from the parties liable for the injuries. Before going into the broad discussion, the concept should be very clear. This chapter will cover the definition and concept regarding all relevant matters.

2.2 Strict Liability

The term “strict liability” is a legal concept that means despite the defendant’s motives at the time of the action, makes them accountable for their acts. It implies that someone might be considered responsible for a consequence they were unaware of.¹⁶ In the famous case of “Ryland v. Fletcher”¹⁷ in 1868, strict liability was established for the first time by justice “Blackburn” and was taken into consideration by the House of Lords. Strict liability is a legal theory that is always applied to protect an individual’s rights and determine their legal responsibility for actions that cause losses or damages, even when they are not wilfully committed.¹⁸

Strict liability is also referred to as no fault liability for this reason. The immateriality of purpose and appropriate care is the thin border that sets apart strict liability from negligence.¹⁹

2.3.1 Background History of Strict Liability

In the case Ryland vs. Fletcher,²⁰ defendant in case employed a third party to construct a reservoir. Unfortunately, the contractors neglected to plug the ancient, unused shafts that were

¹⁶ Christy Bieber, J.D, ‘Strict Liability: Legal Definition and Examples’ (September 15,2022)
<https://www.forbes.com/advisor/legal/personal-injury/strict-liability/>4 August 2023

¹⁷ Ibid11

¹⁸ Mohd Aqib Aslam, ‘Liability (Strict Liability, Absolute Liability and Vicarious Liability)Under Law of Tort’
<https://www.legalserviceindia.com/legal/article-4532-liability-strict-liability-absolute-liability-and-vicarious-liability-under-law-of-tort.html>4 Aug 2023

¹⁹ N20

²⁰ N 11

under the reservoir area. The water from the reservoir overflowed the shafts and flooded the plaintiff's nearby coal mines when it was filled with water. The defendant was found accountable for the harm done even though he was not negligent and was unaware of the shafts. This sort of accountability, known as "strict liability," as well as no "fault liability" allows the defendant to be held accountable even if they didn't intentionally do anything illegal.

The main argument in this case concerned "whether the defendant might be held accountable for acts committed by other parties"? According to the House of Lords' judgement, the defendant is indeed liable, introducing the idea of "strict liability."²¹ This law provides that if a person or entity permits a dangerous or hazardous element to remain on their land and the element escapes, harming others, the person or entity who placed the element there shall be liable for the damages ensuing therewith.

2.3.2 Elements Which Needs to be Proven for Strict Liability

Three essential conditions are considered in strict liability cases:

1. **Dangerous Thing:** When something can cause harm or any accident if it escapes from an individual's property, it is considered a dangerous thing.²² As per to this concept, liability for releasing an item from someone's property only arises if the product gathered was dangerous. The subject of the legal dispute Ryland's vs. Fletcher was a big water reservoir.²³ Additionally, this idea applies to things like electricity, gasoline, noises and vibrations waste products, exploding substances and others as well.
2. **No Natural use of Land:** Handling hazardous materials negligently can lead to responsibility for the growth of hazardous substances. The Sochacki vs. Sas decision established that holding a fireplace is a valid land use, even if it causes a fire. Non-natural substances must increase the risk to humans, and defendants were not deemed liable for a mistaken flare-up.^{24,25}
3. **Escape:** The things which considered as dangerous must escape from the land or possession and caused serious harm. It cannot be proven through merely providing evidence. According to a judicial decisions of Reads V Lyons & CO, if there is no escape

²¹ N 15

²² N 5

²³ N 11

²⁴ Sochacki v Sas [1947] All ER 344

²⁵ Pramit Bhattacharya, 'Concept of Strict Liability and Absolute Liability', (5 July 2016)

<https://blog.iplayers.in/concept-strict-liability-absolute-liability/24-August,2023>

there is no liability.²⁶ For instance, if an accuser has a poisonous plant on their property and it spreads to the victim's land, killing animals, the defendant is liable for the damage. However, if the plaintiff's animals enter the defendant's premises, take the poisonous leaves, and die, the defendant cannot be held accountable.

- 4. Product liability:** Regardless of their intention or negligence in creating or marketing the product, manufacturers and sellers of defective products may be held strictly liable for any injury caused to consumers.²⁷ The "Snail in the Bottle" case or Donoghue vs. Stevenson case involved Mrs May Donoghue's bottle of ginger beer in a Paisley cafe. Unbeknownst to her, the bottle contained a dead snail.²⁸ She became unwell and filed a lawsuit against Mr Stevenson, the ginger beer maker. The House of Lords ruled that the manufacturer owed her a duty of care, which was broken due to the foreseeable harm to customers and the close relationship between consumers and the product manufacturer.

2.4.1 Environmental Pollution

Any addition of unsafe materials or power to the environment that alters its structure is known to as environmental pollution. The result of unwanted changes in our surroundings that have an adverse influence on humans, animal. And plants is known as "Environmental pollution". The materials which makes this pollution are solid, liquid or gaseous that are found in larger amounts than they would be in the natural world.²⁹ Pollution could arise natural as well as human activities. Changes to these elements' inherent qualities can have significant effects on ecosystems and human existence. These factors include air, water, soil, noise, and light³⁰.

Conclusion

The theories of and strict liability are exemptions. Such regulations work under the idea that liability can occur even when no one is at culpable, even though culpability is normally allocated when someone is at fault. This idea is known as "no-fault liability." Within those

²⁶ Reads V Lyons &Co [1947] AC 156

²⁷ 'Concept of "Strict Liability" in Indian Tort Law and Its Applications', (25 Mar 2023), <https://www.ilms.academy/blog/concept-of-strict-liability-in-indian-tort-law-and-its-applications> accessed 28 August 2023

²⁸ Donoghue v. Stevenson Heuston, R. F. V. [1957] 20 [1], 1–24.

²⁹ Praveen Sahu, 'Environmental pollution: Types, Causes and Effects' (21-06-2023) <https://www.embibe.com/exams/environmental-pollution/>, Accessed 13 September 2023

³⁰ Environmental pollution: definition and Types, <https://www.studysmarter.co.uk/explanations/environmental-science/pollution/environmental-pollution/#:~:text=Environmental%20pollution%20is%20any%20addition,for%20ecosystems%20and%20human%20life.> Accessed 28 August, 2023

limits, even if a person was not carrying out the activity, they are still liable for any negative impact that results. There are circumstances where the defendant may not be held accountable under strict liability. There may be exemptions in strict liability instances that benefit the defendant. Whatever the situation, the strict liability rule enforces liability on the defendant.

Chapter 3

Strict liability in International Environmental Law

3.1: Introduction

A famous case that introduced the idea of absolute liability in India is *M.C. Mehta v. Union of India*.³¹ This case is where the strict liability theory in India gave origin to the concept of absolute liability. As because of human being has neglected the worth of the environment and nature in the name of progress, this concept is extremely important. The court's decisions in this case, however, on strict liability and absolute liability became India's current legal guidelines. Even if every country has its own laws and regulations to prevent pollution, the scenario in which one nation pollutes the environment of another in breach of international agreements must be considered. It's significant to note that the idea of strict liability, which holds a nation accountable for harming another nation's environment while breaking international agreements, has developed gradually in the area of international environmental law.

3.2 State Responsibility

In the 1949 *Corfu Channel*³² case, the International Court of Justice (ICJ) established a broad obligation to prevent harm across boundaries adhering to the *Trail Smelter*³³ arbitration. This was in reference to “each country’s responsibility to forbid the wilful use of its territory in violation of other nations’ rights”.³⁴ The United Nations Survey on International Law revealed the universal support of the idea that a nation should not permit the use of its territory in ways that injure other countries and violate international law in the same year.³⁵

3.2.1 Conventions Adopted the Principle by ICJ.

³¹ *M.C. Mehta And Anr vs. Union Of India & Ors* on 20 December, [1986]

Equivalent citations: 1987 AIR 1086, 1987 SCR (1) 819.

³² ICJ Reports, [1949] p 22

³³ RIAA [1938], 1965

³⁴ n 1

³⁵ International Law Commission (1949) at 34

Following the above-mentioned principles there are many conversation established and adopted the same convention such as

- **Stockholm Declaration:** The declaration of the United Nations conference on the human Environment (1979) is known as Stockholm Declaration which works for prevention the human environment from harm and guide the individual to enhance the environment.³⁶ This convention adopted the idea which given by ICJ the idea developed in the Trail Smelter arbitration and comparable cases was further emphasized in the concept 21 of the 1972 Stockholm Declaration. In accordance to the united governments Charter and general principles of international law, “governments have a responsibility of ensuring that acts committed within their territory do not harmful for the environment of other countries or territories that are not under their direct jurisdiction”.
- **Rio Declaration 1992 and World Summit in 2002: The idea from principle 21 furthermore incorporated in Principle 2** from the Rio Declaration on environment 1997³⁷ as well as World summit in 2002. This concept is again found in the introduction of the 1992 UN Framework Convention on Climate Change and in article 3 of the Convention on Biological Diversity.³⁸ Moreover, an advisory opinion from the International Court of Justice acknowledged that the global responsibility of nations to ensure that their activities within their borders or influence don't harm the environment of other countries or international areas is now an established aspect of international environmental law.
- The convention on the Law of the sea.³⁹
- Article 20 of the ASEAN Convention on the conservation of Nature and Natural Resources⁴⁰.

³⁶ Stockham declaration, 1972 <<http://docenti.unimc.it/elisa.scotti/teaching/2016/16155/files/file.2017-03-11.7227158899>>10 August, 2023

³⁷ Rio Declaration, 1992 http://www.unesco.org/education/pdf/RIO_E.PDF10 August 2023

³⁸ The Convention on Biological Diversity 1992, Available at <https://www.cbd.int/doc/legal/cbd-en.pdf10August,2023>

Legality of the threat or use of nuclear weapons, Advisory opinion, I.C.J. Reports [1996], pp. 241-242, para 29

³⁹ United Nations Convention on Law of the sea 1994, art (194) (2)

⁴⁰ ASEAN Convention on the conservation of Nature and Natural Resources (1985), 15 *Envtl.Pol's & L.*64 (1985).

- **Geneva Convention:** Principle 21 is repeated in the 1979 Geneva Convention on Long Range Trans boundary Air Pollution, which states that it "expresses the common conviction that states have" regarding this issue⁴¹.
- **Gabckovo-Nagymaros project :** The advisory opinion's expressed was reiterated by the court in paragraph 53 of a different case regarding the "Gabckovo-Nagymaros project", wherein it highlighted the importance that it is for both nations and all of humankind to respect the environment⁴².

3.2.2 Consequences: Absence of Convention Regarding Environmental Law

Countries are responsible for any harm that crosses their territory, whether it is deliberate or not, under the Stockholm Principle 21 and related laws. Even if the damage is serious, nations frequently avoid claiming unintentional damages under this procedure. Nuclear fuel melting during the 1986 Chernobyl incident that occurred from a nuclear power plant explosion, and radioactive material was spilled into the atmosphere.⁴³ There were a couple of deaths at the time of the expulsion of fifty thousand people living within 30 kilometres of the plant's location, and 29 more lately. Radiation poisoning sickened hundreds of individuals. Although the fact that no deaths could be directly attributed to the disaster, several other countries were also devastated.⁴⁴

3.3 Strict Liability in Environmental agreements

At the present time, strict liability includes risky activities in outer space, an entirely new area. The development of laws based on strict liability is necessary due to the current and risky activities of missions to space and implementation.⁴⁵ It's remarkable that governments are mostly responsible for these measures. State responsibility and rigorous liability are both highlighted in the convention describing the fundamental concepts for controlling state space operations⁴⁶.

⁴¹ Geneva Convention 1979

⁴² *Gabc ikovo-Nagymaros* Project, judgment, ICJ Reports [1997] p 41, para.53

⁴³ L. Malone, 'The Chernobyl Accident: A Case Study in International Law Regulating State Responsibility for Transboundary Nuclear Pollution' [1987] 12 Colum. J. Env'tl. L. 203, 222

⁴⁴ Ibid

⁴⁵ Alexander kiss and Dinah Shelton, '*Strict Liability In International Environmental Law in Law of SEA*' " in Tafsir Malick Ndiaye and Rudiger Wolfrum,(eds), *ENVIRONMENTAL LAW AND SETTLEMENT OF DISPUTES:LIBER AMICORUM JUDGE THOMAS A. MENSAH* (Brill Acedamic publisher 2007)

⁴⁶ Ibid

3.3.1 Convention of outer space

In spite of the entity doing activities, Article VI explains the international responsibility of the countries parties for their activities in space, including those involving lunar and celestial entities.⁴⁷Non-governmental space activities need government inspection and consent. States are held accountable for damage caused by launched objects according to Article VII, which makes a distinction between strict liability for space-related damages and fault-based responsibility (Article VI)⁴⁸.

3.3.2 International Convention Responsibilities for Harm by Space Object

According to article 3 of UN Assembly resolution Which disclose many principles relevant to the Use of Nuclear Power Sources in outer Space established a concept that when any state sent for outer space that particular state will be liable for the damage and if two or more state sent jointly and any harm made by the space object both state will be liable jointly.⁴⁹Whereas article 2 ensure that the state have to be compensated for the harmful activities. Article 5 gives an exception for other nation's negligence or breaches of any conventional statement.⁵⁰

3.3.3 The Madrid Protocol for Antarctica's Responsibility

A framework for handling liability has been established by the Madrid Protocol for Antarctica's Liability Annex, which was created in 2005.⁵¹ Its aim is to reach an agreements on how to handle environmental crises and the requirements for their execution.⁵²Governmental and non-governmental activities are both included in the annex, creating an entire framework of liability. It highlights the importance of precautions, backup plans, and quick reactions. The annex's Article 5 explores a state's accountability and obligation.⁵³

The environmental protection protocol is activated in accordance with Annex 6 of the Convention and only effective after being formally accepted by all parties hereto. Except in situations when a party has implemented necessary laws, rules, and administrative procedures to effectively prevent environmental harm, Article 12 of the liability Annex assures financial

⁴⁷The Convention on principles Governing the activities of states in the Exploration and use of Outer Space 1967, Art 6

⁴⁸ N 13 Art 7

⁴⁹ The Convention on International Liability for Damage Caused by Space Objects, September 1997

⁵⁰ N 49 art (5) (2)

⁵¹ The Protocol on Environmental Protection to the Antarctic Treaty, signed in Madrid on October 1991 and entered into force in 1998

⁵² N 38

⁵³ N 42, Annex 5

support and compensation for affected territories. In such circumstances, the state shall not be liable for any harm. This appendix highlights responsibility more so than state liability.⁵⁴

3.4 The Establishment of Principles Regarding the State’s Liability for Dangerous Lawful Conduct

The International Law Commission (ILC) emphasizes the development of international law with regard to accountability for harm produced over borders by risky activity.⁵⁵ Preliminary principles that emphasize strict accountability for operators and monetary guarantees were developed as a result of the ILC’s modification of concentrate from prevention to establishing who bears the burden of loss. The significance of state liability has been reduced.⁵⁶

3.4.1: Evolution of International Law Commission

“International responsibility for harmful outcomes resulting from actions not prohibited by international law” is a topic that the International Law Commission (ILC) has been addressing throughout 1978.⁵⁷ The International Law Commission (ILC) changed the emphasis in 1997 to preventing harm from risky activities that crosses countries and over a duration of four years produced a complete set of 19 articles. The UN General Assembly then asked for more research to look at how accountability and prevention relate to one another.

A draft set of recommendations for how losses are allocated in situations of cross-border harm brought on by potentially dangerous behaviour was conditionally accepted in July 2004. Following comments, these rules were formally accepted in May 2006 following a second reading. The ILC articles on a nation’s liability for transnational crimes are supplemented by these principles. The final regulations’ language appears to reject a concept of holding a state responsible for following the Draft Articles on Prevention.

3.4.2: Distribution of Risk and Compensation

⁵⁴ N 38

⁵⁵ N 38

⁵⁶ N 38

⁵⁷ N 38

Under a draft principle established in 2004, the State, when it performs its due diligence obligations, is responsible for damages originating from legal activity.⁵⁸ These concepts lay the foundation for national laws and international agreements that provide compensation. The proposed clause aims to safeguard and preserve the environment in situations of international danger.⁵⁹

3.5 Strict Liability for Non-Jurisdictional Activities

In recent times, states as well as individuals have been concerned about the potential harm to the environment. As a result, there have been many treaties and conventions made regarding environmental matters, such as:

- **In 1960s Paris Convention:** The OECD was the organizing committee for the 1960 Paris Convention, also known as the Convention on Third Party Liability in the Field of Nuclear Energies.⁶⁰ Its goal was to develop consistent rules for ensuring fair and adequate remuneration. According to the case decision *Merliun Vs British Nuclear Fuels*, All other provides in this area, including the Paris Convention, have received widespread ratification. Despite several national claims, there have not yet been any known global claims based on the Paris Convention⁶¹.
- **Modified version of 1960s convention:** An Optional Convention (Brussels) was inserted into the Paris Convention in 1963, increasing its scope. Protocols to modify the Paris Convention and the Brussels Optional Convention were enacted in February 2004⁶².

In comparison to traditional tort law, which is based on fault or negligence, this liability is “strict”. A nuclear place controller is accountable under the Paris Convention whatever if negligence can be proven⁶³.

⁵⁸ Draft Article on prevention of Transboundary Harm from Hazardous Activities, in Report of the International Law Commission on the Work of its Fifty-Third session, UN GAOR, 56th Supp.No.10, UN doc A/56/10,370(2001).

⁵⁹ N 50, Article 5

⁶⁰ Convention on third party liability in the Field of Nuclear Energy <https://legalinstruments.oecd.org/en/20> Accessed 20 August 2023

⁶¹ *Merliun vs. British Nuclear Fuels*, (1990), 3 AII ER 711.

⁶² Protocol of 12 Feb, 2004 amending the 1960s Paris Convention; Protocol of 12 Feb., 2004 amending the 1963 Brussels Supplementary Convention

⁶³ Paris Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention or PC)https://www.oecd-nea.org/jcms/pl_20196/paris-convention-on-third-party-liability-in-the-field-of-nuclear-energy-paris-convention-or-pc20 accessed 20 August 2023

- **Oil pollution Convention:** An broad form established on the 1969 International Convention on Civil Liability for Oil Pollution, as altered in 1971, 1976, 1984, and 1992⁴³, as well as the 1971 Convention on the Establishment of a Global Fund for Compensation for Oil Pollution Damage,⁶⁴ also altered by protocols, the latest of which came into force in 2003, controls environmental damage caused by maritime oil pollution in a stricter manner than nuclear operations⁶⁵.

3.6 Conclusion

Strict responsibility simply refers to holding someone accountable for hazardous behaviours. States put regulations on such acts. Sometimes nations choose not to abide by international laws that compel them to regulate or bear responsibility for environmental harm occurring only outside their own national boundaries. Making this decision is sometimes influenced by financial considerations. However, some operations, such as nuclear and marine pollution, might have a negative impact on other areas. International legislation as well as several convention is gradually evolving to require greater responsibility from those who profit from these activities. The environment and human well-being may benefit from this.

⁶⁴ Oil pollution Act 1990, 101-380

⁶⁵ THE OIL POLLUTION OF THE SEA (CIVIL LIABILITY AND COMPENSATION) ACTS 1988 TO 1998,[2003]
<https://www.irishstatutebook.ie/eli/2003/act/33/enacted/en/index.html#20> accessed 20 August 2023

Chapter 4

Environmental pollution in Bangladesh, Framework, Legal policy and Prevention the Pollution under Tort Law

4 Introduction

Although in Bangladesh there are around two hundred environmental laws, the United Nations report on environmental rule of law (2019) reveals an unacceptable condition of the country's law enforcement.⁶⁶The key elements of environmental law are not sufficiently emphasized by Bangladesh's legal system. Bangladesh placed 177th out of 180 nations in the 2022 Environmental Performance Index (EPI). According to the EPI report, Bangladesh received a score of only 23.1 out of 100 based on a number of sustainability parameters.⁶⁷In other words, rather than the contrary, legislation should advise or promote behaviour that respects ecological balance and environmental bounds.⁶⁸For example, Bangladesh has several laws and policies, yet these are not enough to prevent pollution from getting worse. In this context, for the sake

⁶⁶ Mohammed Golam Sarwar, 'Making a case for Environmental rule of law in Bangladesh' | *The daily star* (8 June 2021) 2.03 AM

<https://www.thedailystar.net/law-our-rights/news/making-case-environmental-rule-law-bangladesh-210698928>, accessed 21 August 2023

⁶⁷ Environmental performance Index 2022 (Environmental performance Index) <https://epi.yale.edu/31> Accessed 21 august 2023

⁶⁸ Laitos JG and Wolongevicz L,J, 'Why Environmental laws fail' (William and Mary Law School Scholarship Repository, 16 January 2015) <https://scholarship.law.wm.edu/wmelpr/vol39/iss1/2/31> accessed 21 August 2023

of our health, prevention is mandatory. Under strict liability, tort can be a good method for prevention as well as balancing compensation for those who suffer.

4.1 The Type and Scope of Environmental Issues in Bangladesh

Air pollution

Nearly two million people die each year as a result of air pollution, allowing it a serious global threat. Breathing difficulties, lung disease, migraines, dizzy blocked nasal passages, and kidney damage are some of the health problems brought on by air pollution.⁶⁹ Other pollution production enhances the greenhouse effect, which causes global warming and increasing sea levels.⁷⁰In Bangladesh, air pollution is a significant environmental issue, particularly in urban areas like Dhaka and Chittagong. Particulate matter, SO₂, and Pb levels in the air are above WHO recommendations and Bangladeshi air quality standards.⁷¹The amount of lead in the city of Dhaka is 463 nanograms per cubic metre, which is ten times more than is permitted. The burning of fossil fuels, emissions from brick kilns, waste from factories, and emissions from vehicles are the main sources of pollution in Bangladesh. Significant air pollution levels are influenced by industries like textiles, leather, food, pulp and paper, and agriculture.⁷²

Water pollution-

Due to hazardous waste disposal, industrial pollution, and pollution from industrial sites, Bangladesh, an important delta in the world, explores serious problems with its water resources.⁷³In Bangladesh, enterprises dump rubbish into rivers without following proper procedures, and nearby houses and businesses also dump wastewater into rivers.⁷⁴ Liquid organic and inorganic waste, nutrients, synthetic materials, inorganic chemicals, silt, sediment, industrial, municipal, and urban waste are among the main contributors to water pollution. According to the Institute of Environment and Development Studies, 900 polluting businesses dump industrial waste straight into waterways, causing contamination that is 10 to 100 times more than what is permitted. With 1,500,000 cubic metres of wastewater from 7,000 nearby

⁶⁹ Country Environmental Analysis for Bangladesh, Institutional Document *Asian Development Bank* | July 2004 <https://www.adb.org/sites/default/files/institutional-document/32179/ban-cea-jul2004.pdf>, accessed 29 August 2023

⁷⁰ Ibid

⁷¹ N 69

⁷² N 69

⁷³ Anon, 'Report on the national stakeholder consultation on water supporting the post-2015 development agenda,' [2013]

⁷⁴ N. Ivy, M.K. Hossain, M.L. Hossain, 'Effects of industrial effluents on germination and early growth of selected agricultural crops', [2015] vol. 14, no. 1, pp. 43-48

industries per day and 500,000 cubic metres from diverse non-industrial sources every year, the Dhaka Metropolitan City has substantial pollution levels.⁷⁵The Karnaphuli River has been seriously harmed by the discharge of industrial, sewage, and municipal waste in Chittagong. Since 1990, the government has pushed companies to install effluent treatment plants (ETPs), but these facilities must be upgraded to properly handle sewage and wastewater before disposal.⁷⁶

Waste of Solid-

The numbers for the amount of solid garbage produced daily in the city of Dhaka range from 3,000 to 3,500 tonnes.⁷⁷They are obtained from homes, businesses, factories, and street sweepings. Nearly 45% of all solid trash is produced by households that makes up the majority of the total. It is reported that just 42% of the solid garbage produced in Dhaka city is collected by the municipal authority.⁷⁸ Solid trash should never be disposed of in public areas since it poses major environmental and health problems. Communities become dirty, musty, and unhealthy as a result of rotting and deteriorating rubbish. In besides blockage up the urban drainage system, open and waste disposal also threatens to enter the water supply.⁷⁹

Noise pollution-

Noise pollution is a significant issue in Bangladesh, particularly in urban area due to industrialization and urbanization. There is no doubt that noise contributes to air pollution in the atmosphere.⁸⁰In the context of urban life in Bangladesh, the issue of increased noise pollution has become an identifiable concern. According to an investigation, some residential areas in Dhaka have sound pollution levels that are higher than those recommended by Bangladesh's Department of the Environment (DoE).⁸¹The World Health Organisation (WHO) affirms that a man can become partially deaf at 60 decibels and completely deaf at 100 decibels.⁸²according to certain research, there are various precautions that should be taken when

⁷⁵ N 7

⁷⁶ Nishita Ivy, 'Environmental Problems of Bangladesh: A Review', ULAB JOURNAL OF SCIENCE AND ENGINEERING (1 NOVEMBER 2016) VOL.7

⁷⁷ n 69

⁷⁸ n 69

⁷⁹ n 69

⁸⁰ T. Ahmed, and T. Rahman, 'Non-Auditory health hazard vulnerability to noise pollution: assessing public awareness gap, American Journal of Engineering Research,(2015) vol. 4, no. 4, pp.143-147

⁸¹ A.M. Husain, S. Yusuf, T.H. Rini and M. Hasan, "Noise pollution in major places in Dhaka and proposing a device to keep a data log," Journal of Modern Science and Technology, vol. 3, no. 1, pp. 20-30, 2015.

⁸² Fahad Tuhin, 'Sound pollution-a severe health hazard' (15 November 2008) 12:00 AM

<https://www.thedailystar.net/news-detail-63340?amp23> Accessed 23 August 2023

generating noise, but regrettably, our nation, particularly the metropolitan region, makes noise more than that, which is a major contributing factor to both environmental and health concerns.⁸³

The auditory clamour is excessively accompanied by a commotion of noise from cars, planes, trains, vans, public transportation, and other kinds of mobility, which has been linked to a variety of health problems.⁸⁴The presence of noise pollution increases the chances of hearing loss and causes a variety of biological systems to breakdown.⁸⁵

4.2 Laws and Regulations Regarding Environmental Issues in Bangladesh

Bangladesh has regulations in place to safeguard the environment. The state shall attempt to sustain and enhance the environment, as well as preserve and safeguard the natural resources, biodiversity, wetlands, forests, and wildlife for the current and future citizens, according to Article 18A of the Constitution.⁸⁶

Environment-related policies, guidelines, and legislation have been developed in Bangladesh. The adoption of the National Environment Policy in 1992, the start of the National Environment Management Action Plan (NEMAP), the adoption of the Environmental Conservation Act in 1995, and obtaining environmental clearance for the operation of every workplace and project are a few significant steps that have been taken to protect the environment.⁸⁷ Bangladesh's main environmental legislation, regulations and components are listed below:

- Environmental conservation Act 1995, (The Environmental Conservation Act of 1995 empowered the MOEF to formulate rules and guidelines for the management. It also designed DOE to be responsible for enforcing the 1997 EIA process air pollution, water pollution, water pollution) Amended in 2000.⁸⁸

⁸³ Ibid

⁸⁴ S.Q. Chowdhury, 'Noise pollution,' https://en.banglapedia.org/index.php?title=Noise_Pollution, Accessed 23 August 2023

⁸⁵ S.C. Chowdhury, M.M. Razzaque, and M.M. Helali, 'Assessment of noise pollution in Dhaka city,(July 2010)

⁸⁶ The Constitution of people republic of Bangladesh 1972

⁸⁷ N 69

⁸⁸Environmental conservation act 1995 https://bangladeshbiosafety.org/wp-content/uploads/2017/05/Bangladesh_Environmental_Conservation_Act_1995.pdf13 Accessed 13 September 2023

- Environmental Conservation Rules of 1996, (pollution of air, water, noise)⁸⁹
- EIA Guideline of Industries of 1997, (The EIA processing is divided into four classes, which are us green, amber A, amber B, and red, according to the degree of impacts).⁹⁰
- Environmental Court Act 2000, (The law is passed to make the Environmental Court to speedily handle cases relating environmental crimes as described by the Environmental Law)⁹¹
- Environmental pollution Control ordinance 1997 (Covers national air quality standards, noise levels, solid and waste management, and water quality standards in accordance with WHO guidelines).⁹²
- Factories Act 1965 (Air pollution, occupational health).⁹³
- Non Agricultural Tenancy Act 1947, State Acquisition and Tenancy Act 1950, Acquisition of Waste Land Act 1950, Town Improvement Act 1950, Municipality ordinance 1977, Local Government ordinance 1982, Land Reforms ordinances 1982, Chittagong Hill Tract Regulation Act 1990 (these are deals with use of Land).
- Pesticide Ordinance 1971, Amended in 1980; Agricultural pest Ordinance 1962; Dangerous Drug Act 1930; Dangerous Drug Control Order 1982; Agriculture and Sanitary Improvement Act 1920; Poison Act 1930 (these laws deals with Toxic and hazardous substance).
- Forest act 1927, Modified in 1973 (Forest conservation, biodiversity conservation, soil).
- Wildlife (preservation) Act 1973, (Amended 1974. Wildlife conservation wetland management, biodiversity conservation)
- Private Fisheries Protection Act 1889, (Biodiversity conservation)⁹⁴

⁸⁹ Environmental Conservation Rule 1996, <https://faolex.fao.org/docs/pdf/bgd19918.pdf> Accessed 13 September 2023

⁹⁰ EIA Guideline of Industries of 1997, <http://file.portal.gov.bd/uploads/8ef2a505-c131-4a8f-b6d0-2ac4760cc936//635/f6b/1e6/635f6b1e69cb8822258025.pdf>, Accessed 13 September 2023

⁹¹ Environmental Court Act 2000 <https://faolex.fao.org/docs/pdf/bgd42277.pdf>, Accessed 13 September 2023

⁹² Environmental pollution Control ordinance 1997 http://doe.portal.gov.bd/sites/default/files/files/doe.portal.gov.bd/page/71a829c3_6b74_4ee9_90a6_158e2898b228/Environmental%20Clearance%20Procedure.pdf, Accessed 13 September 2023

⁹³ The factories Act 1965 <http://182.160.97.198:8080/xmlui/bitstream/handle/123456789/911/The%20Factories%20act%2C%201965.pdf?sequence=3>, Accessed 13 September, 2023

⁹⁴ Private Fisheries Protection Act 1889 <http://bdlaws.minlaw.gov.bd/act-61.html>, Accessed 13 September 2023

- Territorial Water and Marine Zone Act 1974, (established and controlled of coastal resources)⁹⁵
- Policy for management of closed waterbody 1990, Water supply and Sewerage Authority Ordinance 1963, Embankment and Drainage Act 1952, Water Hyacinth Act 1939, IWTA Ordinance 1958, Canals Act (management of water resources) EPC Ordinance 1977 (Marine pollution)⁹⁶

4.2.2 Policy Framework regarding Environmental Issues in Bangladesh

The government has taken several measures to solve issues related to developmental and environmental issues. In this case, major policies include the following:

- Environment Policy (1992),
- Forest Policy (1994),
- Fisheries Policy (1998),
- Water Policy (1998),
- New Agriculture Extension Policy (1995),
- Energy Policy (1995)

In addition to all these sectorial policies, the National Conservation Strategy (NCS) and particularly the National Environment Management Action Plan, 1995 (NEMAP) have been developed with action plans to address environmental problems and enhance sustainable development.⁹⁷

4.2.3 Objectives of significant environmental sectors organizations

Presently, Department of Environment DOE has established its five objectives, and to reach its goal, these five plans to increase the activities of these laws and regulations. Its aim is to execute the Environmental Conservation Act and other international agreements so that individual can access the jurisdictions easily. Secondly it's important to take measures to effectively and completely manage the clean-up process, which goal is preventing the pollution. Thirdly effectively handle problems with air and water pollution which could be a way to

⁹⁵ Territorial Water and Marine Zone Act 1974 [http://bdlaws.minlaw.gov.bd/act-details-467.html#:~:text=\(1\)%20The%20sovereignty%20of%20Bangladesh,warship%20in%20the%20Internal%20Water%20s.](http://bdlaws.minlaw.gov.bd/act-details-467.html#:~:text=(1)%20The%20sovereignty%20of%20Bangladesh,warship%20in%20the%20Internal%20Water%20s.), accessed 13 September 2023

⁹⁶ Embankment and Drainage Act 1952 <http://bdlaws.minlaw.gov.bd/act-253.html>, accessed 13 September 2023

⁹⁷ N 76

reduce the hazardous materials from the air. The last, not the least, would be increase public awareness, which would be the more effective method. As long as individuals will not aware about the environment about their responsibilities to the Environment. Lastly, increase DOE's capabilities, there are several lacking in department of environment which is the reason behind the ineffectiveness of the capabilities of the environmental regulations and policies.⁹⁸

4.3 Challenges to Enforcement of the Laws and Regulations

Though there are more than two hundred regulations developed regarding environmental issues, unfortunately, there are very few of instances where they were successfully enforced Reason are given below for failing the enforcement:-

- **Non disciplinary legal strategies:** The present legislation is criticized for not being extreme enough. There are just a few laws that include punishment clauses, such as the Penal Code and others, but they are not enough to affect the public's mind. The penalties under several ordinances for various violations are also quite minor; for instance the Agricultural Pesticides Ordinance imposes a maximum fine of 1,000 taka, and the Agricultural Pesticides Ordinance imposes a maximum fine of 500 taka to trading or infected crop.⁹⁹
- **Out-dated-laws:** Environmental legislation was primarily enacted during population growth and development, leading to outdated and inadequate laws that are insufficient for nation's needs and global environmental changes. For instance Agricultural and Sanitary Improvement Act, 1920; Water Hyacinth Act, 1936; Embankment and Drainage Act, 1952;and so on, significant environmental legislation are still in need of updating.
- **Insufficient institutional capacity:** The institutional capability to carry out the various action plans proposed for carrying out the necessary duties of environmental planning, monitoring, and enforcement is still insufficient.. For example: at present in the Department of Environment and Forestry, there is a lack of sufficient and skilled workers, an information management system, policies, and monitoring activities, as well as regular training programmes to assist with development.¹⁰⁰

⁹⁸ N 72

⁹⁹ The Pesticides Ordinance 1971, (Ordinance NO. II OF 1971) <http://bdlaws.minlaw.gov.bd/act-details-364.html>, accessed 13 September 2023

¹⁰⁰ N 88

- **Sectoral policies in contrast:** There are some times when sectoral policies seem to be at conflicts with one another. The Environmental Policy violates the limited goals of the Export Policies, and several provisions of the Fisheries Policy conflict with those of the Land or Industrial Policies.¹⁰¹
- **Insufficient collaboration among sectors:** In Bangladesh, managing cross-sectorial actions to address issues like the environment is a big problem. Different sectors and ministries are responsible for managing various aspects of environment. For instance, the Department of fishing is in assigned to enhancing the fishing industry, but other governmental entities are legally the owners of the water bodies.¹⁰²

Where the law is not properly enforced, the problem will never end. That's why the conditions of our environment getting worse day by day.

4.4. Reduce environmental damage under tort law

To prevent environment damages, and balancing a compensation under tort law could be a good method. Tort law provides compensation to person who have suffered as a result of environmental damage.¹⁰³

Environmental claims in Bangladesh can be categorized into trespassing, nuisance, negligence, or strict liability. The main goal is to correct violations of privacy and personal rights, with the aim of reducing pollution. Tort law, which addresses these challenges, is distinctive in that it links compensation (amounts paid to make up for injury) with risk management. This implies that if someone harms the environment, they can be required to make compensation. Due to the focus on holding individuals accountable for their acts, this type of law works particularly effectively in environmental situations.

The tort law has an obstacle, though. It isn't the best at preventing environmental harm in the first place because it mostly concentrates on making up for damage already done.

4.4.1 The Role of strict liability for preventing environmental damages

¹⁰¹ N 76

¹⁰² N 76

¹⁰³ Ahmed R, 'Barriers to Environmental Justice' *Dhaka Tribune* (1 July 2019)

<https://www.dhakatribune.com/opinion/op-ed/180850/barriers-to-environmental-justice27>, Accessed 28 August 2023

Strict liability considers people accountable for any loss or damage brought on by their products or conduct, even if they didn't want to hurt anyone or intentionally did anything wrong.¹⁰⁴With strict liability, the injured party can receive compensation without having to prove that someone else was negligent or acted improperly. If strict liability laws are in effect, the person being charged could still be held liable even if they take precautions and issue concerns. For example: The English doctrine of strict liability was the dominant theory in India before to M.C. Mehta v. Union of India.¹⁰⁵The Supreme Court increased precedent for tort liability when it decided that corporations engaging in hazardous or potentially risky activities had an absolute duty to take precautions to avoid injury and compensate those who had been hurt. The Supreme Court in scenarios involving strict liability insisted on following to English law. Bhagwati J. suggested that India establish its own legal framework to deal with unexpected circumstances brought on by risky or merely hazardous activities in the industrial sector.¹⁰⁶

A Very common tendency of the polluters is or any offender is to find the shelter under law, e.g., they somehow try to find out the defences against their claims.

4.4.2 Why we need strict liability in environmental law for prevention damage and balancing compensation

- **The Public Access to Environment Court Act is lacking:** Environmental laws are fail to fulfill their responsibilities. Unfortunately, there are various parts of the legislation that prohibit filing complaints without inspection authorization, including Section 6(3) of the Act, which forbids special magistrates courts from taking cognizance of complaints without inspection permission. Additionally, the Environmental Court is also prohibited under Section 7(4) of the Act without a written record from the inspector.¹⁰⁷In handling lawsuits and investigations, the Department of Environment depends on inspector reports. Despite the Environment Conservation Act permitting individual or group lawsuits, the Environment Court Act does not accept public access. Here the public needs a method like strict liability where they can file their complaint against the polluters.

¹⁰⁴ N 76

¹⁰⁵ 1987 SCR (1) 819; AIR 1987 965 Decided: [20 December 1986], Decision by: P.N. Bhagwati

¹⁰⁶ Stuti Mishra, 'Bhopal Gas Tragedy and the Development of Environmental Jurisprudence In' <https://blog.iplayers.in/bhopal-gas-tragedy-case-study/1> Accessed 1 September, 2023

¹⁰⁷ The Environmental Conservation Act 1995

- **Lack of components to access justice:** Elements of Srikakulam’s “access to justice” Srikakulam Anasaravalli Kumar v. Sravanthi (2018):¹⁰⁸
 - (a) A powerful and efficient legal system with a set of rights and substantive laws.
 - (b) An effective and easily accessible judicial or correctional system for litigants.

It is argued that access to justice and rule of law standards are both lacking in Bangladesh’s environmental laws. So strict liability could be a norm where people can get access easily under this rule and ensure balancing compensation. For example, 2017 saw the Supreme Court approve the decision to remove 155 tanneries from Hazaribagh and pay each one BDT 55,000 for polluting the area and the Buriganga River. 154 Hazaribagh tannery owners were ordered by the High Court bench to pay the government Taka 30.85 crore in fines within two weeks for environmental pollution and failing to move their businesses to the area.¹⁰⁹ Government officials and environmentalists have protested its operation and called for its removal. According to a follow-up report from 2019, the tanneries had left Hazaribagh.

4.4.3 Environmental cases where application of “strict liability” could a better way

Our higher court still has some jurisdictional lacking in recent era but writ petitions are still regularly used to save and preserve our environment.¹¹⁰ These are some court cases where high court gives a decision over environmental problems:

In 1996, *Dr. Mohiuddin Farooque v. Bangladesh* was the first case in which environmental protection was officially recognised by a court.¹¹¹ During the general election season of 1996, a petition was submitted to support the noisy and chaotic citizens. The Attorney General was established by the court to take the appropriate actions to stop property damage caused by an appearance of electioneering.

In Another situation, Dr. Mohiuddin Farooque filed a new writ petition to enforce the Motor Vehicles Ordinance of 1983 because two-stroke three-wheelers in Dhaka put the environment at risk by discharging smoke and having overly loud horns.¹¹² The HCD acknowledged that part

¹⁰⁸ Srikakulam Sravanthi vs. Srikakulam Anasaravalli Kumar on 6 December, 2018
Bench: M.Satyanarayana Murthy

¹⁰⁹ “Close tanneries at Hazaribagh, March 7, 2017 [https://www.thedailystar.net/frontpage/close-tanneries-hazaribagh-1372036?amp=](https://www.thedailystar.net/frontpage/close-tanneries-hazaribagh-1372036?amp=,), Accessed 28 August 2023

¹¹⁰ Ali Mashraf, ‘Landmark environmental law verdicts’ *The Daily Star* (Tue 4 June 2019) <https://www.thedailystar.net/law-our-rights/news/landmark-environmental-law-verdicts-1753354>, Accessed 5 September 2023

¹¹¹ *Dr. Mohiuddin Farooque Vs. Bangladesh* (Civil Appeal No. 24 of 1995)

¹¹² *Ibid*

of the right to life protected by the Constitution is a pollution-free environment. As a result, it was established that the two-stroke three-wheelers should be phased out and replaced by cleaner alternatives by December 2003. Since this Judgement, CNG auto-rickshaws have been used on our streets.

The government got sued for failing to fix the tube-wells that were poisoned with arsenic in *Rabia Bhuiyan, MP v. Ministry of LGRD, & others*. The court recognised the seriousness of the problem and the risks to the general public's health from drinking water that has been poisoned with arsenic.¹¹³ It made a connection between polluting the environment and the Constitution's guarantee of the right to life and the duty to protect that right by making the environment better.

Here we can see that the Judgement does not affect us as much. Though our constitution did not give us the right to pollution, Article 18A though deals with environment pollution but this is not enforceable. But right to environment is now considered as a right to life and any jurisdiction for right to life is enforceable and it's a legislative and administrative duty taken gives us protection for environmental pollution. We can still see the risky vehicles and the noise on our street; here we need strict liability. When compensation comes, people automatically become aware of their act.

4.5 Conclusion

Bangladesh has established regulations, procedures, and programmes for preserving the environment. Over time, some of these regulations have changed for the better. The regulations governing the environment, however, are not always understood or applied correctly. The concept of "tort law" aims to address issues and deter reckless behaviour. This tort legislation might aid in ensuring that individuals abide by environmental regulations. People may become more concerned about the environment as a result and work harder to safeguard it. Tort law may one day play a significant role in Bangladesh's efforts to tackle environmental issues.

¹¹³Civil Appeal No 118 of 1999 (Official Case No)
ILDC 3090 (BD 2005) (OUP reference)
(2007) 27 BLD (AD) 261 (Other Reference)
(2008) 5 ADC 1 (Other Reference)
(2007) 59 DLR (AD) 176 (Other Reference)

Chapter 5

Finding and recommendations

5.1 Findings of the research

The two basic environmental conservation difficulties that the environmental laws were supposed to address are resource management and prevention of pollution, according to their general objectives and structure. However, the country's current legal framework falls short of our expectations. Upon evaluating the research paper, we found the following difficulties:

- **Difficulty of filing a suit**

The environmental court will not entertain direct claims from parties. He has to file a grievance with the director of operations. The first challenge for people seeking full justice for environmental damage is the barrier.

- **Jurisdictional difficulties**

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. It will be easier if people can go through the lower court and file a suit regarding environmental issues.

- **Quite Exhaustive Act**

The court must adhere to the criminal procedure code, the civil procedure code, and the Act's own procedure. Therefore, it is likely to assert that the Act does not cover all bases. Because of this, the public may occasionally be confused about the environment court.

- **Lack of an instant remedy**

A victim cannot guarantee an immediate resolution since the court cannot order one. The court requests written reports and inquiries from the Department of the Environment and follows established practices in civil and criminal actions. As a result, the client must wait a long time for the remedial actions to take place.

- **Lack of transparency in compensation**

It's unresolved whether or not the victims will be compensated. The victim could receive a portion of the sums immediately from the court, although DOE frequently uses them to pay the processing costs. No rules outline the distribution of compensation. There is no additional information available regarding the process of remedy and compensation.

- **Lack of public awareness**

The people of Bangladesh are not sufficiently informed of the environmental tort. In fact, most individuals are unaware of both the issues and the solutions.

- **Corrupt behaviour**

The victims must go through the DOE process before pursuing a claim in court. Therefore, corruption uses frequently affected individuals to undermine the claims of the victims in favour of wealthier polluters.

5.2 Recommendations

- **Proposal for Enhancing the Proposed Environmental Tort Act:** It is essential to recognise the current difficulties while making suggestions for enhancing the proposed Environmental Tort Act.
- **Essential Legislative Changes for Equal Access to Environmental Justice:** Legal reforms are required to achieve access equity for environmental justice. Overcoming the barrier preventing regular people from having direct court access is the first step.
- **Improving the Court's "Suo Moto" Jurisdiction:** The court should have the inherent power to hear cases on its own. It is recommended to promote alternate conflict resolution procedures with a focus on reducing costs and suffering.

- **Quick Adjudication for Remedial Action:** It appears that quick trial provision is a crucial component of speedy remedial action.
- **The Need for Bangladesh to Pass Strong Tort Laws:** The only practical solution within Bangladesh's legal system is the adoption of tort law. This proposal would unify the various tort remedies under a single set of laws, guaranteeing that courts would decide tort claims.
- **Developing a Systematic Approach to Damage Assessing:** The establishment of a systematic and quantitative approach for determining damages is required by tort law. For example: seek damage under strict liability. The complexity involved in assessing the damage should be addressed thoroughly by providing complete guidelines for determining losses.
- **Developing a Specific Forum for Tort Claims:** It is essential to establish a specific forum for judging tort claims. If this weren't done, environmental injustices would go unpunished, and perpetrators' irresponsibility would go unpunished.

5.3 Concluding remarks

In the end, the concept of strict liability is essential for addressing and preventing environmental harm while also securing just recompense for individuals who are harmed. This paper analyses strict liability's complicated nature in relation to environmental protection. It is clear that strict liability sets the burden of duty of care precisely on individuals who engage in potentially hazardous activities, serving as a forceful barrier against behaviours that damage the environment.

Furthermore, it is essential that a balance be taken between protecting the environment and compensating sufferers. This balance not only encourages individuals and organisations to follow ethical behaviours, but it also provides recourse to those who are harmed by unexpectedly natural disasters.

A more sustainable future for Bangladesh is made possible by this critical analysis, which highlights the significance of finding a delicate balance between safeguards for the environment and reasonable reward.

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