



Dissertation
on
Tortious Liability for Environmental Air Pollution:
A Comparison between India and Bangladesh

Submitted to:

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Application for Approval of Research Proposal

To

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Subject: Proposal for Approval of Research Title

Dear Sir,

I, A.K. Saif Musfiqul Haque bearing ID: 2019-1-66-009, is a student of LL.B. (Hons.) program of the Department of Law. According to the program, I would like to undertake the course LAW 406 (Supervised Dissertation) under your supervision.

The Title of Research is mentioned below:

“Tortious Liability for Environmental Air Pollution: A comparison between India and Bangladesh.”

Therefore, I pray and hope that you would be kind enough to approve the mentioned research topic.

Thanking you.

A.K. Saif Musfiqul Haque.

Signature of the student

Approved by the Supervisor

Date: 27 December, 2023



Consent Form

The dissertation titled: **“Tortious Liability for Environmental Air Pollution: A comparison between India and Bangladesh.”** prepared by **A. K. Saif Musfiqul Haque, ID 2019-1-66-009** submitted to **Ali Mashraf, Lecturer, Department of Law, East West University** for the fulfillment of the requirements of Course LAW406 (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: 14/01/2024

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DECLARATION

I, A. K. Saif Musfiqul Haque, declare that the thesis has been done by me and that all the works, citations, review of the literature etc. are genuine and bear no resemblance to other works or secondary research.

I, therefore, confirm that the thesis has been composed and authored solely by myself as a part of the fulfilment of the LL.B. (Hons.) degree at East West University.

ABSTRACT

Tortious Liability for Environmental Air Pollution: A Comparison between India and Bangladesh focusing on the differences in air pollution levels between the two nations. The goal of the dissertation is to determine what effective measures, how the legal framework addresses this issue, and what tortious remedy is available for the victims because air pollution is currently a major problem in these two countries and the rate of pollution is extremely high. The industries in these two nations are expanding quickly, and the majority of them are related to air pollution. A suitable remedy can be awarded under tort law against companies that cause air pollution and endanger people's lives.

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Chapter 1: Introduction

1.1 Background of the Study

Tortious liability for air pollution indicates the legal responsibility of individual's or entity's for causing injury or damage to others by releasing of pollutants into the air. Environmental air pollution is now a serious issue which consequences for both the health of public and the environment. It is proved that releasing toxic compounds into the atmosphere has a variety of negative impact including respiratory ailments, environmental destruction, and climate change. Many nations have built legal frameworks to control and reduce air pollution, holding individuals and businesses accountable for their activities in order to solve these concerns. The purpose of this research is to compare the legal concepts and practices governing tortious responsibility for environmental air pollution in India and Bangladesh. Bangladesh and India both face air pollution issues. Both nations have fast expanded industrial sectors and a large number of cars, resulting in rising pollution emissions. In both nations, the use of fertilizers and pesticides in agriculture sector contribute to air pollution. Rapid urbanization in big cities like Dhaka and Delhi has resulted in increased construction activity, which has damaged air quality. Because air pollution has no bounds, pollutants can flow across these neighboring nations, impacting air quality in both. Due to their shared problems and pollution sources, the two nations frequently collaborate in efforts to reduce air pollution.

1.2 Research Question

Research questions are:

1. What are the legal frameworks and regulations governing tortious liability for environmental air pollution between India, and Bangladesh?
2. How efficient are legislative measures in preventing environmental air pollution and promoting air pollution protection?
3. What remedies and compensation mechanisms are available to victims of environmental air pollution?

1.3 Research Justification

This comparative analysis of tortious responsibility for environmental air pollution in Bangladesh and India is important because it adds to our understanding of how other legal systems handle a similar environmental issue. In addition, determining the extent to which one country's law applies to another country and implementing best practices in one country's law to another country. The results of the research are important for policymakers, legal practitioners, environmental activists, and researchers working to enhance these countries' legal frameworks and enforcement mechanisms regarding air pollution. The following are this study's main goals:

1. To contrast Bangladesh's and India's respective legal systems on tortious liability for environmental air pollution.
2. To evaluate these law provisions' efficacy and enforcement in both nations.
3. In order to understand the actual implementation of these regulations, case studies or examples of air pollution-related litigation from Bangladesh and India are used.
4. To determine the issues and possible solutions with relation to tortious liability for air pollution in the legal systems of the two nations.

1.4 Research Methodology

The research will be conducted following the qualitative research method where books, journal, articles, online newspaper will be discussed and analyzed to reach the purpose of the dissertation. That all the primary and secondary information both are prioritized in this dissertation. The study's research method would be comparative legal research, which would comprise an examination and comparison of relevant laws, rules, and legal precedents in Bangladesh and India. Additionally, a qualitative examination of case studies or incidents in which tortious responsibility for air pollution in both nations will be included.

1.5 Literature Review

Astutya Prakhar and Raj Shekhar in their research article pointed out the available legislation in India for combating air related pollution and what is the right to healthy and clean environment. Journal article (2019) from Indian Express describes about the pollutions of air in Delhi which is in at dangerous position and the implication of Air Act, 1981 with certain amendments. Naina

Agarwal (2020) claims that The Environment Protection Act, 1986 is not effective to combat the pollution related to the environment. Prashant Bhadu (2021) in his research outlined the present laws how extend are effective to control the pollution occurs by vehicle or automobile. Dr. Madhuri Parikh pointed out judicial decisions and interpretation effectiveness for public nuisance matter of environmental protection and focuses on how the Indian judiciary interprets the Criminal Procedure Code and Indian Penal Code's environmental protection provisions which are provisions for public nuisance in each of these codes. Melissa Grant (2023) defines the absolute liability under tort law principles. Delwar Hossain (2019) outlined the necessity of tort law in Bangladesh to combat the problems which common laws failed to resolve. Md Faysal Saleh (2015) in his research pointed out the application of Environmental Conservation Act, 1995 and rules 1997 (which is repealed) in Bangladesh without the suggestions of necessary changing needed for proper application in our country. Barrister Rahman refers the legislation available to combat pollution related to air very shortly just like introduction. A journal from Publications Bangladesh provide Air Pollution Rules of 2022 recently amended to resolve the problems related to air. Tahseen Lubaba in a newspaper article published in The Daily Star gives an overview of environmental law presents in Bangladesh without highlighting the drawbacks of laws and how sort of these laws is effective in our country. Indulia and Bhumika (2022) discuss about the incident of Bhopal and the Vizag tragedy and analysis how tort law compensation awarded in that two cases. Rayhanul Islam (2017) compared the court system between India and Bangladesh in his journal article without providing the necessary steps we have to follow to improve our legal system. Syeda Rizwana Hassan in her newspaper article pointed out the role of law for reducing the pollution of air and the protection of public interest. M. Tony Mathew and L. Priya darshini in their journal article analyses the applications of the tort principle how effectively in India at the time of environmental harm and also introduced the ex-anti safety regulations as a tool for controlling environmental harm. The book named "Sources of Air Pollution in Bangladesh" published by the help of Department of Environment describes the scenario of brick kiln and vehicle emission with the recent conditions of air pollution including real time database in Bangladesh. Adam D.K. Abel Kop in his book named "Tort Law as an Environmental Policy Instrument" pointed out the economic theories of liabilities and compare Tort law v public regulation. Sumit Sharma and Atul Kumar in the book named "Air Pollutant Emissions Scenario in India" refer the major pollutant in India and the negative site of burning brick in the brick field.

1.6 Chapter Outline

Divisions of chapters:

Chapter 1: Introduction.

Chapter 2: Tortious Liability for Air Pollution Indian Perspective.

Chapter 3: Tortious Liability and Air Pollution in Bangladesh.

Chapter 4: Corporate Air pollution and Tortious Liability.

Chapter 5: Comparison of Environmental Courts between India and Bangladesh.

Chapter 6: Recommendations.

Chapter 2- Tortious Liability for Air Pollution Indian Perspective

2.1 Introduction

In India, air pollution is a major environmental issue that has detrimental effects on people's health and standard of living. Numerous factors contribute to its cause, such as building dust, industrial processes, vehicle emissions, and agricultural practices. Consequently, there has been an increasing focus on using the legal system to hold negligent actors accountable for the harm they create. Tortious liability refers to legal liability that emerges when the actions of one person or entity cause hurt or damage to another person, entity, or the environment. This liability relates to the liabilities of individuals, businesses, and government bodies for their acts that contribute to air pollution in India.

2.2 Legal Framework in India

Air Related Legislation in India:

The effectiveness of air pollution control in India is a complex combination of legal frameworks, enforcement mechanisms, and technical advancements. However, the government has made progress in developing policies to address air quality concerns. Present Scenario of available Air Legislations in India are given below:

1. **Indian Constitution:** Article 32 gives the Court original jurisdiction over every person for the enforcement of his or her basic rights. Individuals can approach the Court under this clause to seek protection for their basic rights.¹ Article 48A mentioned the Directive Principles, the State should strive to protect with developing the environment, as well as to protect the lives of forests.² Article 51A (g) of Part IV-A of the Basic Duties declares that the obligation of every citizen to give protection and develop the natural environment. Because of the deplorable state of affairs of environmental pollution, life indicates that to measure with human dignity. However, if one cannot breathe clean air, have safe drinking

¹ Astutya Prakhar, Raj Shekhar, 'Air Pollution and The Constitution of India: A Critical Analysis of The right to Clean Air', (2017), < <https://docs.manupatra.in/newslines/articles/Upload/d08a625b-13b6-49a9-936e-ee5520d83366.pdf> > accessed 1December, 2023.

² ibid n (1).

water, or food, the all-human rights civil, political, social, or economic square measure is meaningless. The right to life is known as a fundamental right which is protected by the Article 21 of the constitution of India, and guaranteed the right to clean water and air in order to live fully.³

2. **The Air (Prevention and Control of Pollution) Act, 1981:** It is considered the first law enacted with the sole purpose of preventing, controlling and abating pollution. It was established to meet the requirements of the Board, to confer and delegate the powers and functions of such Board in related matters. Penalties for air pollution referred under section 37 of this Act where if any person failed to comply with the provisions referred section 22 which is Persons engaged in industry are not to allow to emit the excess level of air pollutants which cross the standard limits of State Boards, failing to do so the person shall be held liable and shall be punished with imprisonment for a term which shall not be less than one year and six months.⁴

Drawbacks of this act: The Pollution Control Boards now are not able to carry out their mission as watchdogs against polluting enterprises under the 1981 Air Act. The Air Act of India does not specifically address or give priority to mitigating the health effects of increasing pollution levels.⁵ Governments and even the Supreme Court have disregarded the rules and regulations of this Act; programs such as the Odd-Even Plan and the Action Plan for Graded Response rely on additional regulations and laws, some of which have no connection to the environment.

3. **The Environment Protection act, 1986:** The 1986 Act arose out of a tragedy named Bhopal gas tragedy in 1984. The Act was passed under Article 253[1] of the Indian Constitution. Excess emission, handling hazardous chemicals in violation of procedural safeguards, and obstruction of anyone entitled to enter and examine are all defined as offenses under the Act. The Act covers offenses committed by corporations and government agencies individually. According to section 7 no one engaged in any kind of industry, operation, or process may release pollutants into the environment above any

³ ibid n (1).

⁴ The Air (Prevention and Control of Pollution) Act 1981, s 37 (1).

⁵ *Indian Express*, 'Delhi's Air Pollution - Need for Amending 1981 Air Act', November 04, 2019, < <https://www.iasparliament.com/current-affairs/delhis-air-pollution-need-for-amending-1981-air-act> > accessed 1December, 2023.

legally mandated limits, nor allow such releases to occur. ⁶Section 16 of this Act deals with the offences committed by the company. Any individual when affected by the company can claim compensation under this section.⁷

Drawbacks of this act: The Act didn't address contemporary issues like traffic, noise, congestion, slums, etc. even though it covered the air, water, and land. Furthermore, as it is a backdated act the rising technology has not been addressed under Section 11. Mobile laboratories can be used to check air or water samples quickly and efficiently. The intention of the present regulations was to protect the guilty, not the environment. However, no minimum sentence has been established, which works as a loophole here. It was a great lot to create such a hefty punishment in case of violation or environmental degradation, and the Act got significant notoriety owing to this.⁸

4. **The Motor vehicle Act, 1989:** This statute establishes vehicle emission limits and controls automotive emissions. The Act was amended in 1994 to promote uses of compressed natural gas (CNG) as fuel and to loosen incentive permits and allow state governments to set their own tariffs. The legislation that enabled the use of LPG as a vehicle fuel in the year 2000 was a welcome change.⁹

2.3 Legal Theories of Liability with Case Laws

In law of torts, effective remedies be there for the breach of law to face the problem of air pollution. Majority of environment air pollution cases of tort in India fall under three major categories:

1.Nuisance:

A nuisance is a legal word that refers to any unlawful interference with the use and enjoyment of one's property or the general public's rights. Noise, odors, pollution, and other disruptions that impair the quiet enjoyment of a property or the surrounding environment can all be considered

⁶ The Environment Protection act 1986, s 7

⁷ The Environment Protection act 1986, s 16

⁸ Naina Agarwal, 'Efficacy of Environment Protection Act, 1986', May 3, 2020, < <https://lawbhoomi.com/efficacy-of-environment-protection-act-1986/> > accessed 1December, 2023.

⁹ Prashant Bhadu, 'Effectiveness of Laws to Combat Automobile Pollution: *A Legal Overview*', e-Journal, vol. 6, núm. 2, pp. 9-16, [2021] Welfare Universe, < <https://www.redalyc.org/journal/7039/703973419002/html/?fbclid=IwAR3r-gYYEX6WVqJtg980qs1QACrumBX-mHEiIrbGhFJYS-SmoCImlEnk7c> > accessed 1December, 2023.

nuisances.¹⁰ Air pollution might also affect in individual or public nuisance claims. Private nuisance is defined as intervene with an existent's use and enjoyment of individuals property, whereas public nuisance is defined as causing detriment to the broader public. In similar circumstances, courts might order abatement or damages.

Case Laws

Ram Baj Singh v Babu Lal

In this case Legal action was taken against the defendant by the complainant, a physician who ran a clinic in his community. Defendant constructed a brick grinding machine in front of a medical practitioner's consulting chamber. The complainant said that the release of brick powder, which was contaminating the surrounding area and getting into his clinic, was causing discomfort for his patients. Allahabad High Court held liable the defendant and states that this construction of defendant and polluting air is considered as private nuisance which is able to cause hurt, inconvenience, or irritation to a person. The court determined that the dust produced from defendant's mills were causing problems for the general public. As a result, the court ruled that the complainant be awarded further damages since he and his patient faced severe losses at his clinic.¹¹

Smt. Ajeet Mehta and Ors. v State of Rajasthan and Ors.

In this case it was established that the act of stockpiling fodder on a specific plot within a residential complex is considered an air pollution and thus a public nuisance. The defendant was ordered not to conduct any business of fodder on that plot, and the order calling the elimination of this nuisance was supposed genuine.¹² the Court observed:

“It's unfortunate that the environmental issue is presently entering little attention and that a lax approach is being taken. Seldom do individuals stand up and oppose the same. They are typically deterred by the government's and the court's tardiness in moving. However, this is one of the few instances when the petitioner has gone through the entire process and filed a motion to address the pollution issue in that area.”¹³

¹⁰ *Encyclopedia Britannica*, 25 Oct. 2023, < <https://www.britannica.com/topic/nuisance> >, accessed 1 December 2023

¹¹ *Ram Raj Singh v Babulal*, [1982] AIR All 285 HC.

¹² *Smt Ajeet Mehta and Ors v State of Rajasthan and Ors*, 9 May, 1989, [1990] CriLJ 1596, 1989 (2) WLN 273.

¹³ Dr Madhuri Parikh, ‘Judicial Interpretation of Law of Public Nuisance for Environment Protection: *A Critique*’, id, p. 1598, per Mathur J, < <https://www.ijcrt.org/> > accessed 1December, 2023.

Himmat Singh v Bhagwana Ram

In one instance, there were fodder tali in a residential complex, to which trucks delivered fodder every day throughout the night and removed in the morning. This produced unbearable loudness. An unpleasant odor and the dispersal of feed cut dust particles are the reason of air pollution. It was held that the act is considered as a public nuisance.¹⁴

2.Negligence:

The failure to treat someone else with the sort of care that someone with common sense or prudence would exercise in a similar circumstance is the legal concept of negligence. Individuals or corporate body can be held liable for air pollution. If their acts are determined to be careless, failing to comply with environmental standards, inappropriate management of pollutants, or failing to take necessary safeguards to prevent pollution are examples of this.

Case laws

Naresh Dutt Tyagi v State of UP

A go down next to a residential neighborhood held some chemical pesticides for storage. Three little children of the petitioner who were living in that area of the building, ages four, seven and ten, respectively, died as a result of the fumes from the pesticides leaking into the next property through the ventilators. The petitioner's wife miscarried while she was living with her family at the time. The petitioner claims that the government authorities' failure to stop the storage of hazardous chemicals in a residential block constituted a duty violation. The Cooperative Society's running of the chemicals is also prompted to be considered "state action," for which the State bears responsibility. The owner of the go down was found to be accountable by the Supreme Court of Allahabad and ordered to compensate the victims.¹⁵

3.Strict Liability:

Strict liability is a legal concept that applies to some tort proceedings claims for compensation following an accident. When strict liability principles apply, defendants can be held liable for the

¹⁴ *Himmat Singh And Ors v Bhagwana Ram and Ors*, 14 April, (1987), [1988] CriLJ 614, 1987 (1) WLN 538.

¹⁵ *Naresh Dutt Tyagi v State of UP And Ors*, (1993) (4) SCALE 520, [1995] Supp (3) SCC 144.

consequences of their acts whether they were purposeful or negligent. When strict liability laws apply, even a sensible individual who took appropriate care might be held liable for the results.¹⁶

Case laws

M. C. Mehta v Union of India (Shri Ram food and fertilizers case / Oleum gas leakage case)

In this case, the rule of Absolute Liability was established. This case is well known as the oleum gas leaking case.

Delhi Cloth Mills Ltd owns Shri Ram Food and Fertilizer Industry. It's located near a heavily populated area of Delhi. An oleum gas leak from the Sulphuric acid factory killed an advocate and wounded many others on December 4th, 1985. On December 6th, 1985, the same facility had another minor oleum gas leak. The District Magistrate ordered Shri Ram Food and Fertilizers Industry to stop operating the business in response to a complaint filed under Section 133 of the Cr.P.C.

Mr. M. C. Mehta filed a Public Interest Litigation (PIL) under Section 32 of the Indian Constitution. In his appeal, the petitioner requested the Court order the government to take the necessary steps to prevent such leakages from firms involved in hazardous industrial processes. He also reminded the Court of the recent Bhopal Gas Tragedy and requested that the government to transfer these businesses away from the city.

The court ordered the administration to deposit Rs. 20 lakhs in court as security for the victims' compensation. Furthermore, the industry has to implement all expert committee recommendations and safety measures in this initial instance.

The court also ordered to the enterprises to build or expand 1-5 km wide green belt around the industry. The court praised petitioner Mr. M.C. Mehta for filing PILs and ordered Shri Ram Food and Fertilizers to deposits Rs. 10,000 in costs.¹⁷

M. C. Mehta v Union Carbide Commission

Methyl isocyanate which is known to be a deadly gas was leaked from the Union Carbide Corporation India Limited facility in Bhopal on December 1984. This catastrophe, which is regarded as the biggest industrial accident in history, left around 6 lakh people seriously injured and 2,260 people dead. On behalf of the victims, the Indian government lodged a lawsuit in US

¹⁶ Melissa Grant, 'What is a Strict Liability Tort', Jun 13, 2023, < <https://www.legalmatch.com/law-library/article/what-is-a-strict-liability-tort.html> > accessed 1December, 2023.

¹⁷ *MC Mehta And Anr v Union of India & Ors*, 20 December, 1986, [1987] AIR 1086, 1987 SCR (1) 819.

District Court in New York. The US District Court dismissed all of the lawsuits, petitions, and submissions based on the venue being non-convenient (the activities could be resolved without difficulty in India).

M.C. Mehta claimed compensation in the amount of Rs. 3900 crores which is around 3.3 billion US dollars. But The District Court determined the compensation of damage to UCC provide the victims with interim remedy of 270 million US dollars which is Rs. 350 crores.

After that, the UCC petitioned for a civil revision before the Madhya Pradesh High Court, requesting a reduction in the sum from Rs. 350 crores. the Supreme Court ordered the UCC to provide the victims with compensation in the amount of 470 million US dollars, or Rs. 750 crores, as a complete and final settlement of all outstanding claims from the past, present, and future. Both parties accepted this order.¹⁸

Vellore Citizens Welfare Forum v Union of India

The Supreme Court emphasized in this decision the "Polluter Pays Principle," a principle stating that the polluter ought to cover the expense of pollution management. The court found that polluting industries must pay for remediation and compensation to impacted parties.¹⁹

2.4 Conclusion

Finally, the legal foundation for tortious responsibility for air pollution in India is comprised of legislation, regulations, and court judgments. The strict responsibility concept, as established in M.C. Mehta v. Union of India case which is known as landmark case in India, is significant. However, obstacles remain in terms of effective enforcement and dealing with growing concerns. To limit the impact of air pollution and hold guilty parties accountable within the Indian legal context, further efforts are needed to enhance legislation, improve monitoring processes, and encourage sustainable practices.

¹⁸ *MC Mehta v Union Carbide Commission*, 3 October, 1991, [1992] AIR 248, (1991) SCR Supl. (1) 251

¹⁹ *Vellore Citizens Welfare Forum v Union of India & Ors*, 28 August, 1996, [1996] 5 SCR 241, ILDC 443 (IN 1996), 1996 5 SCC 647, [1996] AIR 2715, JT 1996, 375, 28th.

Chapter- 3: Tortious Liability and Air Pollution in Bangladesh

3.1 Introduction

Tort law in Bangladesh is regulated by a mix of common law principles and statute law. Tort incidents can occur as a result of purpose or negligence. The criminal is held accountable under multiple laws, including the Fatal Accident Act of 1885, the Civil Procedure Code of 1908 (CPC), The Criminal Procedure Code of 1898 (CrPC), The Penal Code of 1860, The Transfer of Property Act of 1882, and the constitution. These statutes provide a redress for tort victims. However, present legislation is exceedingly challenging for the victim to secure justice. The procedure would be lot smoother if Bangladesh had a codified tort law.²⁰ The High Court Division gives some directions to reduce air pollution in Dhaka city as well as Bangladesh.²¹ In this chapter we are going to know how tort law principal ‘Nuisance’ applied in Bangladesh, the legal frameworks to prevent air pollution with case laws and International Conventions and Treaties in the Field of environmental air to which Bangladesh is a Party.

3.2 Tort Principal of Nuisance how Applied in Bangladesh

Numerous activities can contribute to air pollution by creating nuisances such as construction and excavation dust and dirt, as well as increasing smoke emissions from businesses that affect nearby

²⁰ Delwar Hossain, ‘Why we need tort law’, 07 Feb 2019, 12:00 AM, < <https://www.dhakatribune.com/opinion/oped/168102/why-we-need-tort-law?fbclid=IwAR1aGZheY9xUnfPjJuP11KiaTH-e96ee6bDZss462Mv2EZnAOrG8Tm4jXc4> > accessed 1December, 2023.

- ²¹ 1. To implement Bengal Motor Vehicles Rule 1940 Rule 114(d) and Motor Vehicles Ordinance 1983 Section 139, which prevents the use of hydraulic and different loud and shrill horns, including an air horn.
2. Vehicles will be tested in the 5 Vehicle Inspection Centers previously turned over to BRTA within 6 (six) months, and certificates of fitness will be issued for all vehicles, including motorcycles (two-wheelers).
3. To convert all government-owned patrol/diesel-powered vehicles operating in the Dhaka Metropolitan City into C.N.G.-operated vehicles within 6 (six) months.
4. To establish six more CNG filling stations in Dhaka City by December 2002, as well as to establish more CNG filling stations as needed to satisfy the needs of vehicles ensuring that CNG stations are adequately maintained around the clock.
5. All automobiles must be equipped with a catalytic converter and a diesel particulate filter.
6. Setting Bangladesh's petroleum standards in compliance with international norms, guaranteeing decreased emissions and elimination of harmful and hazardous elements.
7. To phase out current two-stroke three-wheelers and replace them with more environmentally friendly transportation options.
8. To put an immediate prohibition on new licenses for two-stroke three-wheelers in Dhaka Metropolitan City, as well as the termination of nine-year-old permits for baby taxis.

residents, disrupt their daily routines, and have an adverse effect on public health. Bangladesh has a significant amount of this kind of air pollution, which indicates general nuisance. A public right is independent of the quantity of people who exercise it. Members of the undefined mass of the public are entitled to enjoy this privilege.²² In Bangladesh, the common law tort theory of nuisance is applied. The public nuisance part was recognized by statute, even though the private nuisance aspect has not been utilized or expanded to a great degree. Public nuisance regulations have been codified in various substantial and procedural laws in Bangladesh like,

According to Section 91 of the Code of Civil Procedure, 1908, if there's an issue of public nuisance or other unlawful conduct that is or will be likely to impact the public, more than two people have the legal capacity to file a lawsuit for a declaration and injunction or any other type of relief that might be worthwhile in the circumstances of the case.²³

Public nuisance is a criminal offence and punishable under Chapter-XIV where section 278 deals with the atmosphere. According to this section Voluntarily making atmosphere noxious to health by carrying business or other ways should be held accountable for the penalty which may be extended to five hundred takas.²⁴

In The Code of Criminal Procedure, 1898 Chapter X, section 143 referred public nuisance where Magistrate is empowered to prohibit the repetition and the continuance of public nuisance.²⁵ It is used in situations where the public is likely to experience severe discomfort and may sustain irreversible damage if the annoyance or obstacle is not eliminated.

3.3 Legal Framework in Bangladesh

The Constitution of the People's Republic of Bangladesh:²⁶ As is stated Article 18A of the People's Republic of Bangladesh Constitution, Bangladesh shall strive to preserve and safeguard

²² A.I.R. 18 PAT. 76.

²³ Code of Civil Procedure 1908, s 91.

²⁴ The Penal Code 1860, s 278.

²⁵ The Code of Criminal Procedure 1898, s 143

²⁶ The Constitution of the People's Republic of Bangladesh, a 18A

its natural assets, ecological diversity, forests, wetlands, and wildlife both present and future residents.²⁷

The Environmental Conservation Act of 1995:

The Bangladesh Environment Conservation Act of 1995 was created to achieve three key goals: environmental conservation, environmental betterment, and environmental pollution management and mitigation. The Environment Policy of 1992 and the National Environment Management Action Plan of 1995 established the policy foundation for the Act.²⁸ In this Act Section 6 addresses vehicle emissions, while Section 9 addresses excessive pollutant discharge and gives the Dept. of Environment the authority to control and monitor activities that impair air quality. It addresses environmental approvals, emission regulations, and noncompliance fines.²⁹

Drawbacks- The Bangladesh Environment Conservation Act, 1995, have imperfections. The provisions of this acts imply that it is cure-oriented and solely deals with remedies rather than preventative ones. In its real essence, the Environment Conservation Act, 1995, deals with post-harm scenarios.

Environmental Conservation Rules, 2023

The Bangladesh Environment Conservation Rules, 2023 were enacted in compliance with Section 20 of the Bangladesh Environment Conservation Act of 1995. Commercial enterprises as well as components categorized according to their operational actions, pollutants, and possible environmental and human health impact. Green classifies are units or initiatives which have a low environmental and psychological effect. The industrial components or programs that fall under the Yellow Category exhibit minimal effects on both the environment and human well-being. Institutions or initiatives in the Orange Category have a major influence on both the environment and human well-being. The red category has a significant influence on both the environment and human well-being, and it is necessary to decrease the harm caused by safeguarding the

²⁸ Md Faysal Saleh, September 3, 2015, 'A Critical Appraisal of Bangladesh Environment Conservation Act, 1995 and Rules, 1997', (2015), < <https://bdlawdigest.org/bangladesh-environment-conservation-act-1995.html?fbclid=IwAR1X5vJzFD7bXRjdRAJRiAiJY8fX2X6dYI23IdpbqxvAcFbdHNPIblCdO-A> > accessed 1 December, 2023.

²⁹ The Environmental Conservation Act of 1995, s 6, 9.

environment and implementing pollution reduction mechanisms. For constructing new projects, the yellow, orange, and red marked businesses have to seek location approval and then the Environmental approval Certificate from Director which is stated in rule 5. Validity of location clearance certificate and environment clearance certificate is 5 years.

Activities of those with responsibility, enterprises, or programs may be banned under Section 7 of the Act until contamination is regulated. If compensation fails to be paid, the Location Clearance Certificate given to the affected individual industrial entity or program will not be suspended or renewed.³⁰

The Air Pollution Rules 2022:

The government released a new rule based upon Section 20 of the Bangladesh Environment Conservation Act, 1995, motive to preserve environmental health. This rule's primary goals are avoided, control, and minimize air pollution. The government is empowered to appoint a general director who will be authorized in charge of managing with sustaining the issues related to environmental. The Rule defined several sorts of pollution, including pollution generated by industry, cars, construction, rubbish, and so on. According to the new rule, a committee will be formed to assess damages and penalty for such pollution. According to that rule, the government would reward people who oppose pollution.³¹

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

The Act was introduced in 2013 with intention of controlling brick production process. Many limitations on the areas in which brick kilns can be built are imposed by the Act; they have drawn criticism for being overly ambitious and, in some cases, impractical. The Act specifies the bans on

³⁰ 'Environmental Conservation Rules, 2023', 25 Apr, 2023, < <https://www.linkedin.com/pulse/environmental-conservation-rules-2023-bdlex-manupatra> > accessed 12 December 2023.

³¹ "THE AIR POLLUTION RULES 2022", *DATED 25 JULY 2022*, October 31, 2022, SRO NO. 255-LAW/2022, <https://www.vdb-loi.com/bd_publications/sro-no-255-law-2022-on-the-air-pollution-rules-2022-dated-25-july-2022/> accessed 1 December, 2023.

using wood for fuel and on obtaining raw materials from places like hills, hillocks, and agricultural land.³²

Drawbacks- According to the act, no one may utilize soil as a basis for work in brick manufacture after cutting or gathering it out of land used for agriculture, a hill, or a hillock. Brick producers are only permitted to cut or remove soil out of dead ponds, canals, swampland, waterways, deep tanks, rivers, haor-baor, char land, and fallow land along with the permission of the competent authorities. However, the act does not specify the proper authorities or the method. The use using wood as a means of burning fuel inside brick kilns is strictly forbidden by law. Brick producers can only utilize coal as fuel if it meets certain sulfur, ash, mercury, or other standards. The government has yet to establish an acceptable level or their standard for coal. As a result, brick kilns around the country are utilizing hardwood in place of coal illegally. Regrettably, through punishment and regulations described in this act in detailed but there is hardly any actual adherence to these regulations.

3.4 Case Laws Related Air Pollution

Farooque v Government of Bangladesh (vehicle Pollution)

The suit is mostly about pollution from cars and environmental and health issues. The petitioners asked for the respondents to adopt all reasonable and efficient initiatives to reduce pollution due to hazardous smoke releases from car engines and the usage of audible signaling devices that make unacceptable noise, assuring that motor cycles achieved certificates of fitness, to establish a Bangladesh standard for petroleum that ensures the reduction of toxic as well as dangerous elements from that substance, and to require all imported motor vehicles to abide by it. The petition argued that the environment and ecology of Bangladesh were constantly endangered by the discharges of dangerous smokes and sounds into the air from faulty and unfit motor vehicles that lacked the requisite roadworthiness. As a result, numerous areas experienced an unhealthy atmosphere.³³

³² Tahseen Lubaba, 'An Overview of Environmental Laws of Bangladesh', *The Daily Star* (Tue Jun 4, 2019 01:01 AM), <<https://www.thedailystar.net/law-our-rights/news/overview-environmental-laws-bangladesh-1753360?fbclid=IwAR1qPC0Q04NpFURHXRFGCOHrmvAeJMXMzueCtE8Sy2kvMGjPqqU-G0iNmAg>> accessed 1December, 2023.

³³ *Farooque v Government of Bangladesh*, (1995), 48 DLR, p. 438, WP 300, HC,

Even though the technology for ensuring fitness through automation was widely accessible and such approaches had been accepted in a majority of nations, the court held that the respondent's fitness certificate granting procedure was based on human judgment, which was more vulnerable to error and corruption. According to data, several of the cars utilized by responders and other government entities lacked a fitness certificate. The court, on the other hand, believed that certain immediate preventative steps were required to limit environmental pollution and deterioration in Dhaka City. As a result, among other things, the following instructions were issued: To impose restrictions on the use of hydraulic and other loud horns; to carry out the respondents' decision that all motor vehicles be equipped with a catalytic converter and a diesel particulate filter; to establish a Bangladesh standard for petroleum in accordance with international standards, ensuring the reduction and removal of toxic and hazardous constituents from the same; and to phase out a certain type of polluting wheeler and replace it with cleaner trans.³⁴

Farooque v Government of Bangladesh (Industrial Pollution)

In this case, the petitioners asked for the proper redress in relation to the issue of pollution management from factories and businesses spread throughout Bangladesh. The Department of Environment Pollution Control performed a survey by which it was revealed that continual release of different industrial pollutants into air and water bodies was causing ecological imbalance. The petitioners expressed dissatisfaction over the lack of progress in mitigating hazardous industrial pollution in Bangladesh, despite numerous legal provisions pertaining to environmental protection. Instead, they emphasized how the nation's industrial projects and components were becoming more numerous and polluting the environment.³⁵

According to the court, the petitioners qualified as "person aggrieved" under Article 102 of the Constitution since they were registered as an association with the intention of pursuing legal action to safeguard environmental systems and because they were highly involved in this area of public interest. They therefore had the right to file a law suit. A right to life was protected by Article 32

< https://www.informea.org/en/court-decision/farooque-v-government-bangladesh?fbclid=IwAR2dwLmQYoHBsOx7UGOTaM--qmy_PifleE6Wt2TU9vEXI8yfedDnMoVWGYk > accessed 1December, 2023.

³⁴ *ibid* n (33).

³⁵ *Farooque v Government of Bangladesh*, (1994), WP 891 HC, (2001.07.15), < <https://www.informea.org/en/court-decision/farooque-v-government-bangladesh-0> > accessed 1December, 2023.

of the Constitution. The term "life" denoted more than just an elementary existence; it also denoted a high-quality existence free from environmental dangers. Living in a healthy environment is one of a person's fundamental rights, and if that right is violated, there constitutional remedy available under Article 102. The court believed that the factories and polluting industrial units persisted in their irresponsible disregard of the laws and constitutional demands for this crucial and nationally significant issue, thereby damaging the air, rivers, lakes, and land. The Writ petition was granted. The Director General of the Directorate of Environment was instructed, among other things, to make sure that factories and other polluting industrial units adopted appropriate and sufficient measures to control pollution within a year of receiving the judgment and that they reported compliance to this court within six weeks of that date. The secretary, who holds the position of Minister of Industries, was instructed to guarantee that no new factories or industrial units are established in Bangladesh without first putting in place appropriate and sufficient measures to manage pollution.³⁶

3.5 International Conventions or Treaties in The Field of Environmental Air Where Bangladesh is a Party

There are some air related treaties where Bangladesh is a party.³⁷

3.6 Conclusion

Continuous efforts in enforcement, public awareness, and technical advancements reflect a commitment to improving air quality and protecting residents and the environment. As Bangladesh evolves, a comprehensive strategy that includes legislative measures, strict enforcement, and community participation will be critical for effectively addressing air pollution and promoting a healthier and more sustainable future.

³⁶ *Farooque v Government of Bangladesh*, (1994), WP 891 HC, (2001.07.15), < <https://www.informea.org/en/court-decision/farooque-v-government-bangladesh-0> > accessed 1December, 2023.

³⁷ The treaties:

1. Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, Moscow, 1963.
2. Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985
3. Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal 1987
4. London Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, London, 1990 (Copenhagen Amendment)
5. Convention on Early Notification of a Nuclear Accident, Vienna, 1986.
6. Convention on Nuclear Safety, Vienna, 1994.

Chapter- 4: Corporate Air pollution and Tortious Liability

4.1 Introduction

Tortious responsibility for corporate air pollution holds an entity legally responsible for the damage caused by pollutant emissions. This typically falls under the category of environmental torts, in which affected parties may claim compensation for health problems or property damage caused by pollution. Legal procedures may be based on negligence, nuisance, or strict liability, depending on the jurisdiction and circumstances. Companies can be held accountable for insufficient environmental controls, violation with regulations, or harming nearby residents.

4.2 Role of The Judiciary in Enforcing Corporate Liability for Air Pollution in India and Bangladesh

In India and Bangladesh, the judiciary can play a significant role in enforcing corporate accountability for air pollution. Several important rulings of the Supreme Court and High Courts have a significant influence related to environmental law in India and Bangladesh. Some of the most important court decisions related to corporate bodies are mentioned below:

Bhopal Gas Tragedy³⁸

In this particular case, the doctrine of "absolute liability" was utilized. When absolute liability is considered, the establishment of a corporation's liability may occur even in cases when the accused entity is found not at fault. In addition to the aforementioned, the Indian government has filed a case against Union Carbide Corporation in a US court, claiming they are owed \$3.3 billion. Due to forum non convenient, all of these US District Court proceedings had been transferred to India by 1986.³⁹ Along with this, an out-of-court settlement was reached between the Government of India and Union Carbide, which determined the company's duty to pay \$470 million as the full and final settlement of all claims, rights, and responsibilities stemming from the accident.⁴⁰The

³⁸ *MC Mehta v Union Carbide Commission*, 3 October, (1991), [1992] AIR 248, 1991 SCR Supl. (1) 251.

³⁹ *Forum Non-Convenience* is a doctrine which allows a Court with jurisdiction over a case to dismiss it because the convenience of the parties and the interest of justice would be better served if the case were brought in a court having proper jurisdiction in another venue.

⁴⁰ Indulia, Bhumika, 'Bhopal to Vizag - A jurisprudential analysis of the tortious liability for companies' (SCC Blog, 15 June,2022), < <https://www.sconline.com/blog/post/2020/06/15/bhopal-to-vizag-a-jurisprudential-analysis-of-the-tortious-liability-for-companies/>> accessed 2023-12-05 00:21:11.

compensation issued was around Rs. 1 lakh for the families of those who died, Rs. 50,000 for those who were permanently damaged, and Rs. 25,000 for those who were temporarily harmed.⁴¹

Vizag Gas Tragedy⁴²

The chemical facility operated by the South Korean business LG Polymers India Private Ltd leaked styrene gas. By which 13 people were killed and many others were harmed. The Andhra Pradesh government held that the Company is responsible and awarded compensation of Rs. 1 Crore to the relatives of those who died, Rs. 10 Lakhs to the sufferers, and Rs. 1 Lakh to the remaining victims who were hospitalized.⁴³

Farooque v Government of Bangladesh (Industrial Pollution)

The petitioners asked for the proper redress in relation to the issue of pollution management from factories and businesses spread throughout Bangladesh. The Department of Environment Pollution Control performed a survey which revealed that the continual release of different industrial pollutants into air and water bodies was causing ecological imbalance.

The Writ petition was granted by the Court and was instructed The Director General of the Directorate of Environment, among other things, to make sure that factories and other polluting industrial units adopted appropriate and sufficient measures to control pollution within a year of receiving the judgment and that they reported compliance to this court within six weeks of that date. The secretary, who holds the position of Minister of Industries, was instructed to guarantee that no new factories or industrial units are established in Bangladesh without first putting in place appropriate and sufficient measures to manage pollution.⁴⁴

⁴¹ *ibid* n (40).

⁴² *Lg Polymers India Private Limited v Andhra Pradesh Pollution Control*, Suo Motu WPs (PIL) Nos. 112, 117 & 119 of (2020).

⁴³ Indulia, Bhumika, 'Bhopal to Vizag - A jurisprudential analysis of the tortious liability for companies' (SCC Blog, 15 June,2022), < <https://www.sconline.com/blog/post/2020/06/15/bhopal-to-vizag-a-jurisprudential-analysis-of-the-tortious-liability-for-companies/> > accessed 2023-12-05.

⁴⁴ *Farooque v Government of Bangladesh*, (1994), WP 891 HC, (2001.07.15), < <https://www.informe.org/en/court-decision/farooque-v-government-bangladesh-0> > accessed 5 December, 2023.

4.3 Conclusion

The Indian and Bangladeshi judiciary have significant challenges in imposing corporate accountability for environmental air damage. Despite the presence of a legislative frameworks, the judiciary has several challenges in maintaining environmental legislation.

Chapter 5: Comparison of Environmental Courts between India and Bangladesh

5.1 Introduction

This chapter will basically describe the similarities and dis similarities of environmental Courts established to deals with environmental related problems between India Bangladesh. An initial comparison of Bangladeshi and Indian Environmental Courts may help us comprehend the current approach and their drawbacks, as both are built on the same historical skeleton of the legal system.

5.2 Comparison between India and Bangladesh

The current position of both the Bangladeshi court system and the Indian Environmental court system developed almost simultaneously, making the court system too remarkable to compare. Bangladesh took a stronger back-and-forth role in creating their court system, eventually establishing two Special Environment Court under the Environmental Court Act of 2010 and This Special Court has just one good specialty: it solely deals with environmental issues. Furthermore, the procedure is frequently difficult and dependent on other institutions.⁴⁵

In India National Green Tribunal deals with environmental issues. The National Green Tribunal of India has the authority to consider all civil disputes can take Suo motu actions involving environmental concerns and questions concerning the implementation of legislation mentioned in Schedule I of the National Green Tribunal Act include the laws relating to Air and the Tribunal accepts both original and appellate jurisdiction from any aggrieved person where there is a clear breach of the law or a major question concerning the environment, or where the environment is likely to be harmed as a result of any conduct under section 2(m) and 14, The Tribunal's most powerful authority is its ability to interpret the law and proclaim specific rights or violations by issuing guidelines.⁴⁶

⁴⁵ Rayhanul Islam, 'Environment courts of Bangladesh in comparison with Indian court', December 8, 2017, < <https://lawhelpbd.com/international-law/environmental-law/environment-courts-bangladesh-comparison-indian-court/> > accessed December 8, 2023.

⁴⁶ Rayhanul Islam, 'Environment courts of Bangladesh in comparison with Indian court', December 8, 2017, < <https://lawhelpbd.com/international-law/environmental-law/environment-courts-bangladesh-comparison-indian-court/> > accessed December 8, 2023.

In contrast, the Environmental Court's jurisdiction in Bangladesh is somewhat limited. No court can take cognizance of an offense or entertain any complaint for compensation without a written report from the Department of Environment's inspector, though there is an even more complicated option, it just returns the matter to the Inspector or Director General, hears them, and if they do not object, the case is taken.⁴⁷

India has specialized courts comprised of professionals from several fields with judicial minds. However, because Bangladeshi court processes take a long time, individuals there are sometimes reluctant to bring cases pertaining to environmental issues, and during the proceedings, the courts have not dealt with environmental issues with environmental specialists.

In Bangladesh, Environment Courts have jurisdiction over any offence punished under the Brick Manufacturing and Brick Kilns Establishment (Control) Act, 2013. So far, just three Environment Courts have been formed and are operating in Dhaka, Chittagong, and Sylhet. The Department of Environment is in charge of administering regulatory approval for brick kilns as well as monitoring the adherence to this Act, having the primary duty of initiating cases and conducting investigations. Though it is intended to construct a few environmental courts in each of the 64 districts, the Department of Environment only has offices in 22 of them. Without the DoE's (Department of Environment) office and people, it is very difficult to create an Environmental Court and effectively administer this Act.

5.3 Conclusion

Indian environmental law is more flexible than Bangladeshi Environmental laws because the Indian Tribunal is made up of both judicial members and experts from scientific and technological fields. Bangladesh can follow India, where the court is a specialized one comprised by specialists from many fields with judicial minds. With administration and government policy partnership.

⁴⁷ ibid n (46).

Chapter 6: Recommendations

The environmental impact of a development project is frequently overlooked. This is not acceptable because our Constitution explicitly states that no harm to the environment or public health can be caused by any development initiative and we are endangering the lives of future generations as a result of our careless behavior. We are not fulfilling our constitutional commitment to safeguard the environment.⁴⁸ I suggested the following recommendations states below:

- A. Air Pollution in our country is mainly due to brick kilns. The Brick Manufacturing and Brick Kiln Establishment Control Act, 2013 should be modified by the researcher, Simultaneously, legal frameworks should be improved and required by-laws must be created to ensure the proper execution of this Act.
- B. Brick Kilns burn low-quality coal which cause more air pollution. By using gas instead of using wood and coal as fuel, this pollution level can be reduced.
- C. As the High Court Division has previously given several instructions to decrease air pollution, converting CNG was proposed as a solution to air pollution. Converting CNG is not the only option, and I propose adopting electric vehicles, which are environmentally friendly and beneficial in controlling air pollution.
- D. Make environmental cadres available in the Bangladesh Civil Service.
- E. Buildings should be required by the City Corporation to set up rooftop gardens.
- F. Tort remedy should be introduced and instituted where a person or entity affect individual's environment and living standards by polluting the air.
- G. Mobile courts should be deployed to reduce air pollution.
- H. Increase the usage of concrete blocks and turn to a more environmentally friendly alternative to brick.
- I. Create an unbiased Commission to Control Air Pollution.
- J. It is important to manage workplace air pollution using effective solutions.
- K. Economic and sociopolitical problems should be highlighted, and root people should be given access to specific legal aid so they may exercise their legal rights and appear before the law without hindrance.

⁴⁸ Syeda Rizwana Hassan, 'Role of law in combatting air pollution and protecting public interest', The Daily Star, Fri Mar 11, 2022 06:45 AM, <<https://www.thedailystar.net/round-tables/news/role-law-combatting-air-pollution-and-protecting-public-interest-2980456>> accessed 9 December 2023.

- L. The government should designate particular environmental and legal specialists, and it should not be unpleasant to existing NGOs in this field.
- M. The speed of the trial should not be slowed by the bureaucratic procedure, the burden of proof should be moved to the company, and tort law should be implemented.
- N. The principle of 'polluter pays' must be applied.
- O. Exercising Public Interest Litigation is important to seek remedy against pollution of environment. Public Interest Litigation is a process of law of which permits anyone, the organization as well, or the community to submit a complaint to the courts for the public or to preserve the interests of the public. Environmental PILs that are have played an important role in encouraging conservation and protection of the environment in Bangladesh. PIL additionally assisted in raising people's knowledge of problems with the environment as well as their legal rights. public interest litigation contributed to the formation of the enactment of new regulations and laws relating to the environment and the execution of pollution-control measures.

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