

A Brief Discussion on the Deficiency of Environment Conservation Act, 1995 and its Correlation with Environment Conservation Rules, 1997

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Abstract

Environmental law is a new phenomenon in the judicial arena of Bangladesh. Two laws of Bangladesh aim at preserving and protecting the environment, The Environment Conservation Act, 1995 and Environment Conservation Rules, 1997. Protection of Environment is not only a national issue; this issue affects the entire human race. Therefore, every state has an inherent responsibility to conserve the environment. This doctrinal research paper evaluates the provisions and correlation of the above-mentioned national laws. It also aims at findings the lacking of the said act when it comes to conservation of the environment and enforcement.

Keywords: Conservation of Environment, Department of Environment, Ecologically Critical Area, Environment Clearance Certificate.

Introduction

The survival of human race is entirely depended upon the nature. Mother Nature has blessed us with oxygen to breathe, minerals, fertile lands to cultivate food to survive this cruel world. However, we must remember that our resources are not infinite. We are at the verge of destroying Mother Nature. Environment is one of the few things that bind us together. Humans have created borders and separated themselves. Nevertheless, when it comes to nature we all are interconnected. Nature does not see border, if we harm it, we will all have to face devastation together. Every state has the responsibility to protect its environment. Their actions will create a worldwide phenomenon when it comes to environment. If you pollute your seashore, it will definitely flow to the other side of the world. That is the simplest way of understanding how environment connects us all. Bangladesh government has enacted two laws to conserve the environment. The Environment Conservation Act, 1995 deals with establishment of department of environment, declaration of ecologically critical area, restrictions upon certain acts and use of certain articles and products, appeal and penalties¹. The Environment Conservation Rules, 1997 supplements the act of 1995. It contains provisions related to Ecologically Critical area and Environment Clearance Certificate. The purpose this doctrinal paper is to thoroughly evaluate the acts and find their strengths and weaknesses.

¹ The Environment Conservation Act, 1995.

Objective of the study

The main objectives of the study are:

- Critical analysis of the Environment Conservation Act, 1995 and Environment Conservation Rules, 1997.
- Formation of a brief summary of the Environment Conservation Act, 1995 and Environment Conservation Rules, 1997.
- Finally, find the strengths and weaknesses of the Environment Conservation Act, 1995.

Research Methodology

This is a doctrinal research paper. The main sources of the research are the Environment Conservation Act, 1995 and Environment Conservation Rules, 1997. This paper will analyze and summarize the said laws. The paper also aims at finding the strengths and weaknesses of the laws when it comes to conservation and enforcement.

Salient features of the Environment Conservation Act, 1995

In this section, we will be discussing about the salient features of The Environment Conservation Act, 1995.

- Establishment of Department of Environment: To execute the purpose of this act a Department of Environment was established. The head of this department is the Director General.² This act empowers the Director General to take any necessary measure to conserve the environment, mitigate pollution and improvement of environmental standards.³ The powers include coordination with any authority, prevention of accidents, providing advice, conducting inquiries, undertaking research, search and seizure, collection and publication etc. One notable power of the Director General is that he can authorize any person to enter premises at a reasonable time for the purpose of performing any duty under this act, inspect any activity or equipment, searching and seizure.⁴ The Director General is also bestowed with the power to authorize a person to collect samples of air, water, soil or other substances from any factory, premises or other place for the purpose of analysis.⁵
- One astounding aspect of the Environment Conservation Act, 1995 is the Declaration of Ecologically Critical Area. If the government is satisfied that any area is in harm's way of acute environmental degradation, it can declare that area ecologically critical in the official Gazette. The Government may also take necessary steps to mitigate the degradation and prohibit the harmful activities in the ecologically critical areas.⁶
- A ground-breaking and pragmatic approach to fight environmental degradation was introduced in this act as Environment Clearance Certificate. As we know the most harm to our environment is caused by the industrial units and projects. This act makes it mandatory for all the industrial units and projects to obtain an Environment Clearance Certificate from the Director General. Even the units of projects that were established immediately before the commencement of this act, they shall also obtain the Environment Clearance Certificate. To obtain the certificate they shall prepare an

² The Environment Conservation Act, 1995, s 3

³ The Environment Conservation Act, 1995, s 4

⁴ The Environment Conservation Act, 1995, s 10

⁵ The Environment Conservation Act 1995, s 11

⁶ The Environment Conservation Act 1995, s 5

Environment Impact Assessment Report, Environmental Management planning, Consideration of Public Opinion etc.⁷ This provision creates a platform of accountability for the industrial units and projects, to make sure they are not doing anything harmful to our environment.

- Section 8 of the said act gives any person the right to inform the Director General if he or she is or is likely to be affected by environmental degradation.⁸ This issue is also dealt by the Environment Conservation Rules, 1997. According to Rule 5 of the Environment Conservation Rule, 1997 the director General Shall dispose of the application within three months from acceptance.⁹
- Section 6 through section 6E of the Environment Conservation Act, 1997 deals with some specific matters that harm our environment. The matters are vehicles emitting smoke, manufacture, and sale of articles injurious to the environment, cutting of hills, hazardous waste management, cutting and breaking of ships and preservation of wetlands.¹⁰
- The act also deals with some remedial measures. Section 9 of the said act commands a person to take immediate measure if by his action or by accident any environmental pollutant in excess of its limit is discharged in the environment. He or she shall also inform the Director General regarding this occurrence.¹¹ Section 14 gives any person a right to appeal if he or she is aggrieved by a notice, order or direction under this act.¹² Section 15 provides defines of environment related offences and the penalties that may be imposed.¹³

Correlation between the Environment Conservation Act, 1995 and the Environment Conservation Rule, 1997

In this paper, we will be showing the relationship between the Environment Conservation Act, 1995 and the Environment Conservation Rules, 1997 via a chart. The Environment Conservation Rule, 1997 supplements the Environment Conservation Act, 1995 in regard to some specific issues. It deals with necessary procedures to enforce the Environment Conservation Act, 1995. In the chart, we will specify the specific sections of the act and rule that supplement each other. The chart will provide a brief summary of the relevant sections. To understand the Environment Conservation Act, 1995, understanding its relationship with the Environment Conservation Rule, 1997 is compulsory.

The Environment Conservation Act, 1995	The Environment Conservation Rules, 1997
Section 5: This section states that the Government can specify any area ecologically critical area, if it is satisfied that the area needs protection from environmental degradation. Government shall also develop an action plan for the said protected area. Moreover, specify the harmful acts or processes that are prohibited in that area.	Rule 3: This rule specifies the factors the Government shall consider while declaring an area ecologically critical. The factors are human habitat, ancient monument, archeological site, forest sanctuary, national park, game reserve, wild animal’s habitat, wetland, mangrove, forest area, biodiversity of the relevant area, other relevant factors.
Section 6: It prohibits the operating of vehicles that	Rule 4: It requires the owners of motor vehicles to

⁷ The Environment Conservation Act 1995, s 12

⁸ The Environment Conservation Act 1995, s 8

⁹ The Environment Conservation Rule, 1997, Rule-5

¹⁰ The Environment Conservation Act, 1995, s 6-6E

¹¹ The Environment Conservation Act, 1995, s 9

¹² The Environment Conservation Act, 1995, s 14

¹³ The Environment Conservation Act, 1995, s 15

<p>emits smoke injurious to the environment.</p>	<p>add a catalytic converter or a diesel particulate filter before the registration of the car or before the renewal of the fitness certificate. Rule 7A: It states the procedure for issuance of Pollution Under Control Certificate. Rule 7B: It states that an importer of catalytic converter and diesel particulate filters must acquire a written permission from the Director General.</p>
<p>Section 8: It empowers any person to apply to the Director General for remedy of damage, if he/she is affected by any environmental degradation. However, the degradation must be recognized by the act. Director General may hold a public hearing and take measures to deal with the application.</p>	<p>Rule 5: A person applying under section 8 of the act shall use Form-I, appended to this rule. The director General Shall dispose of the application within three months from acceptance. Rule 17: If excessive discharge or emission of environment pollutants is happening in any place, the person in charge shall inform the Director General immediately.</p>
<p>Section 11: It empowers the a person authorized by the Director General to collect samples of air, water, soil or other substance for analysis form any place. The occupier will be notified specifying the intention for the collection.</p>	<p>Rule 6: Form-II shall be used to send this notice. Form-II is appended to this rule.</p>
<p>Section 12: This section specifies the proceedings related to Environment Clearance Certificate. Before establishment, every industrial unit or project shall obtain an Environment Clearance Certificate from the Director General.</p>	<p>Rule 7: It states the procedure for issuing Environment Clearance Certificate. For issuance of certificate, this rule classifies industrial units and projects into four categories, considering their site and impact on the environment. They are Green, Orange A, Orange B and Red. Rule 8: This rule states that the period of validity for Green Category is 3 years from issuance and one year for other categories.</p>
<p>Section 14: This section states that, if any person receives any notice, order or direction under this act and feels aggrieved, he may appeal within 30 days from the issuance of the notice. The appeal must be disposed within 30 days.</p>	<p>Rule 9: This rule states that the appeal must include grounds for the appeal against the notice, order or direction. It shall also include the following document: a certified copy of the notice, order or direction, a copy of environment clearance certificate (if any), A treasury chalan, and any other relevant documents. Rule 10: It describes the procedure that the Appellate Authority shall follow. Rule 11: It enumerates the procedure for hearing an appeal.</p>
<p>Section 20: This section empowers the Government to make rules to determine the</p>	<p>Rule 12: The standard of air, water, sound, odor and other components shall be determined in</p>

standard air, water, soil and other components of the environment. Also make rules regarding rules for establishment of industries, safe procedure for the use, storage and transportation of hazardous substances, measures for prevention of accidents, standards of affluent and discharge, assessment of various projects and their impact on the environment etc.	accordance with the Schedule 2,3,4,5,6,7 and 8 of the Environment Conservation Rule, 1997. Rule 13: The standard limits for discharge of liquid waste and gaseous emission shall be determined in accordance with the Environment Conservation Rules, 1997.
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Critical analysis of the lacking in the Environment Conservation Act, 1995 and Environment Conservation Rule, 1997

The above-mentioned laws are well codified and applicable. However, it does have some missing points. The said acts have the following lacking:

Some key issues are missing in the Environment Conservation Act, 1995. The law does not directly deal with green house gases. Green House Gases absorbs heat of radiation. The most powerful greenhouse gases are carbon dioxide, methane and nitrous oxide. Studies suggest that during the past century world temperature has been rising. This is resulting in worldwide environmental degradation.¹⁴ The Environment Conservation Act, 1995 does not directly deal with greenhouse gases or global warming. The ozone layer protects the entire eco system of this world. However, conservation did not include protection of the ozone layer under the previously mentioned law. The penetration caused by solar UV-B radiation will have a diverse effect on health of human beings.¹⁵ Excessive use of pesticides is another issue that needs some attention. Too much use of pesticides results in polluting our soil and water and harms the health of the farmers as well.¹⁶ These environmental issues needs direct addressing.

There is a lack of connection with other relevant laws or factors. For example, when you are regulating hill cutting you have to consider the housing laws. Construction of housing and other infrastructures is the main reason behind cutting of hills. If you amalgamate environmental laws and housing laws it will be easier to fight hill cutting. Or when you are regulating polythene, you have consider drainage system developed by the authorities. These are issues entangled with each other. Along with the environmental degradation, polythene thrown away as trash causes clogging of the sewer system resulting in flooding of urban areas. So, we need address these issues together. The link between green house gas and transportation is another issue that needs addressing. All these issues are interconnected with each other. To fight one you have to consider the other as well.

The powers bestowed upon the Director General seem a bit excessive. The search and seizure procedure may violate the general rules and regulations established by our Code of Criminal Procedure and Code of Civil Procedure. It is too simplistic and it may end up violating ones legal right against irrational search and seizure and due process of law.

¹⁴ Timothy J. Wallington, Jayaraman Srinivasan, Ole John Nielsen, Ellie J. Highwood, "Greenhouse Gases and Global Warming", Encyclopedia of Life Support System (EOLSS)

<http://www.eolss.net/ebooks/sample%20chapters/c06/e6-13-01-01.pdf> Last visited- 3/8/2020

¹⁵ Peter M. Morrisette, "The Evolution of Policy Responses to Stratospheric Ozone Depletion" (1995) Natural Resources Journal, vol. 29.

¹⁶ Shubhra Bhattacharjee, M. A. Z. Chowdhury, A. N. M. Fakhruddin and M. K. Alam, "Impact of Pesticide Exposure on Paddy Farmers Health." (2013) Jahangirnagar University Environmental Bulletin, Vol.2, 18-25.

Enforcement is the biggest backlash of the law. The effectiveness of the Board of Environment is another crucial issue. In reality, we have not witnessed much activity from the Board. The general people are not aware of the fact that they can seek help from the Board of Environment to prevent any sort of environmental degradation. A lot more publication by the board is required to let the people know the importance of conserving the environment and what legal remedies they have at their disposal to fight against degradation of the environment. Lack of awareness among public of our country about their right to fight for the environment surrounding them is another insufficiency of the law and the legal system around it. Most people around us do not even know about the Environment Conservation Act, 1995 and the fact that the act gives them power to go to the Director General if they are affected by environmental degradation. The Director General can take all necessary measures to stop the degradation. The Fap-20 case already established that environment is our fundamental right¹⁷ and we also have the legal tool to fight for it but our lack of awareness of depriving us from that right.

Conclusion

It is mandatory for the human race to understand that Mother Nature does not need us to survive; we humans are depended upon mother nurture for survival. Destruction of Mother Nature means extinction of the human race. The protection of the environment is the most important task that human race currently needs to focus on. No matter how much riches we leave behind for our future generations, if we cannot preserve the environment for them, it will all be worthless. An effective and efficient legal system that is pragmatic as well is the key to the protection of our environment. We have many well-codified legal instruments to preserve our environment, if we can fight the few lacking of the system we will be able to protect our environment and the future of our children. All we need is proper research for the purpose of development of these laws and their application. The drawbacks we discussed above are not non-amendable. We can rectify the lacking of the law with adequate research, apposite amendments and proper enforcement.

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