River Pollution: Legal Protection and Legal Rights

Sarmin Sultana Susmita
Student of LL.M. (Master of Laws)
Department of Law & Justice, Southeast University

Abstract

Bangladesh is the darling child of nature. The Padma, the Meghna, the Jamuna, the Brahmaputra, the Shitalakha, the Teesta, the Karnaphully, and many other rivers hang on the plain land of the country. But this riverine country is turning into a dead river country because of the contamination of river water. Modern analytical techniques need to be adopted to remove poisonous substances. However, it seems that necessary legal mechanisms are required to take action against the polluters and enlist the serious complications. Existing legislative body, institutional structure, conservation management board, regulatory actions, and legal policy deal with river pollution. But, there is a lack of implementation of their procedures. Concerning man-made pollution, people misuse the river water and damage the river's ecosystem and the living organism, forgetting that their lives are also reliant on it. For this contamination problem, Bangladesh has faced economic hardship and fishery deficiencies. It is high time we took initiatives to conserve safe water, preservation, sustentation, and competent procedures to protect river water to save them. Apart from these, public awareness can also play a vital role in environmental degradation. We have to enhance the environmental-related works on several environmental organizations, NGOs, environmental groups, environmental units, and youth forums for a rapid solution. However, we should be a part of the solution, not the pollution. This paper analyses the legal protection, failures in the legal mechanism, river pollution, and environmental degradation.

Key-words: *Legal protection, river pollution, environmental degradation.*

1. Introduction

Water is an ambient resource for all human individuals. River water is the source of the water cycle. Besides that, river water is directly or indirectly has an impact on the human economy and occupancy. Bangladesh is a riverine country and born with rivers. According to the cultural, economic, and political perspective, the people of Bangladesh are badly reliant on its rivers.

Furthermore, people are getting industrialized day by day and forming the fastest industries such as steel mills, oil refineries, dyeing factories, etc., which are the main polluters of the river water. Undoubtedly, unsafe water kills more people each year than war and other forms of violence combined. Already river pollution in Bangladesh is carrying out the nation’s health risk at a higher stake. The people of Bangladesh are suffering from a lack of potable water, contamination of the food chain, fatal diseases, and infant mortality. At the same time, many High Court Division directives are found against environmental degradation but they merely save the rivers.
For this reason, strict sanctions are required to apply to obey the instructions of the country's law. Though the Government has repeatedly enacted laws, it is unable to enforce the laws for political reasons. To impose the legal mechanism, we need to intensify the pollution control mechanism

in every part of the existing laws. The legal protection of the rivers needs to be specified and interpreted clearly. Sometimes the laws are not enough to ensure environmental justice, and it needs a global commitment, awareness, and proper practice to ensure fairness. Therefore, the rule of law is required to emphasize and exercise the existing laws properly. With legal implications, we can adopt some alternative methods such as creating public awareness, using environment friendly products, recycling plastic, and taking the initiative to clean the river water. Furthermore, some legal protection was worthwhile and prescribed in the legal arena, but it couldn't eliminate the fears of depletion of the rivers. For these reasons, existing laws and policies need to be reviewed individually, along with those institutional specifications and overlaps that need to be identified properly.

2. Legal Protection and Legal Rights for Rivers

For the protection and improvement of the environment and biodiversity, Article 18A of the Constitution of the People's Republic of Bangladesh provides that 'the State shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests, and wildlife for the present and future citizens'.[1] When the supreme law is enforced to ensure legal protection, it is a legal obligation to save natural resources. Natural wetlands are one of the major natural resources. And, the definition of 'wetlands' is manifested in Section 2 (f) of the Open Space Act, 2000 that, 'Natural Wetland means the place declared as the flood flowing land as a river, canal, beel, pond, stream, fountain indicated in the master plan by the government gazette or government and flowing water and the land which conserves the rainwater should be included here'.[2] Therefore, 'River' is also included in the wetland's definition. We need to stop the culture of river pollution broadly, and the existing laws need to be more outstretched to enforce accurately.

Though the supreme law of the land ensures legal protection, the noteworthy cases we see in the navigable areas, precisely, the people of these areas, are unknown to water contamination and the risk of contamination-related diseases. For this reason, it has increased the illegal occupation in the river areas. Furthermore, The National River Conservation Commission Act, 2013 enacted a Commission for preventing illegal occupation of rivers, pollution of water and environment, pollution of rivers caused by industrial factories, illegal constructions and various irregularities and ensuring multidimensional use of rivers for socio-economic development, including restoration of the normal flow of rivers, proper maintenance thereof and making them navigable.[3] But still, the river grabbing and the pollution increased the influences in wrongdoing with our mother rivers. Nonetheless, media can play a vital role in enforcing the existing laws. Along with that, media can be the major source to the ordinary people to know the law. Consequently, the laws will be easier to be followed. On the other hand, to impose the existing national laws, the rule of law needs to be established and practiced for legal protection.

The Environment Conservation Rules, 1997 was promulgated in exercise of the powers conferred by Section 20 of the Bangladesh Environment Conservation Act, 1995 and which provides the declaration of ecologically critical area, procedure for issuing environmental clearance certificate, pollution under control certificate, determination of environmental

[1] Constitution of the People's Republic of Bangladesh, 1972, Article, 18A
[2] Open Space Act, 2000, Section 2(f)
[3] The National River Conservation Commission Act, 2013

standards, application relating to pollution or degradation of the environment, the procedure for hearing an appeal, various services, and their fees, etc. It also covered the Environmental Quality Standards to control the quality of air, water, noise, emissions, and discharge. The projects are categorized into four limes (Green, Orange-A, Orange-B, and Red), alluding to their potential threat and impact on the environment.[4]

Undoubtedly, there are legal protections, management boards, and prime sources of existing laws, but with poor enforcement, there are also large numbers of water pollutants and other problems. Yet strict provisions of the penal laws are not being applied in an expansive way in terms of river pollution. These existing laws are stringent but do not ensure solutions to major problems, and they need proper interpretation, appropriate use in crucial circumstances, and public awareness.

3. Disappearance of the Bangladesh Rivers

Meanwhile, Bangladesh already loses rivers as per the previous records. National River Conservation Commission (NRCC) figured out the matters with the assistance of the local administration. Therefore, NRCC says that 770 rivers are over out of 1178.[5] However, river pollution is one of the major reasons for these consequences. In Bangladesh, river pollution mainly occurred from industrial wastage, sewage and wastewater, polythene, plastic, and fossil fuels. Similarly, water pollution badly impacted public health and alarmingly increased the rate of water-borne diseases such as diarrhea, cholera, hepatitis A and many other fatal diseases.

If the Government of Bangladesh is satisfied that in all kinds of the polythene shopping bag, or any other article made of polythene or polypropylene, or any other article is injurious to the environment, the Government may, by notification in the Official Gazette, issue a direction imposing an absolute ban on the manufacture, import, marketing, sale, demonstration for sale, stock, distribution, commercial carriage or commercial use, or allow the operation or management of such activities under conditions specified in respect to every person and everyone needs to entitle with the direction.

Although there are certain exceptions, those are as follows:

a. If the article specified in the notification is exported or used for export;
b. If the direction mentions that it does not apply to any particular kind of polythene shopping bag.

Furthermore, Explanation- In this section, "polythene shopping bag" means a bag, thonga, or other containers which are made of polyethylene or polypropylene or any compound or mixture thereof and are used for purchasing, selling, keeping, or carrying another article.[6] But there is no proper implementation of this provision, and we can see the hazardous consequences of it on the Surma, Buriganga, Turag, Padma, Karnaphuli rivers, etc. Besides that, as per the report of the NGO, Environment and Social Development Organization (ESDO) of 2019, it was stated that

[4] The Environment Conservation Rules, 1997; Bangladesh Environment Conservation Act, 1995, Section 20
[5] "*NRCC says Bangladesh now has 770 rivers out of 1178 in the past*", September 28, 2020; Available at: https://en.prothomalo.com/environment/nrcc-says-bangladesh-has-now-770-rivers-out-of-1178-in-the-past, accessed on 2 April 2021
[6] The Environment Conservation Act, 1995 (Amendment of 2002)

there were around 6.8 million tons of plastics in Bangladesh. As well, it pointed out that plastics and polythene bags are the main threat to our environment.[7] As a result, it is increasing at an alarming rate, and we've failed to create a new initiative to stop the misuse of our natural resources.

4. Lack of Implementation of High Court Division Decisions

Notably, there are some remarkable precedents in Bangladesh; the Turag River Case is one of them. In 2019 the High Court Division of the Supreme Court of Bangladesh passed a landmark decision. It was declared that the Turag River and all other rivers in the country are "living entities" with rights as "legal persons."[8] However, this is not the first time in history for assigning the legal status of a river. In 2017, New Zealand granted the Whanganui as the nation's longest navigable river. In the meantime, Indian Court assured that Whanganui wouldn't be the only body of water with legal status. Even though the Ganga, the Yamuna all were granted the rights of personhood at the same time.

But, these judgments are not performed decently in the country. Is it enough to provide legal protection? - The answer is No, not at all. The main organs of the state will strive to execute the verdict properly, but what about the civic people, media, and society. Despite that, the court order is not enough to solve the problems, and it is spreading out in every sphere of life. Human beings are the main culprits, and they are the main environmental pollutants. Each day in our daily activities, we carry out household wastes, dumping industrial wastage, causing micro plastic pollution, and using chemical fertilizers, which badly upshots river pollution. Evolution of being more civilized and industrialized, we people lost our ethics and morality to rescue our mother nature resources.

5. Legal Remedies for Environmental Victims

In addition, Section-277 of The Penal Code, 1860, provides that, whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as rendering it less fit and with the intention of ordinarily used, there shall be a penalty with imprisonment for a term which may extend to three months or with fine which may extend to five hundred takas or with both.[9] Therefore, these provisions are strictly made to stop the misuse of the sources of mother nature. It also needs to be more comprehensive to tackle the implementation challenges.

The Bangladesh Environment Court Act, 2010 also enacted to sort out the disputes and establish justice over environmental and social damage due to any development activities. This act granted the Government to take necessary legal action against any parties who create environmental damage to environmentally sensitive areas and human society.[10] Besides that, people can take legal assistance under the Environment Court Act, 2010 for the speedy trial of environmental offences. Therefore, the government instituted several Environmental Courts in Dhaka, Chittagong and Sylhet divisions, and an Environmental Appellate Court in Dhaka. Notably, there is lacking proper effective enforcement of the existing laws and some of the previous laws

[7] Iftekhar Mahmud, "*30,000 tonnes of plastic in 4 rivers*", Prothom Alo, Dhaka, October 18, 2020; available at: https://en.prothomalo.com/environment/pollution/30000-tonnes-of-plastic-in-4-rivers, accessed on 5 April, 2021
[8] Turag River Case, 2019, the Supreme Court of Bangladesh; (Writ Petition No 13989)
[9] Penal Code, 1860, Section 277
[10] Bangladesh Environment Court Act, 2010

consisting of adequate penalties. In the same way, laws need to be absolute and rigorous in manner.

6. Recommendations

6.1. Regulatory Measures

Policies should be made to establish the industrial zone far away from the mother rivers to stop the misuse of the rivers. However, regulations should be specified, and the management board should prioritize the guidelines for real practice. Also, it needs to enforce strict penalties on river polluters. Therefore, institutional, legal measures are needed to control river pollution. There is no enforcement of the relevant laws to control river pollution and to improve the water quality. Besides that, several legislations have been enacted to control river water pollution. But, due to institutional weakness or inadequate legal protection, the laws are not implemented properly.

Bangladesh needs to remove the inconsistency in the existing laws and policies, and the rule of law must be enforced from the local sectors rather than the global sectors to solve the river pollution problem rapidly. Our leaders need to ensure fairness and environmental justice by their acts, not just by their words.

6.2. Plastic Waste Reduction

For plastic pollution, Bangladesh is in an alarming position. Once it contaminates the river water, it is very difficult to remove those microplastics. The people of Bangladesh use plastic waste as a one-time method. The major rivers of Bangladesh are full of plastics and polythene. Now it's a threat to the local communities and their livelihood. Therefore, there should be alternatives for plastics. Otherwise, people will surely run for plastics more and more. However, by recycling plastics, the pollution can be stopped in the river zone.

Moreover, our Government should enforce strict provisions to ban the use of plastics and polythene. It's really important to create awareness regarding the river and plastic pollution among the people who lives alongside the rivers. Different organizations and NGOs should take the initiative against plastic pollution. There could be some eco-friendly alternatives for plastics, such as using wooden products, glasses, cotton produce bags, beeswax-coated cloth, pottery and other ceramics products, etc.

6.3. Policy Responses

River pollution exceeds the tolerable level of human consumption, aquatic ecosystems, rising threats to the water organisms such as extreme floods and eviction-related cases. Therefore, sustainable water policy needs to be addressed to solve the water-related problem. And those sustainable policies will include short-term and long-term management strategies to be enforced properly. However, the Government knows that industrialization can create environmental degradation, but no policies are taken from the management board to control the pollution. Conversely, there is no clear policy upon flood protection for the rural people or suitable water protection policy; these things need to be covered for the new policy. Most of the policymakers across the region attempted to make new policies that could curb environmental degradation. But unfortunately, no efficient policies have been taken there also.

6.4. Industrial Waste Management

Day by day, for the industrial waste, drugs, and hazardous substances, the ecological balance of the river cycle gets hampered. For this reason, toxic contaminated water is found in the river waters. If we want to reduce pollution, industrial product materials need to change. Therefore, the elimination of hazardous materials is a must need in this case. Even biological waste treatment is needed for the method of pollution prevention. The industrial zone needs to be taken far away from the river zone. It can also reduce the percentage of river pollution. Otherwise, we will face a lack of drinking water sources, fisheries deficiencies, and other water-related problems. Hence immediate actions are needed for getting out of contamination problem, and strict laws are needed to control the industrial waste and regulatory of the management board.

6.5. Awareness Creation

River pollution is considered a global problem now, and most of the people of Bangladesh do not know about the causes of river pollution. In reality, man-made things are polluting water more than other environmental pollutants. Besides that, Bangladeshi water is contaminated with arsenic, and mostly arsenic-contaminated tube-wells are the main source of drinking in rural areas. However, contaminated-arsenic water is highly toxic and poisonous. But not many people in the local community have found these facts. By throwing the household waste, garbage, plastics, and industrial waste, people are polluting the river water.

On the other hand, Bangladeshi people are mainly dependent on the rivers. So, proper measures, guidelines, and awareness need to be created to solve this major problem. For creating awareness, better monitoring plans and develop lessons are also must be needed. For this reason, the issues of climate change, river pollution, and existing legal protection need to be aware, perception and acts need to start from you than locally and after that globally.

7. Conclusion

> *"It is high time to realize that our responsibility to the coming millions is like that of parents to their children and that is wasting our resources we are wronging our descendants"*
>
> -Theodore Roosevelt

Like that, the river is one of the natural resources for the environment. It plays a vital role in maintaining a healthy, productive, and resilient water system to benefit plants, animals, and people. It is our both legal and moral obligation to save them. Bangladeshi people attempt to be more civilized at their turn by destroying mother rivers. For this reason, they have increased industrialization with an unplanned strategy and ruled it for urbanization for economic growth. We need proper river conservation procedures to manage those and proper legal mechanisms to stop river pollution. To raise awareness and assertion on legal protection, we need to build a friendly relationship between rivers and human beings.

Furthermore, strict penalties must be needed to enforce against the river pollutants. Being blind will not give us the solutions; rather, it will make us more vulnerable. Law mechanisms are for legal protection, but no assurance seemed in river protection. When the lives of the most rural people are based on it, immediate legal actions are required for the sake of our future generation.