

Environment Court and Special Magistrate Court in Bangladesh: A Comparative Study

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Abstract: *Environment Court and Special Magistrate Court are two special courts to adjudicate environmental cases of both civil and criminal nature. They were constituted by the Environment Court Act, 2010 in order to prevent environmental degradation and punish environmental offenses under different environmental laws. But one decade later, it is seen that these special courts are unable to deliver what it was constituted for. The article aims to provide an overview of environmental governance in Bangladesh with an illustrative discussion of the adjudication process of environmental cases in Bangladesh. In that process, it will examine the major challenges, both legal and non-legal, that are creating hindrances to the efficient functioning of the Environment Courts and Special Magistrate Courts. It is concluded with recommendations with reformative measures for empowering the environment court and special magistrate court in Bangladesh based on the best practices of New Zealand, Australia, Philippines, and India, because the environment court and tribunals in these jurisdictions are considered as successful as being capable of model environment courts.*

Keywords: Environmental Governance and Justice, Environment Courts, Special Magistrate Courts, Department of Environment, Reformation.

1. Introduction

Triple planetary crises, i.e., environmental pollution, biodiversity loss, and climate change are the pressing challenges for the present World.¹ Along with all global efforts and institutions, the international community has long emphasized creating and promoting strong and effective national institutions including specialized judicial bodies to address environmental concerns locally.² Principles

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¹ Michelle Spollen, 'What is the Tripple Planetary Crises?' (United Nations Climate Change, 13 April 2022)< <https://unfccc.int/news/what-is-the-triple-planetary-crisis>> accessed 25 January 2024.

² TimStephens, 'International courts and environmental protection' (2009) 62 Cambridge University Press78-81; See, the Rio Declaration on Environment and Development 1992, Principles 10 and 13.

10 and 13 of the Rio Declaration 1992 lays down that the state shall develop local “judicial administrative proceedings” to provide redress and remedy for the violations of environmental laws.³The Sustainable Development Goals (SDG) 16 emphasizes promoting effective, accountable, and inclusive local institutions and ensuring access to justice for all to achieve sustainable development.⁴It is generally accepted that domestic courts can play a vital role both in enforcing national environmental laws and regulations and in implementing international treaty obligations of a country.⁵ In other words, “domestic courts also play a pivotal role in linking international obligations of conduct with national obligations of result”.⁶Special Environmental Courts and Tribunals (hereinafter ECTs)continue to be widely accepted as an important and effective domestic judicial body in this respect.⁷The “exponential growth” in the number of ECTs in countries from the beginning of the twentieth-century evidences this claim.⁸In 2009, a study found over 350 ECTs in 41 countries.⁹According to the last updated study on the number of ECTs globally in 2018, the number increased to nearly 1,500 ECTs.¹⁰It has been predicted that such proliferation of ECTs will continue¹¹ with greater success and efficacy in future.¹² It has been empirically proven that ECTs are best capable of ensuring access to remedies for environmental harms and wrongs done, broadly, to environmental justice at the local level.¹³

³ George Viñuales (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford Commentaries on Interna, 2015).

⁴ United Nations, Department of Social and Economic Affairs, ‘Sustainable Development’, <https://sdgs.un.org/goals/goal16#targets_and_indicators> accessed 25 Jan 2024.

⁵ Ibid, Stephens, (n 2) 79.

⁶ Anna-Julia Saiger, ‘Domestic courts and the Paris Agreement’s climate goals: The need for a comparative approach’ (2020) 9(1) Transnational Environmental Law 37.

⁷ Ibid, Stephens, (n 2) 78-81; Anna-Julia (n 6) 37-54.

⁸ Brian Preston, ‘Characteristics of Successful Environmental Courts and Tribunals’ (2014) 26 Journal of Environmental Law 365-366.

⁹ George Rock Pring, and Catherine Kitty Pring, *Greening Justice: Creating and Improving Environmental Courts and Tribunals*, (The Access Initiative of World Resources Institute, 2009) <<https://www.law.du.edu/ect-study>> accessed 15 January 2022.

¹⁰ Don C Smith, ‘Environment Courts and Tribunals: Changing Environmental and Natural Resources Law around the Globe’ (2018) 36(2) Journal of Energy and Resources Law Editorial.

¹¹ George R Pring, and Catherine K Pring, ‘Environmental Courts and Tribunals’, in L. Paddock, R. Glicksman and N. Bryner, (eds), *Decision Making in Environmental Law*, a volume in the *Encyclopedia of Environmental Law series*(E. Elgar forthcoming, 2016) 2.

¹² George R Pring, ‘Access to Justice and Environmental Courts and Tribunals: The Glotherebal Picture and Future Predictions’, a presentation on the First Inter American Forum on Environmental Justice, (Santiago, Chile, 10 October 2014) 4.

¹³ George R Pring, and Catherine K Pring, *Environmental Courts and Tribunals: A Guide for Policy Makers*, (UNEP, Law Division, 2016), Executive Summary III <<https://www.law.du.edu/ect-study>> accessed 15 January 2023.

The Constitution of Bangladesh imposes a non-justiciable constitutional responsibility upon the State to protect the environment and biodiversity.¹⁴ Moreover, case laws over the years have well established that the right to life under articles 31 and 32 of the Constitution is a justiciable fundamental right has intrinsic relations with the environment, and recognizes the right to a safe, healthy and pollution-free environment as a guaranteed fundamental right.¹⁵ Therefore, the government is equally responsible as other fundamental rights to provide a safe, healthy, and pollution-free environment for every citizen of the country.¹⁶ Till today Bangladesh has ratified all most all international environmental treaties and declarations.¹⁷ To comply with the obligations enshrined in the ratified international instruments, the country has enacted around 200 environmental laws¹⁸, for this article most pertinent are, the Bangladesh Environment Conservation Act 1995 with its 1997 Rules, the Environment Court Act 2010, the Bangladesh Water Act, 2013 etc., and has established several national institutions and forums,

¹⁴ Constitution of Bangladesh, art 18A states ‘the State shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetland, forests, and wildlife for the present and future generations.’ The provisions under Part 2 of the Constitution are not judicially enforceable. See, Constitution of Bangladesh, art 8.

¹⁵ See, *Dr. Mohiuddin Farooque vs Bangladesh*, Writ Petition no. 92/1996 (48 DLR 438); *Dr. Mohiuddin Farooque vs Bangladesh*, 49 DLR (AD) 1

¹⁶ In the write case *Dr. Mohiuddin Farooque vs Bangladesh*, Writ Petition no. 92/1996 (48 DLR 438), the Government was held responsible for not prohibiting importation of radiated skimmed milk powder. The meaning of Right to life was raised for the first time in court and the court extended the meaning as to include the right to safe, clean and healthy environment and the meaning was accepted without question in subsequent cases); *Dr. Mohiuddin Farooque vs Bangladesh*, 49 DLR (AD) 1 (*Locus standi* of petitioner on FAP-20 case was established); *Dr. Mohiuddin Farooque vs Bangladesh*, Writ Petition no.998 of 1994; 50 DLR (HCD) 84 [Food Action Plan-20 was successfully challenged on grounds of, *inter alia*, creating ecological imbalance, and destruction of life and livelihood of one million people of Tangail District]; *Dr. Mohiuddin Farooque vs Bangladesh*, 55 DLR (HCD) 69 (Industrial Pollution Case- in this case, Department of Environment and the concerned ministry was directed to ensure that industries and factories must adopt adequate and sufficient measure to control pollution and not to give permission to set up new industries without first arranging adequate and sufficient measures to control pollution respectively); *Dr. Mohiuddin Farooque vs Bangladesh*, 55 DLR (HCD) 613 (Vehicular Pollution Case- in this case, the HCD gave eight directions to the Government to prevent air pollution from emission of hazardous smoke and incessant use of high noise make horns from motor vehicles plying in the Dhaka city). Similar Jurisprudence has also been developed in India which has led the Supreme Court of Bangladesh to take the same view. See, *M.C. Mehta vs. Union of India*, (1987), 4 SCC 463; *Virender Gaur vs. State of Haryana*, (1995), 2 SCC 577; *Goa Foundation and Peaceful Society vs. Union of India*, (2014) 4 FLT 60, etc.

¹⁷ Abdullah Al Faruque, *Environmental Law: Global and Bangladesh Context*, (Dhaka, New Warsi Book Corporation, 2017) 509-511.

¹⁸ Mohiuddin Farooque, et al, ‘Laws Regulating Environment in Bangladesh’ (4th edn., BELA 2020); Abdullah Al Faruque (n 17) 253; See also, Bahreen Khan, ‘Efficacy & Implementation Gaps in the ‘Core Environmental Laws’ of Bangladesh: An Overview’ (2022) 33 Dhaka University Law Journal 73.

i.e., Department of Environment, Environment Court, and Special Magistrate Court. Environment Court and Special Magistrate Court were constituted in 2000 and were subsequently reconstituted in 2010 under the Environment Court Act 2010.¹⁹ Under the Environment Court Act 2010, the Environment Court and Special Magistrate Court have ample jurisdiction to stretch their legal hand to protect environment-related rights; prevent environmental harm; and punish environmental offenses.²⁰ They have jurisdiction over environmental offenses as provided by the Bangladesh Environment Conservation Act 1995 and other environment-related laws.²¹ Environment Court has the power to provide compensation in case of environmental losses as well.²² Both the Environment Court and Special Magistrate Court may punish violation of its orders and directions and secure compliance with its mandate.²³ However, due to certain legal and non-legal barriers, the Courts are unable to exercise those powers effectively. The Environment Court and Special Magistrate Court cannot take into cognizance any matter without a written report of an Inspector from the Department of Environment (DoE). It is argued that this legal barrier is one of the principal causes why the Courts fail to function effectively.²⁴ Despite pervasive environmental degradation, fewer numbers of cases are lodged before the court.²⁵ It is also claimed that due to procedural complexity and lack of cooperation on the part of the DoE, the conviction rate of the cases that go to trial is very low.²⁶ Against this backdrop, the article aims to make a general assessment of the efficacy of the Environment Court and Special Magistrate Court in Bangladesh with a view to identifying the major challenges to its efficient functioning through a critical comparison of the common features or the best practices found or practiced in the environment courts and tribunals in New Zealand, Australia, Philippines, and India. This article critically analyses the efficacy of Bangladesh Environment courts having these courts as guiding and model environment courts, since they are the most successful environment courts in the world. At the end, it will conclude with the recommendations with the measures for the reformation of the Courts

The article is prepared by complying with the doctrinal and non-doctrinal, mixed methods. It has studied the case records of the Environment Courts in Dhaka and Chittagong from 2003 to 2022 to ascertain the volume and trend of

¹⁹ See, generally, Environment Court Act 2010.

²⁰ Environment Court Act, 2010, ss 11-17.

²¹ Environment Court Act, 2010, Preamble, s 14(3).

²² Bangladesh Environment Conservation Act, 1995, s 17; Environment Court Act, 2010, s 7.

²³ Environment Court Act, 2010, s 8 to read together with ss 6(2), 7(3).

²⁴ Environment Court Act, 2010, ss 6(3) and 7(4); Abdullah Al Faruque, (n 10) 342.

²⁵ Ibid, Faruque, (n 17) 345.

²⁶ Ibid.

cases filed on environmental matters. A pilot study has been conducted in the Special Magistrate Court in Narayanganj. Unstructured interviews have been conducted among the concerned Judges, Advocates, and Academics. Books, peer-reviewed journals, and reports from relevant international and local organizations, etc. have been consulted.

2. Structure of Environmental Governance in Bangladesh

Bangladesh is extremely rich in bio-diversity with full of natural resources, flora and fauna. The country is crisscrossed by hundreds of rivers and their tributaries. In a word, nature is the life line of the country. Unfortunately, pervasive environmental pollution and degradation along with bio-diversity loss have rapidly increased since the 1980s due to population explosion, unplanned urbanization, industrialization, and huge developmental works in the country.²⁷ All-out environmental degradation has posed serious environmental threats to the country resulting in natural calamities and effects of climate change.²⁸ However, environmental consciousness and mainstreaming environmental jurisprudence in the national legal and policy agenda in Bangladesh to address environmental issues have begun very recently. It was just in the 1980s-90s when the environmental movement began to take concrete shape and protection and conservation of the environment became a priority issue in the country.²⁹ Before that, a few laws like the Forest Act, 1927; the Bangladesh Wildlife (Preservation) Order, 1973; the Protection and Conservation of Fish Act, 1950, etc. dealt with specific contents of the environment. There was no integrated approach to the conservation of the environment at all. To develop an integrated mechanism, in 1992 the first 'National Environment Policy (NEP)' was formulated. To materialize the NEP, the 'National Environment Management Action Plan' (NEMAP) was prepared in 1995 to ensure sustainable development, and ecological balance through sustainable use of all natural resources. In 1989, a separate ministry, 'The Ministry of Forest and Environment' was established. Subsequently, on May 14, 2018, it was renamed as Ministry of Environment, Forest and Climate Change. In 1995, the Department of Environment (DoE)³⁰ was placed under the Ministry of Forest and Environment with a plenary mandate and powers, both executive and quasi-judicial to prevent environmental pollution and protect and preserve environment.³¹ On the other hand, to keep pace with the development of international environmental jurisprudence the government of Bangladesh adopted and ratified many international environmental

²⁷ Ibid, 252.

²⁸ Ibid, 252.

²⁹ Ibid, 252.

³⁰ Department of Environment was first established in 1977 under the Environment Pollution Control Ordinance 1977.

³¹ See, generally, Bangladesh Environment Conservation Act 1995.

treaties, conventions, and declarations to comply with international obligations the government has enacted and modified about 200 laws and regulations bearing directly or indirectly relations with environmental issues.³² A study shows that Bangladesh has 23 environmental laws with another 185 laws having indirect bearing on environment and resource preservation.³³

The overall environmental governance in Bangladesh consists of three diverse governance mechanisms combining constitutional, executive, and judicial Governance. High Court Division governs the environment as a forum of public interest environmental litigation, exercising its writ jurisdictions; Environment Court and Special Magistrate Court function as special judicial bodies to adjudicate environmental claims and disputes and impose punishment for environmental offenses; whereas the Department of Environment (DoE) function as a comprehensive executive authority under the Ministry of Forest, Environment and Climate Change.

In Public Interest Environmental Litigation (PIEL), the High Court Division of the Supreme Court has been exercising its power provided by article 102 of the Constitution to protect the environmental rights of the citizens. PIEL is a class action suit of a general nature encompassing myriad environmental injustices to mass people. For instance, development projects like Flood Action Plan-20, river pollution by disposal of industrial wastes, illegal occupation of rivers and lakes, indiscriminate cutting of hills, importation of skimmed radiated milk, etc. have been successfully challenged by those PEILs.³⁴

DoE is an executive agent of the Ministry of Environment, Forest and Climate Change. It works as compliance watchdog of the environmental legislations. The function of DoE is to monitor and implement environmental laws and regulations throughout the country. A person aggrieved by any environmental damage or offences first has to go to DoE for remedies and if not adequately remedied by the department, may file a case in Environment Court or a Special Magistrate Court.³⁵ The investigation or inquiry into environmental cases is conducted by the appointed inspector of the DoE.³⁶

³² Ibid, Faruque (n 17) 253.

³³ The South Asia Co-operative Environment Program (SACEP), Handbook on Environmental Legislations and Institutions in Bangladesh (2001) 2 <<http://sacep.org/pdf/Reports-Technical/2001-UNEP-SACEP-Law-Handbook-Bangladesh.pdf>>accessed 25 June 2023.

³⁴ Ibid, Faruque (n 17) 347-355.

³⁵ Environment Court Act 2010, s 6 and 7.

³⁶ Ibid.

3. Environment Court and Special Magistrate Court

Environment Court is both a civil and criminal court, whereas Special Magistrate Court is exclusively a criminal court. First, all environmental cases of a criminal nature shall be filed in the Special Magistrate Court. Then the Special Magistrate Court takes cognizance of the case filed and tries that to which it has jurisdiction to try and sends the cases to which it has no trial jurisdiction to the Environment Court.³⁷ Special Magistrate Court may sentence a term of imprisonment not exceeding five years or a fine not exceeding five lac Taka or both.³⁸ Environment Court may sentence any term or any amount of fine prescribed by the laws.³⁹ Therefore, a case where a sentence exceeds five-year imprisonment or a five lac Taka fine shall be sent to the Environment Court for trial.⁴⁰

Environment Court shall be constituted with one judge who shall be the rank of Joint District Judge.⁴¹ He shall be appointed by the government with consultation of the Supreme Court.⁴² He shall dispose of environment cases in addition to his ordinary judicial responsibility.⁴³ Generally, in each district, there shall be one Environment Court. However, the government can appoint more than one Environment Court in a district as it thinks fit. In that case, the government shall notify in the official gazette specifying the territorial jurisdiction of each court.⁴⁴ On the other hand, the government may establish one or more Special Magistrate Court in a district.⁴⁵ In consultation with the Supreme Court, the government shall appoint a Magistrate of the First Class or Metropolitan Magistrate, as the case may be, as Special Magistrate Court.⁴⁶ He may be appointed to perform his environmental duty exclusively or in addition to his ordinary responsibility, as directed by the government.⁴⁷

Cases in the Environment Court or Special Magistrate Court shall be filed by the Director General of the DoE or any person appointed on his behalf.⁴⁸ Neither the Environment Court nor Special Magistrate Court shall take cognizance of a

³⁷ Environment Court Act, 2010, s 7(1), 9(2).

³⁸ Environment Court Act, 2010, s 9(1).

³⁹ Environment Court Act, 2010, s 7(1).

⁴⁰ Environment Court Act, 2010, s 7(1) and 9(1) read together.

⁴¹ Environment Court Act, 2010, s 4(2).

⁴² Ibid.

⁴³ Environment Court Act, 2010, s 4(3).

⁴⁴ Environment Court Act, 2010, s 4(2)(3).

⁴⁵ Environment Court Act, 2010, s 5 (1).

⁴⁶ Environment Court Act, 2010, s 5(2).

⁴⁷ Environment Court Act, 2010, s 5 (2).

⁴⁸ Environment Court Act, 2010, s 6(1) and 7(1).

case without the written report of an Inspector of the DoE.⁴⁹ They may allow a party to sue or take cognizance of a case, only when the court is satisfied that a person presented a written request to the authorized Inspector of DoE to accept a claim of compensation or a complaint respectively, and no action has been taken within sixty days of the submission of such claim or complaint.⁵⁰ The court in such a case must give the Director General or Inspector of the DoE a reasonable opportunity to be heard before filing a case or taking cognizance of a criminal case.⁵¹ Both the Environment Court and Special Magistrate Court shall dispose of a case within 180 days from the date of framing issues and the date of framing charge respectively.⁵² The Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898 shall be followed *mutatis mutandis* in respect of a civil case or trial of an offense respectively.⁵³

Environment Appellate Court shall hear appeals from both the Environment Court and Special Magistrate Court. Government in consultation with the Supreme Court shall appoint an officer of the rank of District Judge as Judge of the Environment Appellate Court who shall perform as an Appellate Court under the Code of Civil Procedure, 1908 or a Sessions Judge Court under the Code of Criminal Procedure 1898 respectively.⁵⁴ An appeal shall be filed within 30 days from the date of passing of the impugned decision by the trial court.⁵⁵

4. Efficacy Evaluation of Environment Court and Special Magistrate Court

The first-ever global study on ECTs was made by George Pring and Catherine Pring, titled, *Greening Justice: Creating and Improving Environmental Courts and Tribunals* (2009).⁵⁶ Subsequently, the same authors under the auspices of UNEP published another global study, titled *Environmental Courts and Tribunals: A Guide for Policy Makers* (2016).⁵⁷ Since then, academic researchers have identified about 12 specific characteristics that successful ECTs should possess.⁵⁸ ‘Successful ECT’ is defined as those that possess practices that ensure equal and easy access to justice, advance environmental jurisprudence, improve the rule of law situation, and rely on procedures that bring a quicker and more effective

⁴⁹ Environment Court Act, 2010, s 7(4) and 6(4) respectively.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Environment Court Act, 2010, s 14(8) and 10(2) respectively.

⁵³ Environment Court Act, 2010, s 14 and 10 respectively.

⁵⁴ Environment Court Act, 2010, s 19.

⁵⁵ Environment Court Act, 2010, s 19(2).

⁵⁶ Ibid, Pring (n 9).

⁵⁷ Ibid, Pring (n 13).

⁵⁸ See generally, Preston, (n 8)365.

decision and cost reduction.⁵⁹ In light of these 12 standards and criteria of a successful ECT, the efficacy- both the merits and weaknesses of the Environment Court and Special Magistrate in Bangladesh is examined below.

At present two Environment Courts in Dhaka and Chittagong and one Environment Appellate Court in Bangladesh operate. All these courts were set up in 2002. An Environment Court in Sylhet was set up in 2005 but no longer functions. By a notification from the Ministry of Law, Justice, and Parliamentary Affairs dated 22/03/2011, all Senior Magistrate and Metropolitan Magistrate under the Chief Judicial Magistrate and Chief Metropolitan Magistrate in the Metropolitan Area respectively are empowered to act and exercise powers as Special Magistrate Court under the Environment Court Act, 2010.⁶⁰

4.1. Scope of Jurisdictions

Successful ECTs usually possess comprehensive civil, criminal, and administrative jurisdictions and a wide range of execution powers.⁶¹ The Environmental Court in New Zealand⁶²; the Land and Environment Court in New South Wales of Australia,⁶³ and the National Green Tribunal of India⁶⁴ are among the best examples.⁶⁵ The Court in New South Wales, Australia exercises a wide range of jurisdiction covering 8 classes of areas extending from environmental matters to land tenure, indigenous communities' land rights, and even mining, because the impacts of decisions in one area are eventually felt in other areas.⁶⁶ The Australian Court has the power to hear appeals from government agencies making decisions under environment-related laws and local government agencies having an impact on environment and land use, and also from a local court in respect of

⁵⁹ Ibid, Pring (n 13) 44.

⁶⁰ Ministry of Law, Justice and Parliamentary Affairs, notification dated 22/03/2011, reference-বিচার-১/৪পি-১/২০০৮-১৩৩.

⁶¹ Ibid, Pring (n 9) 28; Ibid, Preston (n 8) 372-374.

⁶² Environment Court in New Zealand is one of the successful models of a special environment court. It was established in 1996, by the Resource Management Act 1991. See, The Court Environment Court of New Zealand, 'About the Environment Court' <<https://environmentcourt.govt.nz/about/history/>> accessed 22 June 2023.

⁶³ The most successful special environment court is the 'Land and Environment Court of New South Wales, Australia'. It was constituted by the Land and Environment Court Act 1979, and the first environment court ever established across the globe. See Land and Environment Court of New South Wales, <<https://www.lec.nsw.gov.au/>> 23 June 2023.

⁶⁴ The National Green Tribunal was established in India under the National Green Tribunal Act (NGT) 2010. See, National Green Tribunal <www.greentribunal.gov.in> accessed on 01 July 2023.

⁶⁵ Ibid, Pring (n 13) 35.

⁶⁶ Land and Environment Court Act, 1979 (Aus), ss. 16-21c.

an environmental offense.⁶⁷The Environmental Court of New Zealand exercises comprehensive jurisdictions in three main ways the Court exercises the power of judicial review by declaring a particular act or omission illegally contravening the Resource Management Act 1991, may review decisions of local and regional authorities, and enforce compliance with its decisions through civil or criminal proceedings.⁶⁸ The National Green Tribunal of Indian has broad jurisdiction to settle all environmental cases and to order any relief and compensation to victims of pollution and other environmental damage arising under the enactments specified in Schedule I, and to hear appeals from certain authorities.⁶⁹The NGT is not bound by the traditional rules of procedure and evidence and has the power to make its own rules of procedure and are mostly guided by the principles of natural justice.⁷⁰The Court can apply certain principles of international environmental law, i.e., principles of sustainable development, precautionary principle and polluters pay principle.⁷¹Therefore, the jurisdictions of the NGT are wide enough to empower the court to take broad measures to uphold environmental justice and provide compensation to the victims of environmental damage.⁷²However, the Court has no criminal jurisdictions.⁷³

The Environment Courts and Special Magistrate Courts in Bangladesh combine both civil and criminal jurisdictions in line with the regular judicial structure of the country. It has the power to grant compensation as well as to punish the offenders with sentences under different environmental laws.⁷⁴ The Environment Court Act, 2010 empowers the court by providing the power to take necessary actions to prevent environmental pollution and violations of environmental laws by granting injunctions, directing investigations, allowing search and seizure, etc.⁷⁵The enforcing power of the court is broad as the court can make “any orders as it fits appropriate”.⁷⁶The Special Magistrate Court is also empowered to conduct mobile court when necessary.⁷⁷

⁶⁷ Ibid., also see, Crimes (Appeal and Review Act) 2001 (Aus), s 32.

⁶⁸ Resource Management Act, 1991, (NZ), ss. 120, 310, 314-321.

⁶⁹ National Green Tribunal Act, 2010, (Ind) ss. 14-25.

⁷⁰ Ibid, s, 19.

⁷¹ Ibid, s, 20.

⁷² Gitanjali Gill, ‘Environmental justice in India: the national green tribunal and expert members’ (2016) 5 (1) Transnational Environmental Law 186-187.

⁷³ National Green Tribunal Act,, 2010 (Ind), s 14.

⁷⁴ Environment Court Act 2010, ss. 7(2), 14(3) and 15.

⁷⁵ Environment Court Act 2010, ss. 11 and 12.

⁷⁶ Ibid.

⁷⁷ Environment Court Act 2010, ss 12(11).

4.2. Composition of Court and Appointment of Judges

Studies show that no particular structure of the composition of the ECTs is attached to the successful ECTs, rather it varies substantially across the ECTs.⁷⁸ However, the judges of successful ECTs are appointed in “a transparent, open, and competent selection process”.⁷⁹ Appointments based on the Judges’ competence, and high standards are crucial not only to the effectiveness and credibility of court decisions but also to secure public confidence in the Court.⁸⁰

The Environment Court of New Zealand is at the level of the District Court which is the first tier of the four-tier court system of New Zealand, and is subordinate to the High Court, the intermediary appellate court.⁸¹ Judges of the Environment Court of New Zealand are the District Court Judges.⁸² They are appointed by the Governor General on the recommendation of the Attorney-General.⁸³ The law requires that to make there commendation, the Attorney-General must consult with the Minister for the Environment and the Minister of Māori Affairs on these appointments.⁸⁴ However, since the Attorney-General is a member of the Executive, there is a constitutional convention that he decides independently and not influenced by party politics, as well as consults with the Chief District Court Judge.⁸⁵ The Secretary for Justice, who is the head of the Ministry of Justice, conducts the appointment process of the Judges. Thus, the appointments are transparent and checked for unjust political and executive interference.⁸⁶

The Land and Environment Court of NSW is the superior court having the same standing as the Supreme Court of New South Wales, which is the highest state court in New South Wales where as the High Court of Australia is the Apex court in federal jurisdiction.⁸⁷ The judges are appointed by the Governor among

⁷⁸ Ibid, Preston, (n 8) 366-367.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Resource Management Act, 1991, (NZ)s 299. The four tiers of courts in New Zealand from lowest level to upper level are the District Court, High Court, Court of Appeals, and the Supreme Court of New Zealand. See, Courts of New Zealand, Structure of the Court System, <<https://www.courtsofnz.govt.nz/about-the-judiciary/structure-of-the-court-system>>accessed 25 August, 2024.

⁸² Resource Management Act, 1991, (NZ) s. 249.

⁸³ Resource Management Act, 1991, (NZ) s. 250.

⁸⁴ Ibid.

⁸⁵ See, Courts of New Zealand, ‘How is a Judge Appointed’, < https://www.courtsofnz.govt.nz/learn-about-our-courts/how-is-a-judge-appointed/#_ftn1> accessed 25 August, 2024.

⁸⁶ Ibid.

⁸⁷ Land and Environment Court Act, 1979 (Aus), s. 7.

the persons eligible for being appointed as judges under the law.⁸⁸ The appointment procedure is governed by the Judicial Officers Act 1986 (NSW) and conducted by the Judicial Commission of New South Wales established under this Act.⁸⁹ Like the NSW Land and Environment Court, the NGT in India has been given the status of the High Court of a State in a federal system of governance where the Supreme Court of India is the apex court.⁹⁰ The Chairperson, the presiding judge of the NGT is appointed by the Central Government in consultation with the Chief Justice of India, and other Judges and Expert Members of the Tribunal are appointed by the central Government on the recommendations of a Selection Committee constituted under the Act.⁹¹ In Bangladesh, Environment Court Judges and Special Magistrates are appointed from judicial officers who are appointed through competitive and fair recruitment proceedings conducted by the Bangladesh Judicial Service Commission which is headed by a justice of the Appellate Division of the Supreme Court of Bangladesh.

4.3 Power to Provide Adequate Remedies and Enforcing Mechanisms

Successful ECTs possess the power to provide adequate remedies.⁹² For instance, the Court needs to have the power to give necessary, innovative, appropriate orders to address the harm as it deems fit. It also should have enforcement tools to abide by the laws and regulations, because they are crucial to the better efficacy of ECTs.⁹³ The Land and Environment Court of New South Wales has a wide range of enforcement mechanisms as many as six main types including civil enforcement (fines, injunctions, etc.), civil penalties (fine and detention/not used), criminal (imprisonment), administrative (spot fines, notices, etc.), judicial review, merit review.⁹⁴ National Green Tribunal of India can adopt appropriate and fitting enforcement and monitoring mechanisms for ensuring compliance with its orders.⁹⁵ The NGT may confer powers on the selected bodies, including those comprising former high court judges, former chief secretaries, or subject matter

⁸⁸ Ibid, s 8.

⁸⁹ Land and Environment Court of New South Wales, <<https://lec.nsw.gov.au/about-us/judicial-officers-and-decision-makers.html>>accessed 13 September, 2024.

⁹⁰ National Green Tribunal Act, 2010, (Ind.) s 5.

⁹¹ Ibid, s. 6.

⁹² Ibid, Pring (n 13) 5.

⁹³ George Rock Pring, and Catherine Kitty Pring, 'Twenty-first Environmental Dispute Resolution- Is there an 'ECT' in Your Future?', 2015, 33(1) Journal of Energy and Natural Resources Law 30.

⁹⁴ Brian Preston, J, Access to Justice, Land and Environment Court (June 2016), a paper present to the Law and Sustainability Symposium, held in Brisbane on 11 March, 2011.

⁹⁵ Gitanjali Gill, 'The National Green Tribunal: Evolving Adjudicatory Dimensions' (2019) 49(2-3) Environmental Policy and Law 153.

experts to ensure that the orders of the Tribunal are timely executed.⁹⁶

Environment Courts and Special Magistrate Courts in Bangladesh are adequately empowered to compel obedience to their orders since the 2010 Act gives them the power to sanction stringent punishments to persons who violate the court's orders and directions.⁹⁷ Law enforcement agencies shall render assistance to the investigation efforts of the Courts, whenever it is called for.⁹⁸ The courts have the power to inspect any property, object, or place of occurrence of offense if any question arises regarding such object, place, or property. The result of such inspection shall be recorded in the memorandum and such memorandum shall be evidence in the trial of the case.⁹⁹

4.4 ADR

Adherence to ADR in the formal legal process makes many cases disposed of quickly and cheaply. It is found as the most common best practice among successful environmental courts around the globe.¹⁰⁰ The Land and Environment Court of New South Wales has a variety of ADR processes, both in-house and outside by parties in the forms of either conciliation, arbitration, mediation, or neutral evaluation according to its appropriateness to the cases.¹⁰¹ The Court's in-house ADR procedures include neutral evaluation (conducted by commissioners), mediation (conducted by experienced mediators, including the registrar, full-time commissioners, and some acting commissioners), and conciliation (conducted by commissioners or registrars). Additionally, there are unofficial channels like case management that could lead to a settlement through negotiation. The Court also encourages the use of accredited mediators to mediate disputes externally.¹⁰² The Environment Court of New Zealand also provides for ADR on its own motion, or on request.¹⁰³ A member of the Environment Court may conduct ADR.¹⁰⁴ The NGT Act, 2010, of India does not explicitly provide for ADR proceedings, but it does allow the NGT to adopt any procedure that it deems fit for.¹⁰⁵

⁹⁶ National Green Tribunal, 'Methodology of the NGT' < <https://www.greentribunal.gov.in/methodology-ngt> > accessed 1 July 2023.

⁹⁷ Environment Court Act, 2010, s 8.

⁹⁸ Environment Court Act, 2010, s 13.

⁹⁹ Environment Court Act, 2010, s 17.

¹⁰⁰ Ibid, Pring (n 1) 47; Pring (n 2) 72.

¹⁰¹ Land and Environment Court Act 1979 (Aus), s 34; Preston, (n 97).

¹⁰² Ibid.

¹⁰³ Resource Management Act, 1991, (NZ), s 268.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid, National Green Tribunal, (n 99).

ADR has been incorporated into the proceedings of the Environment Court in Bangladesh. In environmental cases of civil nature, the Court is directed to follow the ADR as provided under the Code of Civil Procedure 1908, in Sections 89A-89C.¹⁰⁶ In the case of certain environmental offenses, provisions relating to compromise are laid down in the Act 2010.¹⁰⁷ In certain criminal offenses, the Act contains provisions for compromise. Any person liable for being tried for certain environmental offences as mentioned in Section 18 of the Act, 2010 may reach a compromise with the Director General of the DoE by paying a certain amount of prescribed fine. Such compromise may be made before or after filing a criminal case with the special Magistrate Court, during investigation or trial, or even in the course of appeal or revision.¹⁰⁸ Though the law provides for ADR, in practice, the present study finds that there is no instance of adhering to ADR in any of the environmental cases in both Dhaka and Chittagong Environment Court. The reasons for non-adherence of ADR in environmental cases are the same as ADR has not been successful in regular civil courts, to mention, *inter alia*, the reluctance of parties and non-cooperation of advocates, etc.¹⁰⁹

4.5 Forum for Appeals

Having ECTs at both trials and appeals increases judicial competence and uniformity in decision-making.¹¹⁰ Generally, there exist two-tiered environmental courts with the higher tier as an appellate court, for instance, in Sweden, Finland, and Belgium.¹¹¹ However, the Environment Court in New South Wales, New Zealand and India is of one-tier court having both original and appellate jurisdiction. Bangladesh has two-tiered environmental courts- the Environment Court and Special Magistrate Court at the trial level and the Environment Appellate Court at the appeal level.¹¹² There is only one Environment Appellate Court situated in Dhaka.

4.6 Volume of Case Records in Environment Courts

It is assumed that case volume reflects the success and effectiveness of an ECT. It is an accepted estimation that at least 100 cases filings per year per judge

¹⁰⁶ Ibid, Environment Court Act, 2010, s 14(6).

¹⁰⁷ Ibid, Environment Court Act, 2010, s 18.

¹⁰⁸ Ibid, Environment Court Act, 2010, s 18.

¹⁰⁹ See generally, Asrafuzzaman, A. B. M., and Md Golam Mostofa Hasan, 'Causes and Redresses of Delays in Disposal of Civil Suits in Dhaka District Judge Court: An Empirical Study' (2021) 32 Dhaka University Law Journal 135.

¹¹⁰ Ibid, Pring (n 9) 30.

¹¹¹ Ibid.

¹¹² Ibid.

are required to justify a ‘stand-alone’ ECT.¹¹³

Year	Previous cases pending	Cases filed	Total	Disposed	Pending
2003	00	17	17	17	00
2004	00	72	72	60	12
2005	12	23	35	18	17
2006	17	37	56	30	24
2007	24	04	28	03	25
2008	25	97	122	89	33
2009	33	82	115	76	39
2010	39	60	99	40	59
2011	59	33	92	25	67
2012	67	24	91	15	76
2013	76	09	85	08	77
2014	77	09	86	01	85
2015	85	11	96	06	90
2016	90	04	94	08	86
2017	86	05	91	12	79
2018	79	19	98	11	87
2019	87	03	90	03	87
2020	87	29	116	02	114
2021	114	19	133	21	112
2022	112	19	131	18	113
		576		463	

Table 1, Source : Court Statement of Environment Court in Dhaka¹¹⁴

Year	Previous cases pending	Cases filed	Total	Disposed	Pending
2003	03	05	08	02	06
2004	06	16	22	06	16
2005	16	36	52	07	45

¹¹³ Ibid, Pring (n 9) 30.

¹¹⁴ Office of the Environment Court, Dhaka

2006	45	14	59	12	47
2007	47	60	107	08	99
2008	99	42	141	18	123
2009	123	57	180	22	158
2010	158	58	216	24	192
2011	192	49	241	27	214
2012	214	18	232	01	231
2013	231	16	247	32	215
2014	215	28	243	26	217
2015	217	04	221	17	204
2016	204	18	222	21	201
2017	201	25	226	15	211
2018	211	58	269	24	245
2019	245	13	258	11	247
2020	247	09	256	13	243
2021	243	25	268	18	250
2022	250	41	291	48	243
		592		352	

Table 2, Source: Court Statement of Environment Court in Chittagong¹¹⁵

Tables 1 and 2 show that Tables 1 and 2 show that in Dhaka and Chittagong Environment Court, the number of cases filed per year is only 29 and 30 respectively.¹¹⁶ The total number of cases filed in Dhaka and Chittagong Environment Court for the last 20 years period from 2003 to 2022 is 576 and 592 respectively.¹¹⁷ The average number of cases filed per year, disposal and pending of the cases are the reflection of the fact that the Courts are not able to function properly in their full capacity. Moreover, the number of cases filed in each year from 2012-2016 fluctuates within a range of four to twenty-eight cases, which shows an overall decreasing trend, which indicates peoples' no confidence in the existing court system and adjudication of the environmental grievances.¹¹⁸

¹¹⁵ Office of the Environment Court, Chittagong.

¹¹⁶ See, Table 1 Column 3, and Table 1, Column 3

¹¹⁷ See, Table 1 Column 3, and Table 1, Column 3.

¹¹⁸ Solaiman Salman, 'Environment Court Inactive for Lack of Cases', The Daily Sun (Dhaka, 5 June 2017) <<http://www.daily-sun.com/printversion/details/231486/Environment-court-inactive-for-lack-of-cases>> accessed 4 November 2020.

During the period from 2003 to 2022, number of cases 463 and 352 were disposed by Dhaka and Chittagong Environment Courts respectively.¹¹⁹ The average disposal per year is 23 in Dhaka and 17 in Chittagong Environment Courts. The number of pending cases, as of December 2022, in Dhaka and Chittagong Environment Courts are 113 and 243 respectively.¹²⁰ For lack of cases, Environment Court Judges, who are both Joint District and Joint Session Judges, mostly hear their regular civil and criminal cases. Due to pressure of regular duties they are not able to focus on special duties and hence they hear environmental cases on a particular day in a week according to their convenience.

4.7 Bar to Receiving or Taking Cognizance of Environmental Cases

The experiences of ECTs in different countries suggest that they shall be independent of political or executive interference or pressures in adjudication.¹²¹ The independence of a judicial body is a *sine qua non* for ensuring the rule of law.¹²² Independence of the court also garners public credibility and trust. It gives people greater willingness and confidence to bring their claims to the court.¹²³ Environment Courts and Special Magistrate Courts in Bangladesh lack judicial independence regarding the court's jurisdiction to receive environmental cases or take cognizance of environmental offenses directly from the aggrieved party, and restrict the people's access to environmental remedies and justice.¹²⁴ Environment Court and Special Magistrate Court can receive civil cases or take cognizance of environmental offenses respectively only upon the written report of the Inspector from DoE approving such filing or taking cognizance of cases.¹²⁵ As an exception to this general rule, the court may directly receive a case from an aggrieved private person without such prior approval from the DoE, but the private litigant must satisfy the Court or the Magistrate that the inspector has not taken any necessary steps within sixty days of request by the aggrieved person and that the Court or Magistrate has sufficient reasons for receiving the case or taking cognizance of the complaint after hearing the Inspector.¹²⁶ There is also a provision for filing an FIR in the police station as regards environmental offenses, but no individual who suffers environmental injury can file the FIR. The Director

¹¹⁹ See, Table 1 Column 5, and Table 1, Column 5.

¹²⁰ Ibid

¹²¹ Pring (n 13) 45

¹²² *Secretary, Ministry of Finance, Government of Bangladesh vs. Mr. Md. Masdar Hossain & others* 52 DLR (AD) 82

¹²³ Pring (n 13) 45

¹²⁴ Environment Court Act 2010, s 6(3), 7(4); Preston, (n 8) 368

¹²⁵ Environment Court Act 2010, s 6(3), 7(4)

¹²⁶ Ibid

General on his behalf is the authority under law to file FIR.¹²⁷ Therefore, the DoE having “complete control as a gate keeper” is the “major obstacle to access to environmental justice” for the common people as well as the cause for the low caseload of the Environment Courts.¹²⁸ Such restriction on the access to justice also contradicts the equality protection clause and right to a fair trial guaranteed under the Bangladesh Constitution.¹²⁹ This legal restriction is derogatory to the constitutional pledge of both separation of powers and independence of the judiciary in light of constitutional provisions and the settled constitutional jurisprudence on independence of the judiciary.¹³⁰ It is found that effective and strong ECTs usually possess open and broad *locus standi* as far as practicable to include ‘any person’.¹³¹ Under the Environment Court Act 2010, only a personally aggrieved person has the *locus standi*, and such *locus standi* is even restricted requiring the prior approval of DoE to seek remedy in the Court.

The present research finds that there is no single individual case in Dhaka or Chittagong Environment Court and nowhere in the Special Magistrate Court which has been filed without the report of the Inspector from DoE.¹³² This fact certainly undermines judicial independence and creates a sense of apathy among the public for not going to the Courts for justice. It is unanimously opined by the judges of the Environment Court interviewed that the public in general is reluctant to file environmental cases as they do not want to go through the lengthy and cumbersome procedure of getting approval from the DoE for filing cases. In contrast, the National Green Tribunal in India is empowered to take on environmental cases against the government freely and independently and even *suo motu*.¹³³ Both the Environment Court in New Zealand,¹³⁴ the Land and Environment Court of New South Wales¹³⁵ are independent to take cases from

¹²⁷ Environment Court Act 2010, s 6(1)

¹²⁸ Preston (n 8) 368

¹²⁹ Mohammad Golam Sarwar, ‘Making a Case for Environmental Rule of Law in Bangladesh’, *The Daily Star* (8 June, 2021) <<https://www.thedailystar.net/law-our-rights/news/making-case-environmental-rule-law-bangladesh-2106989>> accessed 25 January 2024

¹³⁰ Constitution of Bangladesh, art 22; *Secretary, Ministry of Finance, Government of Bangladesh vs. Mr. Md. Masdar Hossain & others* 52 DLR (AD) 82

¹³¹ Pring (n 13) 51

¹³² Court Office of Dhaka and Chittagong Environment Court

¹³³ Pring (n 13) 35

¹³⁴ Ceri Warnock, ‘Reconceptualizing the Role of the New Zealand Environment Court’ (2014) 26(3) *Journal of Environmental Law*, 507–518, <<https://doi.org/10.1093/jel/equ030>> accessed 23 June 2023

¹³⁵ T Naughton, ‘The limits of jurisdiction and locus standi in the Land and Environment Court of New South Wales’, 65(3), *Australian Law Journal* 149–160., <<https://search.informit.org/doi/10.3316/agispt.19911043>> accessed on 23 June 2023

the aggrieved persons directly. The National Green Tribunal of India¹³⁶ is also independent by mandate but it occasionally asserts its jurisdiction suo motu.¹³⁷

4.8 Workload of Judges

As we see that the judges for all environmental courts in foreign jurisdictions are appointed exclusively to perform the functions of the environmental court. But in Bangladesh judges for environmental courts are appointed not independently/exclusively but are assigned to function as judge for environment court in addition to their regular duties of a judge. Because the Environment Court Act, 2010 allows the Government to appoint Judges for Environment Courts and Magistrates in addition to their original judicial functions as Joint District/Session Judge or Magistrates.¹³⁸ In reality when the Judge who is assigned for the environment court seems to be over burdened with the cases of his regular court as Joint District/Session Judge or as Magistrate, and has little time to act efficaciously as to environmental matters. It may be argued that the present low caseload due in the environment courts are because the DoE controlling the filing of cases as gatekeepers.

4.9 Procedural Flexibility

Environment Courts and Special Magistrate Courts in Bangladesh have little option to act with its flexibility due to both existing laws and judicial practices. The Environment Court Act 2010 prescribes procedures for filing a case, and investigation, search, seizure, etc. which are either very complex or ambiguous in nature.¹³⁹ To make matters worse, the Act 2010 also prescribes that the Courts are to follow the Code of Civil Procedure 1908 and the Code of Criminal Procedure 1897 in civil and criminal cases respectively.¹⁴⁰ Therefore, Environment Courts and Special Magistrate Courts are under pressure to follow the complex and time-consuming legal procedures.

A flexible environment court can better serve its purposes and can effectively dispose of the cases. The Court is flexible when it has the power to make and adopt its own rules relating to procedures, evidence, and remedies. This flexibility is considered a valued unique practice.¹⁴¹ Where Environment Court has such flexibility, they can use 'inventive' and 'problem solving' approaches to dispute

¹³⁶ National Green Tribunal Act, 2010, (Ind)s 14

¹³⁷ Gill (n 98)153

¹³⁸ Environment Court Act 2010, ss 4 and 5 respectively

¹³⁹ Environment Court Act 2010, ss 6,7, 11,12, 14

¹⁴⁰ Environment Court Act 2010, s 14(1), (6)

¹⁴¹ Pring (n 13) 45

resolution.¹⁴²In 2010 the Philippines Supreme Court enacted “Rules of Procedure for Environmental Cases” which is considered one of the best models of procedural rules in the world.¹⁴³ The rules provide detailed and comprehensive procedures for civil and criminal environmental proceedings.¹⁴⁴ It adopts mediation as ADR in its process.¹⁴⁵ It also provides for writ matters in environmental issues.¹⁴⁶ The rules also are modern in the sense that they allow the court to admit digital evidence, like photography, videos, and similar evidence.¹⁴⁷ The Rules allow the court to apply even ‘the precautionary principle’ in case of deciding a case on inadequate scientific certainty on potential environmental harm.¹⁴⁸ NGT in India has broad power to make its own rules of procedure.¹⁴⁹The Tribunal is not bound by the Code of Civil Procedure 1908 or the Indian Law of Evidence 1960 and is mostly governed by the principles of natural justice.¹⁵⁰ NGT uses modern digital tools, i.e., email, fax, etc. to communicate with the parties which allows them to respond promptly. The Tribunal even entertains petitions which are made through letters sent to Tribunal addresses. Instances of substantial environmental damage are thus coming before the Tribunal easily.¹⁵¹Like NGT, the Environment Court in New Zealand can set its own rules of procedure and may conduct its proceedings “without procedural formality where this is consistent with fairness and efficiency.”¹⁵² Further, the NZ Environment Court is “not bound by the rules of law about evidence that applies to judicial proceedings”, and “may receive anything in evidence that it considers appropriate to receive.”¹⁵³The procedure of NSW Land and Environment Court is governed by several procedural laws, of which the principal one is Land and Environment Court Government Rules 2007.¹⁵⁴ The procedural rules are broad and flexible and have different procedures for different classes of suits.¹⁵⁵

¹⁴² Ibid 45

¹⁴³ Ibid 27; see also Bret C. Birdsong, ‘Adjudicating Sustainability: New Zealand’s Environmental Court’ (2002) 29 Ecology Law Quarter 1

¹⁴⁴ Rules of Procedure for Environmental Cases, see rr 2-17

¹⁴⁵ Rules of Procedure for Environmental Cases, r 3, s 3

¹⁴⁶ Rules of Procedure for Environmental Cases, rule 7, 8

¹⁴⁷ Rules of Procedure for Environmental Cases, r 21

¹⁴⁸ Rules of Procedure for Environmental Cases, r 20

¹⁴⁹ National Green Tribunal 2010, (Ind), s 19

¹⁵⁰ Ibid

¹⁵¹ National Green Tribunal, (n 99)

¹⁵² Resource Management Act 1991 (NZ), s 269

¹⁵³ Ibid, s 276

¹⁵⁴ Land and Environment Court of NSW, ‘Practice and Procedure’, <<https://lec.nsw.gov.au/practice-and-procedure/legislation.html>> accessed 25 January 2007.

¹⁵⁵ Preston, (n 8) 391

4.10 Combination of Legal and Technical Skills of the Judges

Environmental issues demand special knowledge and expertise. Creating an environmental court with both judges and non-legal experts from diverse professions, such as, scientists, engineers, economists, planners, academics etc. is a commonly adhered best practice.¹⁵⁶ This brings two essential skills into the adjudication process – legal capacity and scientific-technical know-how.¹⁵⁷ In multifaceted environmental cases, technical expertise is very crucial to determine causation, damages, and future impacts.¹⁵⁸ It is even argued that the evaluation of scientific evidence by judges who are ‘technically illiterate’ is ‘dangerously unreliable’.¹⁵⁹ But the constitution of Environment Courts and Special Magistrate Courts in Bangladesh is such that it does not accommodate technical and scientific knowledge. Judges are appointed from the regular officers of the rank of Joint District Judge, and Magistrates respectively irrespective of their knowledge of environmental matters. Even no special training is given on environmental law or science after the appointment.¹⁶⁰ Just a course on environmental law has been recently added to the training manual of the foundation training courses for entering judges conducted by the Judicial Administration Training Institute.¹⁶¹ Judges and Magistrates often find themselves in a very difficult position to rely on pieces of evidence put forward by the lawyers of the parties for not having sufficient technical knowledge. The opportunity to call for expert witnesses is very cumbersome and costly and as such rarely called. Of not having adequate technical and scientific skills, judges apply environmental laws mechanically which results in the dismissal of cases on technical or procedural grounds only.¹⁶² Therefore, it is suggested that a body of expert panels composed of persons having knowledge and experience in complex scientific issues in environmental cases is *a sine qua non* for appropriate and effective dispensation of environmental litigation.¹⁶³

The successful environmental courts, i.e., Land and Environment Courts in New South Wales, Australia; Environment Court in New Zealand; National

¹⁵⁶ Ibid, 381-382

¹⁵⁷ Pring (n 13) 46

¹⁵⁸ George Rock Pring (n 9) 55

¹⁵⁹ Md. Shahidul Islam, ‘Scientific Uncertainty and Need for Specialized Environment Court in Bangladesh: A Lesson from Australia, New Zealand and India’ 19 (2) *Bangladesh Journal of Law* 136, citing Brian J. Preston, ‘Benefits of Judicial Specialization in Environmental Law: The Land and Environment Court of New South Wales as a case study Case Study’, 29 *Pace Environmental Law Review* 396 (2012) <<https://digitalcommons.pace.edu/pelr/vol29/iss2/2>> accessed 20 March 2022

¹⁶⁰ Faruque (n 17) 342

¹⁶¹ See, Bangladesh Judicial Training Manual

¹⁶² Ibid, Faruque(n 17) 344.

¹⁶³ Ibid, Md. Shahidul Islam (n 159) 157.

Green Tribunal in India combine legal, scientific, and technical knowledge in environmental areas, as well as experiences and skills in the related field in its decision-making process. The judges of these courts are a mix of judicial officers and technical experts drawn from relevant professions.¹⁶⁴ In the Land and Environment Courts in New South Wales, Australia, the Bench is constituted of both judges and commissioners. A person below 70 years of age who holds or has held a judicial office or an Australian lawyer of at least 7 years standing may be appointed as a judge of the court.¹⁶⁵ Any person not a judicial officer but has special expertise in the specific areas required under the Land and Environment Act, 1979 can hear and dispose of matters under their jurisdiction independently and also in certain matters specified in the Act assists the judge of the court.¹⁶⁶ The jurisdictions of the court are classified,¹⁶⁷ and they are made exclusive to the judges or commissioners (expert members) according to the suitability of matters with the judges' or commissioners' professional expertise and experiences.¹⁶⁸ Similar to the Court of Australia, the Environment Court in New Zealand consists of both judges and commissioners,¹⁶⁹ where the commissioner is the non-judicial expert member of the court. Distinct to the Land and Environment Court in New South Wales; in the Environment Court of New Zealand, one environmental Judge and one Environmental Commissioner sitting together constitute the quorum of the court, though in certain cases only a single judge may constitute the quorum.¹⁷⁰ In India, National Green Tribunal is constituted of both Judges not below the rank of High Court Judges and expert members having high standard of experiences and expertise requiring, degree in science, fifteen years of experience of which five years must be relating to some environmental specialization.¹⁷¹ Without such combination, it is hard to come to an appropriate conclusion for a court in environmental disputes, particularly, when they involve results of scientific experiments, scientific data, and technological uncertainty.¹⁷²

¹⁶⁴ See, Land and Environment Court Act 1979; Resource Management Act 1991; National Green Tribunal Act 2010; see generally Md. Shahidul Islam, (n 159) 141-152.

¹⁶⁵ Land and Environment Court Act, 1979, (Aus), s 5.

¹⁶⁶ Ibid, (Aust) s 12(2AB).

¹⁶⁷ For details, see Ibid, (AUS), ss 16-21C.

¹⁶⁸ For example, the law bars the jurisdiction of the Commissioner in a case relating to the Aboriginal Land Rights Act 1983 where he has no suitable knowledge on the land rights for Aborigines and qualifications and experience suitable for the determination of disputes involving Aborigines. see Land and Environment Court Act 1979, s 30(2A), (2C).

¹⁶⁹ Resource Management Act, 1991 (NZ), s 248.

¹⁷⁰ Resource Management Act, 1991 (NZ), s 265.

¹⁷¹ National Green Tribunal Act, 2010, (Ind) s 5, 6.

¹⁷² Lord Woolf, in his Garner lecture to UKELA, on the theme 'Are the Judiciary Environmentally Myopic ?' (1992) 4(1) Journal of Environmental Law 1 <<https://cla.auburn.edu/envirolitigators/introduction-to-the-enviro-litigators/law/concepts-and-processes/environment-courttribunals-problems-of-complex-technology/>> accessed 26 March 2022.

4.11 Cooperation among Concerned Governmental Institutions

The research finds that there exists a considerable lack of cooperation on the part of the DoE to assist the Court in the disposal of cases. Such lack of cooperation often occurs partially because a conflict of interest exists between the executive who works to secure governmental interest, and the judiciary is principally constituted to serve the public interest and check the executive. It also happens because of the scarcity of workforce and logistic support of the Department and unwillingness and not having an environmentally sensitive attitude on the part of the Officers. In Bangladesh Environment Courts and Special Magistrate Courts often find a lack of evidence or delayed investigation report from the Inspector of the Department. In such cases, the law provides no power for Environment Courts and Special Magistrate Courts to make them accountable, except for making an order for further investigation.¹⁷³

4.12 Availability of Logistics and Resources

An effective environmental court has an adequate budget, logistic support, and an adequate number of court staff. Greater political resolve and mandate must exist visibly to adequately fund and provide the court with the facilities.¹⁷⁴ In Bangladesh Environment Courts and Special Magistrate Courts are functioning with inadequate infrastructural facilities and logistic support. They do not have their courthouses. Both the Environment Courts are set up in the courtroom of the concerned Joint District Judges and the Magistrates.

5. Special Magistrate Court in Narayanganj: Lessons Learned

Establishment of the Special Magistrate Court in Narayanganj under the Chief Judicial Magistrate Court is unique as one Judicial Magistrate was specifically assigned to carry responsibility of the Special Magistrate Court under the Environment Court Act, 2010.¹⁷⁵ According to the Government Notification dated 22/11/2011, all Magistrates of the First Class or Metropolitan Magistrates are already appointed as Special Magistrates in each district or metropolitan area respectively.¹⁷⁶ Since the Notification provides general powers to all Magistrates of First Class in a District to try environmental offenses under environmental laws, thus creating a general court, it is in contrast to the objective of the Environment Court Act, 2010 as the Act inherently aims to create a special court. The case has been different in Narayanganj since the duty of the Special Magistrate Court is

¹⁷³ Environment Court Act, 2010, s 14(2).

¹⁷⁴ Ibid, Pring (n 9) 22.

¹⁷⁵ Office order, Chief Judicial Magistrate Court, Narayanganj, Order no. 09/2021 dated 26 January 2021

¹⁷⁶ Ministry of Law, Justice and Parliamentary Affairs, notification dated 22/03/2011, reference-বিচার-১/৪পি-১/২০০৮-১৩

specifically assigned to one particular Judicial Magistrate under the terms of the Government Notification of 22/11/2011. The Chief Judicial Magistrate in Narayanganj, Ms. Farhana Ferdous made an office order (order no. 09/2021) dated 26 January 2021 by exercising her power of distribution of business under section 17(2)/11(3), Code of Criminal Procedure, 1898, assigning Mr. Kowsar Alam, the Senior Judicial Magistrate to function as ‘Special Magistrate Court’ in addition to his regular judicial responsibility.¹⁷⁷ The specific assignment of responsibility of the Special Magistrate Court to one particular Judicial Magistrate has accelerated access to environmental justice in the district. Unlike in most of the districts, the Court has been successful in working in collaboration with the Narayanganj branch of DoE.

The Special Magistrate Court has shown outstanding judicial responsibility to bring to book environmental offenders and serve environmental justice under numerous environmental laws of Bangladesh. The Court acts in the prevention of industrial pollution, use of polythene bags, illegal brick kilns, private hospital waste disposal mismanagement, etc. The Court has ensured compliance with environmental laws by taking legal measures, for instance, stoppage orders, injunctions, directions to take environmental clearance certificates, directions to establish Effluent Treatment Plant (ETP) in industrial projects, etc. The Court has once initiated a compliance case under section 8(1) of the Environment Court Act, 2010 for continuing the illegal brick kilns in violation of the court’s previous order for closure.¹⁷⁸ Several polluters were arrested in pursuance of arrest warrant in environmental cases and sent to interim custody by the Court rejecting the bail.¹⁷⁹ The accused were granted bail after they committed themselves in writing not to continue with the environmental offenses they were arrested.¹⁸⁰ The Court has successfully conducted mobile court as per the law under section 12(11) of the Environment Court Act, 2010 and prevented environmental pollution by illegal brickfields.¹⁸¹ So far, the Court’s success in enforcing environmental laws and ensuring compliance with the environmental standards and requisites is quite promising. From its constitution on 26 January 2021 to 30 May 2023, a total of 84 cases were filed. The number of filed cases every year is 6 cases in 2021, 71 cases in 2022, and 7 cases in 2023 (up to 30 May). The Court has disposed of 6 cases in 2021, 52 cases in 2022, and 3 cases in 2023. The total disposed cases is 61 and the disposal rate is 73%.¹⁸² As per law, the Court has recovered a fine of an amount

¹⁷⁷ Chief Judicial Magistrate Court, Narayanganj, order dated 26/01/2021, reference-সিজেএম(এন)/২০২১-২৬(১৮)

¹⁷⁸ Interview with the Special Magistrate in Narayanganj (18 June 2023).

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Court Office of the Special Magistrate Court, Narayanganj dated 18 June 2023.

one crore sixty-four lac and ninety thousand taka (1,64,90,000/-).¹⁸³ It is found that the Special Magistrate Court in Narayanganj has been successful in having a visible impact on the area in creating environmental awareness among the public in general and ensuring environmental rule of law. Later, several districts, for instance, Feni, Habiganj, and Munshiganj Districts adhered to the model of Narayanganj Special Magistrate Court.

6. Proposals for Reformation of Environment Court and Special Magistrate Court

It is found that ECTs in different countries are unique and distinct to their cultural, societal, governmental, legal, and fiscal contexts.¹⁸⁴ Therefore, there is not a single best model of an ECT applicable to every place but there are several common best practices as discussed above across the ECTs that a particular ECT may adopt. Therefore, what formation of a specialized environment court will serve better in a country needs to be examined in consideration of the country's socio-political and legal factors such as political will, available budget, level of public demand for environmental justice, the form of government, availability of environmentally trained judges and lawyers, etc.¹⁸⁵

In consideration of the discussion made above, the article suggests the following reform proposal to make the Environment Court and Special Magistrate Court efficient and effective:

- i. The Environment Court Act 2010 must be revised, and the following issues must be incorporated into the revised Act:
 - a. The provision for authorization from the DoE for filing cases must be repealed.
 - b. Separate flexible and broad rules of procedure should be adopted.
- ii. The number of Environment Courts must be increased immediately, at least, one in each district and one Environmental Appellate Court in each division. One or two Magistrates shall be appointed exclusively as Special Magistrate Court for environmental cases of a criminal nature in each district following the model of the Narayanganj Special Magistrate Court.
- iii. Judges and Magistrates shall be appointed exclusively as environmental judges. He must not be busy with other judicial responsibilities.

¹⁸³ Ibid.

¹⁸⁴ Ibid, Pring (n 93)11.

¹⁸⁵ See generally, Ibid, Pring (n 9).

- iv. Measures should be taken to promote the environmental legal and scientific knowledge and expertise of the judges and magistrates of the Environment Court and Special Magistrate Court. It can be done through continuous professional training of judges in environmental laws and knowledge.
- v. Government Lawyers (GP, PP) shall also be trained with the necessary skills to handle environmental cases and evidence.
- vi. The courts should be provided adequate resources, technological devices, court staff, and logistic support.

5. Concluding Remarks

Development in establishing ECTs is ‘dramatically changing the playing field for environmental justice around the world’¹⁸⁶. Bangladesh is one of the earliest countries that set up specialized environment courts in the form of Environment Courts and Special Magistrate Courts. The article concludes that due to the legal barriers, the Environment Courts and Special Magistrate Courts will hardly be able to play their due role to protect the environment and ensure access to environmental justice in the country. First and foremost, the legal requirement of prior approval from the DoE to file an environmental case or a complaint should be withdrawn and unhindered access to environmental justice shall be ensured. Then, other reforms recommended herein will make the court effective and efficacious. It is highly desired that the recommendations for reformations will get the due attention of the policymakers and existing courts should be empowered to deal with environmental cases and ensure environmental justice.

¹⁸⁶ Ibid, George Rock Pring (n 9) 1