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The politics of the Bangladesh environmental protection act

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PROFILE

The Politics of the Bangladesh Environmental Protection Act

There has been an ever increasing political enthusiasm about environment in Bangladesh lately. In a typical statement, the country's premier, for example, announced: '[the government] has attached top priority to protection of the environment ... Environmental protection is a highly important issue and at any cost we will have to preserve the environment for the people of the country' (cited in *The Bangladesh Observer*, 5 May 1997).

The newspapers frequently contain such highly charged statements made by central politicians and state officials (for example, *The Bangladesh Times*, 24 April 1995, 23 April 1995, 6 Feb. 1995, 23 April 1995, 6 Feb. 1995; *The Daily Azadi*, 13 Feb. 1995; *The Morning Sun*, 25 Jan. 1995; *The Bangladesh Observer*, 5 June 1995, 24 April 1995, 22 April 1995, 29 March 1996). However, few definite steps have been taken to materialise these promises. The institutions and regulations for environmental protection have generally remained weak, inadequate and largely ineffective [Schroll, 1995; Department of Environment (DoE), 1995, and undated; Hussain, 1995; Huq, 1995].

The latest governmental step towards the country's environmental protection, which has been claimed to have provided a legal framework for comprehensive environmental management, is known as the Bangladesh Environmental Protection Act 1995 (Act 1 of 95; hereafter, the Act or the BEPA). In her speech on the World Environment Day, the (then) Prime Minister made the following comment, referring to the government's approval and endorsement of the BEPA:

Bangladesh is committed to protection of the environment globally, regionally and locally ... The present democratic government is making all-out efforts to develop environment. To this end, ... the Environmental Protection Act 1995 has been approved. Equal priority has been given to the protection of environment and the alleviation of poverty. This reflects the ethos of sustainable development as enunciated in [the] Rio Declaration [DoE, 1995:11].

The purpose of this brief profile is to focus on the Act in some detail to argue that it hardly reflects the high-blown promises and enthusiasm from the central political and bureaucratic leadership of the country. In the context of its general significance as the major environmental legislation so far, and the lofty claims of its protagonists, an analysis of the BEPA may be very worthwhile. Taking the BEPA as an example, such analysis may also help to focus more generally on the gap between the rhetoric and the real performance of the environmental institutions.

The Genesis of the BEPA

The genesis of the BEPA may be traced back to the Environmental Pollution Control Ordinance 1977 (which was repealed in 1995 with the promulgation of the BEPA). Before the BEPA, some other statutes also contained limited provisions relating to environment (for example, the Factories Act 1965, the Agricultural Pesticides Ordinance 1971, the Protection and Conservation of Fish Act 1950). The BEPA was designed to act as an umbrella for covering different aspects of environmental management.

The United Nations World Commission on Environment and Development [1987], more popularly known as the Brundtland Report, had a strong influence in shaping the development and environmental activities in Bangladesh. Since the late 1980s, the government started to attach increased importance to environmental issues as may be evidenced from the establishment of a separate Ministry of Environment and Forest in 1989 and the restructuring and expansion of the Department of Environment (DoE).

In 1990, Bangladesh stepped into a new era with the fall of its one-and-a-half-decade-long military dictatorship. A new caretaker government, led by President Shahabuddin Ahmed, assumed the power and set up a specialised 'task force' to determine development strategies to be adopted by the newly elected government. In 1991, the reports of the task force were compiled in four volumes of which one volume had been dedicated to address environmental problems in Bangladesh. It is considered as the first reasonably comprehensive work on the Bangladesh environment. It recommended, among other things, different measures to strengthen the environmental institutions and legislation [*Task Force, 1991*].

In line with the general recommendations of the Rio Earth Summit, the National Environmental Policy and the National Conservation Strategy were framed for the protection of the environment in Bangladesh in 1992. A National Environmental Committee was formed in 1993 with the Prime Minister in the chair to address environmental issues at the central level. In order to implement these policies and strategies, an appropriate legal

framework was felt necessary which finally found expression in the form of the BEPA.

The Principal Provisions of the BEPA

The BEPA aims at 'environmental conservation', 'improvement of ecological condition' and 'prevention and control of environmental pollution'. In total, it contains 21 sections which include, *inter alia*, the mandatory requirements for 'environmental clearance' for any new industry to be set up in Bangladesh. Wide powers have been given to the Director General of DoE to carry out the provisions of the Act, such as, the power to do anything as (s)he considers necessary to meet the objectives of the Act and to issue written 'notices' to anybody to assist him(her) in discharging the duties. In addition, (s)he is empowered to adopt safety measures against environmental pollution; to direct the concerned importers and exporters for environment-friendly use of dangerous particles and its elements; to undertake research and investigation on environmental matters; to visit and examine any plant, equipment, or process with the end to protect the environment; and direct the appropriate authority to take measures to curb pollution. The BEPA also empowers him(her) to direct immediate closure of any industrial plant and to monitor water quality standards.

Other major provisions of the Act include the appointment of the Director General of DoE and determination of the terms and conditions of his(her) service, employment of the necessary staff to carry out the functions of the DoE, declaration of the 'ecologically critical areas' by the means of 'government notification', prevention of vehicular pollution, and publication of environmental guidelines to meet the principal objectives of the Act. The Act also prescribes punitive measures for non-compliance with its provisions including up to five years imprisonment, or a penalty of Taka 0.01 million (1 GBP=76 Taka approximately, as of July 1998), or both. In addition, the BEPA maintains that the owner, director or any appropriate officer of a company shall be held responsible if the company fails to comply with any provision of the Act, unless it can be proved that such non-compliance was 'beyond the company's notice', or the company made its best efforts to comply. The government is also empowered to frame detailed operational rules for the implementation of the Act.

Limitations and Practical Applicability of the BEPA

Although the provisions of the BEPA seem to be elaborate and ambitious, the practical applicability of the Act is considerably limited by the following factors. First, it has been rightly argued by some analysts that the

implementation of the elaborate provisions of the Act would require substantial funds which the government can hardly afford [DoE, 1995; *The Bangladesh Observer*, 5 May 1995].

Second, the DoE, which is the principal implementing agency (as envisaged in the Act) to execute the various provisions of BEPA, suffers from an acute shortage of human and physical resources and logistics.

Third, a considerable number of the existing DoE staff are not adequately trained in the technical, social and scientific aspects of environmental protection issues (as warranted by the Act). The chief executive (Director General) of the DoE himself expressed concern over the inadequate manpower, funding and resources of the agency, and noted that 'DoE needs skilled and trained manpower to function efficiently. The present organisational structure of the department fulfils that requirement partially only' [DoE, 1995: 11].

Fourth, implementing the various provisions of the BEPA will require complementary, detailed (operational) rules which are yet to be formed. These rules will need to cover such issues as environmental quality standards and environmental impact assessment [DoE, 1995].

Fifth, the Act has provided wide powers to the DoE, especially to its Director General. It has little to say, on the other hand, about the accountability of the DoE in cases of possible misuse or abuse of such powers. In a country where the public bureaucracy is generally believed to be corrupt, powerful, centralised, resistant to reform and change [Khan, 1998; Ahmed, 1980; Khan 1980], such administrative powers (with a potential risk of misuse) should only follow very careful considerations of public interest and people's opinion. The BEPA has failed to consider these issues.

Sixth, it has been repeatedly argued that one major problem of environmental management in Bangladesh is the lack of inter-agency coordination among the relevant public institutions [Hasan and Mulamootill, 1994; Khan, 1998]. The BEPA does not offer any definite strategy to tackle this problem which is found to be a major cause of inefficient and wasteful administrative practices within the public sector.

Besides the above, flood and cyclone management has increasingly been felt to be 'an extremely important environmental and social issue' [Hanchett, 1997: 279] for Bangladesh which received no attention from the BEPA. The cyclone and subsequent flooding caused by the tidal surge, for example, wrecked 140,000 lives in 1991 and 10,000 lives in 1985 [United Nations Children's Fund Cyclone Evaluation Team, 1993]. Another 3,000 people were killed by the floods of 1987 and 1988 [Wightman, 1993]. The principal causes of these disasters, as identified by some major studies [Hanchett, 1997; Hoque and Siddique, 1995; Wightman, 1993; Haque and

Blair, 1992; Zaman, 1983] include the lack of public involvement in the design and implementation of flood protection projects, the country's topography in a heavy monsoon area, sea level rise associated with the global climatic change, lack of an appropriate disaster management policy, lack of co-ordination of the relevant agencies, poor engineering and faulty design of embankments and other construction schemes, inadequate financial and physical resources, and the bureaucratic delays in releasing funding and making operational decisions for flood protection schemes.

Drawing on the United Nations Environmental Programme's calculations on the global temperature rise, Hussainy [1992] predicts that by the year 2030, a 100 centimetre rise of the level of the Bay of Bengal may cause 12 per cent to 18 per cent of the most densely populated southern land mass of Bangladesh to go under the sea. The recent governmental strategies for dealing with floods include, in the main, the formulation of the Flood Action Plan (FAP) and the 'riprap' (and associated bank protection) work. The FAP, begun in 1989, has six main aims: disaster preparedness and management, area development with controlled flooding and drainage, flood proofing for unprotected area, urban flood prevention measures, cyclone protection including construction of roads and shelters and river management [Wightman, 1993; Hanchett, 1997].

The riprap projects aim at the protection of adjacent populations, public infrastructure (such as railways and bridges), township and agricultural lands. The major riprap schemes include the Mahipur, Rajshahi town protection, Sirajganj town protection, Hardinge railway bridge, Chandpur town protection and Bhairab-bazar projects. Lack of regular maintenance, minimal public involvement, funding shortages and poor construction management have been identified to be the major problems for the riprap work [Sarkar, 1995]. The issues and problems related to flood (and water) management have not been reflected in the BEPA and, thus, considerably reducing the effectiveness and significance of the Act as the country's major environmental legislation.

We shall close this section by citing a few recent examples of the application of the Act and the performance of the DoE. Of late, the DoE has identified the 903 'most polluting industrial units in Bangladesh' which were found to be causing pollution, primarily in the form of discharging untreated solid and chemical wastes to the major river systems in Bangladesh. The DoE issued 'notices' to warn and to seek an explanation from these industries as regards their (alleged) role in pollution. After repeated persuasion by the DoE, only 196 industries replied to the 'notice'; the rest did not bother to respond at all (*The Daily Ittefaq*, 24 July 1995). The section 15 of the BEPA includes punitive measures for non-compliance with such 'notices'. However, no industry has been actually punished thus

far. In recent years, in the face of general ineffectiveness of concerned public agencies and laws, there have been cases of organised community-based (public) protest in the districts of Sirajganj, Joypurhat and Natore against industrial pollution and ineffective institutions (*The Bangladesh Observer*, 29 March 1995; *The Financial Express*, 28 Aug. 1995).

Conclusion

From the above discussion, one can see that the ambitious promises of environmental protection are not reflected in the practical execution and functioning of the principal national legislation (BEPA) and public institution (DoE) concerned with the country's environmental management. The implementation of the Act is handicapped by some major limitations including institutional weaknesses of the implementing agencies, lack of complementary rules, omission of crucial environmental issues (such as flood management), and the absence of functional coordination among the agencies concerned with environmental protection.

Under the current situation, the Act is most likely to serve rhetorical purposes only for the central political and bureaucratic leadership. Thus far, propagandist language and discourse – rather than workable, down-to-earth strategies – have been the dominant feature of the governmental action towards environmental protection. Expressing concern over the country's environmental management scenario, Landel-Mills also noted that 'time is not on our side and so far the true political will [as opposed to political rhetoric] has been sadly lacking' [1995: 8].

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