

**ARCHAEOLOGICAL SITES AND MANGROVE FOREST AS ECOLOGICALLY CRITICAL AREAS  
IN INTERNATIONAL ENVIRONMENTAL LAW: ANALYSING THE CASE OF BANGLADESH**

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*This paper analyses the overall structure of the legal framework and judicial activism in the context of Ecologically Critical Areas in Bangladesh. Ecologically Critical Areas is a globally practiced concept to preserve the natural biodiversity of environmentally endangered areas, which often include significant natural and cultural heritages. Since the adoption of the Stockholm Declaration, other leading international legal instruments have reiterated their consonance with the principles of Intergenerational Equity through recognizing the preservation of Ecologically Critical Areas. This includes the World Heritage Convention 1972, the principal instrument ensuring the protection and preservation of natural and cultural heritage. Bangladesh, a signatory of the World Heritage Convention, has thus incorporated these principles in its domestic laws through making provisions for Ecologically Critical Areas (ECAs) in the Bangladesh Environment Conservation Act 1995 (amended in 2010) and the Environment Conservation Rules 1997. In accordance with these laws, the archaeological sites and the Sundarbans, world's largest mangrove forest, have been declared as ECAs, while the Constitution of Bangladesh also pledges to preserve the biodiversity of the State. The obligation placed upon Bangladesh under the international and domestic legal regimes has not been fulfilled satisfactorily, and the preservation of the archaeological sites and the Sundarbans is in questionable state. Ignorance, administrative negligence and faulty legislation have put the heritage sites in serious degradation. The situation has become graver since the United Nations Educational, Scientific and Cultural Organization (UNESCO) has recognized these areas as World heritage sites. However, the judicial activism in Bangladesh provides the only hope for intervention by non-state actors.*

**Key words:** environmental law, archaeological sites, mangrove, Sundarbans, national heritage, Bangladesh, Judiciary, human rights, development, Bangladesh

I PROLOGUE

*'All things rush on, they stop not, they look not behind,  
no power can hold them back, they rush on.'*

Gitanjali 70, Rabindranath Tagore<sup>1</sup>

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Despite the poet's yearning, it is upon the touchstone of the relics of the past that the present is often judged. The natural and cultural properties are the silent witnesses of the life and environment long gone by. In Bangladesh, these are considered national properties which play a significant role in the preservation of environment and bio-diversity by the State. Poor policy considerations, over population and uncontrolled industrialisation have posed serious human rights threats including violations of right to life, right to minimum standard of health and right to culture amongst others in the forms of destruction of these natural and cultural properties.<sup>2</sup> This Paper analyses the overall structure of the legal framework and judicial activism in the context of Ecologically Critical Areas in Bangladesh.

In doing so the Paper discusses the concept of Protected Areas and Environmentally Critical Areas as mechanisms of environmental protection, the significance of considering the archeological sites and mangrove forests as Environmentally Critical Areas in Bangladesh, reasons behind their degradation and its environmental impact and explores plausible recommendations under the current legal regime.

The main thesis of the paper is that, since internationally Ecologically Critical Areas (ECA) are valued for their intrinsic impact in protecting bio-diversity, the archaeological sites and mangrove forests of Bangladesh qualify to be recognized as ECAs for their contribution to ecological protection in Bangladesh. The Paper argues that in this respect, the judiciary in Bangladesh has made some noticeable progress through activism but without due legislative intervention, such judicial activism is not of much value. As such, the article argues it is high time the Bangladeshi legislature revised its definition of ECAs and biodiversity protection to include the archaeological sites and mangrove forest.

## II INTRODUCTION TO ECOLOGICALLY CRITICAL AREA: WHAT AND WHY?

Ecologically Critical Areas are geographical areas or ecosystems which have been adversely affected by the changes brought through human activities.<sup>3</sup> The concept of Ecologically Critical has flourished throughout the globe as a policy measure for protecting areas of national importance.

For example, the Bureau of Land Management (BLM) in the Western USA runs the conservation ecology program under the title Areas of Critical Environmental Concern

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<sup>1</sup> Rabindranath Tagore, *Gitanjali (Song Offerings)*, (Macmillan, 1971) 86.

<sup>2</sup> The Supreme Court of Bangladesh has observed in the FAP 20 Case (*Mohiuddin Farooque v. Bangladesh*) how right to environment is intricately connected with right to life. The environmental degradation in Bangladesh by way of deforestation and hill cutting have turned people homeless, increased salinity in the soil of southern Bangladesh has created environmental IDPs (internally displaced people). In respect with cultural rights, the degradation of the cultural properties are depriving the people of their right to know and enjoy the history of Bangladesh, denying them the opportunities to participate in cultural activities due to gradual destruction of the historical establishments.

<sup>3</sup> Asiatic Society Bangladesh, *Banglapedia* (at 6 December 2015), 'Ecologically Critical Areas' in <[http://en.banglapedia.org/index.php?title=Ecologically\\_Critical\\_Area](http://en.banglapedia.org/index.php?title=Ecologically_Critical_Area)>.

(ACEC).<sup>4</sup> The program considers an area as a potential ACEC when it fulfills the relevance and importance criteria<sup>5</sup>; which include the following: a significant historic, cultural, or scenic value, a fish or wildlife resource, a natural process or system (including but not limited to areas supporting rare, endemic, relict, or endangered plant species, or rare geological features), natural hazards (areas of avalanche, unstable soils or rock-fall), poses a significant threat to human life and safety, or to property and has more than locally significant qualities.

The State of Washington similarly runs the Environmentally Critical Areas (ECA) program in the Sammamish city under the purview of the Sammamish Municipal Code which includes wetlands, streams and other fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, and aquifer recharge areas as the ECA.<sup>6</sup> A third example from the USA is the same program run by the Department of Planning and Development in the City of Seattle. In Canada, the Ministry of Water, Land and Air Protection runs the Environmentally Sensitive Area Program. These are places that have special environmental attributes worthy of retention or special care and are critical to the maintenance of productive and diverse plant and wildlife populations.<sup>7</sup>

In Europe, the UK started the Environmentally Sensitive Areas (ESA) Scheme<sup>8</sup> in 1987. The program offered incentives to encourage farmers to adopt agricultural practices, which would safeguard such areas. There are 22 ESAs in England, covering some 10% of agricultural land.<sup>9</sup> This was superseded by the Environmental Stewardship<sup>10</sup> in 2005, which advocates for responsible use and protection of the natural environment through conservation and sustainable practices. Aldo Leopold (1887-1948) championed environmental stewardship based on a land ethic "dealing with man's relation to land and to the animals and plants that grow upon it."<sup>11</sup>

In Asia, the Philippines by the Presidential decree no. 1586 issued by President Ferdinand E. Marcos established Ecologically Critical Areas program. The decree in Section 4 provides that the President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects,

<sup>4</sup> U.S. Bureau of Land Management, 'Areas of Critical Environmental Concern' in *BLM Manual*, (S.1613.1.11, 1988) 5.

<sup>5</sup> Ibid.

<sup>6</sup> Sammamish City Council, Department of Community Development, *Environmentally Critical Areas* <<http://www.ci.sammamish.wa.us/departments/communitydevelopment/CriticalAreas.aspx#>>.

<sup>7</sup> Development, Ministry of Water, Land and Air Protection, Government of British Columbia, Canada, *Environmental Best Management Practices for Urban and Rural Land* <[http://www.env.gov.bc.ca/wld/documents/bmp/urban\\_ebmp/EBMP%20PDF%204.pdf](http://www.env.gov.bc.ca/wld/documents/bmp/urban_ebmp/EBMP%20PDF%204.pdf)>.

<sup>8</sup> Environmentally Sensitive Area (ESA) is a type of designation for an agricultural area that needs special protection because of its landscape, wildlife or historical value. Originally it was administered by Ministry of Agriculture, Fisheries and Food, then by the Rural Development Service for the United Kingdom Governments Department for Environment, Food and Rural Affairs. See, Government of U.K., Ministry of Environment, Environmentally Sensitive Area, <<https://www.gov.uk/government/...data/.../4092-env-sensitive-areas.doc>>.

<sup>9</sup> U.K. National Archives, *Environmentally Sensitive Areas Scheme*, <<http://www.naturalengland.org.uk/ourwork/farming/funding/closedchemes/esa/>>.

<sup>10</sup> Government of UK, *Environmental Stewardship: funding to farmers for environmental land management* <<https://www.gov.uk/environmental-stewardship>>.

<sup>11</sup> Leopold, Aldo, *A Sand County Almanac*, (Oxford University Press, 1949) <<http://www.aldoleopold.org/AldoLeopold/almanac.shtml>>.

undertakings or areas in the country as environmentally critical.<sup>12</sup> Southeast Asia through the intervention of ASEAN has long been using the Protected Areas (PAs) as a means to safeguard the regions natural wealth, as well as regulate their uses. Over the years, the number of protected areas has increased both in the terrestrial and marine realms.<sup>13</sup> In India, Conservation Areas are large, well-designated geographical entities where landscape conservation is undergoing, and usually contains different kinds of constituent protected areas, as well as privately owned land.<sup>14</sup>

Hence, it was as a way to keep up with the standards of international environmental protection practices that Bangladesh adopted the laws on Ecologically Critical Areas (ECAs).

### III ECAS IN BANGLADESH: AN OVERVIEW

With the continuous degradation of environment in Bangladesh, the number and extent of areas suffering ecologically is ever increasing. A large number of ecosystems in Bangladesh could accurately be described as ‘threatened’. Therefore, the government has chosen to act on a priority basis: in order to qualify as ECAs for a priority basis protection, a series of biodiversity ‘importance criteria’ have been taken into account together with an ‘urgency criteria’.<sup>15</sup> This first came with the adoption of the *Bangladesh Environment Conservation Act* (BECA) in 1995.

The BECA, 1995 has a provision for ECAs Declarations by the Director General of the Department of Environment (DoE) in section 5 of the Act. It provides that if the Government is satisfied that due to degradation of environment, the ecosystem of any area is in an environmentally critical situation or is threatened to be in such situation, the Government may by notification in the official gazette declare such area as an ECA.<sup>16</sup> Rule 3 of the *Bangladesh Environment Conservation Rules 1997* explain that the Government shall take into consideration 12 factors while declaring any area as an ECA, amongst which are ancient monument, archaeological site, wild animals habitat and mangrove.<sup>17</sup> Under this mandate, the Ministry of Environment and Forest has declared certain areas as ecologically critical in a number of notifications.<sup>18</sup>

<sup>12</sup> Department of Environmental Management, *Presidential Decree* (1586), <<http://www.emb.gov.ph/portal/Portals/13/LAWS%20PDF/PD1586.pdf>>.

<sup>13</sup> ASEAN Clearing House Mechanism, Biodiversity Information sharing System, *Protected Area Gap Analysis in the ASEAN Region* <[http://chm.aseanbiodiversity.org/index.php?option=com\\_content&view=article&id=145&Itemid=231](http://chm.aseanbiodiversity.org/index.php?option=com_content&view=article&id=145&Itemid=231)>.

<sup>14</sup> Well-demarcated large geographical entities with an established conservation plan, and were part of a joint Indo-US project on "landscape management and protection. The project ran from 1996 to 2002. See, Government of India, ENVIS Centre on Wildlife & Protected Areas, <[http://www.wiienvis.nic.in/Database/ConservationAreas\\_844.aspx](http://www.wiienvis.nic.in/Database/ConservationAreas_844.aspx)>.

<sup>15</sup> Urgency criteria is a criteria set up by the BECA. Area or ecosystems, which are threatened to reach a critical state, are deemed to meet these Urgency criteria.

<sup>16</sup> *Bangladesh Environment Conservation Act 1995* s 5 <[http://bdlaws.minlaw.gov.bd/bangla\\_pdf\\_part.php?id=791&vol=31&search=1995](http://bdlaws.minlaw.gov.bd/bangla_pdf_part.php?id=791&vol=31&search=1995)>.

<sup>17</sup> *The Bangladesh Environment Conservation Rules 1997*, R.3 <[http://www.moef.gov.bd/html/laws/env\\_law/178-189.pdf](http://www.moef.gov.bd/html/laws/env_law/178-189.pdf)>.

<sup>18</sup> *Notification*, MOEF notifications dated 19.04.1999, 30.08.1999 and 26.11.2001, cited in *Banglapedia*, above n 2.

In April 1999, the Director General of the Department of Environment (DoE) officially declared nearly 40,000 *haors* within 7 separate wetland areas as ECAs.<sup>19</sup> These sites are: *Hakaluki Haor* (local dialect for small lake), *Sonadia* Island, St. Martin's island and Teknaf peninsula (Cox's bazaar Sea Beach) but not their buffer areas. Later on, *Tanguar haor* and *Marjat baor* (local dialect for small lake) were added to this list.<sup>20</sup>

#### IV KINDS OF PROTECTED AREAS IN BANGLADESH

ECAs notified under the *Bangladesh Environment Conservation Act*, 1995 are only one of these protected areas. All activities that may deteriorate the environment further are prohibited in these areas. Apart from the BECA framework, other laws provide for specific environmental protection of specific areas, as discussed below.

##### A *Archaeological Sites in Bangladesh: Amounting to ECAs*

Archaeological sites and mangrove forest form part of the cultural and natural heritage within the meaning of various international instruments. The *World Heritage Convention 1972* defines "natural heritage" to include geological and physiographical formations and precisely delineated areas which constitute habitat of *threatened species of animals and plants* of outstanding universal value from the point of view of science and conservation (emphasis added).<sup>21</sup>

The *Antiquities Act 1968*<sup>22</sup> of Bangladesh mentions that any historical and archaeological sites, which are threatened, will be declared as ECAs. This provision enumerates the notion that national and cultural heritages of the country are the reservoir of the ecological conditions of the national environment and as such demand a good amount of attention and care. Bangladesh has been formed over tens of thousands of years, composing a very thick layer of sedimentary depositions as the heavily laden rivers slow down in the Bangladesh delta. Its unique geographic posture has given it additional advantages as a healthy and convenient by many people throughout the course of history.

##### B *Significance of Preserving the Archaeological Sites and Mangroves Forests as ECAs*

The purpose of designating environmentally sensitive areas as special is to protect their significant environmental features from the encroachments of severed development. Environmentally sensitive areas perform a variety of important environmental functions including storm water drainage, floodwater storage, pollutant entrapment, and the provision of wildlife habitat. They can also provide desirable green space to enhance urban aesthetics.<sup>23</sup>

<sup>19</sup> Asiatic Society Bangladesh, above n 2.

<sup>20</sup> Ibid.

<sup>21</sup> *Convention Concerning the Protection of the World Cultural and Natural Heritage*, signed 16 November 1972 (entered into force 17 December 1975) Art.2.

<sup>22</sup> *The Antiquities Act 1968*, (ACT NO. XIV OF 1968), <[http://bdlaws.minlaw.gov.bd/print\\_sections\\_all.php?id=353](http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=353)>.

<sup>23</sup> East Central Wisconsin Regional Planning Commission, *Delineation of Environmentally Sensitive Areas* (2002)

<[http://www.eastcentralrpc.org/planning/community%20facilities/ssa\\_documents/other/EnvironmentallySensitiveAreas.pdf?>](http://www.eastcentralrpc.org/planning/community%20facilities/ssa_documents/other/EnvironmentallySensitiveAreas.pdf?>).

Such sensitive areas can enhance the quality of places where people live, work and play and help to create unique developments that have the community support to move efficiently.<sup>24</sup>

Leading international legal instruments have reiterated how wise use of natural and cultural heritage leads to preserving biodiversity and sustainable development for the mankind. The following section discusses the instruments and issues in detail:

### 1 *Preserving the Original Biodiversity in Local Ecosystems*

*The Ramsar Convention 1971* provides that progressive encroachment on, and loss of, wetlands cause serious and sometimes irreparable environmental damage to the provision of ecosystem services. Therefore protected areas like wetlands provide fundamental ecological services and are regulators of water regimes and sources of biodiversity at all levels - species, genetic and ecosystem and constitute a resource of great economic, scientific, cultural, and recreational value for the community.<sup>25</sup>

Bangladesh has a rich biodiversity, especially in the forested and wetland areas. Approximately 5,000 species of flowering plants are found in Bangladesh.<sup>26</sup> The country has 266 inland and 244 marine fishes, 22 amphibians, 109 inland and 17 marine reptiles, 388 residents and 240 migratory birds, 110 inland and 3 marine mammalia.<sup>27</sup> However, due to various factors, Bangladesh has failed to conserve the surrounding environment of the archaeological and heritage sites from the clutches of urbanization, mechanization and consequent pollution. Such encroachment has seriously upset the aesthetic balance in these areas, leading to extinction of flora, fauna and animal species. As a result, of the known vertebras, 13 have already perished, 54 of the inland fish species, 8 amphibians, 58 inland reptiles, 41 resident birds and 40 inland mammals are threatened.<sup>28</sup> A close speculation reveals that these reasons are deeply connected with the degradation of the archaeological and heritage sites as well.

These sites, as part of the nature, have their own ways of maintaining a particular ecological and natural in its surrounding. The perimeter of such surrounding often expands up to a certain ratio the biodiversity within which keeps itself somewhat secluded from other nearby areas and the environment thereof. This seclusion is mainly attributable to the unique nature of these sites. Due to being preserved in their 'original' state (meaning least disturbance due to developmental and industrial intervention), the biodiversity in the concerned perimeter is enabled to maintain its characteristics as prevalent before the developmental/ human interventions changed the vicinity. This continuation of the original state of biodiversity helps maintain the natural balance from the adverse effect of pollutants and other degradation.

<sup>24</sup> Ibid.

<sup>25</sup> *Convention on Wetlands of International Importance, especially as Waterfowl Habitat*, signed 2 February 1971 (entered into force 21 December 1975) Preamble.

<sup>26</sup> The United Nations Conference on Environment and Development, *Bangladesh Country Report* (1992) <[http://books.google.com.bd/books/about/Bangladesh\\_country\\_report\\_for\\_United\\_Nat.html?id=u8XsAAAAMAAJ&redir\\_esc=y](http://books.google.com.bd/books/about/Bangladesh_country_report_for_United_Nat.html?id=u8XsAAAAMAAJ&redir_esc=y)>.

<sup>27</sup> Red List of Threatened Animals of Bangladesh, IUCN-Bangladesh 2000, above n 2.

<sup>28</sup> Ibid.

An example on point is the Amazon Forest. Due to its density of trees, the inner circle of the Amazon rainforest has till today remained untouched by the aggression of modern science and technology. Therefore, if one can penetrate the forest, he will find it as if the forest has remained what it is in perpetuity. The Amazon is responsible for maintaining the Oxygen and Carbon Dioxide balance of the world to a great extent.<sup>29</sup> To find out what happens over the undisturbed rainforest, a joint Anglo-Brazilian team of scientists conducted experiments which showed that 70 percent of the radiation from the sun goes into evaporating water, leaving just 30 percent to heat the air and general surroundings. They found that 17 percent of precipitation is intercepted by the canopy and evaporates before reaching the ground, while more than 30 percent of rainfall is drawn back into the atmosphere through plant transpiration. The remaining 50 percent runs off. The forest thus feeds the atmosphere, which, in the turbulent conditions over the forest, forms cumulus clouds, and so the rain is returned again.<sup>30</sup> However, due to heavy deforestation in the Amazon, the atmospheric oxygen level of Earth has dropped by 20% in recent years, found by a study in 2013.<sup>31</sup> Similar hypothesis could be drawn for ECAs in Bangladesh and other countries.

## 2 *Fostering Sustainable Development*

Sustainable development requires due preservation of environmental balance, whereas economic development causes global environmental changes through industrial interventions. The implications of global environmental change are inherently long-term and require that we address equity issues that span two or more generations.<sup>32</sup>

The survival of human race depends upon the welfare and well being of every generation.<sup>33</sup> The importance of sustaining the life support systems of the planet, the ecological processes, environmental conditions and cultural resources is paramount for the very survival of human species and a decent human environment.<sup>34</sup>

The Sundarbans is a sanctuary to a large part of the country's wild life. This mangrove forest still houses majority of the country's most endangered animal species. The roaming of the Royal Bengal Tigers is a major reason of the till-date existence of a number of trees, which have become extinct in other parts of the country. Due to the salinity of the soil and other unique features of the locality, one can find a variety of typical trees that are peculiar to that region alone. The trees with Pneumatophorous or aerial roots are only found in the

<sup>29</sup> See generally, Sharon A. Cowling et al, 'Contrasting Simulated Past and Future Responses of The Amazonian Forest to Atmospheric Change' (2004) 359 *Philosophical Transaction B* <[http://empslocal.ex.ac.uk/people/staff/pmc205/papers/2004/Cowling\\_et\\_al\\_04\\_RS.pdf](http://empslocal.ex.ac.uk/people/staff/pmc205/papers/2004/Cowling_et_al_04_RS.pdf)>.

<sup>30</sup> Noeline Gannaway, 'The Importance Of Tropical Forests For Climate Stability', cited in The World Meteorological Organization, *The Summery of the Statement on the status of the global climate in 1995* <<http://www.converge.org.nz/pirm/frames/climat!b.htm#tropo>>.

<sup>31</sup> Institute of Science in Society, *O<sub>2</sub> Dropping Faster than CO<sub>2</sub> Rising: Implications for Climate Change Policies*, <<http://www.law.unimelb.edu.au/mulr/submissions/quick-aglc>>.

<sup>32</sup> Edith Brown Weiss, 'Intergenerational equity: a legal framework for global environmental change' in Edith Brown (ed) *Environmental change and international law: New challenges and dimensions*, (United Nations University Press, 1992).

<sup>33</sup> *Ibid.*

<sup>34</sup> Edith Brown Weiss, 'Fairness To Future Generations: International Law, Common Patrimony and Intergenerational Equity' (1989) *American University International Law Review* <<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1498&context=auilr>>.

Sundarbans. The roots of the *Sundar (Heritiera fome)* tree have distinct characteristics, which protect the soil from the force of the tidal surges. These trees check the current of the waves caused by the daily tide and ebb. This forest plays a vital role in the livelihoods and in providing every day needs of the local inhabitants, making their life sustainable in that otherwise inaccessible area.

### 3 Contribution to the Cultural Diversity of the Country

The Sundarbans area is the only place in the entire country where collecting honey from the naturally made bee hives serves as a means of earning daily livelihood. While the major portion of the country's honey production is derived from cultured beehives, the *Mouals*<sup>35</sup> of the Sundarbans still penetrate deep into the forest for collecting the honey from the trees. This takes a heavy toll on their security, and the Government has done little to mitigate their sufferings. In absence of assistance on the part of the state, the profession of the *Mouals* is at the verge of extinction today. Similar threat is posed to the *Bawalis*<sup>36</sup> (the *Golpata* collectors). The *Golpata (Nypa fruticans)* is of utmost importance to the local inhabitants. It is used for manifold purposes such as housing, fuel and making carpets. In this way, the typicality of the Sundarbans has also contributed to the cultural diversity of the country.

The archaeological sites at various districts have also given birth to distinct cultural practices and values. The vicinity of the *Mahasthanagar* houses a *majar (shrine)* of a *Peer*, though now forgotten. It has now become a practice of the area for the people who pass by the *Gar* and for the tourists to contribute money to the *majar* for the betterment of the nearby mosque.<sup>37</sup> The "*Behular Bashorghor*" site, which is about 2/3 kilometers far from the *Gar*, is another place of interest to the visitors, and thus the folklore of "*Chand Saudagar*" has sustained more robustly in this area, contributing to the cultural flourishing of the country on a totalitarian approach.<sup>38</sup>

Similarly, the *Ghora Dighi* (meaning the *Lake of the Horse*, as myth has that the area of the lake was marked by the are the preacher's horse covered running) in the vicinity of the *Shat Gambuj Mosque* in Bagerhat, Southern Bangladesh, stands witness to the legend of the excavation of the lake within the area marked out by the race of a horse.<sup>39</sup>

### 4 Preserving National History

The archaeological sites provide important clues as to the past trace of historical events. This is very important in pointing out the past transactions in historical ups and downs. This is

<sup>35</sup> *Moual* is the local name for the professional bee collectors who gather honey in the Sundarbans for three to four months during the flowering season taking permission from the Forest Department. See, Asiatic Society Bangladesh, *Banglapedia* (at 7 December 2015), 'The Sundarbans', <[http://en.banglapedia.org/index.php?title=Sundarbans,\\_The](http://en.banglapedia.org/index.php?title=Sundarbans,_The)>.

<sup>36</sup> *Ibid.*

<sup>37</sup> Staff Correspondent, 'HC forms body to save Mahasthanagarh, *The Daily Star* (online), February 3 February 2011 <<http://archive.thedailystar.net/newDesign/story.php?nid=172606>>.

<sup>38</sup> See, Md. Mosharrif Hossain, *Mahasthan: Anecdote to History*, (Dibyaprakash, 2006), 25-26.

<sup>39</sup> Asiatic Society Bangladesh, *Banglapedia* (at 10 December 2015), 'Khalifatabad' and 'Shatgumbad Mosque', <<http://en.banglapedia.org/index.php?title=Khalifatabad>>, <[http://en.banglapedia.org/index.php?title=Shatgumbad\\_Mosque](http://en.banglapedia.org/index.php?title=Shatgumbad_Mosque)>.

amply illustrated by the relics of the Indus Valley civilization which provide significant indications as to the supposed flood or earthquake that might have occurred.

### 5 Educational Value

The archaeological sites play a significant role in discovering new data and information as to the past developments in various fields of knowledge. The architecture of the *Shatgombuj Mosque* in Bangladesh exhibits to have served triple purposes: a congregational mosque, a parliament or assembly hall like those of early Islam and a *madrassa* (Islamic school) like the *Isfahan Jami* and the *Masjid-i-Jami at Ardistan* in then Persia. This shows how the Muslim culture of Persia even at the Sultanate period influenced the thinking in Bengal. At the same time, the *chau-chala* (special type of hut roofs) vaults over the central nave of the mosque appear to have originated from the *chau-chala* huts of the rural Bengal. Such contrasting mode of architecture reflects the mindset of Bengal to be keen in preserving unity in diversity, which is the root cause of the rich cultural background of Bangladesh.<sup>40</sup>

Excavations at *Paharpur* site in Bogra district, Northern Bangladesh, have led to astounding results. Architecturally they have revealed a new type of Buddhist temple architecture, labeled as the *Sarvatobhadra* type. These excavations were extremely significant from the standpoint of history of sculpture art, which is in both terracotta and stone. No other site in Bangladesh has produced stone and terracotta products side by side. These sculptures offer a unique opportunity for a detailed study from religious, artistic, technical and socio-economic point of view.<sup>41</sup>

The *Mahasthangarh*, in present day Bogra, is unique in being a city with a continuous history of more than 1500 years (3<sup>rd</sup>-2<sup>nd</sup> century B.C. to about 15<sup>th</sup> century A.D.). A series of very unusual type of large terracotta plaques have been discovered near the main archaeological site, depicting the story of the *Ramayana* with Sanskrit inscription with alphabets from late 7<sup>th</sup> century. This is significant because *Mahasthangarh* is known mainly to have been the capital of *Mauryan Bengal*, which was predominantly Buddhist. Thus, this site has added a new cultural dimension. The discovery of *Roulette Wares* adds to this list.<sup>42</sup> The archaeological site of *Mainamanti* is famous due to the number of inscriptions, coins and miniature bronzes discovered which is perhaps the largest in the entire subcontinent. The *Sal Bana Vihar* is deemed to be the largest ancient university found in Greater Bengal. These inscriptions belong to more than 5 dynasties and introduce to some new dynasties and kingdoms not known before. As such this site has changed the concept of history of the southeast Bengal between 6<sup>th</sup> and 13<sup>th</sup> century A.D. It proves that this part of Bengal had a flourishing currency system distinct free from the *Pala* and *Sena* influence.<sup>43</sup> Similarly, the excavation done in *Wari-Bateswar* has opened up a new prehistoric horizon for Bangladesh

<sup>40</sup> G Michell (ed), *The Islamic Heritage of Bengal*, (1984, UNESCO, Paris) cited Asiatic Society Bangladesh, *Banglapedia* (at 7 August 2015), <[http://en.banglapedia.org/index.php?title=Shatgumbad\\_Mosque](http://en.banglapedia.org/index.php?title=Shatgumbad_Mosque)>, Also see, Archaeological Survey of India, *Annual Report 1934-35*, <[http://asi.nic.in/asi\\_publ\\_annual\\_reports.asp](http://asi.nic.in/asi_publ_annual_reports.asp)>.

<sup>41</sup> KN Dikshit, 'Memoirs of Archaeological Survey of India', cited in Asiatic Society Bangladesh, *Banglapedia* (at 6 December 2015), 'Paharpur' <<http://en.banglapedia.org/index.php?title=Paharpur>>.

<sup>42</sup> KN Dikshit, 'Annual Report 1928-29', (1933, Archaeological Survey of India, Delhi), Also see, "Asiatic Society Bangladesh, *Banglapedia* (at 6 December 2015), 'Mahasthangarh' <<http://en.banglapedia.org/index.php?title=Mahasthan?>>.

<sup>43</sup> Asiatic Society Bangladesh, *Banglapedia* (at 14 December 2015), 'Mainamati', <<http://en.banglapedia.org/index.php?title=Mainamati>>.

previously thought to be unlikely in this deltaic land. The discovery of semi-precious stone beads shows that they were locally manufactured. This bears witness to the proposition of a strong and independent economic life.

All these archaeological sites, apart from adding the educational value to the cultural life of the nation and hence the right to culture, are an integral part of the local environment and biodiversity as discussed in the earlier sections. As such, their protection and preservation have not only cultural but environmental value, as pledged in the *World Heritage Convention 1972*. This issue will be discussed in detail in the following sections.

## V FRUSTRATING THE PICTURE OF THE ARCHAEOLOGICAL SITES IN BANGLADESH

As mentioned before, the principal reasons behind the degradation of the archaeological sites in Bangladesh consist of development projects and industrial interventions.

### A *Land Use*

Due to high population density and predominance of agricultural activities as livelihood, pressure on the country's limited land is tremendous. The amount of cultivable land is 8.52 million hectare<sup>44</sup> constituting nearly 52.97% of the total land area.<sup>45</sup> 63% of the total land area of Bangladesh is subjected to agricultural use. This large-scale land consumption for cultivation purpose drives people to encroach upon the remaining area which include the forestry, wetland and ecologically crucial areas. Likewise, indiscriminate deforestation and land cutting for the purposes of road construction and human settlements also cause huge imbalance in the ecology. In 2011 the local townspeople of Bogra started removing soil from the "*Gokuler Med*" for road construction.<sup>46</sup> This site had been declared as an archaeological site in the official gazette of 1922 by the then British government. It is popularly believed to be the site of the "*Behular Bashorghor*", a famous folklore in Bengal. The townspeople argued that there was no good road from the locality to travel to the *sadar* (city center). In 2011, the High Court Division gave two rulings on removing construction materials to preserve the integrity of *Mahasthangarh* and the Mughal Lalbagh Fort in Bangladesh.<sup>47</sup>

Another point to ponder about is that the increased soil infertility due to soil erosion and soil removal which disrupts the natural cultivation cycle. In a whole, the unplanned, uncoordinated land use and agricultural methods have created a bleak picture so far as it concerns the archaeological sites of Bangladesh.

### B *Deforestation*

The practice of large-scale deforestation is an offshoot of several other factors including population explosion, land use and demand for fuel for domestic consumption. A study by

<sup>44</sup>Government of Bangladesh, Ministry of Agriculture, *Bangladesh Agriculture at a Glance*. <<http://www.moa.gov.bd/statistics/bag.htm>>.

<sup>45</sup>Central Intelligence Agency, 'Bangladesh land Use', *CIA World Fact Book* <<https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html>>.

<sup>46</sup>Staff correspondent, 'Bishal Bangla' *The Daily Prothom Alo*, (Dhala, 21.01.11).

<sup>47</sup>News Editor, 'Protect Mahasthangarh: HC', *Bdnews24.com* (online), 7 December 2010 <<http://bdnews24.com/bangladesh/2010/12/07/protect-mahasthangarh-hc>>.

the Department of Global Ecology of the Carnegie Institutions in U.S.A. reveals the nature of change in the global climatic condition through deforestation. According to Julia Pongratz, the concept that burning of fuel and carbon for the rapid industrialization has caused global warming in the present age is not totally correct, for there are new evidence that suggests that man's agricultural activities over the past 150 years have contributed an amount of carbon dioxide to the atmosphere comparable to the total emissions for fossil fuel combustion.<sup>48</sup>

### C *Uncontrolled Industrialization and Development Projects*

Development projects and industrial set-ups often conduct faulty Environmental Impact Assessments, leading to sanction of dangerous projects. The major archaeological and heritage sites in Bangladesh are mainly situated in Dhaka, Khulna, Bogra and Rajshahi, which constitute part of the area which a study identified as 'hot spots'. The spatial distributions of the most polluted 'hot spots' in Bangladesh are Dhaka, Gazipur, Narayanganj, Chittagong, Khulna, and Bogra. These districts contribute more than 50% of the national pollution load in 4 of the 6 pollutant groupings. In the case of total particulates and biological oxygen demand (BOD), they contribute about 35 % each.<sup>49</sup> Thus, a reading on the face of it shows that the most environmentally threatened areas in the country have the honor of housing the most intricately valued national treasures.

#### 1 *The Latest Blow: The Rampal Power Plant*

A ten kilometer area surrounding the Sundarbans was declared as ECA back in 1999, but in contravention of the 1995 Act, the permissions ( granted earlier) to nearly 150 industrial projects were never revoked despite provision to revoke such permission once the area is declared ECA.<sup>49a</sup> The most recent and prominent example is the Rampal Power Plant project, which is a proposed joint venture project by the Indian state owned National Thermal Power Corporation (NTPC) and Bangladesh state owned Power Development Board (PDB).<sup>50</sup> The proposed power station would be a 1320-megawatt coal-fired power plant in the district of Bagerhat, covering an area of 1834 acres of land, just 14 kilometres north of the Sundarbans. The Environment Impact Assessment admits that the 142 tons of sulphur dioxide and 85 tons of nitrogen dioxide that will be emitted daily from the plant will increase the concentration of Sulphur Dioxide (SO<sub>2</sub>) and Nitrogen Dioxide (NO<sub>2</sub>) in the air near the Sundarbans.<sup>51</sup> Despite tremendous popular protest, the Department of Environment (DoE) of the Government of Bangladesh accepted the project to be feasible. A writ petition filed to stay

<sup>48</sup> See, P. Ciais, Sabine Chris, Balasubramanian Govindswamy, et al, 'Carbon and Other Biogeochemical Cycles' in T.F. Stocker et al (eds), *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press) <[https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5\\_Chapter06\\_FINAL.pdf](https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter06_FINAL.pdf)>.

<sup>49</sup> Asiatic Society Bangladesh, *Banglapedia* (at 6 December 2015), 'Biodiversity', <<http://en.banglapedia.org/index.php?title=Biodiversity>>.

<sup>49a</sup> *Environment Conservation Act 1995* s 12 provides: No industrial unit or project shall be established or undertaken without obtaining, in the manner prescribed by rules, an Environmental Clearance Certificate from the Director General.

<sup>50</sup> Anu Muhammad, 'Rampal power plant: A project of deception and mass destruction', *Bdnews24.com*, (online), 19 September 2013 <<http://opinion.bdnews24.com/2013/09/19/rampal-power-plant-a-project-of-deception-and-mass-destruction/>>. Also see, Salman Riaz, 'Rampal Power Plant; The Death Sentence for Sundarbans', *Perspectivebd.com* (online), September 2016 <<http://perspectivebd.com/2016/09/113/>>.

<sup>51</sup> Md. Asadullah Khan, 'Threat to ecology of Sundarbans, Bitter Truth', *The Daily Star* (online), 17August 2013 <<http://archive.thedailystar.net/beta2/news/threat-to-ecology-of-sundarbans/>>.

the project was summarily dismissed by the Supreme Court.<sup>52</sup> The environmental impact has been estimated with toxic gases, including carbon monoxide, oxides of nitrogen, sulphur dioxide and large amount of fly ash to pollute the local ecosystem, causing water contamination to result in loss of employment of the local inhabitants, and serious internal displacement, which has already begun, due to land acquisition and dispossession by the government to cater for the needs of the plant.<sup>52a</sup>

This case shows how serious disregard for policy considerations make the legislations futile. As such, despite having the 1995 Act and the 1997 Rules in place, what Bangladesh needs is awareness and rule of law more than just law itself.

#### D *The Curse of Shrimp Cultivation*

Initially called ‘the Blue Revolution’, the shrimp cultivation in the developing countries worldwide has created serious ecological threats to wetlands and mangroves. Shrimp aquaculture is responsible for 38% mangrove destruction and considered as the chief threat to mangrove preservation.<sup>53</sup> Shrimp cultivation in the southwest part of Bangladesh is causing degradation in biodiversity in the Sundarbans. The shrimp cultivation in Bangladesh with its unplanned and uncontrolled growth has led to harmful impact on environment and ecology such as the destruction of mangrove forest areas, reduction in livestock, reduction in paddy cultivation and reduction of green revolution and losing fertility of land.<sup>54</sup> This impacts the soil since it needs preservation of saline water for a long period of the year. The intrusion of saline water results in the productivity of the soil. The zooplankton and hydro plankton of the fresh water cannot survive in the saline water, which leads to loss of biodiversity. Mangrove cover in Bangladesh’s Chokoria *Sundarban* forest fell from 7,500 ha in 1976 to just 973 ha in 1988, largely due to shrimp farm development.<sup>55</sup> The process of wild shrimp fry can adversely affect mangrove growth and regeneration.<sup>56</sup>

#### E *Inadequate Local Participation*

The success of management depends very much on the degree of support and respect awarded to the protected area by neighboring communities.<sup>57</sup> It is difficult to involve the

<sup>52</sup> Staff Correspondent, ‘HC rejects writ petition on Rampal Power Plant Project’, *The New Age* (online), 7 October 2013 <<http://newagebd.com/detail.php?date=2013-10-07&nid=68318>>.

<sup>52a</sup> Riaz, above n 50.

<sup>53</sup> Valiela, I., J.L. Bpwen and J.K. York, ‘Mangrove Forests: One of the World’s Threatened Major Tropical Environments, (2001) 10 *Journal of Bioscience* 51, cited in Coralie Thornton, Mike Shanahan & Juliette Williams, ‘From Wetlands to Wastelands: Impacts of Shrimp Farming’, Environmental Justice Foundation, [2003] 20 (1) Bulletin, 20(1) The Society of Wetland Scientists, 48-53 <[ftp://taurus2.caf.dlr.de/put/leinenkugel/MekongBasin\\_thematic/Thornton2003.pdf](ftp://taurus2.caf.dlr.de/put/leinenkugel/MekongBasin_thematic/Thornton2003.pdf)>.

<sup>54</sup> Md. Jahid Hossain Dolon, *International Environmental Law With Bangladesh Perspective* (University Publications) 295.

<sup>55</sup> Thornton, above n 10, 49, 50.

<sup>56</sup> *Ibid.*

<sup>57</sup> MacKinnon et al (eds.) *Managing Protected Areas in the Tropic*, (IUCN, Gland, Switzerland) 295, cited in Laskar Muqsudur Rahman, ‘Policy, Law And Administration For Protected Area Management In Bangladesh’, (March 2005) 10 <[http://www.nishorgo.org/tbltd/upload/pdf/0.77383100%201354819309\\_Policy,%20Law%20and%20Administration%20for%20PA%20Management%20in%20Bangladesh.pdf](http://www.nishorgo.org/tbltd/upload/pdf/0.77383100%201354819309_Policy,%20Law%20and%20Administration%20for%20PA%20Management%20in%20Bangladesh.pdf)>.

local communities in the ECA management in Bangladesh without giving them any benefit or providing them with alternate source of income. There are many ways in which local people can benefit from protected areas, including the preservation of traditional rights and cultural practices, and special preference for local residents in employment or social services. Implementation of social laws through people's participation in conservation of Protected Area is inevitable. *The Nishorgo Support Project*<sup>58</sup> aims at conserving the selected Protected Areas largely by moral or social laws and providing technical assistances.

#### F *Administrative Indifference*

The respective authorities vested with the responsibility of the preservation and protection of the ECAs in Bangladesh is more often than not negligent and careless. This is truer in case of archaeological sites than the Sundarbans. Often reports of reckless construction work within the archaeological sites parameter are received with no heed paid by the authorities. For example, in 2008, the *Mahasthan Mazar Unnayan Committee* (the Shrine Development Committee) started constructing buildings on the official premises violating the *Antiquity Act 1968*. The Bogra Administration ignored repeated requests from the Archaeological Department (AD) to stop the construction, which succeeded only through judicial intervention.<sup>59</sup> The AD officials claimed that thousands of ancient bricks and artifacts including terracotta were damaged by the construction.<sup>60</sup>

#### G *Flawed Projects Taken by the Department of Archaeology*

Most of the projects for the preservation or restoration of archaeological sites undertaken by the AD are inadequate, flawed, and more often than not in violation of existing laws.<sup>61</sup> Professor of Archaeology, Shah Sufi Mustafizur Rahman at Jahangirnagar University says: '*though the archaeology department claims they are following Conservation Manual and Archaeological Works Code, it exists only on papers. Practically they are just destroying the sites violating existing laws*'.<sup>62</sup>

The preservation work is often carried out with much neglect. Enquiry in the renovation work at *Panamnagar* found colors used on 'restored' parts were too shiny and bear the testimony of modern age rather than reviving originality of the ancient monuments. Besides, cement and sand were used in plastering instead of *lime-surki* (limestone grinds) for restoration works causing further damage. Moreover, RCC (rod-cement-concrete) pillars and

<sup>58</sup> The Nishorgo Support Project NSP is a project of the Forest Department, Ministry of Environment and Forests, funded by the USAID and implemented by the International Resources Group (IRG). Nishorgo Support Project, *Technical Oversight and Monitoring of Local Currency Activities*, <[http://www.nishorgo.org/tbltd/upload/pdf/0.89747500%201354819957\\_Technical%20Oversight%20and%20Monitoring%20of%20Local%20Currency%20Activities.pdf](http://www.nishorgo.org/tbltd/upload/pdf/0.89747500%201354819957_Technical%20Oversight%20and%20Monitoring%20of%20Local%20Currency%20Activities.pdf)>.

<sup>59</sup> Staff Correspondent, 'Mahasthangarh Heritage site unprotected', *The Daily Star* (online), 8 December 2010 <<http://archive.thedailystar.net/newDesign/cache/cached-archive-2010-12-08.html>>.

<sup>60</sup> Ibid.

<sup>61</sup> "We don't agree we violate existing laws. We follow conservation manual and Archaeology Works Code in conservation, preservation and restoration," said former director general (DG) of the Archaeology Department Dr Shafiqul Alam; in Emran Hossain, 'Heritage sites left in ruins', *The Daily Star* (online), April 8, 2009 <<http://archive.thedailystar.net/newDesign/news-details.php?nid=83242>>.

<sup>62</sup> Ibid.

beams were used instead of wooden ones though international laws direct to preserve and display antiquities with original materials and authentic documents.

Another example of negligence is 'preservation' of *Shat Gambuz Mosque* funded jointly by the Bangladesh government and United Nations Educational, Scientific and Cultural Organization (UNESCO).

An enquiry Committee headed by Prof Sharifuddin Ahmed found that the 'preservation' of *Shat Gambuz* was carried out by making on-spot decisions and without conducting a study.<sup>63</sup> This was gross violation of the international charter for conservation and preservation. Other examples show gross neglect by the AD has occurred in *Baliati Jaminder Bari* (Landlord Mansions) in Manikganj. The AD replaced three broken wooden doors at the main entrances to the mansion with three iron doors of modern design.<sup>64</sup>

#### H *Inefficient People*

Conservation is a science meaning you cannot do whatever you like. Skilled artisan is a must to ensure proper conservation. To develop such expertise people should be sent abroad for training, while those who know history and archaeology must be involved in conservation. According to the President of Asiatic Society of Bangladesh, Professor Sirajul Islam, "*heritage affairs should be maintained by heritage-oriented people. It cannot be maintained by government staffs.*"<sup>65</sup>

Having referred to the autonomous heritage departments in America, Europe, Japan, Australia and even in neighboring India, Prof. Sirajul also noted that "Neither money nor manpower shortage can be a problem in maintaining heritage sites. Heritage can earn money from inside and outside the country. The problem is our approach and lack of expertise."<sup>66</sup>

#### I *Age-Old Legislation*

The sole existing law that specifically deals with protecting the cultural heritage is the *Antiquity Act 1968*. This statute is a continuation of the colonial law originally promulgated during the British rule. The Act discourages examination of archaeological evidence like earth, coal and ash abroad as there is no clear provision in this regard. It even does not have the provision to take action against any persons involved in preservation, conservation and restoration in case of any loss as section 30 offers indemnity.

The absence of effective legislations is one of the chief factors in environmental protection mechanism. Many countries have large bodies of laws dedicated to historic, archaeological and environmental preservations, which are updated and amended in keeping with technological progress. For example, the United States has the Federal Historic Preservation Laws and Regulations, aided by Presidential Orders and Tribal, State, and local laws which have been

<sup>63</sup> Hossain, above n 61.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

amended over time.<sup>67</sup> Some mentionable laws are *American Battlefield Protection Act*, The Protection and Enhancement of the Cultural Environment of 1971, *Historic Sites Act*, *Public Buildings Cooperative Use Act*; Procedures for State, Tribal, and the Local Historic Preservation Program. The *National Historic Preservation Act 1966*, which is the key legislation for preserving historical and archaeological sites in the USA, has been amended in 1976, 1980 and 1992 thereby extending protection to Native American and Native Hawaiian preservation efforts and increasing federal department powers.

In Australia, the heritage laws seek to protect, preserve, present, and transmit the Australian nation's natural, cultural, and historical heritage. Australian heritage laws exist at the National and Territorial Levels. The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC) is the key framework for protection of the Australian environment covering biodiversity and natural-culturally significant places. It has been last amended in 2015 to keep up with new developments on Biosecurity.<sup>68</sup>

In the UK, the *Ancient Monuments and Archaeological Areas Act 1979* (AMAAA) was passed by the British government as the latest in a series of Ancient Monument Acts for protecting the archaeological heritage of Great Britain.<sup>69</sup> It introduced the concept of city centres of historic significance to ensure further protection by forcing developers to permit access prior to commencing constructions. By 2004, only five city centres were declared as protected. The UK also created the Heritage Protection Guide<sup>70</sup>, an online guide that provides the public with general knowledge as well as case decisions relating to archaeological monuments of the nation.

In Japan, historic and national monuments are considered as ‘Cultural Property’ and are directed to be preserved for the people of Japan.<sup>71</sup> The most relevant laws are the 1897 Ancient Temples and Shrines Preservation Law, 1919 Historical Sites, Places of Scenic Beauty, and Natural Monuments Preservation Law and the recent 1950 Law for the Protection of Cultural Properties. These laws have been amended periodically with the latest amendments being brought in 2004.<sup>72</sup>

Last but not the least, in neighboring India, the *Indian Treasure Trove Act 1878* was amended in 1949 and the *Ancient Monuments and Archaeological Sites and Remains Act 1958* was amended in 2010 to incorporate new definitions of prohibited areas and protection.<sup>73</sup> Thus, whereas India has remained up-to-date with necessary legislative

<sup>67</sup> National Park Service, *Federal Historic Preservation Laws, Regulations, and Orders*, (8 December 2015) <<http://www.nps.gov/history/laws.htm>>.

<sup>68</sup> Environment Protection and Biodiversity Conservation Act 1999 Series, <<https://www.comlaw.gov.au/Series/C2004A00485>>.

<sup>69</sup> See, the long title of the Act: “An Act to consolidate and amend the law relating to ancient monuments”.

<sup>70</sup> Historic England, *Heritage Protection Guide* (2015) <<https://historicengland.org.uk/advice/hpg/>>.

<sup>71</sup> Cultural Properties Department, Agency for Cultural Affairs, *Cultural Properties for Future Generations: An Outline of Cultural Administration of Japan* (2015) <[http://www.bunka.go.jp/tokei\\_hakusho\\_shuppan/shuppanbutsu/bunkazai\\_pamphlet/pdf/pamphlet\\_en\\_03\\_ver04.pdf](http://www.bunka.go.jp/tokei_hakusho_shuppan/shuppanbutsu/bunkazai_pamphlet/pdf/pamphlet_en_03_ver04.pdf)>.

<sup>72</sup> Ibid.

<sup>73</sup> Government of India, Ministry of Law and Justice, Gazette Notification 10 of 2010, <[http://asi.nic.in/minutes/AMASR\\_Act2010\\_Gazette\\_Notification\\_new.pdf](http://asi.nic.in/minutes/AMASR_Act2010_Gazette_Notification_new.pdf)>.

amendments, the Legislative and the Executive of Bangladesh have remained for the large part inactive.

## VI ANOTHER LEGAL THREAT

The *Tourism Act 2009* provides that for the purpose of promoting tourism, the Tourism Department of the Government can bring about any kind of modification in the structure of the archaeological sites in Bangladesh. This would hamper their due preservation. Already, the Madhabkunda waterfall in Sylhet has seen disastrous consequences: Eco-park built in the waterfall area involved clearing more than 1500 acres of forest including indigenous lands by cutting off trees and levelling hills to construct motorways.<sup>74</sup> It also changed the layout of the *kunda* (the shrine dedicated to deity *Madhab*), which is legally prohibited under the *Antiquity Act 1968* (Section 19 provides that except for preserving antiquities, any destruction, damage, alteration, or sign on any antiquity will be a punishable offence). Contrary legal sanction under the 2009 law will facilitate future projects to same disastrous effects. The statute also contravenes the Constitution which under articles 23 and 24 pledges to conserve and protect from alteration any heritage and monument historically and culturally important for the people.<sup>75</sup>

## VII THE IMPORTANCE OF PRESERVING CULTURAL HERITAGE: ITS RELATION TO DEVELOPMENT AND HUMAN RIGHTS

According to Swadhin Sen, faculty member at the Department of Archaeology at the Jahangirnagar University, heritage is an essential element in building up the identity of a 'nation' and 'ethnic groups', because the root of a collective (as nation or ethnic group) can be traced back, reconstructed and interpreted through archaeological works on 'heritage'.<sup>76</sup> From an economic perspective, heritage in recent years has appeared as an indicator of financial boost. Heritage has become a sector where both financial and intellectual investments are made and profit is sought. In present world, Tourism and sustainable development have paired up to boost the neo-liberal economy under the guise of cultural preservation.<sup>77</sup> This trend is visible worldwide, where objects and monuments connected to the memories of distress, pain and suffering, such as Nazi concentration camp like Auschwitz, have been preserved not as the evidence of the horrific insult done to human dignity in the world wars, but also for satisfying the modern day tourists.<sup>78</sup>

<sup>74</sup> Rajat Kanti Goswami, 'Foundation of "controversial" Eco-park to be laid today', *The Daily Star* 14 April 2001.

<sup>75</sup> Art. 23 provides: The State shall adopt measures to conserve the cultural traditions and heritage of the people, and so to foster and improve the national language, literature and the arts that all sections of the people are afforded the opportunity to contribute towards and to participate in the enrichment of the national culture.

Art. 24 provides: The State shall adopt measures for the protection against disfigurement, damage or removal of all monuments, objects or places of special artistic or historic importance or interest.

<sup>76</sup> Swadhin Sen, 'Our past, their pasts': cultural heritage and popular domain in Bangladesh', *The New Age* (online), <<http://www.newagebd.com/special.php?spid=7&id=26>>.

<sup>77</sup> Ibid.

<sup>78</sup> Andrew Curry, 'Can Auschwitz Be Saved?' *Smithsonian Magazine* (online), February 2010 <<http://www.smithsonianmag.com/history/can-auschwitz-be-saved-4650863/?no-ist>>.

Such preservation has further significance from a human rights perspective, as being the proof and medium of right to identity and cultural rights, especially in cases of indigenous people. Article 27 of the *Universal Declaration of Human Rights* (UDHR) specifically promoted the idea that culture was an aspect of human rights.<sup>79</sup> Communities have demanded that their cultural identity be upheld in the study and work of heritage preservation, and in pursuance of their demands countries like USA and Australia have brought striking changes in their existing laws and regulations pertaining to archaeological heritage and code of conduct for the archaeologists and Cultural Rights Managers (CRM) have been formed.<sup>80</sup>

#### VIII INTERNATIONAL JURISPRUDENCE ON PROTECTED AREAS, CULTURAL HERITAGE AND STATE OBLIGATIONS

A number of international agreements exist to establish a system for the conservation of cultural and natural heritage.<sup>81</sup> These instruments have mentioned the archaeological assets of different nations of the world as an important part of the world heritage of outstanding universal value.<sup>82</sup> The most important instrument in the field of conservation of world heritages are the *Convention on Wetlands of International Importance 1971*, Especially as Waterfowl Habitat, (commonly known as the Ramsar Convention)<sup>83</sup> and the *Convention for the Protection of the World Cultural and Natural Heritage 1972* (commonly referred to as the World Heritage Convention)<sup>84</sup>.

The *Ramsar Convention* focuses on the conservation and sustainable utilization of wetlands to stem the progressive encroachment on and loss of wetlands now and in the future, recognizing the fundamental ecological functions of wetlands and their economic, cultural, scientific, and recreational value.<sup>85</sup> The Convention promotes the “Wise Use” concept-*maintenance of their ecological character, achieved through the implementation of ecosystem approaches*, which has at its heart the conservation and sustainable use of wetlands and their resources, for the benefit of humankind.<sup>86</sup>

The *World Heritage Convention* goes further than the *Ramsar Convention* by establishing an effective system of collective protection of the cultural and natural heritage organized on a permanent basis and in accordance with modern scientific methods.<sup>87</sup> 168 States have signed this convention<sup>88</sup> respectively, including Bangladesh,<sup>89</sup> making it one of the most universal legal instruments for the protection of cultural and natural heritage.

<sup>79</sup> Helaine Silverman and D. Fairchild Ruggles, *Cultural Heritage and Human Rights* (Springer, 2007) 4.

<sup>80</sup> Sen, above n 76.

<sup>81</sup> At the regional level, two instruments are found: *The European Convention on the Protection of Archaeological Heritage*, 1969 (entered into force on November 20 1970) and *The Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations*, 1976 (entered into force on 30 June 1978).

<sup>82</sup> *World Heritage Convention* above n 25, Preamble, para 8.

<sup>83</sup> *Convention On Wetlands Of International Importance Especially As Waterfowl Habitat*, UN Document No. 14583, signed February 2 1971 (entered into force December 21 1975).

<sup>84</sup> *World Heritage Convention*, above n 25.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid* Art 2.

<sup>87</sup> *Ibid* Art.4.

<sup>88</sup> Contracting Parties to the Ramsar Convention as of June 18, 2015 <[http://www.ramsar.org/sites/default/files/documents/library/contracting\\_parties\\_list\\_20150618\\_e.pdf](http://www.ramsar.org/sites/default/files/documents/library/contracting_parties_list_20150618_e.pdf)>.

<sup>89</sup> Bangladesh has ratified the Convention on 23 November, 1972.

The protection mechanism basically enumerates from the well-known principle of Intergenerational Equity. This principle propounds that all generations of mankind are inherently linked to one other in using the common patrimony of natural and cultural resources of the planet.<sup>90</sup> Each generation is a custodian and user of this common natural and cultural patrimony, and must pass the planet on in no worse condition than that in which received. Weiss,<sup>91</sup> a renowned Professor at Georgetown University and the main propounder of the principle, proposes that each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problems and satisfying their own values. She terms it as "Conservation of Options."<sup>92</sup>

All these obligations are deeply entrenched in different legal traditions and have been expressed in various political documents, often referring to the common heritage of mankind.<sup>93</sup> The *International Covenant on Economic, Social and Cultural Rights* (ICESCR)<sup>94</sup> in its Article 15 paragraph 2 provides that to realize the cultural rights of the people the States Parties should take steps necessary for the conservation, the development and the diffusion of science and culture.<sup>95</sup> *The World Charter for Nature 1982*,<sup>96</sup> whilst not a formal agreement, refers explicitly to a global concern for the heritage the present generation ought to leave to future generations.<sup>97</sup>

#### IX ARCHAEOLOGICAL SITES AND NATURAL HERITAGE: THE STATE LEGAL RESPONSIBILITY OF BANGLADESH

Bangladesh is a party to the *World Heritage Convention 1972*, and as such Bangladesh recognizes the primary duty to identify and delineate the cultural and natural heritages situated within its territory. Bangladesh must do all it can to ensure the protection, preservation and transmission of the sites to future generations through its national resources and international cooperation<sup>98</sup>. In order to achieve this end, Bangladesh has to adopt a general policy and comprehensive planning programs to:

<sup>90</sup> Weiss, above n 54.

<sup>91</sup> Edith Brown Weiss is a Professor of Law at the Georgetown University. She is most reputed for her works on environmental and water resources law. Professor Weiss is currently a member of the United Nations Environment Programme's International Advisory Council on Environmental Justice <<https://www.law.georgetown.edu/faculty/weiss-edithbrown.cfm>>.

<sup>92</sup> Weiss, above n 52.

<sup>93</sup> Weiss, "The Planetary Trust: Conservation and Intergenerational Equity," 11 *Ecol. L. Q.*, 495, 540-563 (1984), cited in Weiss, <vedegylet.hu > okopolitika>.

<sup>94</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976. Cited in Weiss, above n. 52.

<sup>95</sup> "The steps to be taken by the States parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture." See, *International Covenant on Economic, Social and Cultural Rights 1966*, U.N. Doc. A/6316 (1966), came into force on January 3, 1976, Art 15(2).

<sup>96</sup> *The World Charter for Nature*, 1982, G.A. Res. 37/7, 37 U.N. GAOR Supp. (No. 51) U.N. Doc. A/37151, adopted by United Nations member nation-states on October 28, 1982.

<sup>97</sup> Weiss, above n 26.

<sup>98</sup> Such international cooperation includes financial, artistic, scientific and technological assistance.

1. set up management services for conservation
2. carry out appropriate research to remove threats
3. take other appropriate legal, technical measures and establish training centres.<sup>99</sup>

Article 6 of the Convention adds that each party undertakes not to take any deliberative measures that might damage directly or indirectly the cultural and natural heritage. Finally, the state party must endeavor to strengthen respect and appreciation of the heritages by her people through educational and information programs.

While interpreting the nature of the obligation of a state party under the Convention in the case of *Commonwealth of Australia and Another v. State of Tasmania*<sup>100</sup>, the Australian High Court decided that Articles 4 and 5 impose an international obligation on the state party for the preservation of the world heritage area, and this obligation extends also to non-listed sites which are 'natural heritage' within the meaning of the Convention.

On the domestic front, Article 18A of the *Constitution of the People's Republic of Bangladesh* pledges to preserve the biodiversity.<sup>101</sup> Articles 23 and 24 of the Constitution provides for the protection of the cultural and natural heritage of the state. These are in Part II of the Constitution as part of the Fundamental Principles of State Policy. Article 23 provides that:

The State shall adopt measures to conserve the cultural traditions and heritage of the people, and so to foster and improve the national language, literature and arts that all sections of the people are afforded the opportunity to contribute towards and to participate in the enrichment of the national culture.<sup>102</sup>

Article 24 provides that:

'The State shall adopt measures for the protection against disfigurement, damage or removal of all monuments, objects or places of special artistic or historic importance or interest.'<sup>103</sup>

These articles are in line with the principles and norms of customary international law. Part II of the Constitution does not have judicial enforceability, but it furnishes importance guidance to the Government and legislators with regards to the law making process, and it is incumbent upon the legislators to draft laws in accordance with the spirit enshrined in this part. It is in line with these articles that the Bangladesh *Environmental Conservation Act 1995* and *Rules 1997* have been promulgated.

The *Antiquity Act 1968*, albeit archaic, envisages that raising any kind of new structure adjacent to any archaeological site affecting the ancient monument is totally prohibited. The Government is duty bound under section 12 of the Act to protect historical sites by proscribing any sort of construction activity near the enlisted immovable properties.

<sup>99</sup> *World Heritage Convention* above n 25, Art.5.

<sup>100</sup> *Commonwealth of Australia and Another v State of Tasmania* (1983) 46 ALR 625, 1.

<sup>101</sup> *The Constitution of the People's republic of Bangladesh, 1972*, Art. 18A. The article provides that the State shall endeavor to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests and wild life for the present and future citizens.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

The *National Tourism Policy 1992* identified 5 key areas for development, two of those being emphasis on culture and heritage and protection and rehabilitation of Sundarbans. Moreover, in line with liberal constitutional jurisprudence from India, (that though the fundamental principles of state policy are at the inception of the constitution viewed as mere guidelines, after a sufficient passage of time, these principles mature into having some sort of judicial enforceability on their own account),<sup>104</sup> the judiciary in Bangladesh recognised a binding constitutional duty to strive for the protection and conservation of the Archaeological sites and natural heritage. This will be discussed below.

#### X ECA: A GLIMPSE OF JUDICIAL APPROACH

The significance of preserving natural and cultural heritage has been critically hailed by the judicial activism and esteemed Supreme Court (SC) decisions in various PILs (Public Interest Litigation, a class suit filed under the constitutional framework of Bangladesh) in Bangladesh. In the matter of *Human Rights and Peace for Bangladesh (HRPB) and others v. Bangladesh and Others*, the SC on 11<sup>th</sup> February 2011 held that a local committee formed to develop a mosque within the precincts of the monuments at *Mahasthangarh*. was illegal and ruled for the increased protection by appointing RAB (Rapid Action Battalion)<sup>105</sup> officers if necessary. The court observed the sanctity of the site, a relic of a highly developed city, as witness to our rich cultural history and ordered that the new mosque be built 200 feet away from the eastern side of the monument.<sup>106</sup> To quote:

It tells us of the exquisiteness of the civilization that we have inherited. ... It is pitiable, grotesque and weird that by constructing buildings in the vicinity of the place of profound sanctity, the beauty and the grandiose character of this monument is being irretrievably devastated and waned.<sup>107</sup>

In *Bangladesh Environmental Lawyers Association (BELA) v. Ministry of Land and others*<sup>108</sup>, BELA petitioned the High Court Division seeking special protective measures to protect and conserve the 4916 hectares of *Sonadia* Island as an Ecologically Critical Area

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<sup>104</sup> *Unni Krishnan, J.P., v State of A.P. and Others* [1993] AIR 2. The Supreme Court held that the right to basic education is implied by the fundamental right to life (Article 21) when read in conjunction with the directive principle on basic education (Article 41). It held that the passage of 44 years since the enactment of the Constitution had effectively converted the non-justiciable right to education of children under 14 into one enforceable under the law.

<sup>105</sup> RAB is a permanent special force under the direct supervision of the Ministry of Home Affairs of the Government of Bangladesh. RAB formally emerged on 26 March 2004 and started its operational journey at a limited scale from 14 April 2004. The activities of RAB include ensuring internal security, recovery of unauthorized arms, ammunitions, explosives, apprehension of armed gangs of criminal, assisting other law enforcing agencies for maintaining law and order, gathering intelligence regarding crimes and criminal activities, investigation of any offence under the direction of the government, other duties which the government may assign. For details, see, < <http://www.rab.gov.bd/index.php/about-rab.html>>.

<sup>106</sup> *Human Rights and Peace for Bangladesh (HRPB) and others v Bangladesh and Others* [2010] 40 CLC 24, per Shamsuddin Chowdhury Manik J.

<sup>107</sup> *Ibid* 15.

<sup>108</sup> *Bangladesh Environmental Lawyers Association (BELA) v Ministry of Land and others* [2003] Writ Petition No 4286 of 2003 (Protection and Conservation of Sonadia Island) <<http://www.elaw.org/es/content/bangladesh-bela-v-secretary-moef-others-wp-2003-sonadia-island-case-original-petition>>.

(ECA).<sup>109</sup> This was the first petition in Bangladesh to use the ‘Polluters Pay’ principle and recognised that alien activities in a given ecological area upset the biodiversity. BELA argued that despite being declared as an ECA, the island faced serious deforestation by the local influential shrimp cultivators with the aid of executive negligence and through leases made to Ministerial departments.<sup>110</sup> Moreover, due to the Forest officer’s negligence the forest was categorized under a wrong head that “*changed the nature of the land that has lost almost all the traits of a forest and hardly serves as habitat for birds and other wild creatures or protects the people living in adjoining coastal areas from the havoc of natural disasters*”(emphasis added)<sup>111</sup> under the Environmental Laws of Bangladesh.<sup>112</sup> The Court issued a show cause as to why the Respondents should not be directed to undertake special protective measures<sup>113</sup> and stayed further granting of lease of the island).

In the historic case of *Dr. Mohiuddin Farooque v. Bangladesh & others*<sup>114</sup> and *Sekandar Ali Mondol v. Bangladesh and others*<sup>115</sup> (1994), BELA challenged the implementation of Flood Action Plan-20 in Tangail upon the apprehension of potential displacement of a million people, destruction of natural water life, and threatening human health through degraded sanitation and drinking problems leading to ecological imbalance.<sup>116</sup> The SC recognized “any encroachment to fundamental rights including right to healthy environment” is subject to judicial scrutiny under the Constitution,<sup>117</sup> and that the magnanimity of the environmental hazard spilled over local boundaries, making it a grievance for each and any citizen of Bangladesh, irrespective of local jurisdiction in the case.<sup>118</sup> This changed the constitutional jurisprudence regarding locus standi in Bangladesh ever since.

In *Bangladesh Environmental Lawyers Association (BELA) and Global Village, Rangamati v. Bangladesh and others*,<sup>119</sup> a petition was moved to prevent the establishment of a community center in the sole children’s and Municipal Park in *Rangamati*. This executive decision had resulted in felling trees on the western side of the Park and a possible demolition of historical monuments. The SC recognized the cultural value of historic monuments for the small town life and children’s right to entertainment, which are dependent on environmental wellbeing.

Regarding industrial hazards towards environment, BELA in *Dr. Mohiuddin Farooque v. Bangladesh & others*<sup>120</sup> sought relief against indiscriminate pollution of air, water, soil and

<sup>109</sup> Ibid para 2.

<sup>110</sup> Ibid para 11-13.

<sup>111</sup> Ibid para 8.

<sup>112</sup> Ibid para 14.

<sup>113</sup> *Environment Conservation Act 1995* s 5.

<sup>114</sup> *Dr. Mohiuddin Farooque v Bangladesh & others* [Writ Petition No.998/94] 43DLR 126, Also See *Dr. Mohiuddin Farooque v Bangladesh & others* [Writ Petition No.1576/1994], *Sekandar Ali Mondol v Bangladesh and others*, Bangladesh Legal Decisions, BLD.1

<sup>115</sup> Ibid.

<sup>116</sup> Ibid para 5(b).

<sup>117</sup> *Constitution of the People’s Republic of Bangladesh*, Art. 102.

<sup>118</sup> Above n 102, para 70.

<sup>119</sup> *Bangladesh Environmental Lawyers Association (BELA) and Global Village, Rangamati v Bangladesh and others* [2004] Writ Petition No. 2459 of 2004 (Construction of a Community Center in the Sole Municipal Park of Rangamati).

<sup>120</sup> *Dr. Mohiuddin Farooque v Bangladesh & others* [1994] Writ Petition No. 891/1994 (Industrial Pollution Case).

the environment by 903 industries. The Ministry of Local Government, Rural Development and Cooperatives (LGRDC) vide Gazette notification dated 7 August 1986 had directed the Department of Environment (DoE), the Ministry of Environment and Forests and the Ministry of Industries to ensure appropriate pollution control measures to be taken by those industries within three years. After eight years of inaction, the number of polluting industries has risen up to 1176. The SC directed the DoE that “It will be imperative on the part of the Director General to take penal action against such department for persons who are responsible for not implementing the letter of the *Environment Conservation Act 1995*.” Such vigilance on part of the Court meant more responsible behavior. Most importantly, all these rulings and decisions show that judicial activism through PIL has emerged as a major tool to fight environmental concerns.

#### XI IN LIEU OF CONCLUSION: THE WAY AHEAD

The above discussion shows that the prevalent situation in Bangladesh can be best described as a stalled predicament. The limited movement in the government has brought little meaningful change. The law has mostly remained in the books and pages of court decisions, and the public movements by NGOs have mainly succeeded in keeping the cause alive. Bangladesh appears to not *actually* perceive the necessity of protecting the environmental and archaeological treasures it has.

In this bleak picture, the judicial activism seems to be the brightest light. However, this judicial activism has its own limitations, and therefore needs a more holistic approach, one that sees the rulings and decisions translated into action. For that, awareness, both on part of the Executive and the common people, is a must. The role of international cooperation has also become more important than earlier days with the present upsurge of multi-culturalism in a united global community, sharing the best of history and culture will ensure a true appreciation of human rights and cultural freedom.