

Ship-breaking Yards in Bangladesh and the Environment: An Analysis of the Existing Legal Framework

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ABSTRACT

Ship-breaking is one of the highly polluting industries which produce hazardous waste while dismantling an obsolete ship. Though the industry has been causing huge damage to the environment, it has earned a reputation as a profitable business in developing countries like Bangladesh. In addition to serious environmental pollution, human health abuses and human rights abuses take place frequently at ship-breaking yards. As the chemicals and hazardous materials of scrap are not managed in the environmentally sound way at the ship-breaking yards, oil excesses and other refuse from ships are spilled and mixed with soil and water, causing extensive pollution to the environment and threatening the coastal life and marine biodiversity. The ship-breaking activities also have a severe impact on human health, directly to the workers', food chain, physicochemical properties of seawater, intertidal sediments and soil, and above all on biodiversity. Despite the hazardous level of environmental pollution due to unplanned ship-breaking in Bangladesh, no significant or effective steps are taken or there is no clear or specific law to prevent ongoing pollution. The existing environmental laws are not enough to address the issue and its implementations are also largely absent in Bangladesh, the most vulnerable country to climate change. So, the existing laws and frameworks are not effective enough to address the cause of pollution by ship-breaking and its prevention. This article aims to determine the causes of pollution due to the ship-breaking and its impacts on the environment and livelihood; to scrutinize the prevailing related laws and policies and to conclude with recommendations to stop ship-breaking-related pollution in Bangladesh. The paper makes use of secondary data i.e. books, articles, different national and international law reports, acts etc.

Key words : Bangladesh, Ship-breaking yards, Regulations, Pollution, Environment.

Introduction

A large number of dangerous pollutants, including tot waste, oil, polychlorinated biphenyls, and heavy metals reduce during ship-breaking, and those mix into the waters and seabed, polluting the marine environment extremely. High concentrations of oil and grease are found in the coastal water in the Sitakunda area of Chattogram (Bangladesh) as as-

bestos toxic items were released from the ship-breaking yards, which significantly jeopardized the ecological balance in the area. Gaseous waste generated when the metals of the ship were cut at the yards and burns of gas pollute the air to an extensive extent. Sometimes solid wastes from the yards are also thrown into the sea, causing marine pollution. Once, there was a mangrove forest in the northern coastline and adjoining areas of Sitakunda, where

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ship-breaking yards were developed (Faruque, 2017). Now that mangrove forest is almost extinct. According to article 4(4) of the Basel Convention, “each party must take appropriate legal, administrative and other measures, including measures to prevent and punish conduct in contravention of the Convention (Basel Convention, 1989)”. As a result, Bangladesh has a legal duty as a state party to prevent unauthorized ship movements, and all individuals and companies subject to its jurisdiction, including ship owners, charterers, brokers, shipping agents, and captains and crew, must comply. Bangladesh government has not enacted any legislation for implementing the obligations under the Convention yet. Furthermore, the government has not taken any step to comply with the different guidelines for ship-breaking. Bangladesh has also ratified or acceded to many ILO Conventions, some of which are directly or indirectly relevant to the welfare and rights of the labour at ship-breaking yards.

Legal Framework on the Ship-breaking Industry in Bangladesh

The regulatory framework that governs the ship-breaking activities in Bangladesh is comprised of different sets of laws on environment and labour issues. Ship-breaking has been included in the Bangladesh Labour Act, 2006. Ship-breaking is now recognised as an industry in Bangladesh as it has been included within the definition of the Bangladesh Labour Act 2006 (Bangladesh Labour Act, 2006). However, this industry is regulated by a separate arrangement of the government’s departments in a fragmented manner. The regulatory departments include—The Department of Factories and Establishments Inspection, the Explosives Department, and the Department of the Environment are all involved. Each department has a distinct but crucial role to play in the shipbreaking phase (Maria *et al.*, 2010). The Bangladesh Environment Conservation Act of 1995 is the most relevant environmental legislation in the country for conserving and enhancing environmental standards and reducing pollution. The Department of Environment, which is in charge of implementing this act, has been granted broad authority to take a number of acts, including providing advice and issuing guidance to those who are concerned about the environmentally sound use, storage, transportation, import and export of hazardous substances or their components. Section (d)

of the Act deals exclusively with the shipbreaking industry. This ensures that ship owners and importers as well as ship-breaking yard owners must ensure that scraping through hazardous waste disposal will not result in any contamination and or health damage (Dana, 2011). According to Section 9, “in case of discharge of excessive pollutants, the responsible person and the person concerned shall take measures to control or mitigate environmental pollution”. Under the Bangladesh Environmental Protection Act 1995, there is a provision which states that any industry, including shipbreaking, requires a “Environmental Clearance Certificate” from the Ministry of Forests and Environment’s Department of Environment. Any ship-breaking yard must develop an Environmental Management Plan in order to obtain this certificate. (EMP). But none of the ship-breaking yards in Bangladesh has obtained any environmental clearance certificate. The government is empowered under Article 13 of the Act to develop environmental guidelines for the control and mitigation of emissions, environmental conservation, and environmental enhancement. Article 20 authorizes the government to create regulations to complement the law for setting environmental standards, regulating the industry. Moreover, the government has been empowered to determine safe methods for storage and transportation of the use of hazardous substances, to set standards for contamination and discharge. This article suggested the government to formulate comprehensive guidelines for the ship-breaking industry and rules relating to them considering the special nature of ship-breaking processes. The Environmental Conservation Rules 1997 also set the standards for waste discharge and emission. These include:

- i. Sewer overflow
- ii. Discharge of water from industrial units and projects
- iii. Gas ejection from manufacturing units or projects.
- iv. Waste pollution or discharge for industries classified as nitrogen phosphate fertilizer, integrated textile mills, and large-scale manufacturing of unused paper, cement, industrial boilers, nitric acid, distillery, sugar, and others., tannery processing, fish canning, dairy, starch and jute, petroleum refinery.

Marine Fisheries Ordinance 1983 is another law that is also applicable to the ship-breaking industry. Any person who holds, possesses, or regulates any

explosive, toxin, or other poisonous material with the intent to use it for killing, stunning, disabling, or capturing fish is guilty under Section 26 of the Marine Fisheries Ordinance 1983 (Marine Fisheries Ordinance, 1983). Section 33 authorizes the government to seize any explosive, poison or other toxic substances. Section 6 of the Explosives Act, 1884 stated that the government may prohibit, either absolutely or subject to conditions, the manufacture, possession, use, sales, transportation or importation of any explosive for public safety. Section 6(2) provides that the officers of customs at every port or border check post shall have the same power to check the import of explosive. Section 6(3) provides that any person manufacturing, possessing, using, selling, transporting an explosive in contravention of notification shall be punishable with imprisonment for a term which may extend to ten years. Section 9 provides that in case of an accident in a metropolitan area, the police commissioner shall bold or direct a magistrate or a police officer to conduct an inquiry. According to the Environment Conservation Rules, 1997, the ship-breaking industry currently is now under the category of "Orange B". The law is concerned about the environmental clearance certificate. According to the Department of Environment (DoE), "Red Category" means the hazardous level. However, there is no specific guideline or rule as to whether the environment clearance certificate is needed for the ship-breaking yard or the ship only. A provision should be included in the Act so that getting an environment clearance certificate should be made mandatory before getting any permission for the import of a ship for the ship-breaking industry. If a ship needs an environmental clearance certificate before opening the L/C, it can be easier to protect the environment without any damage in case of ship-breaking.

Obligations of Bangladesh Under International Law

Every party must take appropriate legal, administrative, and other steps, including measures to prevent and punish conduct in violation of the Basel Convention, according to Article 4 (4) of the Basel Convention. Bangladesh has a legal duty as a state party to ban unauthorized ship movements for all individuals and companies subject to its jurisdiction, including ship owners, traders, shipping agents, and captains and crew. Bangladesh government has so far failed to enact any law to implement its obliga-

tions under the Convention, the government has not taken any action in compliance with various ship-breaking guidelines. Bangladesh has also ratified many ILO conventions, some of which are directly or indirectly related to the labour rights of the ship-breaking industry.

Ship-Breaking and Ship Recycling Rules, 2011

The Ministry of Industries of Bangladesh has formulated 'The Ship Breaking and Ship Recycling Rules' following a directive of the High Court on May 24, 2011. The Rules for Shipbreaking and Recycling, the Ship-building and Ship Recycling Board (SBSRB) was established in 2011 as a one-stop service under the Ministry of Industries that integrates all required processes, as well as permits and collaborates with the relevant departments and ministries. The SBSRB is also responsible for issuing various certificates. To import a ship, the yard owner must obtain an 'Offensive Certificate' by submitting an Environmental Clearance Certificate and a list of hazardous substances before importing the ship. Besides, as per the rule, the yard owner has been required to submit a Ship Recycling Plan (SRP) and a Ship Recycling Facility's Plan.

The beaching of a ship requires permissions from several concerned authorities. Before beaching, it needs to have prior boarding and physical inspection by the officials at the Ship Building and Ship Recycling Board. Besides, inspection by officials of the Department of Environment is required for getting an Environmental Clearance Certificate. For getting the 'Gas Free for Man Entry' and 'Gas Free for Hot Work' certificate inspection by officials of the Department of Explosives is also required. To date, Bangladesh is the only country where "Gas Free" certificates are not required for ship-breaking, making the country a favourite destination for the ships that are not pre-cleaned and do not fulfil the pre-requisites of ship-breaking. This is the inevitable reason behind the numerous deadly explosions. For taking "cutting" permission, Shipbreakers must apply a Ship Recycling Plan, which includes the SBSRB's evaluation, labeling, storage, and disposal system for hazardous materials and wastes; the DoE's yard environment clearance certificate; workers' identification documents; and evidence of removal of residual oil from all bunker tanks. In collaboration with the customs department, the SBSRB is also in charge of the No Objection Certificate (NOC) and the pre-beaching inventory check-in. It

also pertains to the Department of Environment's Environment Clearance Certificate, as well as the Department of Explosives' "Gas Free for Man Entry" and "Gas Free for Hot Work" certificates. In addition, the SBSRB is in charge of all oversight and compliance measures. The enactment of these rules would play a crucial step towards the consistency of the domestic legal government governing the ship-breaking and would make the government more responsible.

The Ship Breaking and Hazardous Waste Management Rules, 2010

In line with the directives of the High Court, the Ministry of Environment formulated Ship Breaking And Hazardous Waste Management Rules, 2010 which contains the provisions of managing hazardous wastes, ensuring safety, making necessary plans in case of accidents caused during ship-breaking. This Law provides for a two-year sentence or a fine of Tk 2 lakh if the rules are violated, while the Environment Protection Act 1995 provides for a three-year sentence or a fine of Tk 3 lakh if the rules are broken. The rules also propose banning the import of ships that were listed as hazardous. The rules have a provision requiring the ship-breakers and the importers to obtain certificates from the environment ministry that the ships do not contain any hazardous wastes.

Institutional Framework on Regulation of Ship-Breaking Industry

The role of the Department of Environment is very significant in preventing environmental pollution from ship-breaking activities. But the Department of the Environment has failed to play that role. Moreover, it does not have the adequate logistical support to prevent environmental pollution from ship-breaking industries. Currently, the ship-breaking industry falls under the category of "Orange B" under the Environmental Protection Rules 1997. But it should fall under the "Red" category considering the hazardous level according to the Department of Environment. As per the existing laws, there are no specific guidelines or rules on whether the "environmental clearance certificate" is for the ship-breaking yards or just for ships. The provision for issuance of clearance certificate should be changed in such a way that a certificate is made mandatory before getting import permission. If a ship needs an environmental clearance certificate before opening the L/C,

it will be easier to protect the environment without causing any harm to the ship-breaker (Hilz and Radka, 1991). When the Director General of Shipping permits the LC to be opened, the Department of Environment should be involved by regulations or executive orders.

The Department of Inspection for Factories and Establishments keeps track of shipbreaking yards. For collecting the evidence of explosive, the "Explosives Department" examines the ship before and after bleaching. Before a ship can be beached, the Department of Shipping must certify a certificate. Workers' operations are supervised by the Department of Labor. These procedures are seldom carried out, most likely due to the ship-breaking industry's unofficial status. A ship-breaking yard's facilities should also be licensed by the Department of the Environment. No facilities have yet been accredited, and as a result, no inspections have taken place. Since the industry is not known, there are fundamental issues with compliance with the Hong Kong Convention (Alam and Faruque, 2014). Moreover, the facilities of the yards are not legal and there is no law or they are not adequately inspected. Moreover, there is no deep knowledge of the Hong Kong Convention. Only the creation of legislation, competencies, facilities, and information will mitigate the current situation. In the shipbreaking culture, for example, workers' living standards and safety conditions, environmental protection, road upgrades, technological facilities, and amenities must all be discussed. Although these measures may incur some costs, they are important to comply with the Hong Kong Convention and improve the industry's overall situation in Bangladesh.

Judicial Decision on Ship-Breaking in Bangladesh Context

Multiple public interest litigations have been filed over the environment and human rights issues of the shipbreaking industry. Bangladesh Environmental Lawyers Association (BELA) is leading the way in taking legal action against ship-breaking yard owners and government agencies for violating environmental and human rights issues. In 2003, BELA filed a writ petition (No. 2911/2003) with the High Court, demanding that the court issue instructions to shipbreakers and other government agencies to ensure compliance with the Environment Conservation Act 1995, Environment Conservation Rules

1997, the Basel Convention 1989 for the import of ships for scrapping, and the Department of Explosives' gas-free certificate. The petitioner claimed that importing ships in violation of the 1969 Basel Convention and other local laws relating to ship-breaking yards were gross violations of their statutory obligations to protect the environment. The petitioner also claims that the owner and management of the ship-breaking yard have failed to comply with the labour welfare and protection laws, deprived of the workers' legal protections and fundamental rights guaranteed in articles 31 and 34 of the constitution. During a hearing on the petitions, the High Court issued a rule requiring the respondents to clarify why they should not be guided to ensure ship-breaking operations after obtaining an environmental clearance certificate as provided by section 12 of the Environment Conservation Act, 1995, and to take adequate protection and labor welfare steps as required by labor laws. The court asked the respondents to explain why the ship-breaking operation should not be started after getting the gas-free certificate from the customs department to prevent the explosion and to protect the workers from the risk of death and injury. The court further ruled that the government should ensure that the ships are imported (for breaking purpose) following the Basel Convention, 1989. On May 2, 2006, BELA filed a writ petition (No. 7260/2008) with the Supreme Court challenging the legality of entry of a ship — MT Alfaship, which was listed as one of the 50 dangerous ships by the Green Peace — into Bangladesh for scrapping purposes. The court issued a "Rule Nisi" asking the defendants to show cause as to why they failed to prevent MT Alfaship from entering and why the ship's arrival without the permission of the authorities concerned would not be annulled. The court ordered the government to show cause why it should not be ordered to take measures to prevent the import of any of the 50 ships mentioned by Green Peace as dangerous. It also directed the Director General of the Coast Guard, Director General of the Department of Shipping not to allow any of the vessels in Bangladesh for the next two months. In the latest move, BELA filed a writ petition with the High Court in 2008 seeking its direction on the shipbreakers and concerned agencies of the government to protect the ship-breaking yards workers and to compensate the families of the victim labours, who died or injured in the explosion or any other accidents in the yards.

Conclusion

From the judgement of the Supreme Court of Bangladesh, it has been learnt that judicial rulings consistently support the rights of workers in the ship-breaking industry. The decisions of the apex court also go in favour of environmental and humanitarian protection and ensuring the international standards in the industry. Meanwhile, despite having multiple laws on the regulation of ship-breaking industries in Bangladesh, these laws are hardly implemented largely due to lack of political willingness, lack of capacity of the concerned government agencies and non-cooperation from ship-owners. Current environmental laws should be updated in order to completely comply with the obligations placed on Bangladesh by the international legal system, and given the many detrimental effects of the shipbreaking industry on the environment. Alternatively, separate regulations governing the shipbreaking industry should be enacted to resolve all aspects of the industry's environmental, labor, and social concerns.

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