

LAWS

Regulating

ENVIRONMENT

in

BANGLADESH

MOHIUDDIN FAROOQUE

S. RIZWANA HASAN

LAWS REGULATING ENVIRONMENT IN BANGLADESH

**Mohiuddin Farooque
& Rizwana Hasan**



**Bangladesh Environmental
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BELA NEWSLETTER

A Quarterly Publication of BELA

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This publication has been made possible because of the contribution and assistance from many people and organizations. We express our gratitude to all of them. However, it would be unfair on our part if we do not specifically mention some names.

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Dhaka
December, 2004

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PRELUDE

Like all other nations of the world Bangladesh also acted to the global call for the protection and conservation of natural environment and ecology. The people of Bangladesh who could not afford to introduce modern technological benefits in many respect responded to the need with limited resources and their own environment friendly indigenous technologies and wisdom.

Attraction of sophisticated and high yielding technologies has powered rationality in many instances as consciousness for environment was yet to develop amongst governmental organizations and citizens groups. When realities primarily forced by demand of increasing population and natural disasters started taking tolls on human lives and livelihood, the consciousness began to change from the *status quo*.

The public sectors have been struggling mostly with age-old un-enforced laws having traditional institutional feudalism in place. Hence, the management practice needed change with strong accountability. The development interventions also added to adverse changes in the natural regime that increased landlessness and abject poverty in sub-human conditions. To reverse wheel for arresting such trend was not an easy job for countries like Bangladesh. In 1989, the Ministry of Environment and Forests was established to address the emerging environment related issues. The Government started to take measures, drafted the National Conservation Strategy, adopted the National Environment Policy, 1992 and revised the old law by enacting the Bangladesh Environment Conservation Act, 1995 which has also restructured the Department of Environment. Moreover, National Environment Management Action Plan has also been prepared is being implemented.

In the private sector the rise in awareness and pragmatic programmes led to the development of divergent perception with regard to the issues in environmental sector. Various social organizations came up with different activity package aiming to the protection and conservation of environment. As such from a social perspective environment has been

receiving attention for long although the legal perspectives took some time to appreciate the need for a number of factors.

A research in the regulatory regime shows that there are around 200 laws that have bearing on environment, directly and causally. These laws provide for measures relevant for environment conservation, offer protection against various environmental offenses and by prescribing or prohibiting certain activities, lay down rights and duties. A great bulk of these environmental legislation were existent in the country right from the 19th century although they remained either unenforced to a large extent due to several factors or vaguely known to the responsible public agencies. The traditional practices prevailing in the legal regime were not much conducive to reading the law with new ideas like environmental protection or conservation of resources etc. Moreover, lack of consciousness amongst the implementors and the general public as to the very existence and scope of these laws rendered them ineffective functionally. Some laws have also become redundant since the situations for which they were enacted do not exist any more.

In such a backdrop, the Bangladesh Environmental Lawyers Association (BELA) started its mission as a legal advocacy group of young lawyers working out techniques and strategies in dealing with legal regime for the protection of environment. The organization has adopted various means to create awareness amongst major actors and the common people about the environmental rights and duties prescribed by a number of legislation. It has already published few books all having relevance to the concept of environmental protection for different categories of readers and stakeholders.

The arrangement of laws in this book is *issue* and *sector based*. There are environment related laws adopted as Order, Ordinance or Acts etc. We have appended the Environment Policy of 1992 and a list of all environment related international instruments to which Bangladesh is a party. Cross references to other sections wherever relevant have been made. As such, only the relevant portions of laws having bearing on environment have been included.

RELEVANT ARTICLES OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH, 1972

The Constitution of Bangladesh came into force on the 16 December, 1972. Till date, it has undergone 14 Amendments. As has been mentioned in the preface, portions having bearing on environment as they stand today after all the amendments have been quoted.

PART II

FUNDAMENTAL PRINCIPLES OF STATE POLICY

- | | |
|--------------------------------------|--|
| Democracy and human rights | 11. The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed... |
| Principles of ownership | 13. The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms-
<ul style="list-style-type: none">(a) state ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalised public sector embracing the key sectors of the economy;(b) co-operative ownership, that is ownership by co-operatives on behalf of their members within such limits as may be prescribed by law; and(c) private ownership, that is ownership by individuals within such limits as may be prescribed by law. |
| Emancipation of peasants and workers | 14. It shall be a fundamental responsibility of the State to emancipate the toiling masses-the peasants and workers-and backward sections of the people from all forms of exploitation. |
| Provision of basic necessities | 15. It shall be fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens- |

Best effort has been made to insert all amendments in the laws till June, 2004. For minimizing difficulty for the readers, these laws have been presented under 19 different sectors with a miscellaneous section containing numeric sub-sectors and each law has been placed under the most appropriate sector or sub-sector in their chronological order. To avoid repetition, a number of the laws have been cross-referred through a note at the end of the sector.

In the local government sector, the laws on six existing city corporations have been mentioned with only the text of the Chittagong City Corporation Ordinance, 1982 in full as the provisions of all the six City Corporation laws are the same but the section numbers are different. For the convenience of the readers, the relevant sections of the five city corporation laws with corresponding section numbers have been mentioned under the respective sections of this 1982 Ordinance. The same process has been followed in the case of laws on metropolitan police and the local government councils for the three hill districts.

From BELA a separate handbook has been published on environmental law where the important provisions of the laws mentioned in this book which are of necessity in our day-to-day life has been presented in simple Bengali referring to remedies.

We hope that this book will offer the readers a comprehensive guide to the status of environmental regulation of the country. We earnestly wish that this effort will significantly contribute in creating consciousness amongst the readers and users of the Book as to their environmental obligations and consequently ensuring wider participation of those agencies entrusted with statutory responsibility, the citizens groups, NGO community and the stake-holders and the members of the legal community in environmental conservation and protection.

S. Rizwana Hasan

- (a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;
- (b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;
- (c) the right to reasonable rest, recreation and leisure; and
- (d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans in old age, or in other such cases.

16. The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas, so as progressively to remove the disparity in the standards of living between the urban and the rural areas.

Rural
development and
agricultural
revolution

18. (1) The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.

Public health
and morality

(2) The State shall adopt effective measures to prevent prostitution and gambling.

19. (1) The State shall endeavour to ensure equality of opportunity to all citizens.

Equality of
opportunity:

(2) The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic.

- Duties of citizens and of public servants
21. (1) It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property.
- (2) Every person in the service of the Republic has a duty to strive at all times to serve the people.
- National culture
23. 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.
- National monuments, etc
24. 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.

PART III

FUNDAMENTAL RIGHTS

- Right to protection of law
31. To enjoy the protection of law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.
- Protection of right to life and personal liberty
32. No person shall be deprived of life or personal liberty save in accordance with law.
- Freedom of movement
36. Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh.
- Rights to property
42. Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law.

(2) A law made under clause (1) shall provide for the acquisition, nationalisation or requisition with compensation and shall either fix the amount of compensation or specify the principles on which or the manner in which, the compensation is to be assessed or paid; but no such law shall be called in question in any court on the ground that any provision in respect of such compensation is not adequate.

44. (1) The right to move the High Court Division in accordance with clause(1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed.

Enforcement of
fundamental
rights

(2) Without prejudice to the powers of the High Court Division under article 102, Parliament may by law empower any court, within the local limits of its jurisdiction, to exercise all or any of those powers.

47. (1) No law providing for any of the following matters shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges, any of the rights guaranteed by this Part-

- (a) the compulsory acquisition, nationalisation or requisition of any property, or the control or management thereof whether temporarily or permanently;
- (b) the extinction, modification, restriction or regulation of rights to search for or win minerals or mineral oil;

Saving for
certain laws

if Parliament in such law (including, in the case of existing law, by amendment) expressly declares that such provision is made to give effect to any of the fundamental principles of state policy set out in Part II of this Constitution.