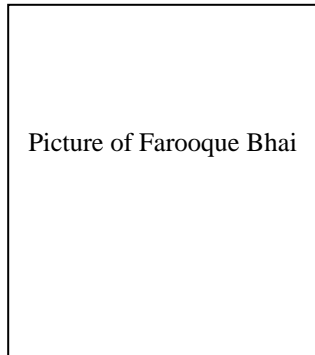


## ***Dedicated to the memories of Dr. Mohiuddin Farooque***

*Founder of BELA who led and succeeded in opening up the horizon of PIL and advancing the cause of environmental justice in Bangladesh*



### **Acknowledgement**

This voluminous publication is indeed an effort of many! Let us first express our gratitude to the United Nations Development Program (UNDP) and the Ministry of Environment and Forest (MoEF) for their generous support under the Sustainable Environment Management Program (SEMP) that has made this publication possible. Such support underscores the need and scope for coming together in producing significant outcomes and we sincerely hope that the same shall continue in all future efforts aimed at protecting the mother earth and our common precious heritage.

For this book, the search for and collection of environmental decisions from the five South Asian countries itself was a task and it would not have been possible to do the same without the help of our neighbouring friends. We must name here Chiranjeevi Bahtyacharjya and Narayan Belbase of Nepal, Hemantha Withanage of Sri Lanka and Tariq Bilal of Pakistan who assisted us in getting the judgments from their countries and also in translating those for this book. We are grateful to these great people for their kindness and support!

We are indebted to the entire research team of BELA for their tireless search into the various law reports, journals and web pages, clustering of the cases against proper headings, doing the typing and proof reading, finding out the follow up decisions that needed continuity and were indeed time consuming. In this regard we must also mention the name of Morshed Ali Khan, Special Correspondent, the Daily Star who assisted us greatly in doing the proof reading.

We shall consider our effort a success if this book assists the legal professionals and activists in their efforts and helps others in their search for precedents to advance the cause of environmental justice.

Dhaka  
December, 2005

## Preface

In Bangladesh, like other South Asian countries, public interest environmental legal action is growing with much vigour and promises. As with anywhere else, it started here with the hope to change status *quo* and bring about positive impact in the society and in lives of people asserting rights for equality, dignity and respect. While it is still premature to comment on the impact of the legal actions, what can be said at the moment is that environmental legal activism has created positive sensitivity in the society about the need, scope and role for judicial activism in upholding human rights and that it is complementing efforts of protecting other branches of human rights as well.

In South Asia, efforts of the environmentalists to protect the environment and rights of people through judicial interventions are significantly contributing to the development of environmental or for that matter human rights jurisprudence. Large number of cases is being filed challenging executive and bureaucratic inactions or misdeeds, corruption, atrocities and so on in managing public resources. These cases aim at protecting peoples' legitimate rights and interests over resources and to their culture and tradition. While these cases emphasis on implementation of the existing laws, in some landmark judgments, incompatibility of the colonial laws in serving citizens of independent countries were pointed out. Progressive judicial interpretation of constitutional and legal provisions attempted to address the limitations of the colonial legal system empowering environmentalists and their movements across the borders and gaining more consciousness and support for their agenda.

This publication shows that cases on environment have not only been confined to areas like pollution control, forest and wildlife management rather encompassed rights of forest dwellers, environmental refugees, criminal liability of corporations and so on reflecting complexities and curses of so-called development devoid of public participation and access. Judiciary in South Asian countries has recognized peoples' right to environment although the components of the same seem to be still unsettled and struggling against undue corporate interests and inconsiderate government interventions. Consequently, in seeking justice, right groups relied not only on what is there in the laws, but demanded more in light with constitutional pledges and policies and also at times international commitments. The justification and applicability of the colonial laws have in effect been challenged time and again and in dealing with such vast diversity of cases with growing demands for just and equitable society, some judicial decisions laid down the basics of justice, new principles like the principle of absolute liability and also pressed for adoption of principles like the precautionary and polluter pays

principles. Age old procedures of justice have been questioned and burdens of proof have been shifted to the wrongdoers rather than those pleading to change status *quo*. Right to information and participation have been upheld and poor were encouraged to access justice by virtue of what is now known as epistolary jurisdiction. Other cases questioned economic policy making for profit making alone and resulted in recognizing sustainable development, inter and intra generational trust, demanding procedural clarity, higher degree of responsibility, accountability and transparency in resource management.

Due to multiple factors including declining judicial assertiveness and subsequent inactions or *mala fide* on part of the executive and/or the legislature in protecting the business houses, the philosophical and directive forces of the judgments have either been bypassed or negated and hence positive forces of the landmark judgments are yet to produce desired results. The vision and philosophy of the judges who laid the foundation of judicial activism were not always kept up with the same vigilance by their successors. Similarly not all South Asian countries have marked equal progress in advancing the cause of environmental justice that requires appreciation of certain core values and norms as opposed to declining value systems of a pervert globalized and privatized world.

Judicial activism has its own strength and limitations. Despite hostility and isolation in politics and economic policy making, in our part of the world judicial activism has greatly raised consciousness on environment and added definitive values to the environmental movements. Some of the decisions of our courts are hailed by the international community. With constant activism of the environmentalists and their hammering, it is expected that the jurisprudence of environment will overcome its inherent shortcomings and externalities in becoming truly pro-people and pro-nature and in protecting the common and irreplaceable heritage of mankind for all generations and creatures. By assisting the environmentalists with case precedents, this publication is expected to assist and encourage that process and contribute in achieving that goal.

On an editorial note-South Asian cases of this publication do not include cases from the Maldives and Bhutan as we failed to get any references from those two countries despite our sincere efforts. All shortcomings of this book are responsibility of the editors while we welcome suggestions to improve the future versions.

**S. Rizwana Hasan**  
**Taslima Islam**