



REVIEWING *the views*

117 Ordinances by the CTG: How to convert them into Acts?

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ONE of the most important politico-legal issues at the moment is the fate of 110 Ordinances issued by the outgoing Caretaker Government. Generally the supreme law making power of the nation is vested in the Parliament. However, Article 93 of the Constitution provides for law making by the President in some situations by way of promulgating Ordinances. Under Article 93(1) of the Constitution the President may make Ordinances in the following two situations: (i) when the parliament is not in session; or (ii) when the parliament stands dissolved. Under these two situations the President can promulgate Ordinance only when he is satisfied that circumstances exist which render immediate action necessary. On 27th October 2006 the 4 Party Alliance government handed over power as it completed its five years' rule. However, because of huge political unrest, partisan role of the then Chief Election Commissioner MA Aziz and the President, the military interference into politics led the President to go for declaration of state of emergency on 11th January 2007 with a fresh Caretaker Government headed by recently stepped down Chief Adviser Dr. Fakhruddin Ahmed. This Caretaker Government took necessary steps to give the Election Commission neutral and acceptable shape and finally almost uncertain

Legal Status of an Ordinance

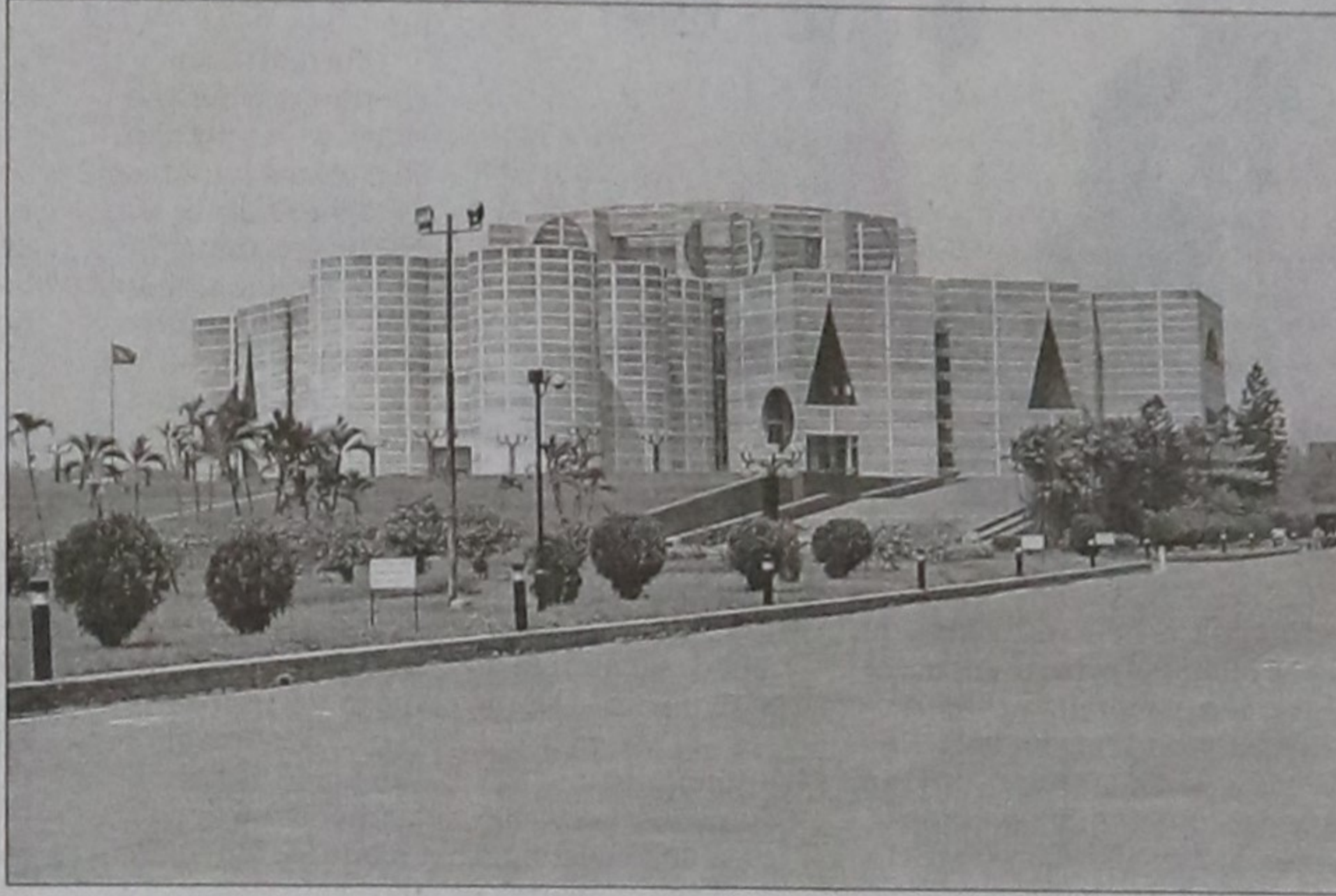
As to the legal status of an Ordinance article 93(1) says that an Ordinance shall, from its promulgation, have the same force and effect as an Act of parliament. This is because the power to issue an Ordinance is not an executive power of the president; it is his legislative power which is devised to meet urgent situations and necessary for peace and good governance in the country. The only difference between an Act and Ordinance is with regard to the duration. Like an Act of parliament an Ordinance may repeal parliamentary enactments or an earlier Ordinance or may give retrospective effect to its provisions.

Limitations of an Ordinance

- (i) What cannot lawfully be made under the Constitution by an Act cannot be done by an Ordinance.
- (ii) An Ordinance cannot alter or repeal any provision of the Constitution; and
- (iii) An Ordinance cannot continue in force any provision of an Ordinance previously made.

Conditions Subsequent to an Ordinance

- (i) Every Ordinance made during the recess of parliament must be laid before parliament at its first meeting following the promulgation of it, if it is not repealed earlier.
- (ii) Once the Ordinance is placed in parliament, a corresponding Bill must be introduced within 30 days; otherwise it will



(iv) If a corresponding bill is introduced into the first parliamentary session, the bill will undergo all stages of a normal procedure of legislation. That means once a bill is introduced it may not be passed in the same session and in such a case it will remain as an unresolved bill to be considered in the next session of the parliament. For instance, an Ordinance in the shape of a bill was introduced in the 7th session of the first parliament but remained unresolved and was later passed in the 8th session of the first parliament. Likewise, 3 Ordinances were introduced as Bills in the second session of third parliament but they were not passed i.e. they remained unresolved/immature Bills before the session ended. Two of them were passed in the 3rd session of it

parliament' and not passing the same within 30 days.

Auto-legality to Ordinances

The 8th session of the First Parliament ended on 17th July, 1975. From this 17th July to 15th August, 1975 President Sheikh Mujibur Rahman promulgated 9 Ordinances. Later, before the start of the 2nd Parliament, President Mustaq promulgated 9 Ordinances. President Sayem promulgated 123 and President Zia promulgated 127 Ordinances. Of these 268 Ordinances, 159 (excluding 9 Ordinances promulgated by Mujibur Rahman before his death) were given auto-legality by the 5th Amendment to the Constitution of Bangladesh. These Ordinances were not formally introduced as Bill in the parliament and as a result they were not transformed into Acts of Parliament; they exist till today as valid law in the name of Ordinances so far as they are not repealed or otherwise amended by parliament or by any subsequent Ordinance.

How an Ordinance becomes an Act of Parliament

All Ordinances promulgated before the session starts must be, by operation of law i.e. under the authority of Article 93 of the Constitution, laid before the parliament at its first meeting of the session. 'Laying before parliament' means to inform parliament i.e. to distribute the copies of Ordinances to all members of parliament. This is the first stage (i.e. laying before parliament). After being so laid the minister-in-charge (here the Minister of Law and Parliamentary Affairs) must give notice to the Secretary of Parliament of his intention to move for leave to introduce the Bill relating to any or all of those Ordinances. In the mean time the Government will prepare bills on the basis of those Ordinances. On the basis of the notice the motion for leave to introduce the Bill or Bills shall be entered into the orders of the Day. When the item is called, the minister-in-charge shall move for leave to introduce the Bill or Bills. The leave being granted by the Speaker, the minister shall introduce the Bill. After this introduction the Bill shall follow the regular procedure of an ordinary Bill. Article 93(2) of the Constitution speaks about 'laying before

Martial Law was re-imposed on 24th March, 1982. Article 93 of the Constitution was revived under the Martial Law Proclamation and before the start of the 3rd Parliament President Ershad promulgated 307 Ordinances. None of these Ordinances was introduced in the 1st session of the 3rd Parliament as Bill and they could not become Acts of Parliament. But all of them were given auto-legality by the Constitution 7th Amendment Act and till now they exist as valid laws in the name of Ordinances.

Fate of 117 Ordinances

This will be a policy choice by the newly formed cabinet. If the cabinet decides to introduce them all as bills in the first session of parliament, then they will follow the normal process of law making. But there is no condition at all that all these bills are to be passed within the first session; some of them might be sent to any committee and in that case they would be passed in some later sessions following the reports of the committee.

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Comparative study of Ordinances approved by different parliaments

Parliament	Total Ordinances	Number of Bills passed which were initiated from Ordinances	Comments
1ST	94	90	4 Ordinances were not introduced as bill and as a result they lapsed.
2ND	295	15	auto-legality given to 280 Ordinances.
3RD	323	14	auto-legality given to 309 Ordinances.
4TH	92	89	3 Ordinances were not introduced as bill and as a result they lapsed.
5TH	102	70	32 Ordinances were not introduced as bill and as a result they lapsed.
6TH	19	0	19 Ordinances were not introduced as bill and as a result they lapsed.
7TH	21	19	3 Ordinances were not introduced as bill and as a result they lapsed.
8TH	5	5	OO

and long awaited 9th parliamentary election was held under this government on 29th December, 2008 paving the way for democracy. However, during this period of two years the caretaker government made as many as 117 Ordinances covering the issues not only of election and day to day matters but of policies on different national issues.

cease to have any effect at the expiration of 30 days.

- (iii) Before the expiration of 30 days parliament may pass a resolution disapproving the Ordinance and if such a resolution is passed, the Ordinance will cease to have any effect upon the passing of the resolution.

LAW campaign

An international law of the biosphere needed

KAMAL WADHWA

ANY emergence of a new international economic order to redress the disparities of wealth and opportunity between North and South must emphasise equal access to the vast reservoir of untapped mineral resource wealth situated in the Earth's biosphere.

To match territorial, space and laws obtaining on the High Seas, a system of rules to govern and adjudicate the exploitation of wealth in the bowels of Mother Earth must now find root among nations who are still disposed to view international law as a viable means to obtain

justice however limited its practical benefits might seem. Lawmakers across the globe must now plan and formulate their conceptions into an "International Law of the Subterranean" or, more aptly, an "International Law of the Biosphere" to adjudicate and decide conflicting claims to scarce, often precious, resources found in the Earth's interior.

A body of laws is needed to map the Earth's biosphere not only to determine how and when nations will have access to natural resources individually, jointly and severally, but also to set limits and restraints on wanton and senseless exploitation of such resources by strong and wealthy nations to the detriment of the new

economic order they deem to be their goal.

Inasmuch as the Earth's surface, its oceans and skies, have been mapped minutely, meticulously and in detail by geographers, oceanographers and airmen, it is now incumbent upon modern Man to look below himself into the hidden recesses of the subterranean world from which he proposes to enrich himself in the coming decades of resource scarcity. In an Atomic Age where more and more nations seek the wherewithal and the means to power their industries and fuel their defense programs, a premium is placed on finding mineral and chemical wealth in the Earth's interior. In brief, it is time to turn our attention to the neglected quadrants of the earth's sphere and farm them judiciously to ensure plenitude and abundance for all nations. National states must now achieve international comity to ensure that not all resources are expended selfishly so as to deprive other nations of a meaningful future.

International comity is needed to guarantee that those nations lacking mineral and natural wealth will be accorded a modicum of such wealth to meet and satisfy legitimate needs of survival. In practical terms, this means that resource reservoirs or "mineral banks" will have to be set up to apportion and share rare and scarce resources to benefit all nations equally. Nations not in immediate need of fossil fuels and rare metals may divert or postpone their consumption thereby guaranteeing their peoples a richer future. In a world demanding immediate satisfaction and instant gratification, international tests of morality and lawfulness will soon acquire a material and economic dimension as resource scarcity and poverty follow in the wake of the present profligate and

adventurous resource expenditures.

The organs of international justice such as the World Court at The Hague and the International Criminal Court will not only have to adjudicate and arbitrate disputes between member nations, but also find ways to prevent costly litigation over claims to covert resources to be found in the Earth's interior. The World Court, in particular, must direct research under its auspices and tutelage to draw up and implement a system of rules and regulations binding on all nations subscribing to international law.

Prior to setting up universal and binding guidelines to regulate the farming of resources in the Earth's interior, the scientific and educational arms of the United Nations must study and research the prospects of channeling warring nations into separate developmental paths to eliminate competition over commonly desired resources. In practical terms, it would become desirable for each nation to choose its own peculiar and unique developmental mode and the appropriate economic strategy to achieve it.

The propaganda organs and the information media in each nation must attempt to influence the public to adopt a lifestyle more conducive to economizing natural resources in the interests of preserving world peace. Education imparted to youth in the developed countries, in particular, must wean them away from the false notions of economic progress inherited from their elders. North and South must come together in a forum to set up a New Economic Order based on principles of international justice and equity.

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FOR YOUR information

Laws of 2007-08

The caretaker administration led by Fakhruddin Ahmed has handed over power to the Awami League-led government along with the fate of at least 114 Ordinances to be decided about in the first 30 days in parliament. Of the 114 Ordinances, 44 are regarding fresh laws and 70 concerning amendment to the main laws. Ordinances promulgated during Fakhruddin-led caretaker government in 2007:

1. Emergency Power Ordinance,
2. Code of Criminal Procedure (Amendment),
3. Special Powers (Amendment) Ordinance,
4. Code of Criminal Procedure (Second Amendment),
5. Law and Order Breaching Crime (Speedy Trial) (Correction) Ordinance,
6. Emergency Power (Correction) Ordinance,
7. Anti-Corruption Commission (Correction) Ordinance,
8. Criminal Law Amendment (Amendment) Ordinance,
9. Members of Parliament (Remuneration and Allowances) (Amendment) Ordinance,
10. Finance Ordinance,
11. Joint Account (Supplementary grants and specification) Ordinance,
12. Joint Account (Advance grants and specification) Ordinance,
13. Bangladesh Biman Corporation (Amendment) Ordinance,
14. Padma Multipurpose Bridge Project (Land Acquiring) Ordinance,
15. Public Procurement (Correction) Ordinance, Bar Council (temporary rule) Ordinance,
16. Money Laundering Prevention (Correction) Ordinance,
17. Voter List Ordinance,
18. Bangladesh Flag Vessels (Protection) (Amendment) Ordinance, President's (Remuneration and Privileges) (Amendment) Ordinance,
19. Paurashava (Amendment) Ordinance, Bank Company (Correction) Ordinance,
20. Chittagong City Corporation (Amendment) Ordinance,
21. Dhaka City Corporation (Amendment) Ordinance,
22. Khulna City Corporation (Amendment) Ordinance,
23. Rajshahi City Corporation (Correction) Ordinance,
24. Sylhet City Corporation (Correction) Ordinance,
25. Barisal City Corporation (Correction) Ordinance,
26. Court Reforms Implementation (Auxiliary Rules) (Correction) Ordinance,
27. Pesticides (Amendment) Ordinance,
28. Mobile Court Ordinance,
29. Income Tax (Amendment) Ordinance,
30. EPZ Workers Organisation and Industrial Relations (Correction) Ordinance,
31. Anti-Corruption Commission (Second Correction) Ordinance,
32. Islamic University (Amendment) Ordinance,
33. Islamic University (Amendment) (Amendment) Ordinance,
34. Islamic University (Correction) Ordinance,
35. Jamuna Multipurpose Bridge Authority (Amendment) Ordinance,
36. Financial Loan Court (Correction) Ordinance,
37. National Human Rights Commission Ordinance,
38. Acid Control (Correction) Ordinance, and Income Tax (Second Amendment) Ordinance.

Ordinances promulgated in 2008:

1. Income Tax (Amendment) Ordinance,
2. Trademark Ordinance,
3. Muslim Marriages and Divorces (Registration) (Amendment) Ordinance,
4. Grameen Bank (Amendment) Ordinance,
5. Election Commission Secretariat Ordinance,
6. Supreme Judicial Commission Ordinance,
7. Fertiliser (Management) (Correction) Ordinance,
8. Members of the Bangladesh Public Service Commission (Terms and Conditions of Service) (Amendment) Ordinance,
9. Law and Order Breaching Crime (Speedy Trial) (Correction) Ordinance,
10. Bar Council (Temporary Rules) (Correction) Ordinance,
11. Upazila Parishad (Correction) Ordinance,
12. Money Laundering Prevention Ordinance,
13. Income Tax (Second Amendment) Ordinance,
14. Bangladesh Labour (Correction) Ordinance,
15. Local Government Commission Ordinance,
16. Local Government (City Corporation) Ordinance,
17. Local Government (Paurashava) Ordinance,
18. National Identity Registration Authority Ordinance,
19. Government Attorney Service Ordinance,
20. Fish Feed and Fodder Ordinance,
21. Contempt of Court Ordinance,
22. Bangladesh Telegraph and Telephone Board (Amendment) Ordinance,
23. Village Government (Cancellation) Ordinance,
24. Securities and Exchange (Amendment) Ordinance,
25. National Board of Revenue (Amendment) Ordinance,
26. Bangladesh University of Professionals Ordinance,
27. Voluntary Disclosure of Information Ordinance,
28. Anti-Terrorism Ordinance,
29. Supreme Judicial Commission (Correction) Ordinance,
30. Chartered Secretaries Ordinance,
31. Medical and Dental Council (Amendment) Ordinance,
32. Local Government (Upazila Parishad) Ordinance,
33. Finance Ordinance,
34. Specification Ordinance,
35. Specification (Auxiliary) Ordinance,
36. Public Servants (Marriage with Foreign Nationals) (Amendment) Ordinance,
37. Voluntary Disclosure of Information (Correction) Ordinance,
38. Public Servants (Dismissal on Conviction) (Amendment) Ordinance,
39. Rangpur University Ordinance,
40. Dhaka Electricity Distribution Authorities (Correction) Ordinance,
41. Government Attorney Service (Correction) Ordinance,
42. Representation of the People (Amendment) Ordinance,
43. EPZ Workers Organisation and Industrial Relations (Correction) Ordinance,
44. Administrative Tribunals (Amendment) Ordinance,
45. Representation of the People (Second Amendment) Ordinance,
46. Insurance Control Authority Ordinance,
47. Insurance Ordinance,
48. Information and Communications Technology (Correction) Ordinance,
49. Consumers Rights Protection Ordinance,
50. Right to Information Ordinance, Bangladesh Laws (Revision and Declaration) (Amendment) Ordinance,
51. Representation of the People (Third Amendment) Ordinance,
52. Local Government (Paurashava) (Correction) Ordinance,
53. Local Government (Upazila Parishad) (Correction) Ordinance,
54. Attorney Service Ordinance, Real Estate Development and Management Ordinance,
55. Emergency Power (Repeal) Ordinance,
56. Bangladesh Telecommunication (Correction) Ordinance,
57. Bangladesh Shilpa Bank (Amendment) Ordinance,
58. Local Government (Union Parishad) Ordinance,
59. Vested Property Return Ordinance,
60. Private University Ordinance,
61. National Curriculum and Textbook Board (Amendment) Ordinance,
62. Financial Reporting Ordinance,
63. Medical and Dental Council (Amendment) Ordinance,
64. Citizenship (Amendment) Ordinance,
65. Dhaka Shishu Hospital Ordinance,
66. Government Finance and Budget Management Ordinance,
67. Bangla Academy Ordinance,
68. Bangladesh Export Processing Zone Authority (Amendment) Ordinance,
69. Supreme Court Judges (Remuneration and Privileges) (Amendment) Ordinance and
70. Bangladesh Economic Zone Ordinance.

Source: The Daily Star.