

LAW ANALYSIS

Delegated Laws in Bangladesh

Delegation of Functions without Bounds

MD. RIZWANUL ISLAM

DELEGATED legislations are in some ways a familiar paradox in modern liberal democracies. On the one hand, in essence, they being laws made by bodies other than the Parliament are quite patently an antithesis to the theory of separation of powers among the three organs of the government. On the other hand, the role of law being more and more ubiquitous and pervasive in modern states,

they are still very much in use around the world. In terms of their number, scope, and concomitant direct impact on the life of citizens, in most of the liberal democracies in today's world, delegated laws would probably outnumber their parent counterparts. While hard numbers are unavailable, legal commentators in this country tend to agree that Bangladesh is no exception to this global trend of delegated laws outnumbering parent laws. However, an interesting feature of delegated laws in

laws in Bangladesh would typically state that the Government "may make regulations for carrying out the purposes"/ "make rules for carrying out the purposes of this Act/Ordinance." Such sweeping words would hardly provide any guidance to the authority exercising this delegated power.

Even when the delegated law making power is a little more detailed, they are rarely specific to any meaningful extent. For instance, Section 12(2) of the Administrative Tribunals Act, 1980 sets some guidelines on the scope of the delegated law making power in the following terms:

[R]ules may provide for all or any of the following matters, namely:-

- (a) form and manner in which and the fee on payment of which an application or appeal may be made;
- (b) registration of an application or appeal;
- (c) procedure to be followed by a Tribunal in hearing an application or appeal, as the case may be;
- (d) form and service of notices, summonses and requisitions;
- (e) prescription of records and reports to be maintained or prepared by a Tribunal;
- (f) execution of decisions and orders of a Tribunal;

However, the above direction on the scope of the rule making power is relaxed by the following generic words used in Section 12(2) (g) "any other matter which is to be or may be prescribed". The above trend of delegating law making power to the executive bodies with superficial parameters and objectives may not be an inconsequential matter. It is true that when a delegated law is contrary to the provisions of the parent act, it would be *ultra vires* but in terms of the binding force, a delegated

law is by no means, a lesser law than the parent acts on the basis of which it may have been enacted. It is not being advocated here that all parent acts or ordinances granting power to make delegated laws be very detailed. That would be rather needless because in many cases the changing circumstances would render detailed parameters superfluous. However, a nearly universal practice of delegation of law making power without setting any parameter for exercise of that power may not be compatible with the ethos of modern liberal democratic values. In colonial days, it was understandable that the delegating clause in the parent laws would be too generic and broad. Understandably, laws during the colonial era were tools for ruling the subjects, not for democratic governance of serving the people.

It may be important to recall that in Bangladesh, unlike parent laws, delegated laws are made, not laid before the Parliament. Except for some very widely discussed delegated laws (for instance, the recently passed Labour Rules, 2015), these laws are not routinely circulated in their draft form and hence, they rarely receive public inputs prior to their official enforcement. Again, a delegated law passed under a very broad mandate makes it very difficult to be challenged before the courts on the ground that they are *ultra vires* to the parent law. Hence, it may be worth considering whether or not the practice of delegating law making power using very general and broad directives radically embellishes the power of the executive and correspondingly reduces the scope of participation of the parliamentarians (and not to forget the citizens) in the law making exercise. For this reason, it may be worth further research and consideration by the Parliament as to whether the current predominant practice needs some reform.

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it would be functionally almost impossible for a parliament to make laws with sufficiently detailed provisions to cover all the practicalities associated with its application. For this reason, although generally delegated laws are prone to much less publicity (and concomitant public scrutiny) than primary laws, thus running greater risk of being made unreasonably or arbitrarily,

Bangladesh is that they are generally a product of very wide powers granted by the primary law (both acts enacted by the Parliament and ordinances adopted by the President). In other words, the Parliament of Bangladesh has in general been extremely generous in granting powers to the executive in the realm of making delegated laws. The delegating clause in parent

RIGHTS CORNER

ANUPOMA JOYEETA JOYEE

WORLD Day of Social Justice is a relatively new edition to the diverse string of international observance days as declared by the United Nations. Having started in 2009, February 20, every year has now been utilised to commemorate, promote and mobilise all-encompassing social justice issues such as poverty, economic exclusion, unemployment and so on. In a country like ours, ensuring social justice is a colossal challenge. Under the umbrella of "a society for all" barriers on gender, age, race, ethnicity, culture or disability need to be removed.

Starting with what hits home the hardest, in the perpetual crusade against gender inequality Bangladesh stands strong. According to the Global Gender Gap Report, 2015 undertaken by World Economic Forum (WEF), out of the 145 countries surveyed, Bangladesh ranked 64th, while India, Pakistan and China ranked 114, 144, and 87, respectively, in terms of Gender Equality Index.

However, disregard to human life still thrives in the form of gender based violence and misconduct. Occurrences like that of Pohela Boishakh at TSC, Dhaka University cannot simply be overlooked as isolated since many more of these happen all over the country every day and stay unreported.

On the other hand, while the Deputy Speaker of the parliament M Fazole Rabbi Mian on February 13, 2016 vouched for government's separate allocations in the new budget for children and disabled people, the progress has been sluggish. Moreover, since 2015 there has been oddly high number of child abuse cases

In the hope of a society for all

amongst which the viral lynching video taken by the abuser himself has led to six death sentences.

The very recent pass to Draft Policy for Domestic Workers will revolutionise the ways domestic help are treated in Bangladesh, in a legal and justifiable way. With the anniversaries of the tragic

Building Safety questions its own accomplishment.

Light shines even less bright on rights of indigenous people and migrants. "MorThengari" was set to be the first feature film made entirely in Chakma language (spoken by almost 300,000 people in Bangladesh) but it never

institutionalised education.

Fundamental rights of the Indo-Bangladesh enclave dwellers have finally been safeguarded after a 68 years of distress which is a ground-breaking step in achieving "a society for all". On the contrary, insecurity seems to have increased among the religious minority groups in Bangladesh.

To highlight the issues in the international arena, 2015 saw appalling disregard to human dignity through the astounding number of migrants and refugees crossing borders to the EU countries from Middle East and Africa. Humanity washed ashore with the lifeless body of 4 year old Syrian Aylan Kurdi whose name was known and cared about among the 2600 refugees who drowned in the Mediterranean to reach Greece and Italy during 2015.

In a developing third world country, always striving for equality among myriad societal classes, everything comes down to poverty and lack of resources. In Growth and Equity by Dr Sadiq Ahmed it has been analysed that the top 10% of the population holds the 35% of the national income. Almost all our problems can rightfully be traced back to economic inequality. Social justice aims at developing solidarity, equality and harmony among all classes. This international day demands limelight because it is bound to initiate well-timed discussions among the citizens and create peer-pressure on the government to emphasise the problems we can all relate to as a developing country.

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Rana Plaza collapse (2013) and Tazreen Fashions fire (2012) lying ahead, the regret takes toll as the garment factories still remain potential death-traps for people who contribute the most to the GDP. Halfway through the five-year, legally binding agreement that an international coalition of brands and organizations signed up, promising to making Bangladesh's garment industry safe, the painfully slow progress of Bangladesh Accord on Fire and

made past the Bangladesh Film Censor Board due to its incapacity to review any films apart from Bengali and English ones (though it's been claimed that even if the Board was capable the film would not have made past it due to showing sensitive armed forces issue in the hill tracts). On the large scale, there are more than 40 languages spoken by indigenous people, however, these are becoming endangered fast owing to next to none learning opportunities in

LAW TRIBUTE

Mahmudul Islam

A banyan tree of wisdom

RAISUL ISLAM SOURAV

MAHMUDUL Islam, not only a famous lawyer but also an eminent personality in our judiciary who passed away at the age of 79 on 16 February. His death brings irreparable loss to the nation as he was among the most talented constitutional jurist in the country. His book titled the Constitutional Law of Bangladesh is the most cited constitutional law book among others. As a legendary senior advocate, his role was vibrant. As an interpreter of law, his every word was a pearl of wisdom in the horizon of legal arena. Lifelong he fought for ensuring justice and rights of the citizen under the constitution and other legal frameworks.



Mr. Islam made himself illustrious to others by his elite techniques of submission to the court. His unpretentious capitulations of wisdom attracted the judges towards his elucidation. The entire judiciary was benefited by his rare scholarly flair. His sober attitude to address the court was conspicuous; a man of graciousness and always tolerant of different points of view.

Mahmudul Islam was treated as torch-bearer in any treacherous situation in our judiciary and he handled the circumstance with his extraordinary brilliance. He led the nation in various critical periods like caretaker government into the right course to the future and he became the voice of the nation.

Apart from this contribution to the court, Mr. Islam contributed greatly to our legal studies. This top legal brain's most celebrated work i.e. the Constitutional Law of Bangladesh becomes an authority on Bangladesh constitution. His thinking on constitutional affair was very blunt and he articulated his intelligence in an outspoken manner.

Moreover, he introduced another branch of his acumen on civil procedure code along with the aid of Probr Neogi. Two volumes book on the Law of Civil Procedure is another treasured creation of Mahmudul Islam. This book is also referred as authoritative guideline for both subordinate and supreme judiciary. Mr. Islam's book on Interpretation of Statutes and Documents was latest addition of his scholarly contribution to our legal education. This learned personality focused on our own style of interpretation. His sentences are lively and citations are practical to understand. In many occasions the Supreme Court had sought his opinion as amicus curiae in several significant cases like that of Quader Mollah, 5 January election, BDR mutiny, 13th amendment, 7th amendment etc.

Mahmudul Islam was born in Rangpur in 1936. His father Azizul Islam was also a prominent lawyer in Rangpur. He passed his higher secondary level from Rangpur Carmichael College while he achieved his law degree from Dhaka University after completing honours and masters on political science from the same university. After the independence of Bangladesh, he received his LL.M degree from Indiana University in the US. He started his career at Rangpur District Bar, later on he started practice in the High Court Division. He worked as a junior with lawyer Birendra Nath Chowdhury and then with Syed Ishtiaq Ahmed. Mahmudul Islam became assistant attorney general in 1972. Then he served as the state's top legal officer from 1998 to 2001.

This renowned figure passed away bodily but his enthusiastic legacy will encourage the whole nation for years to come spiritually and ethically. Not only the judicial premises, but also the whole nation will be indebted to Mahmudul Islam for his wisdom and great contribution to the country.

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LAW EVENT

ON 18th and 17th February, more than 70 entrepreneurs of Union Digital Centers (UDC) in Sirajganj and Joypurhat districts received day long training on safe migration and anti-trafficking issues. Relief International (RI) has been working with Union Digital Centre (UDC) in 10 districts in Bangladesh to prevent human trafficking and to promote safe migration in rural Bangladesh under its 3 years long project "Combating Human Trafficking in Bangladesh through the promotion of Safe Migration and Protection" funded by US Department of State Office to Monitor and Combat Trafficking in Persons.

"Human Trafficking being an organised crime is the biggest challenge for safe migration of potential Bangladeshi migrants. They often fall victims of national and international syndicates involved in human trafficking and human smuggling. The RI project will utilize the power of 'Digital Bangladesh' to promote safe migration in rural areas of Bangladesh"

said Nazrul Islam, Country Director of the US based International Non-Government Organization, Relief International.

In collaboration with the local organisations and Counter Trafficking Community Committees, RI has selected 250 UDCs in 10 districts to participate in a comprehensive capacity building training program. A training curriculum has been developed with modules on safe migration, government-sanctioned recruitment procedures, human trafficking, and support services for victims in home and destination countries.

Over the next three years, the project will be implemented in Rajshahi, Nawabganj, Sirajganj, Jessore, Joypurhat, Rangpur, Dinajpur, Pabna, Satkhira and Cox's Bazar in collaboration with 3 local non-government organizations, Rights Jessore, Associations for Community Development and Help Cox's Bazar. "The US\$ 750,000 project will enable the UDC to provide a range of safe migration information services to the aspiring migrant workers turning

these rural digital centers into Safe Migration and Anti Trafficking Resource Center. The trained UDC officials will also conduct more than 700 information sessions for potential and aspiring migrant workers. The UDCs

The Government of Bangladesh established UDCs at the Union Parishad, the lowest administrative unit, as part of Bangladesh Government's agenda for a 'Digital Bangladesh' to provide a range of citizen services



under the project are expected to provide information on safe migration and human trafficking to thousands of potential migrants in rural Bangladesh. "This model has true potential to be replicated in all UDCs in Bangladesh," Islam said.

including information on employment, education, agriculture, and health. At present, more than 6000 entrepreneurs are working in 5275 UDC across Bangladesh.

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