

Delegated Laws in Bangladesh

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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, 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, they are still very much in use around the world.

[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;

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 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 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:

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 pre-dominant practice needs some reform.

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