Delegated Legislation and the Cause of Institutionalisation of Democracy in Bangladesh: A Synoptic View

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Introduction

Democracy endorses the rule of law where people’s sovereign will is pronounced by the Parliament through legislation. The enactments by the Parliament direct the tasks for the executive and outline reference for the judiciary. Therefore, the traditional belief of the democratic legislation approves legislation as an exclusive business of the Parliament. ‘Sometimes these law-making powers are conferred upon the executive by the legislature – they are delegated legislative powers’. Delegated legislation at times is measured as ‘legislation without a legislature’. It is indeed, executive legislation, but not exclusive for being detached from the legislatures of democratic polity. This sort of executive law-making has been derived from the authority given by the parliaments or legislatures of representative governments. Legislatures or parliaments herein delegates power to legislate; the end product is delegated legislation.

Delegated legislation usually creates more scope for the executive to be more authoritative. The critics of delegated legislation put emphasis on the proclivity of the practice of delegated legislation in allowing the executive ‘to legislate unchecked by the normal constraints of politicians, parliamentary majorities and interest groups’. In the early days of delegated legislation it has viewed as ‘bureaucratic encroachments’ in the legislative process manifesting the ‘new despotism’. In between the two world wars (1914-1945) delegated legislations by the executive bypassing legislatures had been the dominant feature of legislation in the democracies like the UK, the USA and France. To restrain the trends of unwieldy and authoritative expansion of executive power through excessive delegated legislations, later on certain legislative oversight parameters have been formulated by the democracies.

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In 1946, the British Parliament and the US Congress have enacted, “The Statutory Instruments Act” \(^8\) and “The Federal Administrative Procedure Act” \(^9\). Since then, under the above law, the practices of executive legislation have been checked and controlled by the Committee Systems of the British Parliament and by the US Congress. Neighbouring India, the largest democracy, has introduced legislative measures to check delegated legislation since its First \textit{Lok Sobha}. \(^{10}\) In 1962, while formulating remedial measures against the abuse of administrative authority the UN has recognised as ‘delegated legislation is an indispensable and unavoidable agenda for

the big governments of modern day’, however, it should be done with ultimate legislative sanction in the form of final approval of detailed legislation, annulment of certain laws in case of necessity, and provision for annual reports by the executive to the legislature on the application of delegated legislation. \(^{11}\) Later, the system of legislative control on delegated legislation has gained almost universality in the democratic world. \(^{12}\)

The contemporary critics on delegated legislation like David Schoenbrod (1993) \(^{13}\) and Edward C. Page (2001) \(^{14}\) also admit the reality of undermining the authority of Parliament and bureaucratic domination over the legislative process due to unrestrained delegation. Daintith and Page (1999) \(^{15}\) moreover have perceived the rising propensity of governments to exploit delegated legislation in dealing with matters of principle and policy rather than with detail. In countries like Bangladesh bearing the legacies colonial rule, military takeovers, extra-constitutional usurpation like one-party rule and frequent use of emergencies have caused the growth of a dominant executive with an overemphasised bureaucracy. In such a setting delegated legislation remain as useful device of executive dominance over the structure of government. Indeed, delegated legislation herein persists as the language of executive arrogation impeding the cause of institutionalisation of democracy.

The objective of this paper is a critical assessment of the role of delegated legislation towards institutionalisation of democracy in Bangladesh. In particular, the paper is aimed at inquiring the subsequent questions: Does the Bangladesh Constitution unreasonably and inconsistently authorised excessive powers of delegated legislation and thus negate the supremacy of the Constitution as well as legislative supremacy of the Parliament proclaimed? Does the exercise of delegated legislation approach
Bangladesh Parliament downgraded its role, authority and efficacy? What is the role of delegated legislation on the independent working of the constitutional bodies? Does the Local Government (LG) is chiefly governed by delegated legislation and in consequence impede effective participation of people along with decentralisation of governmental authority? Do delegated legislation is inducing bureaucratic self-preservation and therefore impeding administrative reform requiring for institutionalisation of democracy in Bangladesh? The paper is also made efforts to explore the impacts of delegated legislation towards Bangladesh’s cause of institutionalisation of democracy like the rule of law, transparency and executive accountability through the Parliament, independence of judiciary and the democratic value system. This paper denotes all the instruments of Statutory Rules and Order (S.R.O.) and other legal instruments (except the Ordinance) made by the executive (outside of the parliament) in Bangladesh under the authority of law and constitution commonly refers as delegated legislation.

Delegated Legislation in Bangladesh

Bangladesh has been very much familiar with the experience of delegated legislation since the British colonial rule.16 “The General Clauses Act, 1897” (10 of 1897) sets certain procedural guidelines for the making of delegated legislation. Later on ‘The Government of India Act, 1935’ and the Pakistan Constitution of 1956 and 1962, while defining law clearly recognised delegated legislation. During the British and Pakistani colonial rule the executive-bureaucratic government used delegated legislation as a very useful device of legislation.

Since its commencement, the Bangladesh Constitution has vested the legislative powers of the Republic to the Parliament. Concurrently, the proviso of Article 65(1) of the Constitution has empowered the Parliament to authorise any person or authority in making the instruments of delegated legislation.17 Articles 62(1), 64, 68, 75(1)(a), 79(3), 85, 107(1), 113(2), 118(5), 127(2), 128(3), 131, 133, 138(2), 145(1) and 147 of Bangladesh Constitution have given a wide range of powers in making delegated legislation in the name of President. Delegated legislation in Bangladesh appears more frequent having no mechanism for effective control. The existing system of delegated legislation has been beyond any parliamentary scrutiny. No parliamentary committee has yet been formed for scrutinising and checking the executive legislations. It is argued that ‘the country is almost run by S.R.O. [statutory rules and order i.e. delegated legislation]’. ‘They are often contradictory, confusing’ and ‘unclear’. ‘It suits bureaucracy enjoying enormous power resulting in harassment in citizens business houses’; ‘discrimination and arbitrariness’ towards the ‘civil servants and government employees’. Delegated legislation in Bangladesh has ‘become a major source and a breeding ground for corruption’. It is viewed that the executive
occupies an overwhelmingly dominant role in the legislative process of Bangladesh. While framing the instruments of delegated legislation this dominant role is appeared to be more evident. 18

Delegated Legislation and the Legislative Supremacy of Bangladesh Parliament
As per Article 65(1) of Bangladesh Constitution, - ‘the legislative powers of the Republic’ ‘shall be vested’ to the Parliament. Nevertheless, ‘the legislative powers of the Republic’ are to be exercised by the Parliament ‘subject to the provisions of [the] Constitution’. The Bangladesh Supreme Court has accredited the legislative competence of Bangladesh Parliament sanctioned by Article 65 as ‘plenary or supreme legislative power’ 19. According to the Supreme Court the Constitution sets two limits on the legislative power of the Parliament: i) the Constitution, for being the supreme law of Bangladesh, any law made inconsistent with it to the extent of inconsistency will be void [Article 7]; and ii) on the commencement of the Constitution any existing law or making of law inconsistent with fundamental rights will be void [Article 26]. Moreover, for being empowered by the proviso of Article 65(1) the Parliament is free to delegate ‘by Act of Parliament’ ‘any authority or person’ ‘to make orders, rules, regulations, bye-laws or other instruments having legislative effect’. By virtue of this declaration ‘the Constitution does not in any way restrict the power of delegation’. In fact, ‘the entrenched provisions of the Constitution limit the plenary legislative power of the Parliament for Bangladesh’. The provision of Article 65(1) appears not only as superfluous but also gives unrestrained powers of delegation. 20

Being authorised by uninhibited power, delegated legislation appears a very useful device of executive dominance over the legislative process in Bangladesh. 21 Instead of declaring ‘the policy of law and fix legal principles which are to control in given cases and must provide the standard to guide the rule-making authorities’ 22, the Parliament in Bangladesh is usually inclined to enact skeleton laws leaving essential legislative aspects in favor of delegated legislation. Most often, broad or indefinite/vague powers of delegation are authorised by the primary laws covering wide ranges issues of legislation parting no room for involvement of the Parliament. Thus the practice of delegated legislation in Bangladesh is indeed, seriously undermining legislative supremacy of Bangladesh Parliament.

Beyond the proviso of Article 65(1), the Constitution has allowed the President extensive powers under ‘until so made by the Act of Parliament’ and such provisions to make rules, regulations and orders. In Bangladesh the exercise of rule-making powers by the executive in name of President has been frequent. Apart from that, some of the vital aspects legislation, in particular the service laws have been the lone
concern (apart from some rare exceptions) of presidential rule-making. The authorisation of rule-making powers to the President by the Constitution for a temporary period is conceivable as the Constitution was adopted and enacted prior to the commencement of Bangladesh Parliament. It is too conceivable that the exercise of presidential rule-making under the constitutional provision of ‘until so made by the Act of Parliament’ has prolonged due to usurpation of parliamentary powers by the one-party system and military takeovers followed by the pseudo Parliaments during 1975 to 1990. Even after 15 years of the elapsing of re-birth parliamentary democracy, the prolongation of presidential rule-making referring ‘until so made by the Act of Parliament’ and such provisions are implied to be unjustifiable and inconsistent with Article 7 and Article 65(1) of the Constitution. Not unlike the rule-making ‘by Act of Parliament’ under Article 65(1), the presidential rule-making under various Articles of the Constitution remains beyond any authority of the Parliament. Thus, the legislative supremacy of Bangladesh Parliament in relation to delegated legislation persists as conflicting and unusual. Moreover, for subjugation of the key institution of democracy, the Parliament, delegated legislation is therefore negatively contributing to the cause of democracy in Bangladesh.

Impact of Delegation on the Role and Efficacy of Bangladesh Parliament

Institutionalisation of democracy, in particular, a parliamentary democracy requires a Parliament, which is capable of entrusting government to persons those who hold confidence of it and equally are responsible to it. Moreover, the government herein does not immune from parliamentary control and as well not assumes the role of government. In echoing with the above principles, the Speaker of 7th Parliament has featured the basic tenets of Bangladesh’s parliamentary democracy as: ‘the Parliament would not rule the country, but make accountable those who would rule it’ and ‘the Government would not control the Parliament, leaving to the House the oversight of the Executive Power’. However, the Parliament in Bangladesh in its renewed passage to parliamentary democracy, stayed behind the above norms. Even though the legislative power of the Republic is vested in the Parliament, the role of Parliament in its legislative business is in fact very limited. ‘Legislative business starts with the initiation of Bills which function as it stands till now, is within the control of the executive’. Nevertheless, the policy approval, drafting and scrutiny of a Bill, as determined by the Rules of Business, 1996 along with the Secretariat Instructions, 1976 have been the sole concerns of the sponsoring Ministry/Division, the Cabinet and the MoLIPA. Yet, the Parliament is not restricted by the Constitution in examining the draft Bills through the Committee(s) of Parliament prior to its ‘formal introduction’ by the ‘Minister-in-charge’, since Article 76(2) of Bangladesh Constitution empowers the Parliament, ‘subject to’ the ‘Constitution and to any other law’ the standing committees can ‘examine draft Bills and other legislative proposals’. Despite the fact, the standing committee of Parliament plays no role over a draft Bill. The
scope for parliamentary control of a Bill is usually instigated while it is tabled in the House. As per rule 77 of the Rules of Procedure of Parliament an introduced Bill may go through different motions, either ‘it be taken into consideration by the House either at once or on some future day’ or ‘it be referred to a Standing Committee’ or ‘it be referred to a Select Committee’ or ‘it be circulated for the purpose of eliciting opinion thereon’. Moreover, rule 246 of the Rules of Procedure of Parliament has sanctioned that each of the ‘Standing Committees on Ministries’ ‘may, subject to the Constitution and to any other law’ to ‘examine draft Bills and other legislative proposals’. However, the scope for scrutiny of a tabled Bill through the Committee is quite limited.

While authorising delegated legislation or framing instruments of delegated legislation the role of Parliament in Bangladesh is completely evaded. The Parliament plays no role in initiating, drafting and finalisation of the instruments of delegated legislation. Even though, unlike the Indian Parliament, a Bill of does not incorporate a memorandum justifying the incorporation of delegated power or nothing like the “House of Lords Committee on Delegated Legislation”, any standing or select committee ‘examines the delegated legislative powers contained in primary law’ Despite the fact, because of authorising broad, vague and indefinite powers by the enabling sections of primary law(s), the Bangladesh Parliament virtually abandons the matters of delegated legislation to desires of the executive. Even though, no post-natal scrutiny by the Parliament either in the floor or in the committee passage is evident.

Instead of parliamentary scrutiny, some rule-making sections of primary laws (Act of Parliament) have made provisions for ministerial scrutiny. For instance, we can refer, The Bangladesh Tele-communication Act, 2001. Section 99(1) of the Act made provision for making regulations consistent with the law for carrying out the purposes of the law. However, section 99(2) of the Act made provision for submitting the copy of the law to the Ministry [concerned] within seven days after having published in the Official Gazette and after that the Ministry can provide necessary instructions for modification in the regulations to examine consistency of the regulations with the Act. While making delegated legislation ‘the Parliament’, thus ‘has abdicated in favour of the executive branch’.

Thus the exclusion of delegated legislation from Parliament not only has deserted the legislative authority of Parliament but also seriously lessen the involvement of law-makers to their prime concern of legislation. If the instruments of delegated legislation would have the partaking of Parliament, the law-makers could be more occupied with their legislative businesses. In particular, they could assess whether an enabling section of a primary law is unduly authorised broad or vague powers or to what extent an instrument of delegated legislation is conformed with or ultra vires to the primary law. Moreover, the
legislators could trace out whether an instrument of delegated legislation contains defective drafting or lacks in procedural compliances or could identify the required range of elucidation as well. Thus parliamentary scrutiny of delegated legislation would certainly improve law-makers competency in legislation.

**Since** delegated legislation requires specialist knowledge and getting into the wide arena of law and administration, therefore, in dealing with the businesses of delegated legislation the law-makers would have the chance to attain ‘specialized experience’ and could be able to cope with the intricacies of modern state business. Since the existing system of delegated legislation in Bangladesh not just undermines the role of Parliament but also causing a dysfunctional impact upon its legislative efficacy. Unlike the established democracies, in absence of close control and criticisms of the government by parliamentary committees, delegated legislation is very much prone to fostering tyranny rather than institutionalizing parliamentary democracy in Bangladesh.

**Delegated Legislation and the functioning of Constitutional Body**

Democracy flourishes within the principle of constitutionalism, where a written Constitution is inclined to control the organs of government. The Constitutions here spring from a belief of limited government. Albeit, the framers of Bangladesh Constitution have made no precise statement on the rationale behind introducing distinct constitutional bodies like the ‘Comptroller and Auditor General’ (CAG), ‘Bangladesh Public Service Commission’ (BPSC), ‘Bangladesh Election Commission’ (EC) and the ‘Ombudsman’, it may be assumed that the constitutional bodies were envisioned as effective devices of limiting executive power. Among the constitutional bodies, the CAG, BPSC, and the EC were created by means of unambiguous provisions under distinct parts (except for the office of the Ombudsman) of the Constitution. Thus, the constitutional bodies in Bangladesh have been created by the same Constitution, along with the executive, the legislature and the judiciary. Unlike different statutory commissions of the UK and the USA, the constitutional bodies of Bangladesh are not creatures of the legislature or a subordinate body either to legislature or the executive. For that reason, the constitutional bodies of Bangladesh claim much stronger position and status than other executive or statutory bodies. In asserting the significance and independent status of the constitutional bodies, the Bangladesh Supreme Court has accredited ‘the various functionaries and institutions created by the Constitution exercise not their own indigenous and native powers but the powers of the people on terms expressed by the Constitution’.
However, the constitutional bodies in Bangladesh are highly critical to their suppressed status due to ‘blatant abuse of powers’ explicitly by using extensive powers of delegated legislation ‘by the authorities in the executive hierarchy’. In the following, in relation to delegated legislation efforts have made to assess the contention of undercutting authority and status of constitutional bodies in Bangladesh.

**Delegated Legislation and the Subjugated Status of BPSC:** Effective functioning of a democracy necessitates an efficient civil service organised on the basis of merit and free from patronages. ‘Administration’, for being ‘the province of the executive’, the appointment of civil servants is usually a matter for the executive alone. The Bangladesh Constitution since its commencement in its Articles 137 to 141 embraces provisions for the establishment of BPSC for purporting the purpose of Article 133 of Bangladesh Constitution to ‘regulate the appointment and conditions of service of persons of the Republic’. Despite constitutional commitment for the independent role of the BPSC became subjugated to the executive government having been conditional on delegated legislation. The provision of Article 133 has made the President competent to make so rules ‘until provision in that behalf is made by or under any law’. In consequence BPSC’s jurisdictions relating to recruitments have fairly been constrained by a number of instruments of delegated legislation.

In addition, Article 140(2) of Bangladesh Constitution also left room for delegated legislation in determining matters relating to consultation with BPSC by the President. The Constitution in its proviso of Article 140 (2) has deliberately mentioned: ‘[s]ubject to the provisions of any law made by Parliament and any regulation (not inconsistent with such law) which may be made by the President after consultation with a commission’ (Italic supplied). However, until 1979, no such regulation was framed.

Until 1974, PO 25 of 1973 was the only primary law purporting the constitutional requirements of BPSC. In 1974, “The Members of the Bangladesh Public Service Commissions (Terms and Conditions of Service) Act, 1974” (21 of 1974) was enacted by the Parliament. However, the law is chiefly confined with terms and conditions of services along with remunerations and privileges of the BPSC members. In absence of law or regulations pertaining to consultations, even though plainly conflicting with Article 140(2), in between 1972 to 1974, the procedures for consultation with the BPSC were defined by the Ministry of Establishment (MoE) by way of issuing a number of memoranda ‘acting in its capacity as the chief personnel agency of the government’. The instructions issued by the MoE, in many cases excluded consultation with BPSC.
Schedule I of the “Rules of Business, 1975” has shown BPSC as an item of business allocated to the MoE. It indicates that the MoE was acting as the administrative Ministry of BPSC. The largest part of affairs vis-à-vis policy, composition, administration and finance of BPSC as well as its relationship with other ministries/divisions left to the MoE. Meanwhile, the Parliament enacted the “Services (Re-organisation and Conditions) Act, 1975” (32 of 1975) law to carrying out the purposes of Article 136 of the Constitution. “The Services (Re-organisation and Conditions) Act, 1975” assumes greatly involve with the jurisdictions of BPSC, since the law authorises the government ‘reorganize the service of the republic or any of the public body or nationalised enterprise and for that purpose create new services or amalgamate or unify existing services’, nevertheless the law left no room for playing BPSC’s role as per Article 140(2)(c) of the Constitution. The Act also left the executive the authority to reorganise the services by means of notifying order in the official gazette (i.e. delegated legislation).

“The Bangladesh Public Service Commission Ordinance, 1977” (8 of 1977) was promulgated stating the objective of repealing and re-enacting “The BPSC Order, 1973”. Despite retaining key features of the PO 25, the Ordinance empowered the President with vague powers in resolving or removing any dispute or doubt concerning the jurisdiction of a Commission in respect of any matter through appropriate directions. The term ‘appropriate directions’ in fact entails nothing but usurpation of BPSC’s constitutional authority by the MoE by way of delegated legislation or by executive order.

Till now, except for “The Members of the Bangladesh Public Service Commissions (Terms and Conditions of Service) Act, 1974” (21 of 1974) and “The BPSC Ordinance, 1977” no primary law is operational to fulfill the legal requirements of the authority and functioning of BPSC as per Articles 140 and 141 of Bangladesh Constitution. The organisational setup of BPSC is determined by the Report of the Martial Law Committee on Organisational Setup (1982) and “The Bangladesh Public Service Commission (Officers and Employees) Recruitment Rules, 1982” and various notifications and circulars by the MoE.

Since 1979, “The Bangladesh Public Service Commission (Consultation) Regulations, 1979” (hereafter “The Consultation Regulations, 1979”) is operational which was issued by an S.R.O. to fulfill the requirements of Article 140 of Bangladesh Constitution. Nevertheless, as per proviso of Article 140(2) the regulation is required to be made ‘[s]ubject to the provisions of any law made by Parliament and any regulation (not inconsistent with such law)’.
“The Consultation Regulations, 1979” not merely abridged BPSC’s involvement in recruiting a good number of class I services and posts, in fact, has entirely excluded class III recruitments. Thus putting aside the purview of BPSC on the above matters by means of an S.R.O. has seriously undercut the authority of BPSC. Hence, the reduction of BPSC’s authority is assumed nothing but ‘an abridgement of the constitutional rights’ of it.54

In 1980 a vital instrument of delegated legislation referring section 4 of the “Services (Re-organisation and Conditions) Act, 1975” (32 of 1975), was issued, namely, the “Bangladesh Civil Services (Reorganisation) Order, 1980” [hereafter “The BCS Reorganisation Order, 1980”], which prefixes the civil service into 28 distinct cadres, BPSC was utterly ignored, although, the stuff of “The BCS Reorganisation Order, 1980” is very much congruent to Article 140(2).

The other core feature of subjugation of the BPSC as a constitutional body is apparent relating to its attachment by the Rules of Business, 1996 with certain ministry. Until now, no adequate law has made to furnish the constitutional body an independent shape. The executive has repeatedly ignored BPSC’s need for its own administrative setup based on an independent secretariat. However, in 1989, by amending Schedule I of the Rules of Business, 1996 the Bangladesh Public Service Commission Secretariat (hereafter BPSC Secretariat) has been established with the status of a Division55 of the Presidents Secretariat. The same notification omitted entry number 48(a), which had been shown BPSC as part of the MoE.56

Since 1991, with the introduction of parliamentary system, the BPSC Secretariat has been shifted to the MoE.57 In spite of giving the status of a Division until now the BPSC Secretariat has been enjoying the authority not unlike an attached department of the MoE. As per Schedule IV (rule 7) of the Rules of Business, 1996 in case of referring any matter to the PM and the President the BPSC Secretariat has to go through the MoE. In such cases there are allegations of undue interference and tempering of BPSC Secretariats’ summary.58 The Secretary to BPSC is yet a deputed officer of the MoE. Although the BPSC has framed its own conduct of business rules59, the MoE is much involved with the authority to interpret and determine a wide scope of practical responsibilities of BPSC by means of issuing of a variety of orders, instructions, memoranda and circulars.

Moreover, in authorising the power to make regulations by the President under Article 140(2) pertaining to services of the Republic left no room for any meaningful scrutiny by the Parliament. Thus the
Constitution not only has discarded the legislative authority of Parliament but also put forwarded BPSC’s authority to the intent of the government. Although, making of such regulation is subject to consultation by the President with BPSC, which is in effect maneuvered by the MoE, very often ignores recommendations by the BPSC. Although the BPSC, by means of its annual report, can acknowledge the Parliament concerning MoEs non-allegiance, indeed no follow-up measure has yet been taken by the Parliament. In fact, the “Rules of Procedure” elucidates nothing in dealing with the BPSC reports placed before the Parliament.60

Delegated Legislation and the Constricted Role of CAG: Democracy requires a government involves with the best use of public money for the sake of public good. An executive having unwarranted powers of finance and administration not just intensifies corruption but also vulnerable to the spirit of democracy. This is why ‘it is crucial for any system of democratic government a robust mechanism to ensure transparent financial accountability’.61 Audit is an important part of the accountability process, which ensures the accountability of the executive and the legislature in discharging their functions.62 It involves an examination of legal authority for expenditure and an investigation whether the due forms, such as the requirement of financial sanctions have been observed. In an authoritarian system, government audit institutions have a propensity to become a part of the executive structure. The role of a vibrant and well functioning Supreme Audit Institution (SAI) is crucial to the institutionalisation of democracy, which may be pinpointed as.63

In a parliamentary democracy SAI plays a catalyst role in ensuring accountability in government businesses. Due to constitutional status, state audit flourishes in a parliamentary democracy in consequence of the greater need to account to the legislature.64 For playing an effective and meaningful role in promoting public accountability, an independent and credible role of the SAI is of paramount importance.

SAI in Bangladesh, namely, the Office of the Comptroller and Auditor General (CAG) is aiming at financial accountability of the government. Conversely, the CAG of Bangladesh not unlike the CAG of India has been incorporated within the Constitution.65 The President appoints the CAG of Bangladesh. He holds the office until 65 years of age. He can only ‘be removed from his office in like manner and on ground like a judge of Supreme Court’.66

As per Article 128(1) of Bangladesh Constitution, the public accounts of the Republic and all courts of
law and all authorities and officers of the government shall be audited and reported on by the Auditor-General. In addition, Article 128(3) and Article 131 of Bangladesh Constitution empowered the CAG for keeping public accounts of the Republic.

Regardless of the constitutional status the office of CAG suffers from lack of sufficient legal coverage along with administrative independence from the executive. The office of CAG, as a key oversight agency, since its commencement in 1973, formidably lacks in comprehensive coverage of primary law. Except the “Comptroller and Auditor General (Additional Functions) Act, 1974” (24 of 1974)\(^67\) and the “Comptroller and Auditor General (Remuneration and Privileges) Ordinance, 1976” (83 of 1976)\(^68\) no inclusive laws were made to equip the office of the CAG an independent one. Even though, Article 127(2) and 128(3) of Bangladesh Constitution has left the institution of CAG either to delegated legislation or to the executive discretions/directives like the *Report of the Martial Committee on Organisational Setup* or the *Rules of Business*. Thus, the executive tends to consider CAG as their part. *Rules of Business, 1996* shows that MoF deals with the cases of determining conditions of service of the CAG along with is appointment, removal or resignation.

Moreover, the *Rules of Business, 1996* shows the businesses of CAG as per Article 128(1) and Article 131 of Bangladesh Constitution as the businesses of MoF.\(^69\) Matters relating to audit and accounts along with accounts procedures and rules have also shown by the *Rules of Business, 1996* as the functions of MoF. Even though, CAG operates his functions by the members of B.C.S. Audit and Accounts cadre, the administration of the cadre, as per *Rules of Business, 1996* relies on the MoF.\(^70\) In matters of recruitment, promotion and qualification standards and other administrative areas, this office is greatly circumscribed by a control environment.\(^71\)

Article 127(2) states, ‘[s]ubject to the provisions of the Constitution and of any law made by Parliament, the conditions of service of the Auditor-General shall be such as the President may, by order, determine’, nevertheless, no such order has yet been made. However, the Parliament by enacting the “Comptroller and Auditor General (Additional Functions) Act, 1974” has authorised additional functions to the CAG in keeping public accounts and performing duties relevant to it.\(^72\) On the contrary, the key responsibility of the office of CAG i.e. auditing government revenue and spending has been left to the instruments of delegated legislation. The CAG auditors still rely largely on a slightly modified version of the 1938 Audit Manual [Audit Code].\(^73\)

The *Audit Code* mainly derives its authority from the provisions of the “Government of India (Audit and Accounts) Order, 1936”, made under sections 166 and 170 of the “Government of India Act, 1935”, and together with the *Audit Manual* it supersedes all the rules and instructions relating to audit contained in
the Audit Code, volumes I and II, First Edition (Second Reprint) 1935. By virtue of those provisions the then Auditor-General of India exercised the power subject to the limitation specified in the “Government of India (Audit and Accounts) Order, 1936” to frame rules and give directions in all matters pertaining to the audit expenditure and of the other transactions and accounts for which he is responsible under that order. Later on, the Audit Code was adapted in the legal system of erstwhile Pakistan in 1951.

In Bangladesh, it has been claimed that the Audit Code derives its authority mainly from Articles 128 and 132 of Bangladesh Constitution and the “Comptroller and Auditor General (Additional Functions) Act, 1974”. Even though, in 1980 the law was gone through modifications by incorporating major changes and deleting obsolete provisions it is not persuasive except for Article 149 (saving for existing laws) that the 1938 Code has received its authority from the Constitution along with the 1974 Act. It implies nothing but the dominant nature of delegated legislation over the Constitution and laws in Bangladesh.

As stated by Article 132 of the Constitution, accounts and audit reports of the CAG relating to the public accounts of the Republic has to submit before the President and the President lays the reports before the Parliament. The Public Accounts Committee (PAC) as per rule 233 of the Rules of Procedure of Parliament examines the reports of the CAG and makes appropriate recommendations. Although the Audit Code has been considered as mandatory rather than permissive, the CAG reports are usually very lately placed before the Parliament and so forth for the consideration of the PAC. The reports of CAG put forward no reasonable ex-post checks over spending agencies. Moreover, the executive officials tend to non-cooperate or reluctant to comply with the PAC recommendations.

On the contrary, the CAG laws (including the Constitution) made no provision for ensuring ethical conduct among the auditors. Even as the CAG is empowered ‘to make rules and give directions in respect of all matters pertaining to audit of any accounts he is required to audit’, no such rules and comprehensive directions has yet been made. Thus the constitutional binding of ensuring financial accountability of the government by the CAG has been delicate due to noncompliance along with corrupt practices.

Do the LG in Bangladesh is the mere Agent of Delegated Legislation?

LG is considered as the schools of democracy in which common people are conveyed to political and popular education concerning issues of local and national importance. The excellence of a thriving democracy at the centre requires its agreeable performance at the local level. LG is inclined to flourishing intrinsic worth of initiatives, tolerance and negotiation, therefore indispensable for a functional democracy. However, a sound legal footing, power to raise finance by taxation within its own jurisdiction, involvement of local people in decision-making in specified matters along with their
administration, the freedom to act independently of central control and in contrast to single purpose a distinct character remain the key to meaningful existence of LG.81 In particular, the mandates to LG require explicit status by the Constitution rather making it conditional on delegated legislation, since for ‘being a mere agent of delegated legislation LG is more vulnerable to outside interference than even many purely administrative bodies’.82

Despite Bangladesh’s long familiarity with LG since the British colonial rule, the foundation of LG in undivided India was not derived from the value of democratisation i.e. people’s self-rule. It was either from the insight of accumulation of revenues and extension of state control into the rural level or ‘as concession made to political demand for self Government’, where LG in effect was the ‘democratic facade to an autocratic structure’.83 The district officials performed the businesses of LG, where the role of non-official members was nothing but the ‘spectators’.84 Due to lack of proper legal-constitutional basis, LG both in the British and Pakistani rule were guided through various instruments and circulars delegating wide authorities and discretions to the bureaucratic henchmen of the central government. The LG ‘had little part to play in the administration of the country’85 except ‘as co-operators with the national and sub national bureaucracy’.86 Thus the very intent of LG i.e. democratisation through people’s self-rule was suppressed. Regardless of the fact, LG in the British and Pakistani rule were considered as the ‘integral part of the national system of governance’.87

Subsequent to the Independence of Bangladesh, the framers of Bangladesh Constitution added ‘distinct character’ in the Constitution ‘from other Constitution of the world’ in inserting provisions on LG by means of Articles 9, 11, 59 and 60.88 Article 9 declares that the State ‘shall encourage LG composed of representatives of the areas concerned’, while Article 11 proclaims, ‘the Republic shall be a democracy’ where ‘effective participation by the people through their elected representatives in administration at all levels shall be ensured.’

Whilst the Provisions of Article 9 and 11 are not judicially enforceable as they are part of the ‘Fundamental Principles of State Policy’, therefore Article 60 has been inserted to realise the visions of LG. Article 59 authorises LG ‘to perform within the appropriate administrative unit’ and endows with ‘functions relating to— (a) administration and work of public officers; (b) maintenance of public order; (c) preparation and implementation of plans relating to public services and economic development.’ To giving the full effect of Article 59, Article 60 asserts that the ‘Parliament shall by law confer powers’ on the LG ‘including power to impose taxes for local purposes, to prepare budgets and to maintain funds’.

The post-independent Bangladesh had gone through various experiments and containments, however, no significant steps towards fulfilling constitutional commitments the LG structures were evident. The executive governments irrespective to regimes had commonly shown their disregards towards growing
appropriate LG structures comprising of public representative with ample financial and administrative powers. Except for the UP, rests of the tiers of LG remain unrepresentative either down to non-enforcement of existing laws or by way of experimentation. Even though high morals of democracy pronounced in its liberation movement, Bangladesh’s First post-independence AL government (1972-1975) were more prone to extend its authority in the local level by the nominated party henchmen rather than espousing representative LG structures. “The Constitution (Forth Amendment) Act, 1975” (Act 2 of 1975) introduced one-party rule and debarred constitutional obligation for elected LG by omitting Articles 11, 59 and 60. In between 1975 to 1991, either the military regimes or the civilianised military regimes championed for LG in course of civilianisation. Until prior to “The Constitution (Twelfth Amendment) Act, 1991” (Act 28 of 1991) Articles 11, 59 and 60 were deferred. In the face of overthrowing General Ershad’s civilianised military regime by the mass-upheaval of 1990s and the avowal of democratisation by the major political parties along with civil society actors, it was aspired that the renewed parliamentary democracy would encourage effective LG structures comprised of representatives from the people.

Albeit the constitutional provisions on LG were reinstated, and new spaces of LG like the Gram Parishad, The Chittagong Hill Tracts Regional Council and two more City Corporations in Sylhet and Barishal were created as well as the numbers of Paurashavas (Municipal Councils) were increased, in fact no vital changes in the role and activity of LG were evident. By this time, the Fifth and Seventh Parliaments were failed to specify the tiers of LG together with their scopes and guiding policies either in the Constitution (despite of its Eleventh, Twelfth and Thirteenth amendments), or by means of enacting primary law(s). The regimes since 1991 indeed have discouragingly approached about the promotion of LG. In 1991 the elected BNP government demolished the Upazila system by issuing an Ordinance without introducing any substitution. In place of the political control by the elected representatives over the bureaucracy, the Upazila Parishads were abolished and left to the bureaucracy. To a political analyst the dissolution of UZP has indeed ‘made the journey of the resurrected parliamentary democracy jittery on a thorny road’.

Even though, the other important tier of LG i.e. the District Council created by Ershad under the “District Council Act, 1988” (Act 28 of 1988) was not abolished, however, remain unrepresentative. Thus, the two major administrative units of LG—Upazila and District Council have gone under the dominance of colonial bureaucracy. Over and above, the operational units of LG, namely the Union Parishad [hereafter UP], Paurashava and City Corporations, instead of being represented by the public, remain subject to strict ministerial control by the bureaucratic agents at the centre and in the local level. Indeed, the devices of delegated legislation have been instrumental in attaining such control over the LG.
Nevertheless, since 1990s, instead of entering into the much acclaimed democratic passage, the laws on UP, Paurashava and City Corporations devised by the civilianised military regimes giving executive/bureaucratic ascendancy over those tiers of LG remain unchanged. Despite repeal of the primary laws in the British or Pakistani regime, the rules, regulations or schemes were framed under those laws were saved by subsequent primary laws (Act/Ordinance) (Appendix: 13, 14, 15, 16, 17 and 18). In amending existing law(s) stringent ministerial/administrative control were imposed, while the new enactments usually authorised constrained powers to LG. On the contrary, the enactments conferred broad and vague powers of delegated legislation. By using unbridled powers of delegation, the executive/bureaucratic control over LG has been conspicuously inflated.

While observing the nature of subjugation of LG by the executive, the Local Government Commission has observed ‘the laws and rules’ on LG usually ‘meant to control the day to day operations of the local bodies by the ministry or government departments’. Thus the laws/rules have made LG ‘virtually subordinate’ to the ministry or government departments ‘clearly in contravention of the principle of autonomy’. Supervision, monitoring, financial management and disciplinary actions against the LG are determined by the ministry/department concerned. In particular, from specifying the sources of income to the fixation of rates, taxes, cess and the preparation of budget to mode of expenditure ministerial rules, manuals and circulars in fact determine each of the financial matters of LG.95 Sometimes delegated legislation becomes conditional to commencing of certain tier(s) of LG devised by parliamentary enactment(s). Now we shall categorically examine the extent and nature of delegation authorised by laws operating on different levels of LG.

While surveying appertaining laws, it is transpired that the various tiers of LG in Bangladesh are subject to arbitrary control by the executive/bureaucratic agents of national government. For being an exclusive task of the executive remote from the public as well as scrutiny by the Parliament, delegated legislation has been the key in accomplishing such control. The excessive and erroneous use of delegated legislation indeed signifies the LG as mere agents of delegated legislation. In consequence, the subjugated and suppressed status of LG indeed negatively contributed to the working of Bangladesh’s whole system of democracy.96

**Delegated Legislation, Administrative Reform and Bureaucratic Self-preservation**

As revealed in our early discussions, together with wide discretions of rule-making under the Constitution or the primary law, and absence of any sort of scrutiny (pre or post-natal) by the Parliament (through floor or committee procedures) or by the public (via means of interest consultation) under certain guiding
law(s) in line with the set norms of democratic polity, delegated legislation has been dominant over the legislative process in Bangladesh. This dominance makes space for the bureaucracy to preserve its narrow sectarian interests and to keep status quo, which in turn jeopardizes initiatives of administrative reforms.

Since Bangladesh’s public administration is ‘stem from the stubborn resilience of old forms and bureaucratic practices’ of British colonial rule chiefly devised to the needs of collection of revenues, keeping law and order, accompanied by ‘a limited set of basic services’. The focus of such administration was ‘rulership’ than to ‘service’. The colonial rulers, despite creating some spaces for representative democracy, sought to retain their control over the whole process of governance through the ‘steel frame’ of civil service and therefore, kept the civil service beyond parliamentary control. For that reason, while inserting the provisions of rule-making and determining conditions of the services “The Government of India Act, 1935” utterly excluded the role of Parliament. From now the civil service was granted special safeguards in securing their dominant status over the government. Later on, the Civil Service of Pakistan (CSP), ‘the pivotal service around which entire administrative edifice’ was shaped via means of government resolutions and rules. With the tradition of “The Government of India Act, 1935” the Constitutions of India (1949), Pakistan (1956 and 1962) and Bangladesh (from its origination to 14th amendment) have incorporated law relating to civil service ‘to immune the services’ from ‘political vagaries’ [precisely from legislative control]. Moreover, with the same traditions, not unlike India and Pakistan the Bangladesh Constitution as well incorporates the provisions of Rules of Business, 1996 ‘for the allocation and transaction of the business of the Government’ to be made by the President beyond the realm of Parliament, which is in turn becomes an exclusive task of the bureaucracy. Therefore, the civil service, especially its kingpin — the generalist administration cadre not just has secured its overwhelming controls over the whole process of governance, but also has shielding itself against any sort of reform measures unfavourable to its status quo. As a result, various administrative reform initiatives have taken in the pre and post-independence Bangladesh, the bureaucracy was able to resist them looming such reforms as threats to their dominant standing.

Nevertheless, the Rules of Business has endowed enormous powers to the MoE over the policy and administration of services in Bangladesh including cadre service. By means of making, amending or interpreting the service rules and orders, the MoE gradually has altered the composition of cadre strength, upgraded or created leave vacation/deputation posts in the Secretariat, attached departments or field administration favouring the BCS (Administration) cadre. Such enhancement of cadre strengths in effect contributed nothing to enrich the public administration with specialised knowledge and expertises, rather
caused to unnecessary attachments and delays in service delivery system, and eventually by strengthening vested interests made difficult for structural adjustment/administrative reforms or independent growth of LG as well. For example, we can refer the existing status of different tiers of LG in particular the Zilla Parishad and Upazila Parishads, run by the members of BCS (Administration) cadre.

Moreover, it is evident from the “Ministry of Finance vs. Masdar Hossain and Others” case judgment and its consequences, how the MoE (being supported by the political executive) in exercising rule-making powers under Article 115 of Bangladesh Constitution for appointments of persons to offices in the judicial services or as magistrates exercising judicial function, retained control over the magistrate courts. Thus the cause of separation of judiciary from the administration, a constitutional commitment since 1956 was restrained.103 Hence, delegated legislation remains as the key to bureaucratic self-preservation and impediment to administrative reforms incongruent to Bangladesh’s search for institutionalisation of democracy.

Influences on the Rule of Law and Independence of Judiciary

By virtue of judicial creativity, dynamism and innovation manoeuvred a rule of law society through inflicting the standards of good governance. Hence, it is increasingly becoming indispensable to preserve the courts’ power of judicial review as viewed by Lord Chief Justice of the UK Lord Lane to prevent ‘a bullying government in its tracks’.104 In particular, the judicial review of delegated legislation is almost universally accepted in the democratic polity. Even in the UK, where by virtue of the sovereignty of Parliament, parliamentary enactments kept outside of judicial review, the review of delegated legislation by the judiciary has been given utmost importance, seeing as the instruments of delegated legislation usually receive minimum public and parliamentary exposure as well as remain largely of a more temporary character than an Act of Parliament, it is perhaps more likely to be amended from time to time and in this fashion, the original intension of delegation envisions by the primary law may be spoiled and thus the executive can arbitrarily exercise its power.105

The insertion of indemnity sections within the primary law or within the instruments of delegated legislation has been one of the key features behind the constricted role of judicial review in Bangladesh. While screening the indemnities from adjudication by the court provided by the Bangladesh Constitution Justice Mustafa Kamal perceives ‘whether indemnities are a basic feature of the Constitution or not’.106 Indeed the features of indemnities are graver within the enactments or instruments of delegated legislation in Bangladesh.
In the name of ‘anything which is done in good faith’ by way of inserting ‘indemnity’/‘saving’ and ‘removing difficulty’ provisions within the primary laws, the executive commonly tends to shield their actions including the making and applying of delegated legislation. Moreover, a careful investigation will make it obvious that the indemnity provisions mostly have defended the officials from their individual liabilities involving in administrative actions, which has been a great impediment of an accountable and performance-based efficient administration. Therefore, such indemnities not only undermine the basic tenets of rule of law, but also impede the growth independent judiciary.

Impact upon the Democratic Value System

Personal liberty, respect for the individual, equal opportunity and popular consent along with generation of informed and considered choices through open discussion, debate, criticism, and dissent, as well as the understanding of needs, rights and duties are the key to democratic value system. However, the values of democracy grow out of their unfettered practices through the formal institutions democracy. As effective formal institutions cause the growth of informal institutions of democracy i.e. the democratic values, equally complement formal institutions.\textsuperscript{107}

therefore has degenerated the Parliament into a dysfunctional one rejecting participation deliberation, debate and opposition. Delegated legislation in Bangladesh as disclosed from the earlier discussion, not merely degenerated the Parliament into a dysfunctional one rejecting participation deliberation, debate and opposition promoting the values of intolerance and exclusion. The dysfunctional and disregarded Parliament in Bangladesh not only has dejected Lord Bryce’s\textsuperscript{108} estimation of a true Parliament’s ‘collective self-esteem’ and rise in the ‘whole moral tone of decision-making’, but also derogated public faith and confidence upon it. In the end, Parliament in Bangladesh instead of becoming centrepiece of national politics has contributed to the rise of agitational street politics. Delegated legislation moreover causes bureaucratic ascendency over different tiers of LG opposing public representation and participation, but also discourages people’s self-belief of their entitlements and roles within the polity. Similarly, having been instrumental to bureaucratic-executive control over the constitutional bodies like the CAG and the BPSC, delegated legislation in Bangladesh through rejecting their independent role endowed with the Constitution is in fact rejecting the core values of democracy,—the faith in constitutionalism and limited government. Apart from that, the services and the service laws of the Republic typically remain as an exclusive zone of delegated legislation immune from parliamentary control. Since the laws on service have devised mostly
within the colonial rule giving emphasis on law and order administration with generalist preferences, thus remain paradigmatically unfamiliar to the needs and values of democracy. Furthermore, as exposed from our preceding investigation, delegated legislation is until now instrumental in conserving Bangladesh bureaucracy’s colonial values of omnipotence, seclusion, apathy to reform as well as denial to people’s self-rule through LG. In giving indemnity from judicial review the system of delegated legislation in Bangladesh virtually promotes the value arbitrary exercise of powers by the Parliament and the executive beyond the perception of democracy.

**Conclusion**

While assessing the role of delegated legislation in Bangladesh the foregoing discussion unveils that the constitutional mandate of delegated legislation has been paradoxical to legislative supremacy of Bangladesh Parliament endowed with the Constitution itself. Nevertheless, by narrow interpretation of the ‘until so made by the Act Parliament’ provisions of the Constitution, the exercise of the rule-making powers by the President assumes beyond its original intention. Even, the exercise of rule-making powers under Article 65(1) as well as rule-making by the President under various Articles of the Constitution remains afar from control by the Parliament. The leaving out of delegated legislation from the purview of Parliament thus downgraded the status of Parliament as the core institution of democracy as well as lessened its member’s involvement and competence. Having instrumental to suppression of the constitutional bodies beyond the spirit of Constitution, delegated legislation further attributed to concentration and amplification of executive powers. Having been the mere agents of delegated legislation, the LG in Bangladesh has been subject to arbitrary control by the bureaucratic agents of national government, thus hindered the cause of effective public participation and decentralisation of governmental authority congruent to democratic polity. Moreover, delegated legislation has been invincible to compositions and operations of public service in Bangladesh either beyond parliamentary or judicial control. Hence, delegated legislation has been endorsing bureaucratic self-preservation as well as frustrating administrative reforms requiring with the changing needs of democracy. In restraining separation of judiciary from the executive and shielding judicial review, delegated legislation has been impediment to the independent growth of judiciary in Bangladesh as well. Besides, in promoting unreasonable and arbitrary exercise of powers delegated legislation is negatively influencing institutionalisation and internalisation of democratic value system key to institutionalisation of democracy.


7 K.C. Wheare, *Legislatures*, p. 64.


16 During the British rule delegated legislation in the undivided India for the first time was authorised by the “Northern India Canal and Drainage Act, 1873”. See, I.P. Sathe, *Administrative Law*, p. 18.


21 Khandaker Muzahidul Haq, “Role of Delegated Legislation in the Parliamentary System of Bangladesh”.


28 Even though, there are allegations of not publishing the draft Bills tabled before the floor of Parliament violating rule 76 of the *Rules of Procedure of Parliament*. As stated by rule 76, “every Bill that has been introduced to be published in the Gazette as early as possible together with the statement of objects and reasons and financial memorandum, if any, accompanying it.” See, *Jugantar*, June 24, 2000 (Dhaka).


30 “The Bangladesh Tele-communication Act, 2001” (19 of 2001), section 99

31 Saadat Husain, “Role of Executive in the Legislative Process in Bangladesh”, p. 6.


33 To K. C. Wheare, “In American and European legislatures, the government is so closely controlled and criticized by committees of the legislature that tyranny through the exercise of delegated powers cannot easily be accomplished.” K. C. Wheare, *Legislatures*, p. 112.


36 The Bangladesh Constitution devised ‘constitutional bodies’ in it’s following Parts: Part VII – The Election Commission, Part VIII – The Comptroller and Auditor General, Part IX (Chapter II) – Bangladesh Public Service Commission. Furthermore, the Constitution, in its Article 77 of Part V (The Legislature) has made provision to establish the office of the Ombudsman.


38 Justice Mustafa Kamal, “Dr. Mohiuddin Farooque Vs. Bangladesh Represented by the Secretary, Ministry of Irrigation, Water Resources and Flood Control and Others”, 49 DLR (AD), 1.


41 Michael Ameller (ed.), *Parliaments*, p. 274.

42 Ibid., pp. 163–164.

43 *Bangladesh Constitution*, Article 140(2).


51 S.R.O. No.125-Law/1982, *BG Extra-ordinary*, April 22, 1982. The S.R.O. was issued under the authority of martial law proclamation of 1982, as the Constitution was then declared suspended by the proclamation.

52 For example, we can refer MoE’s notification Óbs: mg/bwb/1B-6/87-353, ZvwiL: 03/11/1987Ó [No.– MoE/First Appointment Section/1E-6/87-353, dated 03/11/1987] which allocated the range of powers of the Chairman and the Secretary to BPSC as appointing authority concerning appointment of persons for different classes of posts. Also, Syed Giasuddin Ahmed, *Bangladesh Public Service Commission*, p. 155.


55 *Rules of Business, 1996* defines “Division” as: “Division” means a self-constrained administrative unit responsible for the conduct of business of the Government in a distinct and specified sphere and declared as such by the Government [rule 2(f)]. Usually a secretary or secretary in-charge to the government is responsible for the administration of a Division [rule 2(g)]. A Ministry may be constituted with one or more Divisions. [rule 2(j)]

56 Notification No - 4/9/89-Regulation/530, February 23, 1989, Cabinet Division, Presidents’ Secretariat, Dhaka.

57 Memo No - 4/1-19-Regulation/146, October 13, 1991, Cabinet Division, Presidents’ Secretariat, Dhaka; Also, *Rules of Business, 1996*, Schedule I, section 18(a) has shown BPSC Secretariat as its part. However, while presenting the functionaries of MoE placed before the parliamentary standing committee on MoE of 8th Parliament the MoE organogram excluded BPSC Secretariat as one of its part of business. See, “Working paper of the First meeting of parliamentary standing committee on the MoE”, MoE, August 17, 2003 (Dhaka).

58 The BPSC Secretariat Memo No.-Admin-1/RB-17/901820/1(2), April 21, 1996.


World Bank, Bangladesh: Government that Works, p. 53.


Riazur Rahman Chowdhury, “Harmonizing Institutional Efforts for Promoting Accountability in the Public Sector”, p. 23.

However, prior to the commencing of the Constitution, the CAG of Bangladesh was instigated by “The Bangladesh Comptroller and Auditor General Order, 1972” (PO 15 of 1972). The Constitution includes the provisions of PO 15 of 1972. With the commencement of the Constitution PO 15 of 1972 stands repealed.

Bangladesh Constitution, Article 127(1) read with 129.


Rules of Business, 1996, Schedule-IV [rule 7], Serial No. 38, 39, 40 and 41

Rules of Business, 1996, Schedule-I, Item 40


Since 1983, the “Comptroller and Auditor general (Additional Functions) (Amendment) Ordinance, 1983” (28 of 1983) has made provision for keeping the government accounts by government ministries and departments. However, the responsibility still rests with the CAG.” The Annual Report contains Audit Materials up to the Financial Year 2000-2001, p. 17.

World Bank, Bangladesh: Government that Works, p. 53.

Audit Code, Preface by E. Burdon, Auditor-General of India, November 21, 1938.

Audit Code, Preface by M. Hafizuddin Khan, CAG of Bangladesh, July 12, 1999.

Audit Code, Preface by E. Burdon.

For example, the CAG reports on audit and accounts placed before the 7th Parliament in its 3rd session on March 11, 1997 those contained reports ranged to the years of 1980 to 1991. See, Summary of the Proceedings of the Fifth Parliament, pp. 144-147.
82 While analysing the problems of delegated legislation concerned to LG in Canadian perspective, Reid Cooper deliberately asserts: “Recent interest in decentralizing government has resulted in increased support for local autonomy within administrative circles. Given democracy’s origins in the self-rule of cities, there are sound historic reasons for these renewed municipal governments. But advocates of decentralization seem to have overlooked certain legal problems that have been created by the current lack of constitutional status of for municipal governments. Being mere agents of delegated legislation municipal governments are more vulnerable to outside interference than even many purely administrative bodies. Hence, any serious effort to increase the responsibilities and authority of local governments must include a reform in the constitutional status of municipalities that would recognize that local governments should not be treated as mere agents of delegated legislation.” Reid Cooper, “Municipal Law, Delegated Legislation and Democracy.” Canadian Public Administration, Vol. 39, No. 3 (Fall-Autumn 1996).


85 Mahmudul Islam, Constitutional Law of Bangladesh, p. 284.


87 Ibid., p. 226.


90 By 1991 to 2001, the numbers of Paurashava were increased to 223 from 95, while the units of Upazila were raised to 507 from 489. However, there were steady growths in the number of UPS as well (from 4451 to 4484). Source: Statistical Yearbook of Bangladesh, 13th (1991) and 22nd (2001) ed. (Dhaka: BBS, 1993 & 2003).

91 Until 1998, prior to “The Upazila Parishad Act, 1998” (Act 24 of 1998), each of the statutes concerned to LG were involved with Ordinances, while the Parliament was not in session or in existence. In fact “The District Council Act, 1988” (Act 28 of 1988) was a ratified Ordinance, namely, “The Local Government Zila Parishad Ordinance, 1988” (Ord. of 1988).


94 Moudud Ahmed, Øevsjv‡j G KWU wbe©vwPZ miKv‡ii msKUÔ, pp. 77–78.

While analysing the Pakistani position Abunasar Shamsul Hoque has disclosed the same reality: ‘The legislature has no power to determine the structure of government Ministries or Divisions or to determine whether a Division should be under a Minister or not.’ Administrative Reform in Pakistan, p. 277.

While asserting such argument in Indian perspective I. P. Massey erroneously refers ‘India’ as ‘the only country where law relating to service matters of the civil servants is provided in the Constitution’. See, I. P. Massey, Administrative Law, p. 475.

However, as per Article 48(3) of Bangladesh Constitution the Rules of Business is to be framed by the President ‘in accordance with the advice of the Prime Minister’. Since, Article 55 of Bangladesh Constitution expressly asserts that ‘the Cabinet having the Prime Minister at its head’ is ‘collectively liable to Parliament’, then such exclusive executive rule-making in evading the Parliament assumes against the spirit of Constitution and beyond the norms of parliamentary form of government.

During 1947 to 1962, 28 reform commissions were formed, while in between 1973 to 2006, 11 major reform initiatives (out of 16) virtually were abandoned. See, Public Administration for the Twenty-first Century: Report by the Public Administration Reform Commission, Vol. 1, Annexure 1.1, (June 2000), Dhaka.

Such tendency is evident from the following report: The government has initiated to separate the judiciary, not following the guidelines set by the Supreme Court. In the name of separating the judiciary, the government finalised a rule by separating the two services, through which the government ultimately wants to divide the judiciary, but not to separate it. Prothom Alo, March 23, 2005 (Dhaka)


V. S. Deshpande, Judicial Review of Legislation, pp. 16-47; Also, Cecil T. Carr, Delegated Legislation, pp. 26–43.

