How Legislation is Drafted and Enacted in Bangladesh

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Abstract

The creation of laws is the most direct and powerful legislative tool available to governments to fulfill their political mandate. Not surprisingly, the drafting and enactment of legislation in many Commonwealth countries often follow the same general pattern as that established by the United Kingdom. Nevertheless, each country adds a sprinkling of local flavour and custom to its own practices. What follows is an overview of the legislative process in the People’s Republic of Bangladesh, highlighting the various distinct stages involved in the making of laws—such as developing policy, drafting legislation, presenting proposed laws to Parliament, final approval by the president, and publication in the Official Gazette. Comparisons are also made with the Canadian and United Kingdom legislative drafting experience where appropriate.

Introduction

In Bangladesh, the Parliament of the Republic is vested with the power to make both primary and secondary laws¹ by virtue of Article 65 of the Constitution.

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¹ Primary laws, also referred to as Acts or statutes, are the most formal expression of the will of the state. Proposed Acts originate as bills and are introduced into Parliament when initiating the primary law-making process. Secondary laws, also referred to as subordinate legislation, consist of rules, regulations, orders, by-laws, or other instruments having legislative effect.
Articles 80 and 82 of the Constitution lay down the basic provisions to follow.² Article 26 of the Constitution adds that all existing laws inconsistent with fundamental rights guaranteed by the Constitution shall be void to the extent of that inconsistency. Furthermore, Bangladesh is prohibited from making laws inconsistent with any of the provisions of the Constitution concerning fundamental rights, and any law so made will, to the extent of that inconsistency, become void. Article 7 of the Constitution proclaims the supremacy of the Constitution, declaring it to be the supreme law of the Republic, and clearly stating that if any other law is inconsistent with the Constitution, that other law shall, to the extent of the inconsistency, be void.³

Statutory law is made exclusively by Parliament. Most of the law is proposed, prepared, and processed by the executive.⁴ Cabinet is the real executive power, but in a parliamentary system of government such as that found in Bangladesh, Cabinet is also an integral part of the Parliament. All the members of Cabinet, except in very few instances, are members of Parliament and accountable to Parliament. Cabinet recommends a legislative initiative and arranges for a bill to be drafted by the professional drafters of the Ministry of Law, Justice and Parliamentary Affairs. Cabinet then approves the bill as a bill of the government ready for enactment.

To enact new primary legislation,⁵ the draft bill is presented to Parliament. Through debate and possible amendments, Parliament votes for the formal adoption of a bill. It is passed by Parliament when a majority of the members present vote in favour of it. The bill is then provided to the president for assent.

Legislative bills may be of three classes: ordinary bills, money bills, and expenditure bills. Ordinary bills do not require the prior recommendation of the president for introduction into Parliament. Money bills and bills involving

² Art. 80 and Art. 82 of the constitution read as follows:

80. (1) Every proposal in Parliament for making a law shall be made in the form of a Bill.
(2) When a Bill is passed by Parliament it shall be presented to the President for assent.
(3) The President, within fifteen days after a Bill is presented to him, shall assent to the Bill or, in the case of a Bill other than a Money Bill may return it to Parliament with a message requesting that the Bill or any particular provisions thereof be reconsidered and that any amendments specified by him in the message be considered; and if he fails so to do he shall be deemed to have assented to the Bill at the expiration of the period.
(4) If the President so returns the Bill, Parliament shall consider it together with the President's message, and if the Bill is again passed by Parliament with or without amendments by the votes of a majority of the total number of members of Parliament, it shall be presented to the President for his assent, whereupon the President shall assent to the Bill within the period of seven days after it has been presented to him, and if he fails to do so he shall be deemed to have assented to the Bill on the expiration of that period.
(5) When the President has assented or is deemed to have assented to a Bill passed by Parliament, it shall become law and shall be called an Act of Parliament.

82. No Money Bill, or any Bill which involves expenditure from public moneys, shall be introduced into Parliament except on the recommendation of the President:
Provided that no recommendation shall be required under this article for the moving of an amendment making provision for the reduction or abolition of any tax.’

³ The provisions concerning laws inconsistent with fundamental rights guaranteed by the Constitution are similar to those found in s 52 of the Constitution Act, 1982, for Canada.

⁴ For a discussion on private member’s bills, see below.

⁵ For the making of subordinate legislation, see below.
expenditure from public moneys require the prior recommendation of the president before tabling in Parliament. However, the president has no power or discretion in refusing to recommend the introduction of these types of bills into Parliament if advised by the prime minister to do so. It is, in reality, the recommendation of the government, and the president’s role is merely a mechanical formality.6

The Rules of Procedure of Parliament govern Bangladesh’s parliamentary procedure. They were initially adopted on 22 July 1974. Following several amendments, a new version of the Rules was published on 5 February 1992. Further revisions were made to the Rules, and Parliament adopted these changes on 10 June 1997. The current Rules incorporate all amendments made as of 1 October 1997. Chapter XIII of the Rules provides further guidance on the legislative process.7

Policy Development, Drafting, and Cabinet Approval

Although Bangla is the official state language of Bangladesh, English was the principal language of legislative drafting until 1987.8 Legislation that amends pre-1987 laws is prepared in both English and Bangla, but amendments to be incorporated into the English text are made in English. Other amending legislation and new laws are drafted in Bangla. Bills and other government documents are often provided in both Bangla and English. There are English language translations of laws drafted in Bangla and, for all intents and purposes, a bilingual system is recognized as a method for drafting and framing of laws. As in the case with the Constitution, if there is an inconsistency between the two language versions, the official Bangla one prevails.9

Many laws originally drafted and passed in English still need to be translated into Bangla. It is the responsibility of the Ministry of Law, Justice and Parliamentary Affairs to translate these laws,10 and for this purpose, translating officers are located at the Ministry. But additional staff are required to complete the task of fully translating all laws into Bangla.

Unlike the situation in Canada and the United Kingdom, where the planning of the government’s legislative agenda begins well in advance of the opening session of Parliament in which legislative proposals are to be tabled, there is no

6 The prior recommendation of the executive to table money bills is a common feature of Westminster-styled parliaments. A royal recommendation is required in Canada before introducing spending bills, and a ways and means motion is necessary before the introduction of bills to raise revenues through taxation.


8 Bangla was used as the language of legislation in 1980 and 1981 in respect of some laws but not all.

9 Although laws are to be drafted in Bangla, those having international implications may have an English-language version prepared to assist foreign readers. But it is not a legal requirement to produce an English-language version of these laws.

10 See sec 30, para. 7 of the Allocation of Business Among the Different Ministries and Divisions.
central planning for legislative proposals in Bangladesh. There is neither a legislative calendar nor co-ordination between the various ministries wishing to bring forward new bills. Bills are approved by Cabinet on an individual basis only, and there is no system in place to determine overall priorities. Bills are brought forward on a casual basis as and when found necessary, with the administrative/sponsoring ministry concerned initiating the process.11

Under Article 55(6) of the Constitution, the president makes rules for the allocation and transaction of the business of government. In this regard, several guiding documents are relied on. These include the Rules of Business, 1996 (revised up to August 2000), and the Allocation of Business Among the Different Ministries and Divisions (Schedule I to the Rules of Business, 1996). Under the Allocation of Business Among the Different Ministries and Divisions, specific subject areas are allocated to the appropriate ministries and divisions according to relevance. For example, civil law procedure and criminal law and criminal procedure are assigned to the Ministry of Law, Justice and Parliamentary Affairs, which is designated as the administrative ministry for these (and many other) matters.12

There is another instrument called the Secretariat Instructions, 1976 (Secretariat Instructions). This document has a long history dating back to 1899 when Lord Curzon was the governor general of British India. After the emergence of an independent Bangladesh in 1971, initiatives were undertaken to develop new Secretariat Instructions. Completed in 1976, a Bangla version of the Instructions was issued two years later.13 The Secretariat Instructions are made pursuant to Rule 4(10) of the Rules of Business, 1975.

The primary purpose of the Secretariat Instructions is to ensure uniformity and efficiency in the observance of administrative practices and procedures. The secretary, who is the senior civil servant within each ministry or division, is responsible for the observance of the Instructions. The preparation and maintenance of the Secretariat Instructions is the responsibility of the Cabinet Division. Secretariat Instructions are supplemental to both the Rules of Business, 1996, and the Allocation of Business Among the Different Ministries and Divisions. All business of government is to be conducted in accordance with both the Rules of Business, 1996, and the Secretariat Instructions.14

The same ministry in Bangladesh develops both the policy underlying a legislative proposal and the preliminary draft bill outline. According to the Secretariat Instructions, a ministry or division is responsible for the formulation of policies of the government within its jurisdiction and also for the execution and review of those policies. The Rules of Business, 1996, and Secretariat Instructions

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11 Nevertheless, discussions are currently taking place with government officials on proposals to have better legislative planning mechanisms in place including a structured legislative calendar.
12 For a short history of these two documents see http://banglapedia.search.com.bd/HT/R_0259.htm.
14 Ch. IV, Instruction 100 of the Secretariat Instructions.
also require that any legislative proposal shall be initiated at the administrative ministry to which the law or a subject matter is assigned. Senior ministerial officials, such as joint secretaries, generally prepare policy papers. Experts within the ministry or, in some instances, outside lawyers usually draft a preliminary bill. Inter-ministerial consultations are normally conducted after the bill is drafted, and legislative drafters from the Ministry of Law, Justice and Parliamentary Affairs are invited to attend these sessions to provide comments and suggestions on the draft bill. Thus, drafters play a key role in policy formulation at an early stage in the drafting process. Nevertheless, widespread public consultation is not generally the rule.

By Rule 16(i) of the Rules of Business, 1996, cases involving legislation, including the promulgation of ordinances,\(^\text{15}\) are to be brought before Cabinet for consideration.\(^\text{16}\) Furthermore, by Rule 4(ii) of the Rules of Business, 1996, no important policy decision shall be taken without Cabinet approval. Therefore, the administrative ministry will initiate the legislative process by preparing a summary to the Cabinet.\(^\text{17}\) Rule 19 of the Rules of Business, 1996, prescribes the format of the summary. The secretary of the ministry concerned transmits to the Cabinet secretary a concise and clear memorandum that gives the background and relevant facts, the points for discussion and the recommendations of the sponsoring minister. The summary shall be self-contained as far as possible and include as appendices such relevant papers as may be necessary for proper identification of the case. The number of copies of the summary to be supplied for Cabinet consideration will be specified by the Cabinet Division. In cases of proposals involving expenditure or abatement of revenue, the views of the Finance Division must also be obtained and recorded in the summary. Where a matter concerns more than one ministry or division, the summary must contain the recommendations of all ministries. At least four clear days are normally needed in advance of the Cabinet meeting for a summary to be placed on the agenda. No matter will generally be discussed unless the summary relating to it has been circulated.

The summary, which is usually one to three pages long, is strictly confidential. The preliminary draft bill generally accompanies the summary. The draft bill facilitates easier understanding of the summary by Cabinet.

As is also the case in both Canada and the United Kingdom, a Cabinet committee initially considers the proposal. This committee normally consists of about four ministers and is not a permanent body. Different committees are established depending on the nature of the matter under review. If the committee approves the proposal, it will prepare a report for full Cabinet consideration.\(^\text{18}\) If the entire Cabinet approves the proposal, this step is considered to constitute

\(^{15}\) For a discussion on ordinances, see below.
\(^{16}\) See also ch. V, Instruction 239 of the Secretariat Instructions.
\(^{17}\) A similar type of document is used when bringing a legislative proposal before Cabinet in Canada and the United Kingdom. In Canada, it is called a Memorandum to Cabinet, and in the United Kingdom, it is simply referred to as a memorandum. For a critical assessment of the former Memorandum to Cabinet procedure in Canada, see Gavin Murphy, ‘Political Control over Policy Development’, 24 Stat L R 157 (2003).
\(^{18}\) This is also the case in both Canada and the United Kingdom.
Cabinet policy approval. The law secretary is asked to attend all Cabinet meetings where proposed legislation is discussed.

After approval of the proposal, the Cabinet secretary prepares a brief record of the discussions and records the decision taken. This file is then submitted to the prime minister for ultimate approval, and once approval is obtained, it is then circulated to Cabinet ministers. Relevant extracts of the decisions are provided to the sponsoring minister and ministerial secretary for necessary action. At this point, the administrative/sponsoring ministry, also called the ministry-in-charge, is authorized to go ahead with the preparation of a final draft bill for Cabinet consideration.

According to rule 14(1)(i) of the Rules of Business, 1996, the Ministry of Law, Justice and Parliamentary Affairs shall be consulted on all proposals for legislation. Furthermore, under section 30, paragraph 2 of the Allocation of Business Among the Different Ministries and Divisions, the business of the Ministry of Law, Justice and Parliamentary Affairs includes the drafting, scrutiny and examination of bills, ordinances, and other statutory orders, rules, regulations, by-laws, resolutions, and notifications.

After the Cabinet approves an initial legislative proposal, the administrative/sponsoring ministry will send the file to the Ministry of Law, Justice and Parliamentary Affairs for preparation of a draft bill or for vetting of the preliminary draft bill already prepared and approved in principle by Cabinet. The Ministry of Law, Justice and Parliamentary Affairs has a Legislative Drafting Wing (the Drafting Wing) for that purpose. It was estimated in 2004 that each year the Drafting Wing prepares about 40–50 new bills and 20–30 amending bills. It also drafts about 1000 subordinate statutory instruments per annum, as well as 3000 notifications and other orders. Nevertheless, it is further estimated that in only about 10 per cent of all cases does the Ministry draft bills with no preliminary version of the text already developed by the ministry-in-charge.

In accordance with Instructions 239 and 240 of the Secretariat Instructions, no legislative bill will ordinarily be referred to the Drafting Wing, nor will the Drafting Wing undertake the preparation of a bill, unless Cabinet has approved the proposal. Every file remitted to the Drafting Wing for the preparation of a legislative proposal will be accompanied by all the background papers connected with the proposal, in particular the summary to the Cabinet. A separate memorandum of instructions should indicate with sufficient precision the contents of the proposal as approved by Cabinet and set out clearly in the form of a series of propositions all matters of substance that are to be included in the draft legislation. As the ministry-in-charge develops the preliminary draft of the bill

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19 For further details, see ch. IV, Rule 21 of the Rules of Business, 1996 entitled 'Procedure regarding meetings of the Cabinet.'
20 The Drafting Wing was established on 11 October 2000.
21 Nevertheless, in exceptional cases, the Ministry of Law, Justice and Parliamentary Affairs could be involved even before initial Cabinet approval.
22 In most cases, the administrative/sponsoring ministry provides the Drafting Wing with the Cabinet summary and preliminary draft law but not the separate memorandum as required by Instruction 240 of the Secretariat Instructions.
in the majority of cases, it does not prepare drafting instructions for the Drafting Wing. But the Drafting Wing may request additional information if it is needed to obtain a better understanding of the purpose and content of the proposed legislation.

The administrative/sponsoring ministries do not generally have legal services units, although some might have one or two jurists on staff. Thus, the drafters are often the first jurists to see the bill, and they are expected to raise all the legal issues associated with it. When the Drafting Wing receives a legislative proposal, it will examine the file to ensure that it contains no measures that are ultra vires of the Constitution or inconsistent with the fundamental principles of state policy. If no problems are identified, the Drafting Wing will advise the administrative/sponsoring ministry accordingly. If there are issues needing reconsideration, the Drafting Wing will return the proposal to the ministry or division concerned and provide advice and recommendations for appropriate modifications. Once revisions are made to the proposal, the matter is then returned to the Drafting Wing for redrafting.

The Drafting Wing, a self-contained subdivision of the Ministry of Law, Justice and Parliamentary Affairs, is a centralized and specialized drafting service consisting of legislative drafting officials who are members of the civil service. These officials are designated as assistant secretaries, senior assistant secretaries, deputy secretaries, and joint secretaries. An additional secretary heads the Drafting Wing. Drafters need to be capable of drafting in both Bangla and English, and they are responsible for the overall quality of their final texts, both from a legal and linguistic perspective.

The duty of the drafting officials at the Ministry of Law, Justice and Parliamentary Affairs is to translate the legislative proposal into an acceptable draft bill through the application of legislative language. Officials of the Ministry work in teams for that purpose. A team generally includes three or four drafters with each group consisting of both senior and junior drafters. Senior drafters supervise the work of junior drafters, and assignment of files is not based on expertise or specialization. Drafters require legislative drafting skills but are seldom specialists in any particular area of the law.

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23 Legislation is prepared by drafting specialists in both Canada and the United Kingdom who work from drafting instructions developed by the sponsoring ministry. These instructions are an annex to the Memorandum to Cabinet in Canada, but it is not the practice to include them in the Cabinet memorandum in the United Kingdom. Drafting instructions establish the framework within which the drafters will work and provide clear guidance for writing the bill. Drafting instructions should reflect the essential policy decisions and provide sufficient details to initiate drafting. They should be general enough to allow flexibility in working out minor policy questions in the drafting process but not so broad as to leave the policy vaguely defined or without any clear indication of how its objectives are to be achieved.

24 The fundamental principles of state policy are contained in part II of the Constitution.

25 Ch. V, Instruction 241 of the Secretariat Instructions.

26 There are also centralized and specialized drafting services in Canada and the United Kingdom.

27 This procedure is also followed at the Parliamentary Counsel Office in England.

28 This is also the case in Canada and the United Kingdom.
In doing their work, drafters from the Drafting Wing often hold consultations, as and when necessary, with officials from the administrative/sponsoring ministry or with outside experts and consultants who are learned in the subject matter of the bill. The attorney general’s office may also be asked to provide expert legal advice on certain subjects if there is any doubt about a constitutional or legal issue. The Drafting Wing can also—and does—call upon the Law Commission of Bangladesh to assist in drafting specific bills, such as those relating to admiralty law.

After the text has been finalized by the Drafting Wing, it is forwarded to the Ministry of Law, Justice and Parliamentary Affair’s secretary for approval. Once approval has been given to the draft bill, it is sent to both the law minister and state minister of law for preliminary political support.30

The draft bill is then sent back to the administrative/sponsoring ministry, the ministry-in-charge of the bill. The ministry again examines the bill to satisfy itself that the bill correctly reflects both the intentions of the ministry and the instructions from Cabinet. After that, the minister-in-charge approves the bill as drafted. In cases of disagreement between the Drafting Wing and the administrative/sponsoring ministry over the bill’s substantive contents, the latter’s views would generally prevail. But the Drafting Wing would have the final say on legislative, linguistic, and drafting points.

When an acceptable version of the bill is achieved, it is forwarded to Cabinet for consideration as an official bill of the government. Once Cabinet gives the bill its final endorsement, the administrative/sponsoring ministry arranges with the Parliament Secretariat to commence the parliamentary phase.

There is also a policy development function at the Ministry of Law, Justice and Parliamentary Affairs when it comes to drafting laws relating to the administration of justice. Policy was traditionally developed as the bill was being prepared, and issues were discussed and resolved amongst drafters during the drafting process. If a particular matter required further elaboration, it was referred to the Minister for attention. But recent changes have seen the creation of a distinct policy development unit within the Ministry. This unit, headed by the Ministry’s secretary, will develop the policy framework of a proposed bill. Once a satisfactory policy outline has been attained, the secretary will forward it to the Drafting Wing to help provide guidance in the preparation of the bill.

There is no separate provision in the Constitution or the Rules of Procedure of Parliament regarding the amendment of a law. Therefore, when amending or repealing any existing legislation, the same general procedure is followed as that for making a new law.

29 No ministry is permitted to consult the attorney general except through the Ministry of Law, Justice and Parliamentary Affairs. In the case of any disagreement between the Ministry and the attorney general, the Ministry is authorized to make the final decision. See in this regard ch. II, Rule 14 of the Rules of Business, 1996.

30 The state minister of law, who is a member of Parliament, assists the law minister as required.

31 But a bill may also be referred back to the Drafting Wing for further revisions.
Parliament’s role

Parliamentary democracy is not new to Bangladesh, and today’s Parliament (the Jatiya Sangsad) is rooted in the British parliamentary model, although it is a unicameral political structure. The Legislative Council of Bengal, the forerunner of the current Parliament, was established in 1861 when only a few jurisdictions outside of Europe and North America had created similar institutions.32

One of the essential functions of Parliament is to debate and enact legislation. The legislative process in Bangladesh comprises three distinct stages: deliberative, parliamentary, and administrative. The parliamentary stages are often referred to as first, second, and third readings—meaning introduction, consideration, and passing, respectively33—although the Rules of Procedure of Parliament do not explicitly refer to expressions such as readings.

The business of the House is classified into two categories: government business and private member’s business. According to Rules 24(2) and (3) of the Rules of Procedure of Parliament, government business consists of bills, the budget, resolutions, amendments, and other motions introduced or initiated by a minister. Private member’s business comprises bills, resolutions, amendments, and other motions introduced or initiated by private members.

Government bills

As in Canada and the United Kingdom, first reading is only a formal procedure by which the bill is introduced into the House and its title announced.34 Only a minister may introduce a government bill in Parliament. Seven days’ written notice to the secretary of Parliament must pass before a motion for leave to introduce a bill can normally be made. The speaker of the House may, if sufficient reasons are provided, suspend this rule and allow the motion to be made on shorter notice.35 The notice is accompanied by two copies of the draft bill, together with a document referred to as a Statement of Objects and Reasons and Notes on Clauses for the proposed new statute. This document is prepared by the administrative/sponsoring ministry of the proposed bill in consultation with the Ministry of Law, Justice and Parliamentary Affairs where necessary.

32 General information on Parliament can be found at http://www.parliamentofbangladesh.org/indexeng.html.
34 Bills can contain both a short and long title. The long title sets out the purpose of the bill and must accurately reflect its content. The short title is used for citation purposes and does not cover all aspects of the bill. The first clause of a bill normally contains the short title. See in this regard, for example, an Act made to establish the secretariat of Parliament and to regulate the recruitment and condition of service of its officers and employees for the purpose of carrying out the provision[s] of article 79 of the Constitution of the People’s Republic of Bangladesh. Section 1 says that this statute may be referred to as the Parliament Secretariat Act, 1994 (Act VIII of 1994). Amending Acts do not generally have short titles.
The text provides background details as may be necessary to help explain the substance and origin of the bill.\textsuperscript{36}

If the bill is one that requires the recommendation of the president before introduction into Parliament, the notice shall also contain a certificate by the minister confirming that the president has recommended the bill. The motion for leave to introduce the bill shall be entered in the Orders of the Day for a day meant for government business. Orders of the Day is a formal listing of business for the day prepared by the secretary of Parliament after approval by the speaker. A copy is made available for the use of every member.\textsuperscript{37}

When the item is called, the minister then moves for leave to introduce the bill. A member may object to the initial introduction of a bill, but this privilege is seldom used.\textsuperscript{38} Following the bill’s introduction into Parliament, it is published in the Official Gazette.\textsuperscript{39} The secretary of the Parliament normally arranges for the bill’s publication as early as possible, together with the Statement of Objects and Reasons and, if applicable, a financial memorandum.

At the second reading stage, the member-in-charge of the bill may propose that it be taken up for consideration, or referred to a standing committee or a select committee, or be circulated for eliciting public opinion.\textsuperscript{40} When a motion is carried for circulation of a bill for public opinion, Instruction 248 of the Secretariat Instructions provides that the administrative ministry or division will supply Parliament, on request, with a list of the individuals, associations and public bodies whose comments should be sought.

This is the time when the lengthy and often emotionally charged phase of debate can take place. The administrative ministry or division will develop the strategy to follow in shepherding a government bill through Parliament and prepare a brief for the minister-in-charge to assist in explaining the substance and origin of the clauses of the bill during parliamentary debate. Only the principles or the general provisions of the bill are permitted to be debated.\textsuperscript{41} Details of the bill are not discussed beyond what is necessary to explain its principles. No amendments to the bill may be made at this point.

It is a constitutional obligation for Parliament to appoint standing committees composed of its members to scrutinize and monitor the operations of government. Assignment of members to different committees of Parliament is the responsibility of the political parties themselves. But it should be noted that there is no provision for automatic referral of any business, including consideration of a bill, to a parliamentary committee. It is only recently that bills have

\textsuperscript{36} See ch. V, Instruction 245 of the Secretariat Instructions.
\textsuperscript{37} For further details on Orders of the Day, see ch. VI, Rule 32 of the Rules of Procedure of Parliament.
\textsuperscript{39} The Gazette is the Gazette of the People’s Republic of Bangladesh. See Rule 2(1)(i) of the Rules of Procedure of Parliament. Furthermore, in accordance with s 3, para. 37a of the General Clauses Act, 1897 (Act X of 1897), ‘Official Gazette’ or ‘Gazette’ shall mean the Bangladesh Gazette.
\textsuperscript{40} Standing committees are permanent committees, whereas select committees are temporary committees appointed for a specific purpose only.
\textsuperscript{41} As is the case in Canada and the United Kingdom.
been referred to committees on a systematic basis. In fact, it was not uncommon for bills to receive second and third reading all on the same day.42

Article 76(1) of the Constitution says that there must be a public accounts committee, a committee of privileges, and other standing committees as the Rules of Procedure of Parliament require. In addition to these committees, Parliament shall appoint other standing committees that may examine draft bills and legislative proposals or review the enforcement of laws and propose measures for enforcement. A committee may also look into any matter of public importance that is referred to it by Parliament and investigate the activities or the administration of any ministry. In this regard, a committee may call for the production of relevant information and require an authorized representative of a ministry to answer either written or oral questions. Nevertheless, the government may refuse to produce a document on the ground that its disclosure would be prejudicial to the safety or interest of the state.

Chapter XXVII of the Rules of Procedure of Parliament also makes provision for the establishment of certain committees. These are the business advisory committee, committee on private member’s bills and resolutions, select committees on bills, committee on petitions, standing committee on public accounts, committee on estimates, committee on public undertakings, standing committee on privileges, committee on government assurances, standing committees on certain other subjects, house committee, library committee, standing committee on Rules of Procedure, and other unspecified special committees.

The members of a committee shall be appointed by Parliament on a motion made by it, but no member will be appointed to a committee who has a personal, financial, or direct interest in any matter that may be referred to that committee. A recent change in structure now has committees headed by members of Parliament who are not ministers, and the chair is normally elected by the committee from among its members. Both government and opposition members may be appointed to a committee. The member-in-charge of a bill is ex-officio, a member of the committee considering the bill. The quorum to constitute a valid sitting of the committee shall be one-third of the total number of members of the committee. The sittings of a committee are held in camera.43

Financial statements (commonly referred to as the budget) are laid before Parliament annually to highlight estimated receipts and expenditures of the government.44 According to Rule 111(3) of the Rules of Procedure of Parliament, the budget is not referred to any committee. General debate on the budget is carried out in a regular sitting of the House presided over by the speaker. The Ministry of Finance prepares the budget, and other ministries, divisions, or departments45

44 See Art. 87 of the Constitution and ch. V, Instruction 257 of the Secretariat Instructions.
45 Departments are distinct organizations. They are subordinate to a ministry or division. An example of a department is the department of archeology under the Ministry of Cultural Affairs.
are required to furnish the necessary materials on which the estimates are to be based.  

When a bill is introduced into the Parliament and referred to a committee for further assessment, officials of the Drafting Wing can attend committee meetings to render technical assistance as and when required.  

After a bill has been referred to a standing committee or select committee for closer assessment, the committee returns the bill to the House with a report, which may or may not contain proposed amendments. The member-in-charge may then move that the bill as reported upon be taken up for consideration.  

At this stage, debate on the motion is limited to consideration of the committee report or any alternatives consistent with the principles of the bill. Furthermore, any member may propose additional amendments to the bill. Copies of the committee report are made available to the members of the House.  

When a motion that the bill be taken into consideration has been carried, the speaker submits the bill, either clause-by-clause or as a whole, to the House for a vote.  

If no amendments are proposed, the member may immediately move that the bill be passed. The debate on a motion that it be passed must be limited to the submission of arguments either in support of the bill or for its rejection.  

Amendments are made on three days’ notice, and any other member may object if this procedure is not followed. Nevertheless, the speaker has the power to overrule any objection and allow the amendment to be moved on shorter notice. An amendment must not be vague, meaningless, or frivolous. An amendment will not be admissible if it is dependent on an amendment that has already been rejected by the House. An amendment must be relevant to, and within the scope of, the motion to which it relates. Furthermore, an amendment cannot be moved if it merely has the effect of a negative vote. Where any amendment proposed in a bill could affect the principle of the bill or the expenditure of the government, the minister-in-charge will not commit to acceptance before obtaining the approval of Cabinet.  

If the government puts forward amendments to a bill already before Parliament, the administrative ministry or division drafts the amendments in consultation with the Ministry of Law, Justice and Parliamentary Affairs.  

Where any private member proposes an amendment to a bill already in Parliament, copies of the proposed amendments are forwarded to the administrative ministry or division, as well as to the Ministry of Law, Justice and

46 See ch. V, Instruction 259 of the Secretariat Instructions.
47 Alternatively, the member may move that the bill be referred to the committee for further study.
49 See ch. V, Instruction 247(4) of the Secretariat Instructions.
50 Ch. V, Instruction 247(1) of the Secretariat Instructions reads:
247. Amendments.—(1) Where, after a Bill has been introduced in the Parliament, the Government contemplates any amendment therein the administrative Ministry/Division concerned will, in consultation with the Law Division, [now called the Ministry of Law, Justice and Parliamentary Affairs] prepare a draft of the amendment contemplated and cause necessary notices to the Parliament to be given after obtaining, where required, the recommendation of the President in the manner laid down in the Rules of Procedure of the Parliament.’
Parliamentary Affairs. After review, the administrative ministry or division will forward its comments, together with any received from the Ministry of Law, Justice and Parliamentary Affairs, to the minister-in-charge. If any amendment is proposed by a private member on the floor of the House, the minister-in-charge will ordinarily ask for a postponement of proceedings to a later date so that this procedure can be followed.

The third reading stage is generally short. The member-in-charge makes a motion that the bill be passed as presented, and the speaker usually puts the motion to a vote without allowing any further debate. A bill is passed by a majority of the members present and voting, subject to a quorum of the session. The member-in-charge of the bill may, with leave, withdraw the bill at any time before it is passed. Once the House passes the bill, the speaker signs it in triPLICATE and transmits it to the president for assent. After assent by the president, the secretary of the Parliament publishes the bill as an Act of Parliament in the Official Gazette. One original signed copy of the bill is preserved for verification and record purposes and shall not be allowed to pass out of the custody of the House without the permission of the speaker.

Private member’s bills

Similar to the Canadian and British parliamentary systems, private member’s bills are legislative bills proposed not by government ministers but by private members of Parliament, who may belong to either the government or opposition benches. The precedence given to private member’s bills is determined by a ballot system held in accordance with the procedure laid down by the Rules of Procedure of Parliament, subject to the authority of the speaker to make minor changes in the procedure from time to time.51

Members may themselves prepare their private bills, but they can also seek the assistance of the Parliament Secretariat if required. When a private member wishes to introduce a bill into Parliament, the member must give the secretary of Parliament 15 days’ written notice of the desire to move for leave to introduce the bill. The notice must include three copies of the bill, along with an explanatory Statement of Objects and Reasons. No arguments are to be provided at this point. If the bill requires the prior recommendation of the president, this must be included. When the bill involves the expenditure of public money, a financial memorandum must also be attached.

A copy of the bill and the Statement of Objects and Reasons are forwarded by the Parliament Secretariat to the administrative ministry or division concerned with the subject matter of the bill. Another copy is provided to the Ministry of Law, Justice and Parliamentary Affairs. The administrative ministry or division will examine the bill in consultation with the Ministry of Law, Justice and Parliamentary Affairs, which will advise where the bill requires the previous

51 Ch. VI, Rule 27(1) of the Rules of Procedure of Parliament.
recommendation of the president or where it contravenes any provisions of the Constitution. By Instruction 246 of the Secretariat Instructions, the administrative ministry or division examines the bill and submits its comments, together with any received from the Ministry of Law, Justice and Parliamentary Affairs, to the minister-in-charge. The latter then decides on the policy to be adopted unless special reasons exist for bringing the matter before Cabinet.

Motions for leave to introduce private member’s bills are set down in the Orders of the Day for a day set aside for private members’ business. Once leave is granted, the member, when called, formally introduces the bill. On the motion being carried, the bill stands introduced. After a private member’s bill has been introduced into the House, all subsequent procedure is similar to that followed for government bills. Nevertheless, the House seldom considers private member’s bills.52

**President’s Role**

Assent to an ordinary bill or a finance bill is governed by Article 80 of the Constitution.53 The president must assent to a bill passed by Parliament within 15 days of presentation, or the bill is deemed to be automatically assented to after expiration of that period. Once a bill receives assent, or is deemed to be assented to, it becomes law and is called an Act of Parliament. Alternatively, the president may return the bill to Parliament (provided it is not a money bill) with a message requesting reconsideration of amendments as may be specified in the message.54 Parliament will then reconsider the bill and may pass it again with or without amendments. But, in this case, the passage of the bill will require the support of a majority of the total number of members of Parliament.55 The reconsidered bill will then be presented once again to the president. This time, however, assent shall be given within seven days, otherwise the bill is deemed to have received assent.56

A money bill passed by Parliament and presented to the president for assent requires a certificate under the hand of the speaker confirming that it is a money bill. This procedure probably acts as a reminder to the president that a money bill cannot be returned to Parliament for reconsideration, unlike an ordinary bill.


53 A constitutional amendment bill is subject to Art. 142 of the Constitution. As with money bills, the president cannot refer a constitutional amendment bill back to Parliament for reconsideration.

54 See Art. 80(3) of the Constitution.

55 Following a constitutional amendment in 2004, the statutory number of members of Parliament is 345. See s 3, Constitution (Fourteenth Amendment) Act, 2004 (Act XIV of 2004). A total of 45 seats of the enlarged Parliament are reserved for women.

56 When returning a bill for reconsideration under Art. 80(3) of the Constitution, the president exercises power independently. The constitutional question has never been raised whether the president can actually return a bill to Parliament without the authority of the prime minister. Under Art. 48(3) of the Constitution, the president can act only upon the advice of the prime minister except in two instances. The president can unilaterally appoint the prime minister and chief justice.
The Constitution also allows for the proclamation of emergency measures and the promulgation of ordinances by the president. Article 93 of the Constitution empowers the president to promulgate an ordinance while Parliament is not in session, and ordinances shall have immediate force of law as an Act of Parliament.57

An ordinance is a temporary legislative arrangement. The process is administrative in nature and normally initiated by the ministry concerned. A draft ordinance is prepared with the assistance of drafting officials from the Ministry of Law, Justice and Parliamentary Affairs. The draft ordinance is then placed before Cabinet for consideration and approval. If approved, the Ministry of Law, Justice and Parliamentary Affairs then seeks agreement from the president and publishes the ordinance in the Official Gazette. This provision is essentially no different from a statute, except that the instrument bears the word ordinance in place of Act in its title.58 The Ministry maintains custody of the signed ordinance in accordance with Instruction 249 of the Secretariat Instructions. The ordinance must not be removed from the Ministry without the law secretary’s permission.

The president cannot make and promulgate an ordinance that could not lawfully have been made under the Constitution by an Act of Parliament. Nor can the president make and promulgate an ordinance that alters or repeals any provision of the Constitution or introduce one that continues in force any provision of an ordinance previously made.

Ordinances must be laid before the House once a new session of Parliament begins, and they cease to have effect no later than 30 days after they are laid before Parliament. If the government decides to retain the ordinance, the normal practice is for the Ministry of Law, Justice and Parliamentary Affairs to quickly

57 Art. 93 of the Constitution reads as follows:
93. (1) At any time when Parliament stands dissolved or is not in session, if the President is satisfied that circumstances exist which render immediate action necessary, he may make and promulgate such Ordinances (as the circumstances) appear to him to require, and any Ordinance so made shall, as from its promulgation have the like force of law as an Act of Parliament:
Provided that no Ordinance under this clause shall make any provision-
(i) which could not lawfully be made under this Constitution by Act of Parliament;
(ii) for altering or repealing any provision of this Constitution; or
(iii) continuing in force any provision of an Ordinance previously made.
(2) An Ordinance made under clause (1) shall be laid before Parliament at its first meeting following the promulgation of the Ordinance and shall, unless it is earlier repealed, cease to have effect at the expiration of thirty days after it is so laid or, if a resolution disapproving of the Ordinance is passed by Parliament before such expiration, upon the passing of the resolution.
(3) At any time when Parliament stands dissolved the President may, if he is satisfied that circumstances exist which render such action necessary, make and promulgate an Ordinance authorising expenditure from the Consolidated Fund, whether the expenditure is charged by the Constitution upon that fund or not, and any Ordinance so made shall, as from its promulgation, have the like force of law as an Act of Parliament.
(4) Every Ordinance promulgated under clause (3) shall be laid before Parliament as soon as may be, and the provisions of articles 87 and 90 shall, with necessary adaptations, be complied with in respect thereof within thirty days of the reconstitution of Parliament.

58 See, for example, the Bangladesh Institute of Nuclear Agriculture (Amendment) Ordinance, 1995 (Ordinance XI of 1995) [spent].
prepare a parliamentary bill to replace the ordinance. The bill expressly repeals the ordinance with actions under the ordinance given savings and its contents incorporated into the new bill.

Parliament also has the power under Article 93(2) of the Constitution and Rule 144 of the Rules of Procedure of Parliament to disapprove an ordinance by resolution of the House. After an ordinance has been laid before the House, any member may move a resolution for disapproval after giving three clear days’ written notice to the secretary of Parliament. If more than one resolution is received in respect of the same ordinance, the resolutions are taken up in the order in which the notices were received. Where the House passes one resolution, all other resolutions lapse. No amendments are permitted to be moved to any such resolution. A resolution disapproving an ordinance is to be confined to disapproval of the ordinance as a whole and not to any specific clause or schedule to the ordinance.\(^5^9\)

**Subordinate Legislation**

As in Canada and the United Kingdom, Parliament cannot possibly deal with every single legislative matter. Consequently, it is regular practice for an Act to include provisions for delegating the power to make subordinate legislation to a third party, such as a minister or an administrative agency. The most common form of subordinate legislation in Bangladesh are rules or regulations. These instruments are a type of law and, like Acts themselves, have binding legal effect. Acts that authorize the making of subordinate legislation are called enabling Acts. Subordinate legislation must stay within the scope of the authority granted by the enabling Act and must not conflict with the Act or restrict or extend its reach.

As noted earlier, according to Article 65 of the Constitution, the legislative power of Bangladesh is vested in Parliament.\(^6^0\) Parliament has the authority to make both primary and subordinate legislation. But Article 65(1) also empowers Parliament to delegate to any person or authority, by Act of Parliament, the power to make orders, rules, regulations, by-laws, and other instruments having legislative effect. The normal practice is that Parliament itself never makes rules, regulations, or orders. Parliament, by Act, delegates that power.

There are basically three main types of subordinate legislation in Bangladesh: rules, regulations, and other orders. In essence, there is not much difference between them. Subordinate legislation made by the government or government

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60 Art. 65(1) of the Constitution reads as follows:

‘65.(1)There shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which, subject to the provisions of this Constitution, shall be vested the legislative powers of the Republic:

Provided that nothing in this clause shall prevent Parliament from delegating to any person or authority, by Act of Parliament, power to make orders, rules, regulations, by-laws or other instruments having legislative effect’.
ministries is referred to as rules whereas that made by statutory autonomous authorities created by law is called regulations. Other orders would include, for example, notifications drafted by administrative bodies and by-laws, which are generally made by a created authority such as a local government. But regulations with a capital R—for example, the Chittagong Hill Tracts Regulations—are similar to Acts of Parliament. They can only be amended by Parliament.

Enabling Acts may contain provisions entitled ‘Framing of Rules’ or language similar to this. This stipulation allows a relevant authority, charged with the responsibility of administering an Act, to frame rules and regulations not inconsistent with the provisions of the Act for the purposes of carrying out the objects of the Act. The civil service remains one of the prime sources of subordinate legislation.

The concerned department or other authority begins the process of making rules, regulations, or orders by preparing draft subordinate legislation on its own initiative and effort. The draft is then sent to the ministry having control over the department or authority for preliminary policy approval. If the ministry approves the draft at the level of the minister, it is sent to the Ministry of Law, Justice and Parliamentary Affairs for further review. Legislative drafters at the Ministry will then examine and give a correct legislative shape and language to the draft rules or regulations. Care is taken during this exercise to ensure that the rules or regulations are within the limits of the Act and that the draft is not inconsistent with the provisions of the Act.

The making of rules and regulations is a painstakingly slow and complex process that often consumes extraordinarily long periods. The Drafting Wing’s primary source of guidance is the enabling Act itself. A Drafting Wing examination is essentially a case-by-case review to determine whether the instrument is properly authorized and in conformity with human rights provisions. Officials of the administrative/sponsoring ministry or department are frequently consulted by the Drafting Wing when finalizing the text. Some laws also provide for previous publication of draft subordinate legislation, thereby giving various interested groups and individuals an opportunity to review and comment on a proposal within a specified time. Any comments received must be considered before finalizing the draft.

The finalized draft is then examined and approved by the concerned ministry or department. Once an acceptable version is achieved, the rules or regulations are published in the Official Gazette. There is currently no legislative oversight to the making of subordinate legislation in the Bangladesh law-making process. But there have been recent calls for some type of effective control.

61 See, for example, s 21 of the Parliament Secretariat Act, 1994, entitled ‘Framing of Rules’.
62 ‘Bureaucratic rule-making is, however, not a peculiar Bangladeshi phenomenon; it is an essential feature of the modern state. In Britain, for example, 79% of policy bills coming forward in parliament make substantial provisions for delegated secondary legislation through statutory instruments’. See Nizam Ahmed, The Parliament of Bangladesh (Hampshire: Ashgate Publishing, 2002) at p. 87.
63 Prepublication of most subordinate legislation is also a fundamental procedural step in Canada.