

✓ PHYSICAL PLANNING LEGISLATION IN BANGLADESH

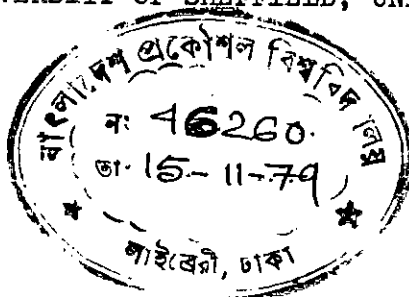
✓ A Study of Proper Legislative Needs

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MASTER'S THESIS

Submitted to

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✓ JANUARY, 1979



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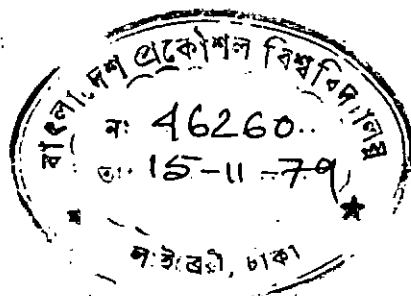
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A B S T R A C T

The research has been concentrated on the laws affecting physical planning in the country. The main statutes studied include:

- ✓ 1. The Bengal Municipal Act, 1932 (Repealed)
- ✓ 2. The East Bengal Building Construction Act, 1952
- ✓ 3. The Town Improvement Act, 1953 (including its amendment in 1958)
4. The Chittagong Development Authority Ordinance, 1959
- ✓ 5. The Municipal Administration Ordinance, 1960 (repealed)
- ✓ 6. The Khulna Development Authority Ordinance, 1961
- ✓ 7. The Rajshahi Town Development Authority Ordinance, 1976
- ✓ 8. The Pourashava Ordinance, 1977 (including its amendment in 1978)

The study of the above statutes has revealed that there are several instances of overlapping, conflict, contradiction and ambiguity in the provisions of the individual acts and also between the provisions of the different acts. This encourages a lack of co-ordination among the agencies created under the statutes.

The Master Plans for Dacca and Chittagong establish strict use zones. Attempts to enforce these zones rigidly have resulted in a large number of unauthorised development, especially in view of the changing character of urbanization.

The requirements under various statutes for planning or building permissions include even the smallest types of construction which may have little planning importance. It is not surprising to find that many structures are in violation of the rules and that unplanned developments are frequent in the principal towns of the country.

There is also a commendable administrative confusion among the agencies created to handle planning and building operations. Responsibility for approving building applications overlaps among several agencies. Many of the problems are due to poor conceptualisation and draftsmanship in the writing of pertinent laws.

CHAPTER - 1

INTRODUCTION

1.1 ✓ What is Planning ?

"Planning is an organised, disciplined or constitutional system of doing something; it is a programme or design of a proposed work".¹

"Planning is an arrangement of doing or using something considered in advance".²

The concept of planning includes the administrative organizations as well as their programmes, roles and people. The present trend of urbanization and growth of cities and towns suggest that if we cannot control or administer the expansion in a rational way, then it may cause serious problems in future. Town or physical planning can be a technique for providing such control on administration.

The principal purpose of town planning is to study the defects, mistakes or weaknesses in the development of towns and to attempt to gradually eliminate them. It attempts to ensure the best use of man-made and natural resources in order to improve the qualities of life in urban areas. Town planning generally focusses transport, land use, buildings, roads and communications, tanks, parks, open spaces and other locational considerations, although it recognises that there are important social and economic factors as well. The preparation of plans and their effective implementation are both important techniques to achieve these goals.

1.2 ✓ What is law ?

Law is a process which attempts to regulate the human behaviour and actions in a society both by establishing

1. Oxford English Dictionary.
2. Advanced Learner's Dictionary of Current English: by Hornby, Gatenby, Wakefield.

procedures for resolving conflicts between citizens and their Government. It is designed to attain an orderly and disciplined society both through establishment of procedures by resolving conflicts and by adopting and enforcing social rules of behaviour.

1.3 ✓ What is planning law ?

Planning law relates to the statutes or regulations which provide for the resolution of conflicts or the establishment of social norms connected with physical improvements. Such laws give legal backing to the decisions of Government or local or development agencies which effect the improvement of urban life. The definition, therefore, includes many laws besides those traditionally thought of as planning law.

✓ 1.4 ✓ Why Planning law ?

Planning must clearly define the extent and content of the rights of the Government and of the people. Thus legislative measures can help to frame policies for best use of land and its control.¹

Law should also aim at a clear definition of the responsibilities and functions of various Governmental departments and their respective powers.

In defining the respective rights of the private citizens and Government departments, planning law is important in a democracy, even in a non-democratic society. It provides an objective standard of the powers, limits of powers and duties of the Government agencies which should encourage the evolution of Government of laws rather than of men.²

The rules and procedures established by planning laws affect the rights of others, regulate the interests of

1. Prof. James, John R: Some Aspects of Town and Country Planning in Bangladesh (1973), P. 19, UDD, Govt. of Bangladesh.

2. Discussion with Mr. D. L. Willcox, UN Consultant on Urban Law and Administration at the Urban Development Directorate.

individuals and institutions. The decisions are made by the executive, but the legal process followed must be that process authorised by the legislature.

Most laws which seek an improvement in urban life provide a framework in which decisions are made. Most traditional planning statutes require the preparation of some type of development plan and provide for its approval and implementation. The usual type of town planning cannot be enforced unless there are development controls. These controls need some kind of a plan to give them direction: that is, a development plan. A statutory basis is required to make it effective. This basis is the sanction of the parliament or the assent of the sovereign. So, a planning law is a precondition for the preparation of an effective plan. The law works as a safeguard for the interests of the community.

There are, however, a number of statutes which authorises the exercises of powers which affect urban life but which do not require planning as a precondition as an exercise. Most of the statutes considered in this paper fall under that category. Where such legal powers exist (power to affect urban life) planning statutes which subject the exercise of such powers to conformity with plan can provide a form of co-ordination.

1.5 What are the problems of physical planning in Bangladesh ?

A mention of some important physical problems of our country will indicate the need for adequate legislation for bringing about improvements. In most urban areas Bangladesh faces acute problems of insanitary conditions, overcrowding, congestion, lack of space, of ventilation, or parks, of recreational and other facilities. The above problems are especially acute in the rapidly growing urban areas of the country such as Dacca, Chittagong, Khulna and Rajshahi. Although there are some laws which authorise

some controls on the use of urban land, the application and enforcement of these controls are not sufficient to back the basic problems.

Insanitary conditions

The problem of insanitary condition is one that is closely related to human health. It results from too many people having to utilize insufficient public facilities. The erection of buildings without considering the effect of their use on such facilities is one of the factors which increases the inadequacy of sewerage, drainage and refuse disposal facilities.

Lack of sanitary condition may lead to the outbreak of diseases and ill health of the people and make the area dangerous for human habitation. In U.K. the importance of the problem was one of the considerations underlying the sanitary provisions incorporated in the historic Public Health Act in 1875.

The history of building regulations has a similar origin. Although it differs from that of planning legislation, improved housing was the principal concern of the Act which attempted to cure the damp, structural instability, poor sanitary condition, fire risk and lack of light and ventilation of buildings in English slums.

Overcrowding

Most of the urban areas of our country suffer from overcrowding. Those which suffer most are Dacca, Chittagong and Khulna. Mymensingh and Rajshahi are also growing rapidly. Shortage of transport, housing, educational institutions is the first indication of the problem.

Lack of open space

The provision of open space is very important for reasons of health and comfort of the present and the future population. But the normal operation of the private development activity does not encourage the keeping of open space for the community. Commercial considerations encourage

the maximum use or utilisation of all land which often has the result of doing away with privately owned open spaces. Due to an unusual rise in land value in some urban areas, unused land is rarely left unutilised. Structures are constructed for any use which will make it a source of income to the owner.

Unauthorised building

The uncontrolled location of buildings in spaces originally designed for parks create problems. Sometimes the overnight erection of religious centres can also create obstacles to the implementation of master plans and other planning laws.

Conflicting land-uses

The establishment of appropriate land-uses is the principal objective of any master plan. The absence of effective enforcement of such plans results in problems of haphazard construction with a consequence that noxious smoke, lack of sanitary provisions, bad drainage, poor sewage, overburdened refuse disposal system and other disadvantages. There are many instances where conflicts in land-uses are observed. In Dacca, the old and the new areas suffer from such conflict of mixed land-uses: residential and commercial. Gandaria and Tejgaon Industrial Area are examples of such mixed uses.

Urban sprawl

The unplanned and haphazard construction of buildings in the suburbs of a town produce urban sprawl. This wastes land and resources and increases the cost of necessary services to the residents. This phenomenon of urban sprawl is increasing characteristic of urban areas of Bangladesh.

These problems can be minimised by instituting an effective planning process including a system of planning control in the country. This will require a method of making

appropriate predictions for the future growth of urban areas on which to base planning decisions aimed at effecting an improvement in the quality of life within a reasonable time to the extent of resources available. Any such system, however, will need the support of law.

The Constitution of Bangladesh guarantees the rights of citizens to use their property except to the extent that Government interference is authorised by statute. Even for the welfare of society, therefore, Government officials cannot impose restrictions on properly rights without statutory rights.

1.6 Planning law and practice

A planning process cannot work unless the agencies entrusted with planning operations are provided with adequate enforcement powers in their enabling laws: Powers to regulate, to control, to adopt rules and to make by-laws (rules framed by the implementing agencies under the General Act) which have the effect of restricting individual property rights in the interest of the community as a whole. Such laws are most effective when they also clearly define the permissible government activity. Both Government officials and members of the public are entitled to be informed about the rights and obligations provided for in any legislation. For that reason also law must be unambiguous. Montesquieu observes: It is essential that only such words should be used by the law-givers as are bound to produce the same notions in the minds of all men.¹

1.7 Broad objectives of the thesis

Firstly, it is an attempt to discover and study the present statutes effecting physical planning in the urban

1. Planning Law and Administration in the Eastern Caribbean: The Manual: A Report by Roger W. Suddards: UNDP, (1974) Vol. 1 Sec. 022

areas of the country. There are several statutes which provide applicable powers.

Secondly, it is an examination of several such statutes to explore the potential conflicts within and among their provisions.

Thirdly, it is to review the actual physical problems of the large towns and cities and to examine the effectiveness of existing laws in the light of such problems.

Fourthly, it is an attempt to aid the future decision-makers in the drafting of new planning laws or modifications of the existing laws.

Fifthly, it is an attempt to generate further study and discussions among the professional planners, academic researchers and the Government agencies: needed because Bangladesh is standing on the threshold of major urban growth, and changes are inevitable if planning and development statutes are to meet the demands that would be placed upon them.

1.8

The approach adopted in this thesis

The above broad objectives are sought to be achieved by an examination of existing relevant statutes and study of their practical implementation. In this context, the planning practices in Dacca, Chittagong and Rajshahi have been selected as representative of the urban areas of the country. They are three of the most important urban centres.

C H A P T E R - 2

THE APPROACH

2.1 Selection of issues

Presently, one of the major problems facing Bangladesh today is the growth of urban areas. The existing rapid rate of growth of population in urban areas reveals that it needs special attention from the urban planners. The excessive transport congestion, growth of slums, increasing density of population and unplanned or unauthorised constructions are some of the problems. On the other hand, the inadequate facilities that exist in the urban areas for the growing population also pose some severe problems to the urban society. These problems include the lack of sanitary conditions, of proper drainage, of ventilation and of open space.

So this thesis studies the Planning laws for urban areas. It studies those planning laws which are directly connected with the urban development process and its management through Government agencies and deal with planning and building control regulations: but it recognises that this is not the entire field of physical planning.

The East Bengal Building Construction Act (1952) empowers the Government to control and prevent the haphazard development of building in urban areas. The Town Improvement Act (1953) is concerned with large development schemes.

These are just some of the related legislation which have implications for physical planning; others, for example, deal with rent control, urban property tax, land acquisition, the construction of embankments and drainage and so on.

It is obvious that it is not possible to study all the relevant legislation in one thesis. As a result the

necessity of selection of certain laws arises. The question is which laws to study, and why should we study those? The answer may be found in the following sentences.

Urban planning is concerned with guiding urban development. It involves two main functions: (1) Preparation of the Plans and policies, and (2) the implementation of these policies.

1. The preparation of urban plans and policies

One of the main planning "tools" which urban planning use is the preparation of urban plans. An urban plan is a statement or description of the future programmes of activities for urban physical developments. It includes, among others, the broad maps of land uses to give a guideline to the plan implementing agencies. So the thesis selects for study, the legislation which gives powers to Government agencies for preparing urban plans.

2. The implementation of these policies

The next important task before the urban planners is how implementation may be achieved by Government, directly carrying out the development activities in the form of large site development schemes and the provision of infrastructure. This is sometimes called "positive planning" because Government initiates planning and development of its own.

Implementation of an urban plan may also be attained by regulating the development of both the private and public sectors. For example, in the areas where no public development scheme exists, development may be controlled through regulating the building construction of individual persons and through regulating changes of landuse. This is sometimes called the 'negative planning' because developments are only controlled to suit the general requirements.

Thus, the thesis also selects laws which give powers of

implementation of these urban plans. Some of the major urban planning tools available to us, therefore, are the Master Plan, building and planning control legislation (their scope and coverage), and the development powers given to various Government agencies, but the land acquisition powers are not studied. So the thesis studies the use of certain powers associated with planning and building controls.

Since partition in 1947, the major planning laws which have dealt with these urban planning tools for the Government agencies in Bangladesh include the following :

1. The Bengal Municipal Act, 1932 (repealed)
2. The East Bengal Building Construction Act 1952
3. The Town Improvement Act, 1953(including the amendment in 1958)
4. The Chittagong Development Authority Ordinance, 1959
5. The Municipal Administration Ordinance, 1960. (This was repealed in 1977 by the Pourashava Ordinance though the main functions remain the same)
6. The Khulna Development Authority Ordinance, 1961
7. The Rajshahi Town Development Authority Ordinance, 1976
8. The Pourashava Ordinance, 1977(including the amendment in 1978)

In addition, the proposed Bangladesh Urban Development Ordinance, 1972 has also been studied, although this proposal has not been adopted.

2.2 Methodology

In studying the subject, the following methodology is adopted.

First, the basic principles of Planning law are studied.

In this respect relevant books and literature on the Planning law are studied which can help in framing our policies.

Second, the thesis studies the chosen acts of Bangladesh which deal with the urban planning law such as the Town Improvement Act, the East Bengal Building Construction Act etc. This study is intended to discover the sort of powers that such statutes give:

1. the preparation of plans
2. implementation of those plans
3. rights of appeal.
4. enforcement and the like

The preparation of the plan means the actual plan-making of an area. In this task, the following aspects are studied: who prepares the plan? how do they prepare it? how many plans have been prepared till now? and, how many of those plans have been implemented so far? Also, the age of those plans and the style, form and contents are also studied.

Implementation is a continuous process of execution of the plans made. The agency for implementing the plan and the procedure they use for this are studied.

The study is also to determine whether there is any potential problem in the acts: overlap of responsibilities between the different agencies for development, ambiguities and uncertainties of meanings and in its language, and possible conflicts and contradictions among the statutes.

Third, the thesis studied how far planning laws are being put into practice. It is aimed to test the effectiveness of the existing planning laws of the country.

Fourth, the procedure with respect to the appeal cases is studied: where does an appeal lie? to whom? how is it initiated? are there any discrepancies in the systems of appeal?

Fifth, the provision of the Master Plan, its importance and roles are studied. In it, the plan preparation, system of approval, its rigidity or weaknesses are studied.

Sixth, the total number of building applications are collected from the register of the development agency for Dacca. In this respect this will show the relation between the voluntary applications for the building construction in a year and that of under compulsion as a pre-requisite to obtain the loan from the House Building Finance Corporation. This is attained through the collected data from the concerned register, because the House Building Finance Corporation demands planning permission of a construction to grant loan to a person. This thesis will let whether this was a significant factor in the number of building applications.

Seventh, the thesis also studied the administrative procedures to see how laws were being carried out. This is a devise to show respect to the law.

Lastly, the system of enforcement is studied. This is to be very significant. This study reveals that whether laws are being backed by strong inspection and enforcement.

The effectiveness of planning laws are studied under the purview of enforcement of controls. Do they have any such imposition of penalties in case the rules are not obeyed by the people? This is important in the sense that no law can be workable unless it is backed by adequate powers of prosecution if those are not followed. The decisions of the implementing agencies are also vital for this study. It also shows whether the building control system is effective.

Sources of data

To study the above the following data is needed: reasons

for applications, reasons for the refusal of the building and planning applications, the relation with the number of applications for the House Building Finance Corporation.

Interviews, official records of the development agencies and discussions with the planners are the principal sources of the data for the research. Besides, a few private interviews with members of the public revealed some of the difficulties and causes of the general lack of observance of planning laws.

C H A P T E R - 3

PLANNING LAW OF BANGLADESH

In 1947, Pakistan became an independent nation of which the then East Bengal (later called East Pakistan and now Bangladesh) was a part. The only law in force at that time with any form of Planning powers was the Bengal Municipal Act, 1932. This law extended at that time to 50 municipalities in the new province of East Bengal.

3.1 The Bengal Municipal Act 1932

At partition, the Bengal Municipal Act was the only statute that provided powers of building control, regulating public health and powers to enforce those controls. 'Building Control' generally means the imposition of conditions on the construction of private and public buildings. This is sometimes called the negative control on development. The reverse may be termed as the positive control which means the large site development schemes etc. The power of enforcement provides for the prosecution against the violations to punish the law-breakers.

Before and after partition in 1947, conservancy, drainage, sewage disposal, sewerage, nuisance and other sanitary and public health activities were regulated by the municipality under the Bengal Municipal Act of 1932. Conservancy means regulating the garbage or rubbish disposal system in an area. This Act applied to the whole of the municipal areas of Bengal. Slums were growing at a rapid speed in East Pakistan after partition. The aim of avoiding epidemics was the principal reason behind such regulatory powers of controlling health activities in a surrounding area.

Hence, the Bengal Municipal Act provided powers of building control and the public health such as the power of destruction of any shed or hut to prevent epidemics. For example, the commissioners were given powers which were deemed necessary to prevent the spread of any dangerous disease.)

If the commissioners are of opinion that the destruction of any hut or shed is necessary to prevent the spread of any dangerous disease, they may after giving to the owner or occupier of such hut or shed previous notice of the intention..., take measures for having such hut or shed and all the materials thereof destroyed.

The Municipality along with the order of the Magistrate could also demolish buildings which had been built without obtaining permission, or which were built in violation of the provisions of the building plan sanctioned. The term building included huts, sheds or any structures.

The Act had provision for acquiring the land and constructing house-gullies for the purpose of cleansing privies, where no suitable means of access were provided for the municipal conservancy staff. With some exceptions, the erection of any building was prohibited if it might deprive other buildings of the means of access. Powers of controlling nuisances were also provided in the Act.

It also defined the role of the local Government. Training the local leaders for the better management of local self Government was the motive behind providing such regulatory powers. The foreign rulers felt the need to offer some kind of local autonomy to the local people as a mark of democracy.

To summarise, therefore, the Bengal Municipal Act was an

1. See the Bengal Municipal Act, 1932, Sec. 380.

Act which determined the role and functions of the local Government in Bengal. It primarily gave powers to control individual buildings only. In actual practice, no planning powers were given to the local body under this Act as such: for example, the power to make a master plan or to control land uses, or more generally to control the process of urban development. The public health and sanitary provisions of the Act, similar in many respects to the British Public health laws of the nineteenth and the early twentieth century, were also aimed at achieving a reasonable standard in urban development.

These powers, may, have been quite adequate to cope with the prevailing situation: towns were small, and urban growth was taking place only slowly. In actual practice, comprehensive town planning at this time in other countries was still relatively a new concept.

3.2

The East Bengal Building Construction Act 1952

With the departure of the British in 1947 from this sub-continent, the importance of Dacca as the capital of the eastern part of the country began to grow very rapidly as the centre of trade, commerce, industry and administration. Urban areas began to grow in a haphazard way. There was no building control regulation by the provincial Government. The only control was through the municipality under the Bengal Municipal Act. This was apparently considered to be inadequate. Recognition of the problems posed by haphazard construction provided the Government with the East Bengal Building Construction Ordinance in 1951. The Ordinance was promptly re-enacted as the East Bengal Building Construction Act of 1952 (hereinafter referred to as the Construction Act). The Act was intended to apply through the whole of East Pakistan (now

Bangladesh) but Government orders were necessary to bring certain areas under its coverage from time to time.

The spirit or motive behind this Act has been suggested in its preamble: to provide for the prevention of haphazard construction of buildings and excavation of tanks.

The preamble also suggests that the uncontrolled construction of buildings and excavation of tanks were likely to interfere with planning of certain areas.

The powers provided under the Construction Act represent a form of direct Government control in contrast to that of the local officials under the municipal acts. Provisions of municipal statutes authorising building controls continue in force, however. It would be possible for an officer of a municipality to be appointed Authorised Officer under the Construction Act, but in that capacity he would be responsible to the Government and not to the municipality. In fact, no municipal officials have been so designated.

It is clear from the above that although the Act has no planning provision, this was a first move towards a comprehensive approach to the problem. The authority under this Act was to be exercised by an "Authorised Officer" to be appointed by the Government.

Subjects of Development Control

The Government apparently wished to control the building regulations through its designated Authorised Officer wherever the Act applied. Over time it has been extended to the four big cities and towns of Bangladesh: Dacca, Chittagong, Khulna and Rajshahi. Permission to make any physical changes in lands or buildings, except normal repairs, is required from the Authorised Officer in those

four urban areas. The Act gave broader scope: Unconditional discretion to the Authorised Officer: it is broader than the Municipal Act. The Authorised Officer has powers to approve, reject or refuse any application and plan for building construction within his area of jurisdiction. Any construction of building or excavation of tanks without his approval or sanction is illegal and prohibited. On the other hand, the Municipal Act provided for rendering authority for such control to the respective municipality. To guide the Authorised Officer in carrying out his duties, the Government promulgated the East Bengal Building Construction Rules (1953) which dealt with technical details of construction under the East Bengal Building Construction Act.¹

As a result of the existence of the two sets of powers, legal problems could arise as to who should actually exercise the powers of control on building construction where an Authorised Officer has been appointed: the municipality or the Authorised Officer.

Appeal

An appeal from a decision of the Authorised Officer under the Construction Act is heard by the Government, the decision of which is final, but an appeal from a determination of a municipality under the Bengal Municipal Act is submitted to the Divisional Commissioner.

To summarise, the Construction Act widened the scope of control, and potentially included under its coverage the whole of Bangladesh; although its application to an area requires a Government order in this regard. The Act also provided the Government with direct control on individual buildings but did not repeal the Municipal Act or its powers of such control.

1. See the DIT -vs- A.W. Mallik case, 20 D.L.R. 1968, 229, P. 231

3.3 The Town Improvement Act 1953

The Town Improvement Act (1953) (hereinafter referred to as the Improvement Act) is the first statute which recognised the need for a planning approach in this country. Although the preamble does not mention planning, the Act made provision originally for zone plan.

In this original form the Act was very closely modelled on the Calcutta Improvement Act of 1911 and was applied to the urban areas of Dacca.¹ Its apparent intention was not primarily planning but the creation of a development agency for improving the areas within its jurisdiction. The language of the original statute gave it powers to plan the areas that it took up as improvement schemes but did not suggest a comprehensive approach.²

The Improvement Act was an important step towards an attempt to develop some parts of Dacca, Narayanganj and Tongi in a planned manner. It seems that there was a feeling that a special agency, free of other functions, could carry out such improvement more conveniently than a local authority. The urgency of such development works were possibly realised by the Government for which a number of development agencies were set up for carrying out such purposes: preparation of Master Plan, improvement scheme and its implementation. The

1. See Kaplan: *The Planning Process and Development Controls in Karachi*; unpublished monographs, July, 31, 1971, page 33.

2. "The Board may ... make Zone Plans showing the purpose for which any land in any area shall be primarily used; such plans may indicate any area reserved for residential purposes, shopping purposes, industrial purposes, open spaces, and any other purpose which the Board may consider necessary." (See the Town Improvement Act, 1953), original Act.

object of creating a development agency was to attain co-ordination, co-operation and efficiency in the disposal of issues and problems related to development.¹ The Act was designed to set up a fast acting autonomous agency. In 1956, the Dacca Improvement Trust was set up.

Board

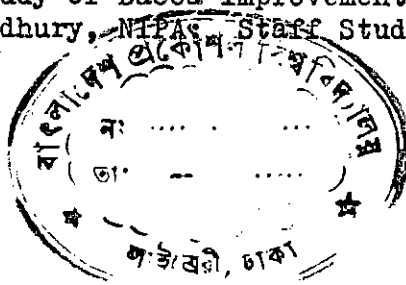
The Act creates a Board of Trustees of the Dacca Improvement Trust. The Board usually consists of not more than eleven Trustees: Chairman, Dacca Improvement Trust, the Chairman, Water and Sewerage Authority, Dacca, (or his representative); the Deputy Commissioner, Dacca; the Chairman, Dacca Municipal Committee and some other members appointed by the Government.

Powers

The Board is provided with the powers of undertaking development, improvement and expansion of the city of Dacca and Narayanganj in specific areas. The principal functions of the Board are planning and developing. It serves dual purposes: The functions of planner and that of a developer. But in its original Act the Trust acted as only a development agency.

Due to the operation of the three Acts: the Bengal Municipal Act and the Town Improvement Act and the Construction Act between 1956 and 1958, the Authorised Officer of the Government, the municipality and the Chairman (The Dacca Improvement Trust) could exercise the powers of building control. In so far as the power of building control was concerned, the Town Improvement Act in its initial form did not introduce anything new. It merely gave the Town Improvement Trust the power to review and veto building plans approved by municipalities for new construction.

1. A Study of Dacca Improvement Trust; by Miss Salma Chowdhury, NIPAS Staff Study No.4: 1962



All plans for the creation of buildings approved by municipality should be submitted to the Dacca Improvement Trust (Chairman) for sanction.¹ This is in line with the original concept of the Trust as a development agency. The veto power conveys an impression that Dacca Improvement Trust was empowered to protect areas it took over for improvement. The Town Improvement Act made specific reference to the Construction Act.

The Board of the Dacca Improvement Trust is vested with the duty of carrying out the provisions of the said Act. The members of the Board are responsible to the Government for their actions and decisions.

3.4 The Town Improvement (Amendment) Ordinance, 1958

In 1958, the Town Improvement Act was amended. The scope of the Act was greatly widened. The amending Ordinance established the Dacca Improvement Trust as a Planning and Controlling authority. This resulted in two main important changes: the Dacca Improvement Trust was made responsible for making a Master Plan for the whole of the area within responsibility of its jurisdiction and acquired the development control powers (via Authorised Officer under the East Bengal Building Construction Act) to bring planning and building control together under the aegis of the same authority after amendment with regard to building control.

The amendment of the Town Improvement Act introduced an interesting aspect of the Master Plan: it is supposed to control both public and private development. This was a recognition of the fact that public development was not covered by the previous zone plans. The attempt to include the building control powers under the Construction Act within the Improvement Trust through the new provision of appointment of an Authorised Officer from the officials of the Improvement Trust would not by itself

1. See the Town Improvement Act, 1953 Sec. 77(1)

have remedied this defect because the Construction Act does not apply to public buildings.¹ There is no recognition in it of the need to approve Government building activity. Indeed it specifically exempts public construction from the need for sanction.

It is again interesting to note that the amendment did not repeal the previous requirement that the Chairman of the Trust review municipal building plan approvals which suggests that the role of the municipality in building control was to be continued.

The original statute provided that no land should be used contrary to the provision of a zone plan without permission from the Chairman. If the Chairman refuses to sanction permission because a proposed land-use is contrary to the zone plan, he must so notify the Pourashava, which must then refuse its permission. In such case, the owner has the right of appeal to the Board of the Trust. The Pourashava (or presently Municipal Corporation) has no right to sanction permission for construction of building without having received the permission from the Chairman of/or the Board of the Dacca Improvement Trust. These provisions remained in effect after the amendment and were applied to Master Plan which replaced the older zone plans. A certain measure of confusion also results in connection with the appellate process. Although the Construction Act is adopted as part of the Town Improvement Act by the requirement that the Authorised Officer be appointed from the staff of the Dacca Improvement Trust, appeals from his decision still run to the Government (as required by the Construction Act) and not to the Board of Trustees, as is the case of planning applications determined solely under the provisions of the Town Improvement Act.

1. See the East Bengal Building Construction Act, 1952
Sec. 11

However, the amendment Ordinance has greatly expanded the role and the authority of the Dacca Improvement Trust. One of the first steps the new organization which was set up in 1956 completed in 1959 was that it prepared a Master Plan for Dacca with the aid of the British Consultants.¹

To summarise, the Dacca Improvement Trust was initially an improvement agency with the powers to take site development schemes and re-housing schemes for particular areas of Dacca and Narayanganj. It created a Board of Trustees entrusted with the task to undertake such schemes of improvement. In 1958, the role of the Trust changed with the amendment of the Town Improvement Act. This amendment made the Dacca Improvement Trust a "Planning Agency" for Dacca. This was the first attempt to introduce the modern western style area planning in this country. The amendment combined the powers of making Master Plan for the area within its jurisdiction, powers of development control and also powers of taking development schemes. The most interesting thing is that yet the Town Improvement Act did not remove the powers of building control of the municipality from Dacca and other municipalities within its jurisdiction nor did it repeal the Construction Act; instead, the amendment tried to bind those two Acts together by (1) appointing the Authorised Officer from the Dacca Improvement Trust and (2) referring the application for building construction to the Dacca Improvement Trust by the pourashava.

3.5 The Chittagong Development Authority Ordinance 1959

The Chittagong Development Authority Ordinance (1959) was closely modelled on the Town Improvement Act, but there are a few departures. The Ordinance established the same kind of organization with similar kind of functions to that of Dacca Improvement Trust: they include powers to

1. Rudduck: "Dacca: The concealed City!" Urban Biographies, Study No.P.P.& H.19, Planning Commission(Physical Planning and Housing Section), Government of Pakistan, April, 1965, P.88

frame Master Plan and improvement scheme and to approve planning applications as well as approving building applications already forwarded from the pourashava. The main departures, however, include development programme and specific schemes:

Development programme

The Authority has been given the task of preparing five year programmes of development and improvement of the areas covered by the Master Plan for Chittagong. These may include lists of schemes of development and improvement, including water supply and sewerage. When the programme is approved by the Government, individual schemes are deemed to be approved and do not require separate approval. These will be approved by the Government on the basis of the Master Plan.

Specific Schemes

There is provision for the preparation of specific schemes by the "Authority" outside of development programme. These, of course, to be submitted individually to the Government for approval. The Government may sanction or refuse to sanction any specific scheme submitted to them, but a scheme sanctioned may be amended by the development Authority if the change is not material. The Chittagong Development Authority Ordinance provides that:

An increase in the cost of the scheme by more than ten percent of the sanctioned cost shall be deemed to be a material change for the purpose.¹

but material change requires the previous permission of the Government.

3.6 The Municipal Administration Ordinance 1960

In 1958, the Constitution of Pakistan was abrogated and Martial Law was imposed throughout the country. During

1. The Chittagong Development Authority Ordinance, 1959 sec. 29(3) Explanation.

this period the military Government of Pakistan introduced a new form of "controlled democracy" throughout the country under the Basic Democracies Order (1959). The new structure provided significant powers in many fields to the local authorities in Pakistan. It tried to make this primary tier of administration stronger and more effective. To do so, the Municipal Administration Ordinance was adopted in 1960. Prior to the promulgation of this Ordinance, the Bengal Municipal Act (1932) had been the basic municipal statute for most of the areas then constituted East Pakistan.

The Bengal Municipal Act continued to be applicable in the local authorities even after that Municipal Act was repealed by the Municipal Administration Ordinance in 1960. Although the new Ordinance was of general application and would yield to acts special to particular localities, nevertheless, there was an opportunity to clarify the respective roles of municipalities and development authorities in areas such as Dacca and Chittagong where such authorities were already functioning as planning and building control agencies. This opportunity was not taken.

For the most part, the Municipal Administration Ordinance is a condensed collection of laws that existed under the Municipal Act of 1932. However, some municipal powers were introduced in this Ordinance. Powers concerning public health, water supply and drainage, building control, streets, trees, parks, gardens and forests were expanded. These are all powers relevant to the physical planning of an area exercisable by the municipalities. The two chapters on "Town Planning" and "Development", however, are entirely new in the context of municipal powers.

The following discussion describes briefly the scope of the new powers introduced by the Municipal Administration Ordinance.

Sanitary condition

The sanitary condition of the area within the municipality continued to be the responsibility of the Municipal Committee. The Committee had the powers to require the owner or occupier of any building or land which it considered insanitary to remedy the problem. In addition, the Committee was required to maintain sufficient number of public latrines and urinals.

Water supply

The responsibility of providing sufficient supply of wholesome water for public and private uses was placed on the municipality. For this, the municipalities could frame and execute water supply schemes.

Drainage

The task of providing an adequate system of public drains continued to be the responsibility of the municipality for the protection of convenience of the people. The municipalities were empowered to prepare drainage schemes at public and private expenses, but such schemes had to be approved by the controlling authority.¹

Building and Town Planning Powers

Building control

Mandatory powers to sanction building plans and approve the sites were introduced under this ordinance. Legally, the municipality had no longer any discretion whether or not it can rule on such an application.

Master Plan

The Municipal Administration Ordinance (1960) also introduced powers of planning. The municipality could prepare a Master Plan for its area, unlike that relating to building regulation was discretionary and not mandatory. The plan if prepared, had to be approved by the Divisional

1. The Municipal Administration Ordinance 1960, ss, 74,75,76

or the Deputy Commissioner ¹ who were described as the "Prescribed Authority". The plan was to include a survey of the area, to provide for its development, expansion and improvement and to recommend restrictions and regulations for the development of sites and construction of buildings. The Ordinance also provided that the site development scheme could not be undertaken without the supervision of the municipality.

Development Plan

Another innovation authorised the municipalities to prepare a different kind of development plans for a period. Such plans were to identify the methods by which their implementation would be financed and the agencies which carry them out. They were intended to improve the execution of any municipal function. Nevertheless, they still require the sanction of the Deputy Commissioner or the Divisional Commissioner.

In brief, the Municipal Administration Ordinance (1960) was the first Act which recognised the value of town planning by municipalities. Under its provisions, powers of preparing plans and development plans, in addition to the building control, were provided to the local authorities.

3.7 The Khulna Development Authority Ordinance 1961

During the period from 1947 to 1960, the rapid growth of the slums and expansion of the town of Khulna led to the emergence of the Khulna Development Authority Ordinance 1961, closely modelled on the Chittagong Development Authority Ordinance (1959).

The Development Authority Ordinance also produces the same kind of organization along with similar powers and functions. The purpose of creating the Khulna Development

1. Divisional Commissioner is the head of an administrative division and the Deputy Commissioner that of a district.

Authority is also the same:

to make provision for the development, improvement and expansion of the town of Khulna and certain areas in its vicinity.¹

3.8 The Rajshahi Town Development Authority Ordinance 1976

The Rajshahi Town Development Authority Ordinance (1976) has been the most recent Ordinance creating a development authority in Bangladesh. This Ordinance incorporates provisions from several of the previous planning statutes but the Ordinance is somewhat different from the Chittagong and the Khulna Development Authority models and also from the Town Improvement Act.

The main differences, in connection with planning, include the requirement that the Authority prepare RECORDS of existing services, public utilities, facilities and important public properties (printed maps, charts, graphs and in written documents) and that it prepare a General Development Plan to be approved by the Government. This plan is to broadly indicate the location of future roads, drainage and water supply facilities, educational institutions and industrial establishments. It can be compared with the Structure Plan of the U.K.

Functional Master Plan

Under the Rajshahi Town Development Authority Ordinance, the master plan is to be framed on the basis of the General Development Plan. It is to include land-use zoning and public land reservations, community plans, housing programmes, slum improvement projects and other matters.

The effect of the Master Plan is indirect:

All future development and constructions, both public and private, within the area to which this

1. The Khulna Development Authority Ordinance: Preamble

Ordinance extends shall be in conformity with the functional Master Plans approved by the Government.¹

Permission must be obtained from the Town Development Authority if a change of land-use is desired which is not in conformity with the provisions of the master plan.

Development Scheme

Specific development schemes for an area have to be prepared on the basis of the functional master plan although they two must be approved by the Government. In cases of urgent public importance the Authority may, with the previous sanction of the Government, execute development schemes before the preparation and approval of the General Development Plan and the functional master plan.

While executing any development scheme, the Authority has powers to require the transfer of land from the pourashava by means of appropriate notice. This power is similar to that of the other development authorities including the Dacca Improvement Trust.

The Authorised Officer

In so far as its powers with regard to building control, an attempt was made under the Rajshahi Town Development Authority under a different basis. The Ordinance provides for an Authorised Officer to be appointed by the Authority and as a staff member of the development agency is responsible to the Board. Although he has to have powers similar to that of an Authorised Officer under the Building Construction Act, he derives his authority from the Ordinance and not from the Act. This is different from the position of the Authorised Officer of the Dacca Improvement Trust, Chittagong Development Authority and Khulna Development Authority where he is appointed by the Government under the East Bengal Building Construction Act. However, the

1. See the Rajshahi Town Development Authority Ordinance 1976 Sec. 12(2)

Construction Act was not repealed in its application to Rajshahi (where a Building Construction Committee was set up and still functioning). The simultaneous existence of the Construction Act and the Town Development Authority Ordinance implies that recognition has been given to the two agencies for sanctioning building plans in Rajshahi: the Building Construction Committee appointed by the Government and the other is the Town Development Authority.

Appeal

An appeal against the decision of the Authorised Officer of the Authority shall be to the Commissioner of the Rajshahi Division. Further appeal against his order shall be to the Government.

An interesting difference in the planning procedure exists where a building permission is turned down by a pourashava. The Rajshahi Town Development Authority Ordinance provides that the pourashava may not sanction any building permission or excavation of any tank within the Authority's jurisdiction unless it has been already sanctioned by the Authorised Officer. This provision, however, implies that pourashava may reject or sanction application. If so, an appeal under the Pourashava Ordinance still lies to the Divisional Commissioner but in this case there is no second appeal to the Government.

In brief, the Functional Master Plan under the Rajshahi Town Development Authority Ordinance has some similarity in nature to the British detailed plans. The powers in respect to the development schemes seem to be similar to the British action area plans.

3.9 The Pourashava Ordinance 1977

In 1977, the enactment of the Pourashava Ordinance (1977) marked the replacement of the Basic Democracy's concept



from the local administration. In so far as its substantive provisions are concerned, however, there is no marked change from those of the Municipal Administration Ordinance which it replaced.

The Pourashava Ordinance applies uniformly to all of the 79 pourashavas in this country, except for Dacca. In 1978, the Dacca Pourashava became the first Municipal Corporation in Bangladesh, its substantial powers still remain unchanged.

3.10 The Proposed Bangladesh Urban Development Ordinance 1972

In 1972, immediately after the national liberation of Bangladesh, a draft proposal for the possible enactment of an Urban Development Ordinance (1972) was framed and prepared by the Urban Development Directorate to apply throughout Bangladesh.

The proposed Ordinance was aimed at creating an Urban Development Council (hereinafter called the Council). The proposal has never been approved or put into effect. However, it deserves a brief discussion.

In the proposed Ordinance, an Urban Development Council at the national level and Shahar Unnayan (Town Development) Committee for each pourashava or industrial complex were recommended. Each local Unnayan Committee was authorised to prepare a plan for its jurisdiction. This plan would have to be approved by the Urban Development Council. With the prior approval of the Urban Development Council, it could then designate "Controlled areas" on the basis of the plan. There were also provisions for the identification of "Designated Areas" for planning, development and redevelopment purposes.

The proposed Ordinance would have placed a mandatory responsibility on such local committees for preparing

Master Plans or Outline Development Plans for their areas within three years after the adoption of the Ordinance. All future developments and constructions both public and private would have to be in accordance with the plan: use of any land otherwise would be treated unlawful. Such plans would have to be reviewed every five years or earlier.

The proposed Ordinance would also have authorised the local committees to prepare detailed layout plans and site development schemes not inconsistent with the approved Master Plan for any "designated area" within its jurisdiction. On the basis of such layout plans the committee would have been empowered to decide applications for building and development permissions.

The role of the Urban Development Directorate

The responsibility of approving plans and site development schemes drafted by local committees or other persons (agencies) was placed on the Urban Development Directorate which was assumed also to act as the Secretariat of the proposed Urban Development Council.

The proposed ordinance also provides for "Permitted development" and "Use-class-order" which have been totally ignored in all the past statutes. These provisions would have allowed the Government to designate certain uses for which permission would not be required.

The use regulations of any Master Plan as conceived of in the proposed ordinance, would have remained valid for five years only. If any land was not developed by that time, applications for any use could be made to the local committee and could be approved in consultation with the Urban Development Directorate.

Appeal

Provisions were included for appeal against the Shahar Unnayan Committees where they rejected applications. The Urban Development Council, with the Minister of Public Works and Urban Development as the Chairman, would hear such appeals.

Summary

To conclude, therefore, the statutes which are presently in force are the Building Construction Act, the four statutes creating four development agencies in Dacca, Chittagong, Khulna and Rajshahi, and the Pourashava Ordinance.

The Building Construction Act provides powers to the Government appointed Authorised Officer. The Government exercises the control under this Act. The Town Improvement Act establishes a Board of Trustees for implementing the planning and developing responsibility of Dacca and Narayanganj. Here the ultimate responsibility is placed on the Board. The remaining statutes also create statutory (autonomous) bodies to discharge specialised functions under their own managing councils.

All the statutes and Ordinances creating development agencies provide powers (by amendments in case of Dacca) for preparation of master plans, site development schemes, public health and building control provisions. In addition, the Building Construction Act and the Pourashava Ordinance deal principally with building regulations. The Divisional or Deputy Commissioner (of a division or district respectively) exercises final powers as the approving authority of the plans of a Pourashava. Appeals under other statutes go to one or another department of Government or to the Boards of Trustees of a development authority.

After studying the planning laws of Bangladesh, it is possible to examine the potential problems in the laws in the next Chapter.

C H A P T E R 4

POTENTIAL PROBLEMS IN THE
PLANNING LAW OF BANGLADESH

4.1 Objective of law

The objectives of law are to lay down rules of society to determine the relationship between Government and individuals, and between individuals themselves. A major purpose of planning law is to provide rules to govern the private property rights in the interests of the community. If the legal framework is confusing, there arise lack of clarity throughout society as to various rights and liabilities. Powers of Government become more difficult to enforce if the majority of the people do not understand the laws or their purposes. If this also includes the officials who are supposed to be enforcing the laws, then the laws become even less effective. And when conflicts arise, courts are less likely to support Government powers vis-a-vis the citizens. If the statutory system is unclear, courts may view the Government action as arbitrary.¹

4.2 Planning Law and Administrative machinery

In the planning systems of many developed countries, planning laws control many aspects of society. The control may even extend to advertisements, the aesthetic design of buildings, and individual trees. This kind of control requires a very large administrative machinery. In the absence of the trained manpower needed for such machinery, it would be unwise for a developing country like Bangladesh to adopt planning laws which bring such a wide range of subjects under its control. Instead a relatively simple planning system which can be used selectively to tackle such basic needs as drainage, sanitary provisions, water

1. Discussion with Mr.D. Willcox, UN Consultant at the Urban Development Directorate for Urban Housing Policy and Programme Project on Urban Law and Administration.

supply, ventilation, open space etc. is far more appropriate. So the question of the scope and coverage of the Bangladesh building and planning laws is of major relevance to the effectiveness of the planning system.

Realistically, building and planning controls in Bangladesh should be closely tied to some form of planning that can focus them in critical areas. It might be argued that it is necessary or preferable to have development control over every kind of development, but this raises practical difficulties, as it would require a large administrative machinery to enforce, and would also involve controlling many activities of the people which are of relatively minor planning importance. In practice, however, this is not the way they work.

The Planning and building laws which exist in the country are intended to be all-inclusive. They cannot be enforced and end up being used selectively. But the selectivity does not reflect the intelligence of planners, but is more a matter of random chance. Some of the factors which make this possible are to be found in the design of the laws themselves. These will be discussed below.

4.3

Potential weaknesses

We have mentioned the general problem which carries out of the operation of different planning laws in our country. A more detailed study of some of the reasons is undertaken below. One of these is lack of statutory clarity from which may arise a number of problems in the interpretations of provisions and purposes of different statutes. The thesis tries to examine the general strengths and weaknesses of the language of different laws and highlights the main problems in this regard. These can be defined as falling into three broad categories which are analysed

below, and for each category, some of the most significant weaknesses of particular statute are selected as examples.

The three broad categories are :

1. Lack of external clarity between different statutes,
2. Lack of internal clarity within a statute, and
3. Laws which are impossible to implement and are therefore, unworkable.

1. Lack of external clarity between different statutes

This weakness exists where there is no precise or clear meaning to the combined provisions of several related statutes. The interpretations of the provisions of one statute may easily contradict, overlap or conflict with that of other statutes.

2. Lack of clarity within the statute

This classification refers to an ambiguity in the meaning of the provisions of a single statute: a statute being composed of several provisions which are not self-explanatory or precise in meaning. Different provisions may present apparent contradictions even within the same statute.

3. Laws which are impossible to implement and are unworkable

This broad category of problem relates to those statutory provisions which are impossible to carry out in actual practice and thus are totally unworkable and of little value. Laws, if impossible to implement, are bad laws. These broad weaknesses shall be discussed at length in this chapter.

The above three broad weaknesses in the legal language of planning and building laws in Bangladesh can and do lead to legal conflict about their rights, the rights and duties of Government, and the rights and duties of various public agencies. Uncertainty by officers and uncertainty of people

can result in disputes and court cases. Inevitably, they cause delay, allow arbitrary decisions to be made and encourage corruption.

Lack of external clarity between different statutes

Lack of external clarity between various statutes is, in fact, one of the major weaknesses in the planning laws of Bangladesh. There are a number of instances where the provisions of one statute contradict the provisions of another statute. Often, this is due to the enactment of different statutes at different times over a period of years without adequate attention being paid to the need for coherence among them. Sometimes similar, and even the same planning powers have been provided to different agencies, and confusion arises as to which is the proper agency to exercise them. For example, in an urban area where a development agency, a Pourashava (Municipality) and a Government appointed Authorised Officer (under the Construction Act) function simultaneously, there can be duplication of powers. Similarly, appeals against decisions handed down by different institutional officials will be submitted to different higher authorities, and appellate decision may differ depending upon which institution takes jurisdiction.

During the last thirty years a number of new statutes were enacted which incorporate planning powers and building controls. They include the East Bengal Building Construction Act (1952), the Pourashava Ordinance (1977) and applicable to Dacca only the Town Improvement Act (1953). In Chittagong, Khulna and Rajshahi, the first two statutes mentioned above operate along with their respective Development Authority Ordinances. Ideally, these laws should relate to each other and be carefully co-ordinated. But, apparently such co-ordination received little attention at the

drafting stage which has resulted in the emergence of a number of problems. The scope or role of the Construction Act, for example, was not clearly defined: was it to apply to the urban areas where the statutory development agencies function or was it not to operate in such areas? The precise functions of the "Authorised Officer" and his relationship to other institutions were not clearly stated.

The existing planning statutes create a number of instances of duplication of responsibilities among the various agencies. Some illustrations:

The Building Construction Act and the Town Improvement Act
The Government appointed "Authorised Officer" is responsible for allowing permission for the construction of building under the Construction Act but the Dacca Improvement Trust is responsible for operating planning permissions under the Town Improvement Act. Although the Authorised Officer is appointed from among the staff of the Improvement Trust, he is, for this purpose, not responsible to it, but to the Government. Consequently, appeals from his decision go to the Ministry of Public Works and Urban Development. But appeals from a refusal of a request for planning permission are decided by the Board of Trustees of the Improvement Trust.

The Town Improvement Act and the Pourashava Ordinance
The Dacca Pourashava (now Municipal Corporation) has the power to prepare a Master Plan under the Pourashava Ordinance. This could conflict with the role of the Dacca Improvement Trust in Dacca since it, too, is empowered to frame a Master Plan and has, been looked upon as the city's planning agency. The same conflict is possible between the Chittagong, Khulna and Rajshahi

Development Authorities and their respective Pourashavas. Other provisions of these statutes could also lead to conflicts: Both contain requirements that applications for building construction be submitted to their respective agencies, the Pourashava and the Dacca Improvement Trust. With appeals in the first case being decided by the Divisional Commissioner and in the second by either the Ministry of Public Works and Urban Development (if it is a building permission initially ruled upon by the "Authorised Officer") or the Board of Trustees at the Improvement Trust (if it is a planning permission). The general people (members of the public) are not easily in a position to understand such complexities in the planning regulations. As a result, chances of non-implementation of such laws increase as do the dangers of arbitrariness and corruption in their enforcement.

Weakness of statutory draftsmanship

These examples do more than illustrate conflicts in specific provisions of these laws. They reveal a failure on the part of past statutory draftsman to consider the respective roles which various agencies should play.

The Town Improvement Act was passed in 1953 as a special act (meaning that its application is limited exclusively to the Dacca-Narayanganj area). But Dacca Municipality at that time, was governed under the provisions of the Bengal Municipal Act (a general act, applicable to most municipalities in East Bengal). There is a convention that a special act will override a general act in cases where the two conflict, but if they can be reconciled both remain in force.

In its original form the Town Improvement Act contains

evidence that some thought was given to the respective roles of the Trust and the Municipality. To undertake improvement schemes the Trust was empowered to take over areas from the jurisdiction of the municipality, but in doing so it would take upon itself the municipal responsibilities for the area as well.

It was not, originally, a planning agency, but could produce zone plans for specific areas-presumably those it intended to improve. Nor was it vested with powers of building control. However, it was authorised to review and veto building permission issued by the municipality. Presumably, again, this power was included to enable the Trust to protect its improvement scheme areas.

Thus, the original Town Improvement Act recognised that the Improvement Trust would function as a development agency and that the Municipality would continue to be responsible for the everyday functioning of the community.

A year earlier, however, the East Bengal Building Construction Act had been passed requiring an "Authorised Officer", to be appointed by the Government, to approve all building activity in any area where it was in effect. Its draftsmen were silent on the question of the respective roles of their "Authorised Officer" and the municipality which was required to perform the same function. On paper, at least, there was no conflict between the two statutes; a potential builder was merely required to seek two separate permissions for the same construction.

Nor did the draftsmen of the Town Improvement Act deal with the position of the Authorised Officer, their Trust had the power to review building applications issued by the municipality, but nothing was said about applications

approved by the Authorised Officer.

The Town Improvement Act was amended by the Town Improvement (Amendment) Act of 1958. This was the amendment that gave the Trust a mandatory responsibility for framing a master plan for the area within its jurisdiction. But the draftsmen of the amendment must shoulder much of the blame for the consequent confusion of roles. They attempted to solve the problem of conflict with the Building Construction Act by specifically providing that the "Authorised Officer" within the jurisdiction of the Improvement Trust would be appointed from the staff of the Trust. As has been mentioned, however, the result has been that the official has two separate responsibilities. Nor does this provision settle the question of the respective roles of the Improvement Trust and the Municipality. The provision allowing the Trust to review Municipal building approval remains in the Act and implies that the Municipality still has a role to play, parallel to that of the Authorised Officer.

The Bengal Municipal Act was replaced by the Municipal Administration Ordinance of 1960 and it in turn, was replaced by the present Pourashava Ordinance of 1977. Both were general statutes, but their draftsmen also had the opportunity of including provision that would clarify the roles of these various local agencies. In neither instance was this opportunity taken.

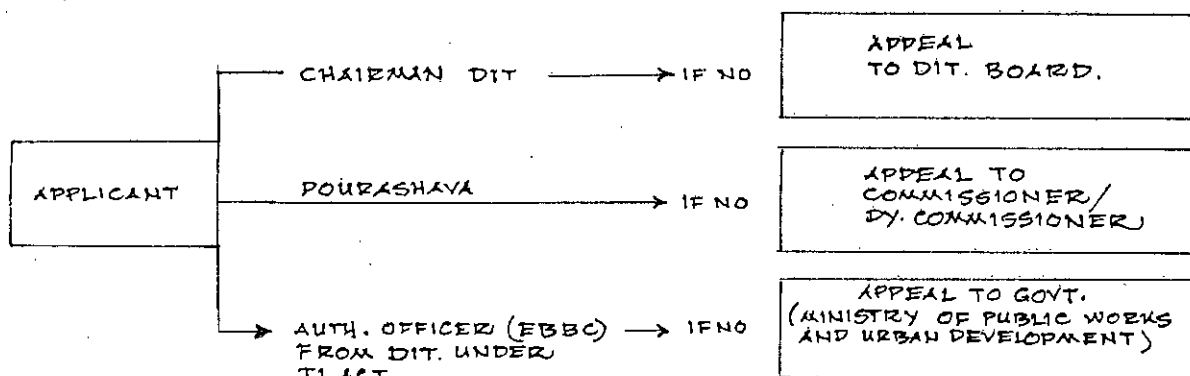
In fact, these two municipal statutes added a further complication. The Municipal Administration Ordinance introduced, and the Pourashava Ordinance continued municipal powers to frame Master Plan and Development Plans of several kinds. These provisions raise several questions. As general statutes they would bow to the

Town Improvement Act where there is a conflict, but the Improvement Trust has no Master Plans for much of the area within its jurisdiction. Would a conflict exist, if municipalities were to frame plans for such areas. There is no clear answer, the question makes the point that the statutes which now exist do not clearly locate responsibility for planning.

Appeal system

Nothing illustrates the lack of an overall concept of the planning system more than the diversity of the system of appeals on very similar question. How and who decides an appeal depends on which agency initially ruled on the issue, not on the substance of the issue involved. Appeals under the Building Construction Act lies with the Government, whereas appeals under the Town Improvement Act lies with Board of Trustees of the Improvement Trust, and appeals from decisions of the pourashava/or Municipal Corporation go to the Divisional Commissioner.

PROCESS OF APPEAL



(NB : RAJSHAHI TOWN DEVELOPMENT AUTHORITY IS DIFFERENT)

The Rajshahi Town Development Authority Ordinance, 1976

Although the Rajshahi Town Development Authority Ordinance is a new statute promulgated in 1976, it suffers from similar problems. Its draftsmen attempted to settle the problem of

the "Authorised Officer" by providing for such an official with powers identical to those under the Building Construction Act, be appointed as a full official of the Authority. But, the Government did not withdraw the applicability of the Building Construction Act to Rajshahi. Consequently, building control powers may be exercised by two agencies: Building Construction Committee under the Construction Act and the Authorised Officer of the Town Development Authority. The Ordinance also sought to settle the relationship with the Municipality by providing that a municipality cannot approve a building permit unless it has been previously sanctioned by the Authority. However, this still leaves open the question of whether or not a municipality may veto a permission which the Authority has sanctioned.

Lack of internal clarity within statute

There are conflicts and ambiguities not only between different statutes, but also within individual statutes themselves. A number of illustrations can be cited.

The Building Construction Act 1952

There are several instances in the Building Construction Act where the provisions are uncertain and ambiguous or seem to run counter to the expressed intention of the Act. Government owned buildings, tanks and hills, for example, have been exempted from the operation of the Act.¹ But this is contrary to the Act, which was the prevention of "haphazard construction" which interfered with planning. But "Planning" especially as defined in the Town Improvement Act covers both public and private development. Nevertheless, even if a Government construction is considered "haphazard development" by the Authorised

the general
objective
of

1. See the East Bengal Building Construction Act; Sec. 11

Officer, the Act does not permit him to stop it.

The Act is also ambiguous in respect to the provision which gives power to the Government, to order a land use to be discontinued if that use:

... militates against the dominant character of the scheme of land utilization as indicated in the Master Plan and constitute a nuisance generally to the zone and particularly to the neighbourhood in which the land or building is situated. 1

It is very difficult to determine which is the dominant character of land utilisation in an area. A commercial shop in a residential area: is this against the dominant character of scheme of land utilisation, and is it a nuisance? It is really difficult to decide. Moreover this introduces a further question as to whether this power applies to Government lands. Although Government buildings are exempted from the control of the Authorised Officer, there is no mention of Government land, where no building exists. Does the power in respect of land use apply to such land ?

Another provision of the Act, which gives vague and ill-defined powers to the Authorised Officer is section 4. The section allows that official to order the removal of a temporary building erected before the passing of the Act in 1952. It is not clear what is meant by the terms "temporary building". The Act defines a temporary building as any building which is declared by the Authorised Officer to be of a "temporary nature".² But how is the Authorised Officer to arrive at such a decision ? Should the materials used in the building of such structures, or its age or its

1. See the East Bengal Building Construction Act, 1952: Section - 3A(2): Government of East Pakistan.

2. See the East Bengal Building Construction Act; Sec.2(g): Government of East Pakistan.

ownership be the guiding principles in so deciding? There are no objective standards for answering these questions in the Act. Apparently, it is left to the Authorised Officer to exercise his discretion. The lack of objective criteria could lead to officials being arbitrary in their decisions, and could certainly lead to a large number of court cases, appeals and delay.

The Act describes itself in the preamble, as an Act for the "Planning of certain areas". However, in the contents there is no further mention of planning. It is essentially a statute for controlling haphazard building development (and also tanks and hills). The Act does not provide for the planning of future land use (except perhaps in retrospect). The retrospective power to curtail existing land uses but not to describe and prevent undesirable new land uses suggests that the rather clumsy purpose of the Act is 'Cure' and not 'Prevention'.

The Town Improvement Act 1953

There are instances in the Town Improvement Act as well where provisions containing vagueness and confusion exist.

The provision which empowers the Dacca Improvement Trust to review all private construction plans approved by the pourashava is unclear:¹ How are the applications from the pourashava to be handled? What kinds of matters are to be considered by each agency? The purpose of the Dacca Improvement Trust review cannot be to determine whether they conform to the provisions of the Master Plan because this provision was included in the original Act, before Master Planning powers were given to the Trust. The provision may have been intended for the purpose of protecting zone plans, but its continuation even after an officer of the Trust was made Authorised Officer, is confusing since it implies

1. See the Town Improvement Act 1953 Sec. 77(1)

that municipal jurisdiction over buildings was to continue. The Town Improvement (Amendment) Act (1958) introduced the requirement that the Authorised Officer under the Construction Act, will be appointed from the Dacca Improvement Trust.¹ It apparently attempts by this method to give to the Dacca Improvement Trust exclusively the functions of building control which were previously exercised by any designated officer of the Government. As mentioned above, however, there has never been a clear definition of the respective roles of the Authorised Officer and the municipality. The fact that the amendment of 1958 did not repeal the pre-existing provisions of the Town Improvement Act that permitted the Trust a review of municipally approved building permits, therefore, suggests that the municipality was expected to continue to exercise this power. This in turn, means that the review provisions of the Improvement Act, and those co-opting the Authorised Officer appear to have conflicting aims.

The Chittagong Development Authority Ordinance 1959

Another example of ambiguity from the Chittagong Development Authority Ordinance concerns the delegation of powers. The Ordinance allows for the complete delegation of any of its powers by the Authority, the top body of the organisation to any subordinate official. This is a surprising provision in the sense that it could result in the discarding of responsibilities. The Ordinance states:

The Authority may, by general or special order, delegate to Chairman, a member of an officer of the Authority, any of its powers, duties or functions under this Ordinance subject to such conditions as it may think fit to impose.²

1. Ibid; Sec. 77(6)
2. See the Chittagong Development Authority Ordinance 1959: Sec. 20: Government of East Pakistan, 1959.

Such a very wide power of delegation seems to mean that the Board¹ is allowed to delegate ALL of its powers which raise a question as to why such a board was created in the first place. If ALL powers may be delegated, this would seem to be an acknowledgement that the board's powers can be handled just as well by some subordinate officials. Such a conclusion must offend the spirit of the Act, although it follows from its language.

4.5 Difficulties in implementing or operating the planning laws

As we have seen above, many jurisdictional and procedural requirements of existing planning and building laws are unclear in meaning and administratively complex. In some instances, however, repairing the statutory details would have little effect because implementation of the substantive provisions is difficult and sometimes impossible, given the existing conditions in this country. Statutes which set up responsibilities that are impossible to accomplish are unenforceable. A number of such examples are set forth below.

The Construction Act sets out to control building construction (also tanks and hills). But the Act does not establish or permit the establishment of any limit whatsoever to the scope of this control. All types of buildings are required to come under its purview by the language of the Act, even huts, out-houses and walls. The Act says:

... no person shall, without the previous sanction of an Authorised Officer, construct or re-construct or make addition or alteration to any building...²

And the definition of a building is so wide that it includes

1. 'Board' refers to the top body of the Authority as the Authority means both an institution and the top body.
2. See. the East Bengal Building Construction Act, 1952; Sec. 3(1): Government of East Pakistan.

all conceivable types of construction. A "building", according to section 2 of the Act:

... includes a house, out-house, hut, wall and any other structure whether of masonry, bricks, corrugated iron sheets, metal, tiles, wood, bamboos, mud, leaves, grass, thatch or any other material whatsoever.¹

This definition presents an impossible task to any official trying to implement the law. Without the ability to limit the scope of the law, they are responsible for approving applications for every wall, hut, or building alterations. If this law were observed in practice, the paper work alone would be inconceivable, even aside from the intelligent application of the mind to the merits of each case. In fact, of course, the law is implemented selectively. But the selection is made not on objective criteria established by law, nor planners criteria laid down by regulations but chance.

The Master Plan

The zoning controls of a master plan, by which the planning statutes try to control public development, is very hard to enforce in practice. All the four statutes which created development authorities require the formulation of a master plan to control development.

In three cases such plans were formulated. However, it is difficult to rigorously implement a 20 year old Master Plan in a developing country which faces rapid physical change and urbanization.

In order to be realistic (and therefore not arbitrary) in the use of zoning powers a master plan must be revised periodically. The faster is the rate of urban growth, the more often these revisions are required. Without such

1. Ibid, S. 2(b).

revision the plans are quickly out of date. Neighbourhoods change either without permissions or through the granting of exceptions. Soon, any attempt to adhere to the Master Plan can rightly be judged to be arbitrary.

The Town Improvement Act is specific when it asks for a Master Plan "...indicating the manner in which it/Board of Trustees/proposes that land should be used."¹ A provision of the Act requires that every use of land which conflicts with the Master Plan must get the permission of the Chairman of the Dacca Improvement Trust², but this is a law which is very difficult to implement. It is not possible to set out a dominant land use zone as required by the Town Improvement Act. There would be room for hundreds of exceptions. So this could lead to countless interpretations, appeals, and evasions of law, which in turn would lead to a growing disrespect for the law.

To sum up, therefore, there are a number of problems with the statutes which can be said to stem from poor draftsmanship. One of these is that the scope and coverage of the Planning laws of this country are too wide. They seek to control all aspects of all activities that are involved in the use of land or buildings by requiring the permission from the proper authority. These controls are imposed by statute on activities regardless of size or whether they have any major planning implications or not.

A second problem is that these laws sometimes apparently attempt to achieve impossible goals. The zoning provisions of Master Plans are a case in point. Given the present strength of administrative and professional manpower in the country, there is no way to enforce those planning requirements.

1. See the Town Improvement Act, 1953 Sec. 73(1)

2. Ibid. Sec. 75(1)

The next important problem is that the planning laws are very complex and confusing in nature. This is illustrated by the fact that administratively the statutes have placed overlapping responsibilities on various agencies resulting in conflicts and contradictions.

Another characteristic of the laws is that they often are ambiguous in meaning. The role of the Government organization are not clearly defined and powers given by the acts are not free from various interpretations by various agencies.

After finishing studies on the potential problems in planning laws of Bangladesh in its language, let us examine the effectiveness of the laws in the next chapter.

CHAPTER - 5

PLANNING LAW IN PRACTICE IN BANGLADESH

In the previous chapters we have discussed the planning and building laws that exist in Bangladesh and their weaknesses and ambiguities. Now, let us see some of the practical applications of the laws. The principal areas to be discussed will include Master Plans, building controls, appeals, enforcement and general administrative responsibilities in Dacca, Chittagong and Rajshahi. The study will concentrate at these questions: Are the planning laws working or being effective in practice? How does administration react to difficulties? The answers to these questions should confirm or reject the hypothesis resulting from the findings in the last chapter: that the present planning and building laws in Bangladesh are potentially weak.

5.1

PLANNING POWERS

Pourashava

The Municipal Administration Ordinance(1960)and the Pourashava Ordinance(1977)provided pourashavas with discretionary powers of preparing master plans. The thesis research revealed that although a number of plans (approximately 15 or 20) were prepared by the Urban Development Directorate in the national Ministry of Public Works and Urban Development for the different Pourashavas of the country on a number of occasions in response to requests from the pourashavas and the Government, there is no instance of any having been formally adopted or implemented. It has been impossible to discover whether any of those plans were approved by the prescribed superior authority: the Commissioner or the Deputy Commissioner.¹ This suggests

1. Commissioner is the head of an administrative division and the Deputy Commissioner is the head of a district.

That the machineries for the implementation of the master plans at pourashava levels are not capable of doing the job. There are probably three different contributing explanations: a lack of staff to prepare the master plans for the Pourashavas; lack of staff to implement the master plans, and a lack of recognition among local officials of a plan being a vital need when compared to other subjects. However, the lack of technical staff is probably the most important inhibiting factor. Traditionally pourashavas in this country emerged as centres of local politics with the dominating characteristics of training for the local political leaders, but the professional staff required to prepare Master Plans are not available with the Pourashava:

Officers and staff in the present day Municipal Committee are generally inadequate in quality if not in quantity. In technical departments quantitative shortage also is there. ¹ G. Rahman.

This shortage is due not only to the shortage of trained staff in the country as a whole but also to a general reluctance on the part of professionals to work for a local authority. Municipalities cannot offer attractive service conditions to persons who could obtain or accept jobs with higher levels of the Government:

There is no prospect for qualified and talented technical staff in the municipal services, nor there is any possibility of granting higher remunerations to attract useful staff, in the absence of opportunities for development. ²

Physical planning for their respective pourashava was not undertaken by the elected bodies largely because they do not have the technical staff to do the job.

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1. Our Cities and Towns; (1970) P. 148: Metropolitan Administration: Planning and Development Aspects: article by Mr. G. Rahman, NIPA, Dacca.
 2. Ibid.

Urban Development Directorate

To get around the problem of shortage of staff at the local level, the Urban Development Directorate has provided the staff. The Urban Development Directorate has formulated Master Plans for Bogra, Rangpur, Patuakhali, Barguna, Jhalakhathi, Comilla, Tangail, Cox's Bazar, Sylhet, Mymensingh, Rajshahi, Kurigram, Kishoregonj, Netrokona, Jhenaiddha and Nawabgonj, while a plan for Noakhali was prepared by a foreign firm. Although none of these plans have been implemented, the plans for Comilla, Mymensingh, Rangpur, Bogra and Barisal are under revision by the Urban Development Directorate and a new plan for Narsingdi is under preparation. A team of officials has already been sent to Mymensingh and another to Barisal for the land use survey of the area; and the land-use map for Narsingdi and preliminary survey for Rangpur and Bogra have been completed for the purpose.¹

Dacca Improvement Trust

The Dacca Improvement Trust adopted Master Plan for Dacca in 1959 prepared for it by a firm of British Town Planners. The Plan is basically a zoning map which includes descriptions of the proposed sites for various uses. Within the last 18 years the Dacca Improvement Trust has carried out several schemes in accordance with the provisions of the Master Plan including a number of roads and markets in Dacca, yet there are a number of instances where development has taken place contrary to the provision of the Master Plan. Many private residences in Dacca represent violations of the Master Plan. The construction of offices in Dhanmondi Residential Area do also. These examples illustrate the difficulty of preserving a zone pure.

1. Discussion with the officials of the Urban Development Directorate, Government of Bangladesh, Dacca.

The area in the old parts of Dacca between the Hrishikesh Das Road and the Dhupkhola Math were fixed as commercial zone in the Master Plan, but it has grown into a residential area through private development.¹ The Dacca Improvement Trust did not authorise this residential use but people paid little heed to the regulations; on the contrary, they constructed houses without obtaining sanctions for them. There are several reasons why this particular area has become a glaring example of the failure to enforce a provision of the Master Plan. One of the more important is that it now includes the site of a religious centre.

Lack of updating the Master Plan

The Master Plan of Dacca has become very old and out-dated. Since the city became a national capital its land use pattern has altered direction and shape reflecting the tremendous politico-administrative changes that occurred in the country since the liberation in 1971. Widespread economic poverty and immigration to the city, due to both push and pull factors, has raised vital issues for planners. Land in the city is scarce and new migrants to the city are finding it increasingly difficult to find accommodation. As a result slums and insanitary houses have emerged as common shelter for the poor and the lower middle income groups. For subsistence and survival, they are forced to resort to any shelter regardless of the legal processes of construction.

Another reason why the Master Plan is not always enforced, has to do with informal agreements between staff of the enforcement agencies and private parties. Change of use of land contrary to the provisions of the Master Plan is frequently carried out on this basis. An example is found

1. Discussion with the officials of the Dacca Improvement Trust.

near the western part of Sher-e-Bangla nagar. The land was kept for open space, but numerous private residential houses have been built, reportedly with informal permission.¹ The possibility of such informal agreements, however, is grounded in the fact that the plan is so out of date as to be unrealistic. This emphasizes the need for the provisions of the Master Plan to be under constant review by the authority and to be kept dynamic and flexible.

Chittagong

The practical application of planning laws in Chittagong was also studied to see the experience there. Chittagong presented a similar picture to that of Dacca.

The Master Plan of Chittagong, also basically a zoning plan, was made in 1961. It has not since been comprehensively revised and is also out of date. The Chittagong Development Authority has successfully completed several development schemes as an endeavour to follow some of the long term landuse provisions of the plan. These include a few roads and some new residential units. But it has had little overall effect.

Example of problems of out-dated Master Plan

About six months ago, the Chittagong Development Authority decided in its meeting to relax some of the zoning provisions of the Master Plan which do not conform to present day reality. Over time these zones have grown differently from what was contemplated in the Master Plan. So, presently plans are being approved even though they represent slight variations from the Master Plan requirements. For instance, in areas originally reserved for mixed uses, with the ground floor commercial and the first floor residential, the Chittagong Development Authority is lenient if an owner wishes to

1. Interview with a person off the area and discussion with the official of the Dacca Improvement Trust.

use both floors for residential purposes. It is also likely to approve new construction with similar variations, especially if the party does not have the economic capacity to build for commercial use.

Rajshahi

The Rajshahi Town Development Authority has not been able to frame a master plan during its short period of existence (only 15 months). An Outline Development Plan for the Rajshahi Municipal Town was prepared by the Urban Development Directorate in 1972 but was never used until the Development Authority came into being. It has since been approved by the Government and is being followed by the authority as an interim measure until the master plan is framed and becomes effective. Moreover, some of the provisions of this Plan are not to be implemented soon or even in the long term. An interview with the officials of the Rajshahi Town Development Authority reveals that the Plan makes provision for parks in some unlikely areas. The existing condition of the land in such areas is not amenable to human habitation without costly and lengthy improvement. Consequently, the Rajshahi Town Development Authority will not start developing its parks in such areas even though that is called for in the Plan.

5.2

THE DEVELOPMENT CONTROL

Pourashava

At the time of the independence of Pakistan in 1947, the only agency with power to review building applications and exercise control in Dacca was the Dacca Municipality. Its powers in this regard were laid down by the Bengal Municipal Act 1932, and according to one source, were exercised fairly efficiently. The practice followed involved a visit to the site by the Sanitary Inspector and submission by him of

reports to the Health Officer. The Health Officer might be assisted by the Building Inspector in coming to a decision. The application was also referred to the Engineering section of the Municipality for an opinion. All of these Heads of Sections would render their recommendations through the Health Officer to the Chairman who would approve or reject the plan.¹

Dacca Improvement Trust

When the East Bengal Building Construction Act came into being in 1953 (drafted in 1952), the first area which was put under the Act was Dacca. Since the amendment of the Town Improvement Act in 1958, the Authorised officer for Dacca area has been a member of the staff of the Dacca Improvement Trust. Nevertheless, he is appointed under and his powers to issue building permits derive from the Building Construction Act.

In spite of this attempt to co-ordinate planning and building approvals under one agency, the process of getting permission to construct a house remain complex. An application for planning permission still goes to the Chairman of the Dacca Improvement Trust, while an application for building permission goes to the Authorised Officer. Nor has the Chairman any authority over the Authorised Officer in connection with the building permit, and appeal from the latter's decision goes not to him but to the Government. An appeal from the Chairman's decision is decided by the Board of Trustees.

The Town Improvement Act was passed in 1953 and as has already been noted, the original version provided that all plans for the erection of buildings approved under the Municipal Act were to be submitted to the Chairman of the Improvement

1. Interview with an ex-Health Officer of the Dacca Pourashava.

Trust for sanction. In practice, apparently, applications were made to both municipality and the Improvement Trust, which created problem in respect of conflicting decisions from the two organizations. In such cases the Dacca Improvement Trust used to send copies of its decisions to the municipality. Nevertheless these conflicts resulted in some court cases which were decided in favour of the Municipality as the prior authority.¹

In 1958, the Improvement Trust Act was amended in an attempt to resolve the conflict by requiring that the Authorised Officer under the Building Construction Act be appointed from the Dacca Improvement Trust Staff. The amendment did not remove the provision relating to the review by the Chairman of the Dacca Improvement Trust of municipally approved building permission and, therefore, remain in force today. Since, however, it is the Authorised Officer of the Improvement Trust and not the Municipal authorities which, in practice, approves building plans. The provision is not being followed.

As has been mentioned earlier, the amendment of the Town Improvement Act did not take away the Municipal responsibility for approving permission, and for a time there were two separate procedures for building permission. Subsequently the system was changed by administrative agreements and the Improvement Trust took responsibility for receiving all applications in duplicate. If the Authorised Officer approves the Plan, he would do so subject to the Municipality's agreement and would send one copy to the Municipality. At a still later stage the practice of sending a copy to the Pourashava gradually faded out. Today the Authorised Officer of the Dacca Improvement Trust alone

1. Interview with an ex-Health Officer of the Dacca Municipality.

sanctions building plans although the municipal responsibility remains in force under the Pourashava Ordinance 1977.

This provision, however, introduced in 1953, and the actual practice followed today mark the legal and administrative stage through which the Improvement Trust has gradually superseded the Municipality in regard to the power of issuing building permits.

Current procedure for building application

The process for the approval of building applications which is currently followed is nowhere statutorily defined but has evolved as a matter of administrative convenience. Applications are submitted along with a building layout plan and a site plan. Fixed fees are charged (realised) before they are accepted by the Authorised Officer at the Dacca Improvement Trust. The staff of the Authorised Officer's section decide the actual amount of fees to be deposited on the basis of the fixed rate. These fees are deposited as income to the Dacca Improvement Trust although originally they were treated as General Government revenue collected under the Building Construction Act. When applications are received in the Authorised Officer's Section, they are assigned to a Building Inspector. This official may examine the site although he need not do so. He is, however, responsible for submitting reports with objections or recommendations to the Chief Building Inspector. The Chief Inspector reviews the papers in the context of the administrative building construction rules, makes his own objections and recommendations and passes them on to the Authorised Officer. If at this stage there are no serious objection, the Authorised Officer refers the applications to the town planning section for

a determination as to whether or not the proposed building will be in conformity with the Master Plan. The town planning section reports back to the Authorised Officer who, if there are no objection, may now approve the application. If there are any objections by the Building Inspector or the Chief Building Inspector, the Authorised Officer may refuse the application without referring to the town planning section. He is, however, not supposed to issue an approval without such reference although reportedly this has been known to happen.

Number of applications

The following table indicates the number of applications for construction of buildings during the last two decades.¹ These figures can suggest some conclusions about the effectiveness of the building application system.

1. The Dacca Improvement Trust: section of the Authorised Officer.

Number of building application and percentage of sanction

Year	Population of Dacca city	Building applications	Total sanctioned	% of sanction
1961	5.2 lakh ¹	773	1039*	
1962		1454	1355	
1963		1989	1904	
1964		2706	2630	
1965		2700	2544	
1966		2103	2091	
1967		1927	1882	
1968		1492	1806*	
1969		1810	1768	
<hr/>				
Total		16954	17019	99.6
<hr/>				
1970		1604	1570	
1971**		470	343	
1972		617	460	
1973		1547	1400	
1974	16.8 lakh ²	1852	1580	
1975		3106	2439	
1976		2857	2159	
1977		3726	2760	
1978		(4160)	(not available)	
<hr/>				
Total up-to 1977		15779	12711	80.6
<hr/>				
Grand Total		32733	29730	90.8
<hr/>				

Source: Dacca Improvement Trust

1. Bangladesh Population Census, 1974: Bulletin 2: P. 102
Census Commission, Ministry of Home Affairs, Government
of the People's Republic of Bangladesh, Dacca.

2. Ibid.

* It deals with the number of pending applications

** War of Liberation of Bangladesh.

The size of Dacca has been expanding rapidly and has more than trebled since 1960's. The present population is about 2 million. During this period the annual number of buildings constructed has also increased, but the size of the increase in the number of applications does not seem adequate to accommodate the increases in population.

Applications are more likely to be received where the lands on which the buildings are to be located were purchased from the Government.¹ In these areas owners are required to construct within specified period of time. If they do not do so their allotment may be cancelled. This provides an incentive to process applications for building permissions.

Another incentive is provided by the requirement of the House Building Finance Corporation that all applications for loans for the construction of buildings be accompanied by approved permissions. In the following table, loan applications are compared with applications for building permissions in some selected years:

Number of applications for loans and building permission

Applicati- ons	1973-74	1974-75	1975-76	1976-77
For loan	320	890	1033	837
For Build- ing permit	1547	1852	3106	2857

Source: Annual Report of the House Building Finance Corporation (1976-77)

Admittedly, applications for loans and for building permissions may not be processed in the same year, but the above figures indicate the comparative number of such applications.

1. An interview with the staff of the Dacca Improvement Trust.

They suggest that nearly one-third of all building applications which the Dacca Improvement Trust receives may be because of the House Building Finance Corporation's requirement.

The above discussion suggests that where an incentive motive does not exist, builders are less apt to apply for building permission.

Simple observation indicates that the actual number of buildings constructed in Dacca is considerably greater than the number of applications received by the Dacca Improvement Trust. If shades, out-houses, walls and other minor constructions, for which permissions are legally required are also taken into consideration, the effectiveness of the building control system must be questioned.

Extra legal expenses

The lack of an incentive is not the only reason for builders to avoid submitting applications for building permission. There are actual disincentives inherent in the system which operate as well. One such disincentive is cost. If the person builds without permission, he has not to pay the various fixed fees mentioned in the discussion above. More important than the fixed fees, however, are extra-legal gratuities which are often considerable. A person choosing to try to avoid the building approval system may do so to escape the expense involved and also the harassment and the embarrassment which accompanies these extra-legal transaction.

The following two case studies are based on interviews with members of the public who have had experience with the building approval system.

Some case studies

Recently, owner of three kathas of land submitted an application for building approval to construct a residence with roughly 1150 sq. ft. of floor space divided into six rooms. He was required to deposit fixed fees in the amount of Taka 150.00 (Taka one hundred and fifty) only. However, the owner reportedly incurred an additional expense of five hundred taka with which his friends were able to procure sanction of the application within 3 (three) days.

Another example at about the same time involved a plan for four storied building. The owner reported that he had deposited the legally required fees of Taka Four hundred. In order to expedite approval of the plan, however, he had also to spend the same amount again in extra legal expenses.

In a third instance which took place about ten years ago, the owner of $1\frac{3}{4}$ kathas of land sought a building permission for which he paid fees of Taka two hundred and fifty legally and an additional five hundred taka extra legally. More recently another plan required three hundred taka as fixed fees and three hundred Taka more for smoothing the process. Similarly, the allottee of a plot of 5 (five) kathas paid 150.00 (hundred and fifty) taka at the time of submitting plan of two storied building and paid another 200.00 (two hundred) taka to expedite the sanction.

The reports indicate that a person who applies for building permission must undertake a financial burden considerably higher than represented by the fixed fees. Coupled with the social and legal embarrassment of negotiating these expenditures these can be a very heavy disincentive, indeed.

These extra legal arrangements are made possible in large part, because the Master Plan and the related building regulations are out of date and the planning process is not capable of reviewing and establishing realistic guidelines to guide the decisions of administrative officials. This is not a problem peculiar to Bangladesh. As Gunnar Myrdal observes it is widespread in much of Asia:

When one recognises the very serious effects of corruption in south Asia, the problem is raised of what can be done about it. The important Santhanam Committee report in India has analysed administrative procedures that create opportunities for malfeasance and has made recommendations for reform. The committee urges simpler and more precise rules and procedures for political and administrative decisions that affect private persons and business enterprises and also closer supervision.

A main committee theme is that discretionary powers should, in so far as possible, be decreased. It suggests that the pay of low level civil servants be raised and their social and economic status be improved and made more secure. The vigilance agencies, including special police departments, should be strengthened. Laws and procedures should be changed so that punitive action against corrupt officials could be pursued more speedily and effectively.¹

CHITTAGONG

It is reasonable to assume that the decline of the Paurashava's role in building control discussed above in the case of Dacca reflected a growing lack of effectiveness on the part of municipal administration. In Chittagong, however, where the same decline took place, there are some evidence that this is not the case. In the view of at least one retired Government official, the municipal Government did not ignore its responsibilities in this regard.

1. Gunnar Myrdal: Asian Drama: 1977: An Inquiry into the Poverty of Nations: P. 172: Corruption - its causes and effects: Pelican Books.

Administrative changes in the planning process

Before the emergence of the Chittagong Development Authority in 1959, the Chittagong Pourashava used to operate the administration of building plan approvals and to prosecute those guilty of unauthorised constructions. In one case in 1950's, the pourashava warned against the unauthorised construction of a small shed for keeping the cows on residential premises.¹ Upon filing a remedial application, the owner received retrospective approval for the shed in a letter which required him also to seek separate approval from the Authorised Officer who was then Commissioner of Chittagong Division. This is not an isolated case. It seems that the Chittagong Municipality almost rigidly enforced the powers of such controls of buildings in the early 1950's and prosecuted the violators.

Example of procedure in 1951

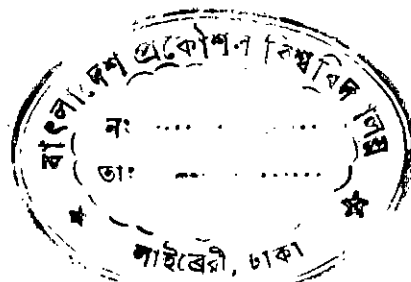
One letter authorising permission for the construction of five houses issued in 1951 by the Chairman of the Chittagong Municipality reveals that there was then a Municipal Town Planning Committee in Chittagong and the permission required the applicant to take the separate approval from that Committee.²

Procedure in 1953

In 1953, a similar letter seems to indicate that a Town Planning Committee was defunct since the Chairman's permission was final.³ The following year, however, a letter from the Chairman conditioned his approval upon a separate permission being received from the Authorised Officer.⁴

Thus by 1954, the East Bengal Building Construction Act

1. See Appendix - 3.
2. See Appendix - 1
3. See Appendix - 2
4. See Appendix - 4



was operating in Chittagong parallel with the building control provisions of the Bengal Municipal Act. The practice at the time was for either the Municipality or the Authorised Officer to sanction approval on the condition that the applicant also sought permission from the other institution.

Procedure in 1959

As late as 1959, a permit issued by the Authorised Officer, still the Commissioner of Chittagong Division indicates that this practice was being followed.¹

Chittagong Development Authority

In 1959, the Chittagong Development Authority came into being. At first, however, this apparently had little effect upon the procedure followedⁱⁿ building application.

Procedure in 1960

A letter issued by an Assistant Planning Officer of the Authority in 1960 indicates that an application submitted to the Authority was recommended by it to the Authorised Officer who is still the commissioner of Chittagong Division.² He had approved the application in question and it was now being sent to the municipality for its approval. Another letter in the same year from the Authorised Officer advised an applicant to obtain permission from the Municipality under the Municipal Act. It stated that the concurrence of the Authority and the Authorised Officer and the Municipality were all needed for sanctioning of building plan.

Subsequently, the practice changed. As in Dacca, the institution of Authorised Officer was co-opted by the Development Authority and the role of the Municipality faded out. Today, the procedure followed in building application is very similar to that of the Dacca Improvement Trust.

1. See Appendix - 5

2. See Appendix - 6

Rajshahi

The Rajshahi Town Development Authority Ordinance attempts to make a different provision for the Authorised Officer to handle building approvals. It calls for an Authorised Officer to be appointed by and be responsible to the Authority. The powers of this Authorised Officer are almost identical to those provided in the Building Construction Act.

Before the inception of the Rajshahi Town Development Authority, the sanctioning of building plans was carried out by an appointed Building Construction Committee headed by the Divisional Commissioner and including, among others, the Deputy Commissioner, the Chairman of the Municipality, and the Superintending Engineers of the Public Works Department, Roads and Highways and Public Health Engineering. This Committee was constituted in 1968 under the Building Construction Act and empowered to exercise the powers of the Authorised Officer provided for in that statute. Prior to 1976, the Municipality exercised the task of secretariat to the Building Construction Committee.

It was expected by the draftsmen of the Rajshahi Town Development Authority that the applicability of the Building Construction Act to Rajshahi would be withdrawn when that Ordinance took effect. In that case the Authorised Officer appointed under the Ordinance would take over the functions of the Building Construction Committee. This, however, did not happen. As a result there are, at present, in Rajshahi two Authorised Officers (one in the shape of the Building Construction Committee) with identical powers. Some small changes have been made in response to the situation. The Building Construction Committee has been expanded to include the Authorised Officer and the Town Planner of the Rajshahi Town Development Authority, and the Develop-

ment Authority now performs the functions of Secretariat. These changes, however, do not affect the legal situation which appears to be required an applicant to receive approvals from two institutions.

Process of application

In practice, this legal requirement is handled in the following way. Applications for sanctions for building construction are submitted to the Authorised Officer of the Rajshahi Town Development Authority. The applications are processed by his section, and if found acceptable are referred to the Town Planner for his comments. If there are any objection by either of the Development Authority Officials, the application may be refused at this stage. If there are no objection, however, it must still be presented to and discussed by the Building Construction Committee.

In sanctioning building plans the Committee looks at various conditions laid down in the Building Construction Rules, 1952 and also prima facie evidence of ownership of the land on which the proposed building is to be constructed. Development Authority officials in both Rajshahi and Chittagong indicated that examination of such evidence is useful in order to minimise their involvement in any subsequent litigation which may arise over the ownership of the land.

Appeals

Under the Rajshahi Town Development Authority an appeal from a decision of the Authorised Officer of the Authority lies to the Commissioner of Rajshahi Division. A further appeal to the Government is also provided for. The Building Construction Act, it will be recalled, authorises an appeal to the Government against the decision of the Building Construction Committee. This means that if an application is turned down at the first stage when it is considered by the officials

of the Rajshahi Town Development Authority, the applicant will have the possibility of a two-stage appeal. If, however, it is turned down at the Building Construction Committee stage, he will have one appeal.

5.3 EFFECTIVENESS OF ENFORCEMENT

In the opinion of one person interviewed in connection with this thesis, the effectiveness of the enforcement of building controls has declined over the last 30 years. Speaking of Dacca, with which he was well acquainted, he expressed the view that prior to the independence of Pakistan in 1947, the municipal authorities received and ruled on building applications representing at least 80% of the building activity within their jurisdiction. Subsequently, however, the municipal performance declined. By 1960, when the task was taken over by the Dacca Improvement Trust, he thought it probable that only about 60% of the buildings constructed had received official sanctions. He suggested that one of the reasons might have been popularly assumed to represent freedom from all controls. But certainly the rapid growth of Dacca since 1947 is also largely responsible. ¹

More recent investigation suggests that this declining effectiveness continued. The following case study illustrates some of the problems which contribute to and flow from such decline.

Case study

In 1963, the Construction and Building Department sought to acquire most of the land of the Shah Ali bagh area of Mirpur on the edge of Dacca. The owners of properties in the area, including those on which houses were built were served with a requisition notice. The Land Acquisition Officials in the office of the Deputy Commissioner of Dacca District were asked to proceed with the compulsory acquisition of

1. Interview with a retd. Health Officer of the Dacca Municipality.

the land and payment of compensation therefor. At the same time the Dacca Improvement Trust was asked to abstain from sanctioning any further building plans in the area.

One owner of ten kathas of land did submit an application for building permission to the Improvement Trust in the following year. Because of pending acquisition, the Trust refused its approval. The owner then constructed a brick and tin shed for temporary occupation. He started living there in 1964 and has not been disturbed or served with any notice concerning either his building violation. During the fourteen years period he has rebuilt the structure as a permanent building.

Meanwhile compensation for the acquisition of the land was assessed on the basis of the prevailing price in 1964 which was Tk.23,000 a bigha. Ninety percent of the compensation was actually paid to the owner in instalments. There has, however, been no payment of the remaining ten percent nor have there been any attempts by the Government to acquire possession. The long period of undisturbed possession has encouraged occupants to develop the land further and the present value is estimated to have risen to Tk.2,50,000 a bigha. The acquisition is still considered as pending although the occupants have demanded a fresh assessment of compensation. The effect, however, is that they are still barred from receiving building permission for any structures they put up. People must therefore, build without permission or leave this valuable land unutilised.

C H A P T E R - 6

6. CONCLUSIONS AND RECOMMENDATIONS

This thesis has studied the urban planning laws in Bangladesh. The growing importance of urbanization and the apparent failure of existing planning laws to influence it was the reason for the selection of the subject for study. In particular, the thesis has focussed on detailed aspects of the laws relevant to the framing of a master plan, the imposition of development control, the regulation of site development schemes and other powers and procedures relating to rights of appeals, rights of enforcements and other matters. Relevant statutes which have been in operation since the partition and the emergence of East Pakistan in 1947 have been included, whether or not currently in force. The thesis examines the laws themselves, the powers that were given under those laws, the process by which the laws changed over time and the reasons for the changes. In addition to the strengths and weaknesses of the laws as written, the study includes an analysis based on the research findings which demonstrate some practical problems of putting those laws into practice. The problems revealed by the study can be grouped into two rough categories: Those which represent poor statutory draftsmanship (including insufficient preliminary research) and those which reflect an inadequate appreciation of the realities of urban dynamics.

6.1 The wide scope of the planning law

The wide scope of the existing planning laws exemplifies this latter problem. Government permission is required for almost every kind of activity which involves the development of land and the use of buildings. They do not even exclude those activities which are of minor importance to town planning and cannot effect other people.

The East Bengal Building Construction Act, for instance, provides that:

... no person shall, without the previous sanction of an Authorised Officer, construct or reconstruct or make addition or alteration to any building... 1

The scope of the measuring "building" is not limited in the Act and includes even 'huts, walls and any other structure! The effect of this language is to place the Authorised Officer under a responsibility which it is impossible for him to enforce. Given the conditions of the cities of Bangladesh it is inconceivable that any institution can be created which has adequate trained manpower to implement this requirement. The obvious lack of enforcement encourages those who might otherwise obey the law to flout it. Thus, an unenforceable law leads to a gradual deterioration in the rule of law.

6.2 The complexity of the law

Another illustration of the unsuitability of present statutes is their complexity.

The procedures laid down by the building and planning laws are not easily understood by most people. These procedures, for instance, require that applications for building permission should be sent to the Authorised Officer of the Government in accordance with the East Bengal Building Construction Act 1952, and also to the appropriate Pourashava as well as the Dacca Improvement Trust or the Chittagong, Khulna or Rajshahi Development Authority as provided in their respective statutes.

Similarly, the appeal system is also complex: An appeal to the Government under the Building Construction Act and to the Board of Trustees under the Town Improvement Act. For some kinds of decisions, therefore, the final arbiter is

1. See the East Bengal Building Construction Act 1952, Sec. 3(1)

the Ministry of Public Works and Urban Development, for others it is the Ministry of Local Government, Rural Development and Co-operatives and for others it is the Board of the Dacca Improvement Trust. It is difficult for the average man to understand the reason for these different requirements.

The system of enforcement is also plagued by confusion. Under the law, the approval of the Government is required to prosecute against violation of the existing laws. By the time such approval is sought and received the point of the prosecution is often forgotten.

6.3 Ambiguities in the meaning in the laws

The weaknesses in draftsmanship, on the other hand, are demonstrated by the number of ambiguities which exist in the meaning of provisions of particular laws.

For example, the Town Improvement Act requires that building applications be received by the Government appointed Authorised Officer from the Dacca Improvement Trust who would be appointed under the East Bengal Building Construction Act, but simultaneously it preserves the provisions that authorises the Dacca Improvement Trust to veto the building construction on the permission approved by a Pourashava. It is not clear which institution is to receive the applications initially or whether they are to be submitted to both at the same time. It is not clear as to how an application can be decided by the Authorised Officer but at the same time also be decided by a Pourashava, with a right of veto by the Chairman of the Improvement Trust. While in practice the approvals are handled by the Improvement Trust, the law remains ambiguous and could cause complications if a Pourashava ever wished to enforce its legal authority. This means uncertainty for the private builder.

This ambiguity means that the complexities of the appeal process, already mentioned, take another dimension. Each of the approval routes has a separate appeal procedure and ends up with a different authority. This could lead to contradictions and conflicts at the appellate levels. These sorts of ambiguities were dealt with in the case of the Dacca Improvement Trust vs. Mallik which decided that the Board of the DIT is the supreme authority to decide on the appeals on the planning grounds and the Government to decide on the building grounds against the Authorised Officer. In so doing, however, it created a new question: if this is the arrangement, what is the purpose of providing that the Authorised Officer be appointed from among the staff of the Improvement Trust? The Court did its best, but was trying to reconcile the irreconcilable.

A second example of an ambiguity within a particular law can be found in the East Bengal Building Construction Act, where much of the language and wording is open-ended and may involve countless arguments and dis-agreements.

In the section 3A (2) of the East Bengal Building Construction Act, for instance, it provides that the Government shall not issue such orders if the use of building does not militate against the dominant character of the scheme of land utilization as indicated in the Master Plan. The Act does not provide any clear definition of "dominant character" of land utilization. If several uses of the land are allowed, question arises as to how to decide the dominant use of the land. This leaves the undue powers to the civil servants to interpret this vagueness.

Similarly, section 4 of the same Act provides the Authorised Officer with the power of removing a temporary building, erected prior to the date of the coming into force of this

Act, but there is no definition of such temporary building in the Act. It is not clear from the Act what actually would be a temporary building; whether the materials used or the time of the construction of such building should be considered. To declare it a temporary building has been left to the Authorised Officer. It is also unclear what are the necessary legal preconditions which would define a permanent building.

Overall, the Act provides no objective standards (and does not even require the adoption of a set of standards) for the exercise of the powers it authorises. It appears to allow almost unrestrained discretion to officials to decide what is and what is not permissible.

A third example of this kind of ambiguity occurs in the Chittagong Development Authority Ordinance. The language of this Ordinance which authorises the delegation of responsibility by the Board is very wide:

... the Authority may, by general or special order, delegate to Chairman, a Member or an Officer of the Authority, any of its powers, duties or functions under this Ordinance subject to such conditions as it may think fit to impose. 1

This would seem to mean that the Board can delegate all of its responsibilities to subordinate officials. If so, it raises a question about the purpose for which the Board was established. If there is nothing it cannot delegate, why was it set up in the first place ?

Different statutes give powers to different Government agencies to deal with the same aspects of planning. The powers of the preparation of the master plan may be cited as an example. The Improvement Act places upon the Improvement Trust a mandatory responsibility for preparing a master plan for the area of its jurisdiction. The Pourashava

1. Chittagong Development Authority Ordinance, Sec.20

Ordinance 1977 also provides such powers to all Pourashavas. It is said the Improvement Act is a special Act and therefore takes precedence. But this would only happen if there is a conflict. What happens if there is no conflict? The Dacca Improvement Trust has prepared a Master Plan which did not include Narayanganj. The Narayanganj Pourashava may wish to prepare a Master Plan. Since there is no conflict, would it have the power to do so? The same question could arise with regard to the Tongi Pourashava and Gulshan Pourashava which were not in existence when the Town Improvement Act was passed.

A second example occurs in Rajshahi where three different authorities exist to decide applications for building construction: The Rajshahi Town Development Authority under its special statute, Rajshahi Pourashava under the Pourashava Ordinance and the Building Construction Committee constituted under the East Bengal Building Construction Act. Although the Rajshahi Town Development Authority Ordinance attempted to incorporate the power directly by providing for an Authorised Officer of, and responsible to the Board of Authority. It did not provide for repeal of the East Bengal Building Construction Act in the area. Consequently, the committee continues to exist and perform functions. The Act does provide for relative roles of municipality and the Authority, but does not remove all uncertainties. There is still a question as to how an application reaches the municipality. If it is made to the Authorised Officer (of Rajshahi Town Development Authority) does it go to municipality at the same time or does provision regarding copy to municipality constitute transmission. Does this provision allow the municipality unrestrained discretion to veto the Authorised Officer's approval?

6.4 The planning and building laws of Bangladesh in practice

The above findings concerning the problems associated with the present planning laws of Bangladesh have been supported by research which indicates that the laws are not working properly which has discovered a number of administrative arrangements that have been evolved to try to circumvent the constraints and difficulties created by the statutes.

First, there is the lack of municipal plans. The Municipal Administration Ordinance of 1960 introduced an authorization for Pourashavas to make master plans. This power was continued by the Pourashava Ordinance 1977 but to date there are no examples of any local authority having used its power. As planning laws, therefore, the local authority statutes have not worked. It is true that several master plans were prepared by the Urban Development Directorate of the Government for some of the Pourashavas, but none of them has been approved or implemented so far. This suggests an inadequate interest and capacity on the part of the local authorities.

As for the major cities, the Master Plans of Dacca, Chittagong and Khulna (prepared and adopted under their respective special statutes) have become out-dated and have not been revised since their adoption about 20 years back. For reasons suggested above, they could not be rigorously enforced and the development of these cities has left them behind. As a result they are no longer relevant to the present conditions. The planning institutions which do exist are apparently incapable of revising the master plan, documents to reflect the current urban situation. No doubt, this is partly due to the shortage of planning staff. But it also suggests that the kind of master plan being asked for by the law may not be appropriate to the local situation and to local needs. A plan that cannot be kept upto date is of

little value and may be counter productive. Planning in Bangladesh may have to be tailored to fit the resources available.

Second, the research revealed that permissions are not asked for or obtained for many of the buildings constructed in the major cities. In Dacca, only 3700 applications for permission were submitted in 1977. But actual observation indicates that several thousand buildings are constructed every year. It suggests that the number of unauthorised buildings are very large.

A large percentage (approx.30%) of the applications that were made had to be submitted as a fulfilment of the requirements for a loan from the House Building Finance Corporation for the purpose of building. This implies that the building control laws will be ineffective unless they make use of incentives which encourage compliance.

In fact, however, the research showed that unofficial disincentives operate. In many cases, favourable and timely decisions on building applications depended on the payment of some extra-remuneration to the officials. Thus, frequently decisions are made on financial, not planning grounds. The higher the total costs, the more the builder is encouraged to try "to get away with it". This process stimulates further flouting of the law.

It has also been found that the procedures required by the laws in regard to building permission are not being followed by the Government departments or the applicants. The administrative complexities required under the laws have been simplified by ignoring the statutory language. Originally planning applications in Dacca were sent both to the Pourashava and the Authorised Officer of the Government

(as appears to be required under the laws), but today without a statutory change they are submitted only to the Authorised Officer. The legal responsibility of the Dacca Municipal Corporation is being overlooked.

6.5 Possible causes of the problems in the planning law

It may be suggested that one of the reasons that planning statutes in Bangladesh have been found inadequate, and that they have been sporadic. Each of the statutes and ordinances examined has been adopted in response to immediate needs but they were never properly synchronised. The Bengal Municipal Act (1932) was enacted by the British administration to establish local Governments in Bengal. Its antecedents, clearly, were the nineteenth century health and sanitary boards statutes of England. It did not mention planning. After the partition in 1947, the East Bengal Building Construction Act 1952 was passed to empower the Provincial Government to control building construction in urban areas. It made no reference to the building control powers existing in the Bengal Municipal Act. While planning was mentioned in the preamble, the statute made no provision for an organized planning process that would co-ordinate the activities of public agencies, includes the municipalities. In 1953, the necessity of creating an enforcement agency to manage the development activities for the growing Dacca area was felt and the Town Improvement Act was passed. When the Town Improvement Act was amended in 1958 to make it a planning and development agency with the power of making a master plan an effort was also made to co-ordinate some of the building approval process: But it was done in such a way as to create more jurisdictional problem than it solved. When the Chittagong Development Authority Ordinance was passed in 1959 and the Khulna Development Authority Ordinance in 1961 they continued the pattern of independent

agencies with powers of planning and building control separate from those of the municipality. Then when the Municipal Administration Ordinance was passed in 1960 to give municipal planning power, and continue municipal authority over building controls, it did not recognise or allow for the activities of the development authorities and improvement trusts.

Furthermore, laws have borrowed heavily from the western practices and the western laws but it has not sufficiently adopted them to local needs and requirements. The zoning system of a master plan, for instance, is almost impossible to enforce in a congested city like Dacca where the problems are of different level of magnitude than those with which the master plan was devised to deal.

Finally, the building control system is complex and is not appropriate to the living conditions of the people of Bangladesh. The system of applications, appeals and prosecutions is cumbersome and the standards are unrealistic. The system is not appropriate given the availability of trained manpower.

6.6

Summary

To sum up the conclusions, therefore, with generalisations existing planning laws can be characterized as too wide in scope, too complex and too discretionary (and lacking in objective standards). There are overlaps between them and conflict with each other. It is not surprising because the laws were framed at different times over a period of years, borrowed in content from the western laws and were not specially adopted for conditions and were not even synchronized with each other.

The weaknesses of the planning legislation are mirrored in their poor administration. Most buildings are constructed without permission. The negligible number that are built with permission often receive the permission on the basis of extra payment of money to expedite the disposal. There is little consideration to building regulations or to the master plan.

6.7 Recommendations

The existing planning laws of the country need to be changed and soon. The purpose of any such change must be to provide clear and unambiguous powers and functions to the respective agencies, to synchronise their activities, and clarify their roles. This could be accomplished by either of the following alternatives:

1. Either by the careful modifications of the existing planning laws to remove the overlapping and conflicts;
or
 2. by a very careful drafting of a comprehensive new statute for the country
1. Administrative re-organization

The administrative responsibilities with regard to the powers of master plans, development control, appeals and enforcements, should be made simple and clearly defined in the statute: Any changes made to the laws should aim at reducing the overlap of responsibilities and complexity between the agencies, and clarifying the respective planning roles of the different agencies. It should be categorically stated that only one application need be submitted for building permission instead of three: Also the power to frame the master plan should be rendered to one agency, and similarly the power to hear appeals.

Preciseness of the individual acts

The individual acts should be made much more precise, and the powers of different agencies should be stated with clarity. The purpose of these powers should be made clear: For example, the definition in the East Bengal Building Construction Act of "temporary building" and the "delegation of powers" in the Chittagong Development Authority Ordinance deserve precision and clarification.

2. Careful drafting of a comprehensive new statute

This alternative might require the annulment of all the existing planning laws of the country. After that, a thorough drafting of the relevant laws would be needed to be enacted in consideration with the present and future needs for planning in Bangladesh. This may give a good synchronization of all the relevant laws and remove the contradictions and conflicts which exist in the present planning laws.

3. Combination of 1 and 2

Another alternative may be a combination of the two above. That is, some of the existing statutes could be reworded to suit these to the present and future conditions and some fresh laws can be passed as well.

General amnesty

In conclusion, it has been found that many existing unauthorised and illegal developments cannot be brought to suit the prevailing legislation. Therefore, it is recommended that a general amnesty be declared to those developments which have taken place in the past: the attempts to include the existing developments to conform to the planning laws may fail and result in innumerable court cases which is impossible to dispose of by the authority in a reasonable time.

Enforcement powers

The planning laws require a strong enforcement system if they are to operate effectively. So the development agencies and the Authorised Officer should be provided with more powers to enforce these laws. Powers of prosecution should be given directly to these agencies without requiring them to take the previous permission from the Government for so doing. Besides, some more Magistrates with first class powers be deputed to the development agencies for the quick disposal of cases. Alternative to this may be to provide powers of implementing the planning laws with the capacity to enforce as a Magistrate of first class powers. This may ensure the satisfactory implementation of planning laws in Bangladesh.

Rules, regulations and guidance issued by the Government

The Government should also issue periodically the rules, regulations and guidance as to clarifying the residential density, detailed control for the newly developing key areas and also general control for general applicability to all areas. This will minimise the responsibilities of the development agencies and the laws will be easier for implementation.

Building plan and services

The analysis indicates that landowners are more likely to observe the building and planning controls when they are connected in some way to a service desired by the owner. This is particularly evident in the case of loans from the House Building Finance Corporation. This suggests that such controls in future might be connected with other services. Approved plan, for example, might be required as a pre-condition for electricity, gas or water connections.

Publications in Bangla

The lack of knowledge and awareness on the part of the people are also causes of disobedience to planning law. So the Government(or the agencies) should publish periodically the short literature and descriptions of the planning laws and its implications in Bangla and make these within the easy reach of the people so that they can understand the laws and express eagerness to follow those. This can inevitably remove some gap of awareness due to the language barrier. This can be recommended as an interim arrangement until complete jump to Bangla Planning law is fully possible.

APPENDICES

(True copy)

APPENDIX 1

Chittagong Municipality

Order Communication

From: The Chairman of the Municipal Commissioner,
Chittagong Municipality.

TO X Y Z Company, Chittagong

Dated 1951

asking permission for construction of building
Permission for the construction of building is allowed
on the following conditions :

1. That all the five houses must be in conforming to the plan submitted.
2. The Pucca drain should not be less than with 4' x 4' water only and R.C. or any other covering should not be more than 8" at a trench and to be so constructed that there may not be any chance of free flowing of the drained water.
3. Under the present ordinance they will have to take separate approval from the Town Planning Committee.

Sd/-

Chairman,
Chittagong Municipality.

APPENDIX 2

Chittagong Municipality

Order Communication

From : The Chairman of the Municipal Commissioners,
Chittagong

To : X Y Z

Order on his petition No. dated 1953 asking
permission for construction of building.

Permission for the erection is given on conditions :

1. That the land must belong to his/her.
2. That the work to be done as per plan and specification,
any variation will be subject to fresh approval.
3. Pucca drain to be constructed along the back side and
upto nullah a North carry sullage water into nullah.

Permission for construction of septic tank latrine for
50 users is given on the following conditions :

1. The site of septic tank should be preferably on the
side of the Municipal nullah (North East corner) at
a distance of atleast 5' from the nullah; from the
dwelling house or cookshed and 4' from the boundary
line on the East or West and 50' from any water source
(little tank or well etc.)
2. It should (septic tank) be constructed @ 3 cft. per
user and should be built in two sections under the
name of grit chamber and digestion chamber separated
by an upper and lower baffle wall.
3. There must be plenty of space above the line of fluid
which stands in the tank to accommodate the screen and
the gas.

4. There must be water seal inlet and outlet to maintain the fluid at a definite level and prevent the escape of foul gases which should be let off by gas pipe.
5. Under no circumstances should any disinfectant be used. This method takes action of biological action of putrefactive Bacteria.
6. There must be abundant supply of water to be provided on automatic and occasional flush sufficient to carry the excrement into the tank and to keep the place clean.
7. The affluent from the septic tank should be drained off to the Municipal nullah to the North or East after it has been passed through a covered soakpit.
8. Arrangement for 'Manhole' is to be kept for periodical clearance of sludge from the septic tank at your own cost.

Sd/-

Chairman,
Chittagong Municipality.

APPENDIX 3

(English version of the Bengali original)

Notice

1954

As the report reveals that without obtaining permission of this office i.e. in violation of the rules and without submission of maps etc., you have constructed a shed of 16' x 14'.

You are asked to show cause within 3 days why you will not be prosecuted in the criminal court for the action; otherwise normal legal procedure will be adopted.

Sd/-

Chairman,
Municipality, Chittagong.

APPENDIX 4

Chittagong Municipality
Order Communication

From: The Chairman of the Municipal Commissioner,
Chittagong Municipality.

To : X Y Z

Dated 1954

Order on his petition No. dated asking permis-
sion unauthorised construction.

Order :

Permission for the construction of a hut measuring
16' x 14' is given on condition :

1. That the land must belong to him
2. That the plinth of the hut must be raised by
1' - 6" above the compound level.
3. That separate permission is to be taken from the
Authorised Officer, Chittagong before starting the
construction.

Sd/-

Chairman,
Chittagong Municipality.

APPENDIX 5

... 1959

Authorisation

In exercise of the powers conferred on me under section 3 of East Bengal Building Construction Act, 1952, I hereby authorize _____ to construct the Building in the area described in the Schedule below in accordance with the plan approved by me for this specific purpose.

The permission granted for construction does not in any way confer any right or title to the plot or plots of land on which the construction is sought for. In cases of disputed possession, permission will be rescinded.

The authorisation does not exempt the owner from taking permission of the Municipality under Municipal Act.

Sd/-

Commissioner,
Chittagong Division
and
Authorised officer,
Chittagong.

APPENDIX 6

Office of the C.D.A.
80, Quaid-e-Millat Road,
Chittagong.

1960

To

The Administrative Officer,
Chittagong Municipality,
Chittagong.

The undersigned has the honour to inform you that the case was recommended vide this office Memo No. dated 1959 for the construction of slab and the A.O. accord permission under his Memo No. dated '59.

The case is therefore, now returned for your necessary action please.

Sd/-

Asstt. Planning Officer
Chittagong Development Authority.

B I B L I O G R A P H Y

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