

Anurag

**DEVELOPMENT OF
ADMINISTRATIVE LAW IN
BANGLADESH: OUTCOMES
AND PROSPECTS**

NO. 10/10/10

5492
d

DR. S. M. HASSAN TALUKDER

**DEVELOPMENT OF
ADMINISTRATIVE LAW IN
BANGLADESH: OUTCOMES
AND PROSPECTS**

DR. S. M. HASSAN TALUKDER

M.S.S., LL.M., Ph.D.

Associate Professor

Department of Law, University of Dhaka

Dhaka, Bangladesh

All rights reserved by the author

Price: Tk. 350

First Edition 1997

Second Edition 2011

ISBN: 978-984-33-2906-6

**Published by: Bangladesh Law Research Centre,
Dhaka, Bangladesh**

Distributors:

- | | |
|--|---|
| (1) Aligarh Library
158, Dhaka New Market
Dhaka-1205, Bangladesh | (3) Anupam Gyn Bhandar
159, Dhaka Stadium
First Floor
Dhaka-1000, Bangladesh |
| (2) Book Syndicate
157, Dhaka New Market
Dhaka-1205, Bangladesh | (4) Amin Law Book Centre
Nilkhet, Dhaka |

Printed at: Trayee Printing Press (A house of quality printing)
15 Nilkhet Babupura, Dhaka-1205, Phone : 9660745

DEDICATION

*In memory of
my father, Abul Hasham Talukder,
who greatly inspired me for
higher legal education*

PREFACE TO SECOND EDITION

Some recent developments in the field of Administrative Law have provided the need and the material for the revision of this research book which was first published in 1997. In the present edition, appropriate revisions have been made where necessary.

The present work entitled "Development of Administrative Law in Bangladesh: Outcomes and Prospects" is specially designed to delineate the outcomes and prospects of the development of Administrative Law in Bangladesh since Ancient Period. But special emphasis has been given in the work on post-independence development with analysis and evaluation, where necessary. The work also contains an exposition of Administrative Law in all of its aspects and dimensions.

To understand the actual state of Administrative Law particularly in Bangladesh perspective, the book, I hope, would be of ready assistance to the lawyers, law teachers, judges, administrators, academicians and others interested, who would otherwise have to collect the information from a number of sources. The arrangement of the book has been made very simple. The materials have been arranged systematically and with care. Nonetheless, if there is any mistake in my efforts, any suggestion for its improvement would be gladly welcome.

But before ending, I would like to acknowledge my debts to the authors whose works I had the privileges to consult and quote. Further I must express my sincere thanks to Mr. Md.

Jobair Alam, a student of Master of Laws, for taking the trouble of reading the final proof gladly and promptly. Discredit for insufficiencies and imperfections, if any, in the book must lie upon me alone.

Dhaka
January, 2011

Dr. S. M. Hassan Talukder

CONTENTS

	Pages
Preface to Second Edition ...	V
1. Introductory ...	1
2. Development of Administrative Law in Pre-Independence Bangladesh ...	21
A. Ancient Period ...	21
B. Medieval Period ...	30
C. British Period ...	36
D. Pakistan Period ...	45
3. Development of Administrative Law in Bangladesh : Outcomes ...	53
A. Outcomes—Positive to welfare-oriented Administration ...	58
(1) Easy access to Justice and speedy disposal of Cases: Tribunals ...	61
(2) <u>Effective regulation of Public Corporation</u> ...	69
(3) Effective regulation of Administrative Rule-making or Delegated Legislation ...	77
(4) Effective regulation of Rule-Application Action or Administrative Action ...	87
(5) Effective regulation of Administrative Discretion ...	101
(6) <u>Liabilities of the Government in Tort and Contract</u> ...	107

B.	Outcomes—Negative to welfare-oriented Administration	...	109
(1)	Administrative Arbitrariness	...	109
(2)	Bureaucratic Control and Red-tapism	...	113
(3)	Extensive delegation of legislative powers to the Administration	...	116
(4)	Excessive privileges and immunities of Administration in Suits	...	118
4.	Developing Administrative Law Issues/Concepts in Bangladesh: Prospects	...	121
(I)	Concept of Rule of Law	...	123
(II)	Concept of Natural Justice	...	137
(III)	Doctrine of Ultra Vires	...	147
(IV)	Availability of Legal Aid	...	153
(V)	Independence in Administrative Adjudication	...	159
(VI)	Right to Information	...	165
(VII)	Ombudsman	...	171
(VIII)	Concept of Public Interest Litigation	...	177
(IX)	Local Government	...	189
(X)	Doctrine of Legitimate Expectations	...	201
5.	Development of Administrative Law in Bangladesh: Conceptual Impediments	...	205
A.	Traditional Concept of Rule of Law	...	206
B.	Theory of Separation of Powers	...	216

C. Negative Attitude towards Bureaucracy and Bureaucratic Expansion	...	224
D. Concept of absence of Proper Accountability Mechanism	...	228
APPENDICES	...	233
I. The American Administrative Procedure Act, 1946	...	233
II. The Administrative Tribunals Act, 1980	...	243
III. The Ombudsman Act, 1980	...	251
SELECTED BIBLIOGRAPHY	...	259
TABLE OF CASES	...	263
INDEX OF NAMES, TERMS AND SUBJECTS	...	269