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**COMMERCIAL ESTABLISHMENTS IN KHULNA CITY: EMERGING PROBLEMS IN CONTEXT OF REGULATORY ARRANGEMENTS****Mohsin Uddin Ahmed**

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**Abstract:** Commercial activities are major characteristics of the urban areas. In the developed countries commercial establishments arranged with a planning manner that guided by the urban planning proforma. But in the country like Bangladesh where natural development prevailing all over the urban areas commercial establishments are haphazardly developing without any planning manner. As a result, congestion on the through fare, environmental hazards dominating through this type of development. Locational importance of the commercial establishment increases the business performances and healthy living environment. Different type of commercial establishments may be viewed in the urban areas of Bangladesh with different type of structural condition and building materials. Such difference presents building heights, locational criterions, uses of the premises and importance of the goods transacted. It also varies according to the importance of the area, land value, population density, accessibility and government control. The urban area where governmental control is efficient and rigid the scenario is quite improved there. Market, shop, office, godown, service centre, etc. may be considered as commercial establishments. But the contemporary regulations could not include all type of commercial developments. Therefore, a large number of developments are continuing their activities without the prior approval of the government. The prescribed regulations, which are enforcing by the authorities, are out dated. Enforcement procedures are also in primitive system. In consideration of the entire scenario, it may be said that the problems available with the commercial establishments are due to the lack of appropriate regulations and disputed enforcement procedures by the government. The study emphasizes on the contemporary regulatory arrangements related with the physical development rather than commercial transaction of the establishments. Present scenario, role on the urban development, involvement of the regulations, problems on the enforcement procedures of the commercial establishment is the major elements of this study. A guideline also prescribed according to the problems identified through this study.

**Key words:** Business planning; Commercial establishments, Contemporary regulations, Planning regulations, Khulna city; Bangladesh

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**Introduction**

Market, Shop, office, godown, service centre, etc. may be considered as commercial establishments. But the contemporary regulations could not include all type of commercial developments. Therefore, a large number of developments are continuing their activities without the prior approval of the government. The prescribed regulations, which are enforcing by the authorities, are out dated. Enforcement procedures are also in primitive system. In consideration of the entire scenario, it may be said that the problems available with the commercial establishments are due to the lack of appropriate regulations and disputed enforcement procedures by the government.

According to the contemporary regulation, the word “shop” means “any premise used wholly or in part for the wholesale or retail sale of commodities or articles, either for cash or credit, or where services are rendered to customers, and includes an office, store room, godown, warehouse or workplace, whether in the same premises or elsewhere, mainly used in connection with such trade or business, and such other premises as the Government may, by notification in the Official Gazette, declare to be a shop.”<sup>1</sup> Again, in the Weekly Holidays Act 1942 (GOI, 1942), “shop” includes any premises where any retail trade or business is carried on, including the business of a barber or hair dresser, and retail sales by auction, but excluding the sale of programs, catalogues and other similar sales at theatres. On the basis of above definition, shops may be divided as following types:

1. Shops dealing mainly in any vegetables, meat, fish, dairy products, bread, pastries, sweetmeats and flowers.
2. Shops dealing mainly in medicines, surgical appliances, bandages or other medical requisites.
3. Shops dealing in articles required for funerals, burials or cremation.
4. Shops dealing mainly in tobacco, cigars, cigarettes, biris, pan, liquid refreshments sold retail for consumption in the premises, ice, newspapers or periodicals.
5. Petrol pumps for the retail sale of the petrol and automobile service stations not being repair workshops.
6. Barbers and hairdressers shop.

A shop may be temporary or permanent establishment. The word establishment termed as “commercial establishment” means “an establishment in which the business of advertising, commission of forwarding is conducted, or which is a commercial agency, and includes a clerical department of a factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contract with the owner of any commercial establishment or industrial establishment employs workers, a unit of a joint stock company, an insurance company, a banking company or a bank, a broker’s office or stock exchange, a club, a hotel or a restaurant or an eating house, a cinema or theatre, or such other establishment or class thereof as the Government may, by notification in the Official Gazette, declare to be a commercial establishment”. and “industrial establishment” means “any workshop or other establishment in which articles are produced, adopted or manufactured or where the work of making, repairing, ornamenting, finishing or packing or otherwise treating any article or substance, with a view to their use, transport, sale, delivery or disposal, is carried on and includes any dock, wharf, jetty, or such other class of establishments as the Government may, by notification in the Official Gazette, declare to be an industrial establishment but does not include a factory.”<sup>2</sup>

Except the above two types of establishments, there is another establishment called “establishment for public entertainment or amusement,” which means a restaurant, eating house, café, cinema, theatre, circus, jattras and such other establishment or class thereof as the Provincial Government may, by notification, declare to be, for the purpose of this Act, an establishment for public entertainment or amusement.<sup>3</sup>

In broad classification, shops may be termed as retail and wholesale dealers. According to the Central Excise and Salt Act 1944 (Act No. I of 1944) (GOI, 1944), wholesale dealer means, a person who buys or sells excisable goods wholesale for the purpose of trade or manufacture, and includes a broker or commission agent who, in addition to making contracts for the sale or purchase of excisable goods for others, stocks such goods belonging to others as an agent for the purpose of sale.

The hawkers provide commercial activities in an urban area in most of the cases. The authority named City Corporation according to the City Corporation Ordinance, Pourashava according to the Pourashava Ordinance and Municipality according to the Municipal Ordinance may control these hawkers. It is prescribed in the section 92 of the Khulna City Corporation Ordinance 1986 (GOB, 1986), that City Corporation may – a) Prohibit the import into the City for sale, or the hawking for sale, of any specified article of food or drink by person not so licensed and b) Prohibit the hawking of specified article of food and drink in such parts of the City as may be specified.

The term 'sale' means a transfer of ownership in exchange for a price, whether in money or in kind, paid or promised or partly paid or promised, and includes – a) The making, causing or permitting of such transfer; b) The attempt to effect such transfer; and c) Any possession, storage, offer, exposure, despatch, consignment, deposit or receipt for the purposes of such transfer or for preparation for such transfer, and the expression 'sell', 'seller', 'sells' and 'sold' shall be construed accordingly. <sup>4</sup>

There is no any authentic information that where and when the commercial establishment was introduced first. But it should be considered that those establishments were not generating any problem until the year of 1951. From this year separate statute named East Bengal Shops and Establishments Act 1951 was established to control the working hour of labour force involved with the establishment and collection of taxes. Physical establishment of such activities is started to control from the year 1953 when Building Construction Act 1953 was established.

Development of regulations on commercial transaction of commodities is more historical than commercial establishment. Central Excises and Salt Act 1944 is one of the major examples. Commercial activities have been considered as important characteristics of the urban areas. In the developed countries, commercial establishments arranged with a planning manner that guided by the urban planning proforma. But in the country like Bangladesh where natural development prevailing all over the urban areas, commercial establishments are haphazardly developed without any planning manner. As a result, congestion on the through fare, environmental hazards dominating through this type of development. Locational importance of the commercial establishment increases the business performances and healthy living environment.

The commercial developments in the urban areas of Bangladesh may be viewed with different type of structural conditions and building materials. From one storied to twenty storied building and bamboo thatches to R.C.C materials are using to construct the commercial establishments. It also varies according to the importance of the area, land

value, population density, accessibility and government control. Where governmental control is efficient and rigid the scenario is quite improved there. All of these activities are not possible to control through the existing contemporary regulations. It should be necessary to improve the regulations on commercial establishments.

### **Objectives and Data Sources**

In the study, commercial establishment considers only the shops, which may be retail or wholesale, departmental store or a cigarette shop. The shops may be established in a daily bazar or roadside where residential activities are prominent. These shops may be varied according to the commodities transacted and place to place. Again, commercial establishment has been considered except the establishment mentioned in the Bangladesh Small and Cottage Industries Corporation Ordinance and statutes on other small-scale industrial development. The word market and bazar did not consider as the commercial establishment though their main objective and characteristics are mostly commercial. But the regulations confined for them as a market not as a commercial establishment.

The study emphasizes on the contemporary regulatory arrangements on the establishment and control rather than physical development and commercial transaction of the establishments. Present status, role on the urban development, involvement of the regulations, problems on the enforcement procedures of the commercial establishments are the major elements of this study. Executional problems of the contemporary regulations on commercial establishments have been tried to find out through this study. Some recommendations are also prescribed on the outlined problems. Mostly secondary materials including published and unpublished have been considered in this study.

### **Status and Enforcement Authorities**

The statutes and enforcement authorities related with the establishment of commercial activities in the country is presented in Table-1. According to the table, local government, development authority, Deputy Commissioner and Inspector have the right to enforce about 17 number of statutes. For the setback of commercial establishment, Building Construction Act 1996 (GOB, 1996), are duly considering and Weekly Holidays Act 1942 enforcing on the opening and closing of the establishments. City Corporation, Pourashava, Municipality and Thana Parishad are the authority to grant licenses to the owners of commercial establishments. Inspector of the shops and establishment control authority preserve the right to control the holidays, environment and labour disputes of the establishments. Deputy Commissioner preserves the right to control on the business of excises and salt. Except the above, there are a number of statutes involved with the goods and commodities sold and transacted by the establishments. The size and covered area of the establishments depends on these transactions and volume of goods handled by the establishments always depends on the locational importance. But, there is no any statute on the locational importance of the establishment.

The study tried to cover all those statutes related with the goods and commodities transacted by the establishments with their functional activities to find out the actual problems related with the commercial establishments. For an example, locational

importance is most important factor to establish a commercial establishment. It may change the total landuse of an area. It should not be same in a densely populated capital city and for sub-urban area or a locality town.

Table 1. Statutes and enforcement authorities.

| Enforcement authorities                                      | Name of the statutes                                                                                                                         |
|--------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Inspector                                                    | Shops and Establishments Act, 1965.<br>Weekly Holidays Act, 1942.<br>Shop Tax Rules, 1984.<br>East Bengal Shops and Establishments Act 1951. |
| Deputy Commissioner                                          | Central Excises and Salt Act, 1944.<br>Pure Food Ordinance, 1959.                                                                            |
| Deputy Commissioner/ Development authority/ Local government | Building Construction Act, 1996.                                                                                                             |
| Pourashava                                                   | Pourashava Ordinance, 1977.                                                                                                                  |
| Municipality                                                 | Municipal Administration Ordinance, 1960.                                                                                                    |
| Dhaka City Corporation                                       | Dhaka City Corporation Ordinance, 1983.                                                                                                      |
| Khulna City Corporation                                      | Khulna City Corporation Ordinance, 1984.                                                                                                     |
| Chittagong City Corporation                                  | Chittagong City Corporation Ordinance, 1982.                                                                                                 |
| Rajshahi City Corporation                                    | Rajshahi City Corporation Ordinance, 1987.                                                                                                   |
| Rajdhani Unnayan Kartipakkha                                 | Town Improvement Act, 1953.                                                                                                                  |
| Chittagong Development Authority                             | Chittagong Development Authority Ordinance, 1959.                                                                                            |
| Khulna Development Authority                                 | Khulna Development Authority Ordinance, 1961.                                                                                                |
| Rajshahi Development Authority                               | Rajshahi Town Development Authority Ordinance, 1976.                                                                                         |
| All local governments                                        | Local government Ordinance, 1976.                                                                                                            |

A brief regulatory provision on the commercial activities through different statutes and enactments are presented here. But the statute on commercial commodities did not consider here.

**a. East Bengal Shops and Establishments Act 1951:** The Act is presented regulations on the use of labour force, facilities should be incorporated and approval procedures of the shops and related establishments.

**b. Municipal Administration Ordinance 1960, Pourashava Ordinance 1977, City Corporation Ordinance 1982, 1983, 1984 & 1987:** The urban local government Ordinances like Municipal Administration Ordinance 1960, Pourashava Ordinance 1977, Chittagong City Corporation Ordinance 1982, Dhaka City Corporation Ordinance 1983, Khulna City Corporation Ordinance 1984 & Rajshahi City Corporation Ordinance 1987 prescribed same regulations on the commercial establishments. Such local governments within their jurisdictional areas may establish planned commercial establishment including urban market. Issuing trade licence and approval of the construction is also the function of these local governments. But the authorities are only performing responsibilities on the issuing of trade licence and construction of hawkers market. Individual shops along the road are also constructing by the Corporations.

**c. Town Improvement Act 1953, Chittagong Development Authority Ordinance 1959, Khulna Development Authority Ordinance 1961 and Rajshahi Town Development Authority Ordinance 1976:** Planned commercial development according to the master

plan by the development authorities. Such commercial development may include new market, department store and super market. The authorities are also given approval of plan on commercial establishment followed by the private landowners.

**d. Shops and Establishments Act 1965:** This is a new formation of the East Bengal Shops and Establishments Act 1951. All the regulations are same as prescribed in the Act 1951. Only punishment on the contravention of regulations has been increased. Some of the provisions became more detailed than the Act of 1951.

**e. Local Government Ordinance 1976:** Local governments like Zila Parishad, Thana Parishad and Union Parishad are under the Local government Ordinance 1976. Among such local governments only Zila Parishad may establish and control on the commercial activities from Union level to Zila level. Such activities only include the issuing of trade licence and leasing of hat and bazars.

**f. Building Construction Act 1996:** This is a new formation of the East Bengal Building Construction Act 1953. Perhaps all the subjectmatter are same but more detail than Act 1953. Setback rule on the commercial establishment is prescribed through this Act. In most of the cases the setback provision is incomplete and absent. The provision is grossly calculated, did not consider any special development with special setback rule, such as tall building with resicom (residential + commercial) use.

### **An Overview of Khulna City**

According to the Khulna City Corporation (KCC) authority, 21 wholesale and retail markets have been developed in Khulna City premises. Major role of these markets is to render commercial services to the buyers. These markets as a whole are not the component of this study. Because a market is composed with different type of commercial establishments and the regulatory arrangements are different than the commercial establishments. Furthermore, types of commercial activities are varied place to place and area to area according to the necessary supports. A list of commercial activities on the Khulna City are presented here, all of them are rendering their services with a trade license approved by the KCC. Some of the major commercial activities are listed below:

- Grocery shops.
- Tea stalls.
- Shops on construction materials.
- Corner shops.
- Pharmacies.
- Shops on glass & related commodities.
- Petrol pump and service centres.
- Fruit shops.
- Hardware and sanitary shops.
- Shops on readimate garments, sock and shoes.
- Books and newspaper stalls.
- Shops on croakeries and utensils.
- Shops on cosmetics and related articles.
- Firewood shops and depots.

A lack of necessary information on the study area has been found during the survey period (personal interview). Most of the authorities did not preserve any record systematically. KCC could not serve any information on the total and types of commercial establishments exist in their jurisdictional areas. On a personal interview they make answer that, they are not interested to establish individual commercial

establishment, therefore, they have been constructed daily markets in the KCC area. They have no any control on the individual commercial activities, (which is not in a market place) except collection of taxes. This is a general scenario in all over the urban areas of Bangladesh.

Role of Development Authority is quite different than the Local Government. Table 2 is presented that, the Khulna Development Authority (KDA) have been constructed 39 commercial buildings and 675 commercial plots in different years. These plots varied from 0.8 to 20 katha. Most of the commercial plots and buildings are adjacent to the road. All of the roads are the major circulation of the Khulna City where such number of commercial activities has been generated.

Table 2. Commercial area developed by Khulna Development Authority (KDA) in different years.

| Project name                                             | Area in hectare | Plot Size (in katha) | No. of plots | No. of buildings constructed |
|----------------------------------------------------------|-----------------|----------------------|--------------|------------------------------|
| Commercial area surrounding new market                   | 2.63            | 2.8-10               | 27           | 03                           |
| Commercial area around Jessore road                      | 2.24            | 0.8-30               | 27           | 07                           |
| Road side commercial land of KDA avenue                  | 3.24            | 1-5                  | 119          | 12                           |
| Road side commercial land of <i>Majid Sarani</i>         | 4.27            | 4.75-7.80            | 90           | 07                           |
| Road side commercial land of <i>Jalil Sarani</i>         | 6.07            | 8-20                 | 43           | 05                           |
| Road side commercial land of <i>Mujgunni</i> main road   | 17.70           | 2.5-19               | 260          | 03                           |
| Road side commercial land of outer bypass road (Phase 1) | 3.56            | 5-6.5                | 109          | 02                           |
| Total                                                    | 39.71           |                      | 675          | 39                           |

Source: KDA, (1998).

From the year 1966 to 1979, commercial schemes executed by KDA with government finance are presented in the Table-3. The table is prescribing that, KDA is interested to develop planned commercial establishment, but that does not mean any control over the owners. KDA also perform responsibilities on the control of setback rule provided in the Building Construction Act. After the completion of building plan sanctioned by the KDA, they did not perform any activities on the constructed establishments.

Table 3. Schemes executed by KDA with government finance in different years.

| Name of schemes                                     | Actual cost (Tk. in <i>Lakh</i> ) | Year of completion |
|-----------------------------------------------------|-----------------------------------|--------------------|
| Development of commercial area around new market.   | 4.870                             | 1966-67            |
| Development of commercial area around Jessore road. | 16.664                            | 1978-79            |

Source: KDA (1998).

### **Arising Issues**

Regulatory problems involved with the commercial establishments may be prescribed in three-dimensions-location problems where the establishment is located, setback rule followed by the establishment and commodities or goods transacted or sold in the establishments. The contemporary regulations did not mention any difference regarding the locational importance whether the commercial establishment is in urban areas or sub-urban areas or rural areas. So, it may be said that, there is no any statute specified on the locational importance of the commercial establishments. Building Construction Act is the only statute to control the setback rules, but a number of statutes are involved with the

commodities transacted by the establishments. Generally, essential commodities sold in the shops and such type of establishments. The term "essential commodity" means any of the classes of commodities mentioned in the Schedule <sup>5</sup> to this Act, and such other classes of commodities as may be declared by the Government by notification in the Official Gazette to be essential commodities for the purposes of this Act.<sup>6</sup> Control on commodities also prescribed for the betterment of human health. It has been prescribed in the Agricultural Produce (Grading and Marking) Act 1937 (GOI, 1937), that, "fruit, vegetables, eggs, dairy produce, tobacco and coffee should be graded by the authorised person." But there is no any control over the dairy product. According to the Pure Food Ordinance 1959 (GOEP, 1959), there is no any control over the dairy product sold in a shop or other place.<sup>7</sup>

**a. *Obsolete regulations:*** The East Bengal Shops and Establishments Act 1951 (GOEP, 1951), is not applicable on certain establishment, shops and persons, which are as follows:

- a) Offices of or under the Central or Provincial Government, the Railways, the State Bank of Pakistan, or any local authority;
- b) Any system of public conservancy or sanitation, any industry, business or undertaking which supplies power, light, or water to the public and such other public utility companies or associations or classes thereof as the Provincial Government may, by notification, exempt from the operation of this Act;
- c) Clubs, hostels and messes not maintained for profit or gain;
- d) Stalls and refreshment rooms at railway stations, steamer and launch stations, docks, wharves and airports, and on trains and steamers, or aircraft, so far as the sale of commodities is concerned;
- e) Establishments for the treatment or care of the sick, infirm, destitute or mentally unfit;
- f) Such shops or classes of shops, dealing mainly in vegetables, meat, fish, dairy produce, bread, pastries, sweetmeats, flowers or other perishable commodities, as the Provincial Government may, by notification, exempt from the operation of this Act, so far as the sale of these articles is concerned;
- g) Shops dealing mainly in medicines, surgical appliances, bandages or other medical requisites, so far as the sale of these articles is concerned;
- h) Shops dealing in articles required for funerals, burials or cremations, so far as the sale of these articles is concerned;
- i) Shops dealing in tobacco, cigars, cheroots, cigarettes, biris, pan, liquid refreshments sold retail for consumption on the premises, ice, newspapers or periodicals, so far as the sale of these articles is concerned;
- j) Shops or stalls in any public exhibition or show, so far as such shops or stalls deal in retail trade which is solely subsidiary or ancillary to the main purposes of such exhibition or show;
- k) Shops or stalls in any public fair or bazar held for religious or charitable purpose;
- l) Barbers and hair dressers shops, so far as service to customers is concerned;
- m) Shops dealing in petroleum products or spare parts for motor vehicles, so far as the sale of these articles is concerned;

- n) Any person employed as a manager, or as a travelling agent, canvasser, messenger, watchman or caretaker, or conservancy staff, or exclusively in connection with the collection, dispatch, delivery, and conveyance or customs formalities of goods; and
- o) Such other establishments, shops or persons or classes of establishment, shops, or persons, as the Provincial Government may, by notification, exempt from the operation of all or any of the provisions of this Act, subject to such conditions as it thinks fit.

Control on the physical development of commercial establishment only followed by the Building Construction (Amendment) Act 1996. Though, the statute is not old but the regulations prescribed in the statute are not appropriate for the establishment of different type of commercial buildings. Perhaps it means that, the regulations prescribed in the Act are only for the divisional cities. It should not be encouraged that a divisional city or Thana-level urban area perform same responsibility according to the land value, density of population and transaction of commodities.

East Bengal Shops and Establishment Act 1951 (GOEP, 1951), is the only and important statute on the control of commercial establishment, but this statute prescribed regulations on the opening and closing time of shop, working hour of the labour, labour disputes, etc. Shops and Establishments Act 1965 (GOEP, 1965), also same as East Bengal Shops and Establishment Act 1951 (GOEP, 1951). There is no any provision on the control of commercial establishment by the Local Government according to their statutes. So, it may be said that, there is no any appropriate regulation on the control of physical characteristics of the commercial establishment. Building Construction Act is not wide enough for the control of such establishments.

**b. Setback rule:** Setback rule is the only regulation on the physical establishment of commercial activities. But the regulations are not appropriate for the control of commercial establishment, though the regulations have been prescribed in the year 1996. In the section 20(1) of the Building Construction (Amendment) Act 1996 (GOB, 1996), setback rule on the commercial establishment and godown prescribed as follows:

Table 4. Site development regulation on commercial establishment.

| Type of the site                                                      | Back side                                             | Front side                                                                       |
|-----------------------------------------------------------------------|-------------------------------------------------------|----------------------------------------------------------------------------------|
| Site developed by the government, Autonomous body or local government | 1.5 meter in case of the absence of road.             | 1.5 meter for ground floor.                                                      |
| Private site                                                          | 1.5 meter                                             | 4.5 meter from the center of road or 1.5 meter from the site adjacent with road. |
| For both, public and private sector                                   | Necessary space for loading and unloading in a truck. | -                                                                                |

Source: GOB (1996).

An urban area of Bangladesh composed with different types of commercial establishments like small shops, tea stall, hawkers, Pharmacy, petrol pump, repairing shops, bakery, tailoring, etc. How these activities and their physical characteristics will be controlled, the contemporary regulations could not make any answer. Only Local

Government preserves the right to grant licence for them. The Local Government and police authority may control hawkers in the urban premises. When any commercial establishment likes to construct permanent structure, the Development Authority imposes regulations as stated in the Table 4. According to the section 13(2) of the Building Construction (Amendment) Act 1996 (GOB, 1996), setback rule on the car parking in the commercial establishment prescribed in the Table 5.

Table 5. Setback rule on commercial establishment.

| Type of buildings                              | Building area (Sq. meter)                             | Parking area (Sq. meter) |
|------------------------------------------------|-------------------------------------------------------|--------------------------|
| Commercial                                     | 200                                                   | 23                       |
| Department store                               | 100                                                   | 23                       |
| Cinema hall/community centre                   | Every 20 persons                                      | 23                       |
| Godown and factory                             | Necessary space for loading and unloading in a truck. | -                        |
| Administrative purpose in the factory premises | 200                                                   | 23                       |

Source: GOB (1996).

City centre, sub-urban area, locality town perform different importance in context of population density, land value and structural condition. One setback rule that provided in the Building Construction (Amendment) Act 1996 is not appropriate to control the setbacks of all the commercial activities in the country. Commercial activities like pathological laboratory with x-ray machine is existing in the urban areas, but there are no any regulatory provision on the construction of such laboratories. Setback on the tannery like Hajaribagh in Dhaka did not control with any regulation. Absence of setback rule on different commercial activities makes the urban congestion and irregular development. Another effective statute named Shops and Establishment Act is only for the betterment of labour. In a court case, it is stated that, "the East Bengal Shops and Establishment Act 1951 (Act No. I of 1952) was that the law mainly composed on the benefit of the employee and, if possible, it should be given the widest construction so that the employee's case may not be jeopardized." *A. Sukur & Sons. Vs. Chairman, 1st Labour Court, Tailor Employees Union.*<sup>8</sup>

**c. Incomplete regulation:** According to the section 109 of the Municipal Ordinance 1960 (GOEP, 1960), section 141 of the Dhaka City Corporation Ordinance 1983 (GOB, 1983), section 129 of the Pourashava Ordinance 1977 (GOB 1977) and section 138 of the Khulna City Corporation Ordinance 1986 (GOB, 1986), section 38 of the Local Government Ordinance 1976 "a Municipal Committee or Pourashava or City Corporation or Local Parishad may, in the prescribed manner, and with the previous sanction of the Government promote, administer, execute and implement schemes for undertaking any commercial or business enterprise." The regulation did not prescribe any control on the commercial establishment, but, confirming on the establishment of markets and shopping complex. The public authority may establish what type of commercial or business enterprise is not mentioned in the statutes.

Another Local Government named Thana Parishad is also responsible for the development of commercial activities, not act as a controlling authority. According to the

Second Schedule of the Local Government Ordinance 1976 (GOB, 1976), a Thana Parishad may implement such development projects in the police station as may be entrusted to it by the Government. Development authority executes their commercial activities through improvement or development scheme as prescribed in the statutes. Through this permission, development authority can execute any type of project, as they think fit. This sort of practice should not be entertained in the statute. Now the question arises that, who will control the physical establishment of commercial activities. All of the Local Governments and Development Authorities are maintaining this role through the regulatory measures on unauthorized construction. From this corner, it is true that, about 98% of the commercial establishments in the urban areas of Bangladesh are unauthorised construction and 100% in rural areas. In a sense, they are not unauthorised because each of them has been collected trade license from the Local Government.

**d. Regulatory intervention:** It is stated in the section 21(1) of the Pure Food Ordinance 1959 (GOEP, 1959) that, after the commencement of this Ordinance, no premises shall be used for- a) The wholesale manufacture or wholesale sale of any article of food notified under section 7 or specified in section 8, 9, 10, 11, 12 and 13, or b) The manufacturer or sale of ice-cream or any pickled, potted, pressed or preserved food, or c) Hotel, inn, restaurant or sweetmeat shop, unless such premises have been registered by the occupier thereof in such manner, by such date and on payment of such fee as may be prescribed. Where it will be registered and who will be the controlling authority, what will be the process and procedure of registration, the statute did not prescribed any answer. In another way, Municipal Authority from 1960, Pourashava from 1977 and City Corporation from 1983 have the right to control the manufacture and sale of any food staffs in the urban areas.

**e. Absence of necessary regulations:** Absence of appropriate regulation on the control of commercial establishment is creating irregular and haphazard development. Availability of regulations is existing on the foodstuffs, but the regulations could not bring any benefit due to the lack of management. It should be realized that, remote Thana urban area and Dhaka Metropolitan Area did not preserve same importance on every sector of urban components. But the contemporary regulations are prepared and prescribed on the consideration of Dhaka Metropolitan Area (example may be sited on the regulations of commercial establishment in the Building Construction Act 1996).

The commercial establishment always varied according to the land value and density of population. This variation followed according to the location, structural condition and volume of transaction of goods and commodities. It is not possible and justifiable to locate any type of commercial establishment in any place, and this localization always controlled by the regulations. But in Bangladesh, there is no any locational control on the commercial establishment due to the absence of regulation. Structural condition including use of materials is controlling by the Building Construction Act 1996, which is not appropriate for all types of commercial establishments.

**f. Poor management system:** Local government is empowered to control the commercial establishments in their jurisdictional areas, but they are performing responsibilities on the

collection of taxes only. Therefore, it may be said that, there is no any authority or management body to control the physical aspects of commercial establishments in the country. Sometimes Local Government and Development Authority demolish the establishments as unauthorized construction.

Absence of demolishing authority is generating more unauthorized commercial establishments in the urban areas. Demolishing of unauthorized construction is a time consuming and lengthy process. Only police authority preserves the right to control the hawkers as and when necessary but not the demolishing of unauthorized construction. There is also a regulatory gap in the demolishing process of unauthorized construction. That is, the establishments who hold a trade license from the Local Government have the right to continue his trade on his owned land whether the land is situated.

***g. Involvement of poor penalties:*** Penalties involved with the commercial activities mostly on the commodities and disputes of labour. Penalties stated in the statutes of Development Authorities on the construction of building (whatever the building is) executed on the commercial establishments also. Section 184 of the Town Improvement Act 1953 (amended in 1991) is using on the commercial establishments in Dhaka City. The section prescribed that, if any person, without the permission of the Chairman required by Sub-section (I) of section 72, erects, re-erects, or adds to any wall (exceeding ten feet in height) or building which falls within the street alignment or building line of a projected public street shown in any plan sanctioned by the Government under the said section, he shall be punishable- a) With fine which may extend, in the case of a masonry building or a wall, to five thousand taka, and, in the case of a hut, to five hundred taka, and b) With further fine which may extend, in the case of a masonry building or a wall, to one thousand taka, and, in the case of a hut, to one hundred taka for each day after the first during which the projection, continues.

East Bengal Shops and Establishments Act 1951 and Shops and Establishments Act 1965 is perhaps same in all of the regulations, only volume of penalties have been increased in 1965 from the year 1951. As an example, section 17(1) of the East Bengal Shops and Establishments Act 1951 (GOEP, 1951) is prescribed that, "whoever contravene any of the provisions of sections 6,7,11 or 13 shall, on conviction, be punishable with fine which, for a first offence, may extend to two hundred and fifty rupees and for a second or any subsequent offence, may extend to five hundred rupees, in default to undergo simple imprisonment which may extend to three months." But in the section 27(2) of the Shops and Establishments Act 1965 (GOEP, 1965) have been stated that, "whoever contravene any of the provisions of sections 10,11,17 or 31 and whoever having custody of any prescribed record, register or notice, refuses or without sufficient cause fails to produce it on being so required by an Inspector under section 26, shall be punishable with simple imprisonment which may extend to two months or with fine which may extend to two hundred taka or with both."

From the above-prescribed penalties, it is clear that, there are no any specific regulatory penalties on the establishment of commercial activities. In the urban areas of Bangladesh, there are different types of commercial establishments, most of them are using roads and

pavements as the part of shops. Local Government and police authority have the right to clear the roads, but did not preserve any control over the establishment. They may follow a lengthy process as the authorized and unauthorized construction formula. From this point of view, involvement of penalties is too poor as the statutes prescribed for other regulatory contrivances.

***h. Involvement of police power:*** It may be said that, there is one process on the involvement of police power for the control of commercial establishment. The process, which generally executed by the Development Authority on the eviction of any unauthorised structure also, followed on the control of commercial establishment. Local Government can perform the same role on the control of commercial establishment as practiced by the Development Authority, but they did not take any step due to the lengthy process on the involvement of police power. Sometimes police authority is tried to control the hawkers from the urban roads, but that is not the permanent solution of the problems.

Due to the absence of necessary regulations on the commercial establishment, involvement of poor penalties and police power, the urban areas of Bangladesh are establishing as congested areas. As a result, all types of movements are prohibiting in those areas, and the areas are losing their living and moving environment. Garbage, sanitation and drainage facilities are too poor in these commercial areas. Another picture may be found in all the intersections of the roads and some of the important roads where commercial establishments are developed linearly. Most of these establishments are unauthorised, but they preserve a trade licence from the Local Governments. Therefore, Local Governments are satisfied on their activities, whatever the areas covered by the activities.

### **Recommendations and Conclusion**

The recommendation provides here on the basis of outlined problems. Regulatory drawbacks emphasized here rather than administrative activities. It was pictured in the outlined problems that, lack of necessary regulation particularly on the commercial establishment is the main cause of problems. Enforcement procedure of the regulation could not make any balance with the development of commercial activities. Disputed management system is one of the important causes in developing irregular commercial activities.

In consideration with all the statutes and enactments involved with the commercial establishment a general picture could be viewed that, there are some regulations which does not followed by the establishment. As an example, section 21 of the Shops and Establishments Act 1965 may be presented here. The section is prescribed that, "every establishment shall provide for the sanitary conveniences, washing facilities and, where so required, facilities for taking meal by the workers in the prescribed manner." Except some of the multi-storied departmental store in Dhaka City the provision of the section should not be viewed where roadside commercial establishments are linearly existed.

- It is pointed out before that, most of the statutes related with the commercial establishments are old and obsolete. Building Construction Act 1996 is only the latest statute but the regulations prescribed in the enactment on commercial establishments is not enough for the control of different type of commercial development. New regulations should be prescribed on the construction procedure including locational aspects. Different scenario may be viewed in the CBD areas and outside the CBD areas. Therefore, regulations should be different. Regulations prescribed for the Dhaka Metropolitan Area should not be imposed on the other municipal areas of the Dhaka City. Again, regulations on the Khulna Metropolitan Area should not be appropriate on the control of commercial establishment in the Thana level urban areas. So, regulations may be formulated according to the Thana level, Zila level, Divisional level and Capital City. These four types of regulations may be prescribed on the commercial establishments of Bangladesh.
- Appropriate and necessary regulations on the commercial establishments should be incorporated with the Minor Acts. An example may be cited on the Bank-Company Ordinance 1991 (GOB, 1991). The Ordinance prescribed regulations only on the bank business. Physical development including locational aspects should be incorporated in the Ordinance. Shops and Establishments Act 1965 prescribed regulations on the duties and responsibilities on the labors and owners of the establishments. Duties of the Inspector also covered a wide range of regulations of the said Act. There is no any regulation on the construction procedure of the shops and establishments in the Shops and Establishments Act 1965. It should be included with the Act that the procedure of the construction of pucca, semi-pucca and katcha shops including location and setback rule. Involvement of the authority also should be attached with the Act. This is the only enactment, which should be re-arranged as a complete form of regulations on the commercial establishments.
- Both the Development Authority and Local Government are performing same responsibilities through the Improvement Scheme and Development Scheme on the construction of commercial establishments. This authorization should be changed, Local Government only performs the duties on tax collection through licensing and Development Authority will be involved with the construction process. Statutes on the commodities also make an intervention with the statutes of Local Government named City Corporation Ordinance, Pourashava Ordinance, and Municipal Ordinance. These interventions should be removed through the re-arrangement of section prescribed in the statutes of Local Government. This re-arrangement is possible in two-dimensional ways one is that, the Local Government should be the custodian of all the statutes and enactments prescribed on the commodities, other is that, the regulation prescribed in the statutes of Local Government should be removed and another separate authority on the control of commodities may be established.
- The management procedure of the enforcement authorities is related with the colonial type of administration. This procedure should be changed according to the necessary regulations prescribed by the Government. Administrative reformation is the only process to update the management process of the public authorities. At the sametime, a particular regulation should be removed from the statutes, an example may be cited here that, the section 118 of the Municipal Administration Ordinance 1960 (GOEP, 1960). The section prescribed that, "no court shall take cognizance of any offence under this Ordinance except on a complaint in writing received from the Chairman, or a person generally or specially authorised by the Municipal Committee in this behalf." This type of regulation did not reflect the pure democratic situation in the society. As a result, one type of dictatorship always prevailed between the public authority and mass people or landowners. After the promulgation of a statute, difficulties on the execution may be arisen through out the years. But it should not be prohibited as the section 173 of the Dhaka City Corporation Ordinance 1983 (GOB, 1983). The section prescribed that, "if any difficulties arises in giving effect to the provisions of this Ordinance,

the Government may, by order, do anything which appears to it to be necessary for the purpose of removing the difficulty: *provided that no such order shall be made after the expiration of two years from the constitution of the Corporation.*"

- Approval system is followed by the by-laws prepared by the concerned authority. All the authorities are permitted to prepare by-laws through their statutes. According to the section 155 of the Khulna City Corporation Ordinance 1986, section 123 of the Municipal Ordinance 1960, "the Corporation may make regulations to regulate the procedure in respect of all or any of the matter enumerated in the Fifth Schedule, and all matters incidental, consequential and supplemental thereto." This type of sole authorization, in some cases, creates irresponsibility. Perhaps in all the public authorities, there is a wide gap in the approval procedure mostly in the commercial activities. This procedure is not to known for all, even their new employees also. Most of the approval system is outdated and time consuming. The approval system should be re-arranged with the imposition of modern and prompt procedures. One-point approval system should be incorporated as the tax collection procedure of the Local Government, also on the permission and removal of commercial activities.
- Environment of the commercial establishments is pointed four components namely- cleanliness, ventilation for air, sufficient natural lighting and sanitary condition. All of these facilities are very much poor in the establishments of Bangladesh. For the better environmental condition in the commercial premises, section 18 to 21 of the Shops and Establishments Act 1965 should be properly maintained. Section 18 prescribed about cleanliness, section 19 about ventilation, section 20 about lighting and section 21 about sanitary conveniences, washing facilities and facilities for taking meals.
- Involvement of police power on the commercial establishments is too poor. Section 170(1) of the Town Improvement Act 1953 (GOEP, 1953), the Police Commissioner and Superintendent of police and their sub-ordinates shall be bound to co-operate with the Chairman for carrying into effect and enforcing the provisions of this Act." Such type of regulation should be prescribed through all the statutes directly involved with the public authorities.
- Volume of punishment on the contravention of regulations related with the commercial establishments should be re-arranged. Punishment on the violation of regulation should be clearly prescribed in the statute. In case of some intervention with Penal Code, the punishment may be referred to the Penal code. Volume of punishment on the contravention of regulations should be re-arranged yearly according to the valuation of the local currency (whether the punishment prescribed as fine). Punishment as imprisonment may be followed the Penal Code or Police Ordinance.

From the beginning, control over the labour or worker functions was considered as important factor rather than construction procedure of the commercial establishments. Therefore, a Major Act named Labour Law and a separate Court named Labour Court is established in the country. Large number of disputes is arisen on the labour function but perhaps none on the construction activities. Generally, Civil Court did not preserve any jurisdiction over the labour disputes. As an example, "whether the plaintiffs are workers as defined in labour laws having no remedy in Civil Court. The plaintiffs are workers. Labour Court is the proper forum for redress of their grievances. Civil Court has no jurisdiction to entertain the two suits." *Md. Shahabuddin Vs. Managing Director, Janata Bank, Bangladesh.*<sup>9</sup>

In the physical planning views, all functions and activities in urban areas should be properly maintained through a systematic guideline. This guideline should be supported

by the regulatory arrangements of the country. From the study, it is viewed that, the regulations on the commercial establishments are too poor, therefore, commercial establishments of the urban areas growing with an irregular shape. Method of development control should be changed and regulations should be specified according to the activities in the prescribed statutes and enactments.

### Notes:

<sup>1</sup> Section 2(m), Shops and Establishments Act, 1965,

<sup>2</sup> Section 2(d), Shops and Establishments Act, 1965.

<sup>3</sup> Section 2 (6), East Bengal Shops and Establishments Act, 1951

<sup>4</sup> Section 3(12), Pure Food Ordinance 1959.

<sup>5</sup> Schedule prescribed with - foodstuffs including edible oilseeds and oils, petroleum and petroleum products, mechanically propelled vehicles including those in completely knocked-down condition their parts and tyres-tubes for the same, coal, drugs and medicine including those administered by injection, chemicals including gases, infant and patient foods and allied articles, cigarettes, tallow, chemical fertilizers, sugar and tea.

<sup>6</sup> Section 2(a) of the Essential Commodities Act 1957

<sup>7</sup> For more details, section 4(b)(I) of the Pure Food Ordinance 1959.

<sup>8</sup> 20 DLR, 1968.

<sup>9</sup> 41 DLR, 1989.

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