



The Controversy Over Bangladesh's Special Energy Act

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Bangladesh's Quick Enhancement of Electricity and Energy Supply (Special Provisions) Act 2010 has sparked both swift solutions and heated debates. This Act was introduced as a fast-track remedy to the country amidst the energy crisis. The Act granted unprecedented powers to the government. But as the lights stay on and power plants rise, a shadow of controversy lingers. Critics argue that the provisions of safeguard have opened doors to unchecked authority and potential misuse. Is this law an essential tool for national development or a dangerous overreach of power?

Since the fall of the Awami Government, the Quick Enhancement of Electricity and Energy Supply (Special Provisions) Act 2010 has become highly debated. Political parties and the public have consistently called for its repeal. Various platforms, including the Center for Policy Dialogue (CPD), have recommended abolishing this Act and aligning procurement in the electricity and energy sectors with Public Procurement Rules (PPR).

A writ petition was filed in the High Court challenging the legality of sev-

eral sections of the Act. The petition argues that the Act violates constitutional provisions, including Articles 7, 21, 26, 27, 31, 42, 44, 46, 143, and 145. Specifically, Section 9 states, "No question regarding the validity of any act done or purported to be done, any action taken, or any order issued or direction given under this Act shall be raised in any court." Similarly, Section 6 allows the government to negotiate directly with a limited number of organizations for energy-related projects, bypassing competitive bidding processes with ministerial approval.

Despite these concerns, the previous government extended the Act until 2026, citing the need to ensure an uninterrupted power supply amid ongoing national energy challenges.

Historical Context

Bangladesh has long struggled with inadequate power supply, hindering its industrial and agricultural sectors. Increasing power generation was a dire necessity. The Awami League government introduced oil and gas-based rental and quick rental power plants to address the issues. However, this approach drew widespread criti-

cism due to inefficiencies and allegations of corruption. To expedite these projects and shield them from potential legal challenges, the government passed the Quick Enhancement of Electricity and Energy Supply (Special Provisions) Act, 2010. However, things were improving gradually in residential and commercial establishments. A detailed report was published in the Daily Star on 16 September 2022.

Objectives of the Act:

The Act's main objective is to introduce urgent measures to increase the generation, transmission, and transportation of electricity and energy. This ensures a reliable supply to meet the demands of agriculture, industry, commerce, and households. Additionally, the Act allows for rapid implementation of energy imports and the extraction of energy resources. The legislation bypasses existing laws to meet the country's critical energy needs, recognizing that energy shortages have been a barrier to economic growth and national development goals, such as the Millennium Development Goals (MDGs).

Controlling Powers and Criticisms

The Act grants the government extensive control over the energy sector. For instance, Section 9 prevents any legal challenges against government actions taken under the Act, and Section 10 shields officials from lawsuits for actions taken in good faith. While this enables quick decision-making, it has sparked concerns about corruption, lack of accountability, and bypassing competitive bidding.

Such extensive powers can lead to favoritism and inflated project costs, as lower-performing organizations might still secure contracts due to the absence of proper oversight mechanisms.

International Comparisons

While some countries have enacted similar emergency legislation, many maintain judicial oversight and accountability to varying degrees.

New Zealand's Electricity Supply Energy Act 1992, and The Electricity Industry Act 2010: This law allows the government to manage electricity generation and distribution during emergencies, ensuring an uninterrupted supply. Similar to Bangladesh's Act, it limits legal challenges to government decisions, which prevents questioning the validity of actions taken under it.

India's Electricity Act, 2003: This legislation grants the central government powers to intervene during crises to stabilize the electricity sector. Similar to Bangladesh's Act, officials executing duties are shielded from legal proceedings, thus allowing for swift responses.

The Emergency Power Supply Act, USA: This law provides the government with significant control over energy resources during emergencies, with government officials granted immunity for actions taken in good faith, akin to Bangladesh's provisions.

UK's Electricity Supply Act, 1989: This Act allows the government to in-



tervene during energy shortages, though some level of judicial oversight remains intact, unlike Bangladesh's complete restriction of legal challenges.

China's Emergency Response Law: This grants the Chinese government broad powers to take any necessary actions during emergencies, including controlling energy supply and infrastructure without needing court approval. Similar to Bangladesh's law, officials are protected from legal action for good-faith actions during crises.

South Africa, the National Energy Act 2008: Grants the government the ability to take steps to secure energy resources and ensure supply stability, including fast-tracking projects and controlling resources. Actions taken under the Act in good faith are protected from legal prosecution, similar to Bangladesh's provisions where officers and employees are shielded from legal consequences while carrying out their duties.

Australia's National Electricity Emergency Response Act, 2015: Unlike Bangladesh's Act, Australia's legislation maintains some judicial oversight, allowing courts to review government actions. This provides a balance between government intervention and accountability.

While some countries do grant their governments extensive powers in times of crisis or for essential infrastructure projects, the degree of control and legal immunity provided under Bangladesh's Quick Enhancement of Electricity and Energy Supply (Special Provisions) Act, 2010 is relatively unique in its lack of judicial oversight and complete legal immunity for officials.

Pros and Cons of the Act:

Cons:

- The act grants the government broad powers without adequate oversight, reducing transparency in decision-making.
- Officials are protected from lawsuits, weakening accountability and increasing the risk of misuse of power.
- Projects may be awarded without competitive processes, raising concerns about unfair contracts and inflated costs.
- Concentrated power and limited oversight increase the potential for corrupt practices.
- Urgency may result in insufficient environmental impact assessments, risking long-term sustainability.
- The absence of judicial review and transparency can erode public trust in government actions.

Pros:

- Allows the government to quickly address energy shortages by bypassing lengthy procedures.
- Reduces bureaucratic delays, speeding up project approvals and implementation.
- Enables swift execution of energy projects, including imports, to meet urgent demand.
- It prioritizes national economic growth by ensuring a continuous energy supply for agriculture, industry, and domestic use, thus supporting economic stability and development goals like the Millennium Development Goals.
- It encourages bold decision-making and reduces the fear of legal repercussions that might otherwise hinder timely interventions. It helps maintain the momentum of economic activities by preventing energy shortages.
- By expediting project approvals,

the act can attract private investment in the energy sector, fostering public-private partnerships in critical infrastructure development.

In a nutshell, we can say that the Act provides a fast-tracked mechanism to address Bangladesh's energy needs.

The Quick Enhancement of Electricity and Energy Supply (Special Provisions) Act, 2010 has played a pivotal role in addressing Bangladesh's pressing energy needs by allowing the government to take swift, decisive actions. However, the Act's provisions for broad government control, legal immunity, and lack of judicial oversight have made it a controversial piece of legislation. While many countries have enacted similar laws to ensure energy stability, most retain some form of judicial accountability or oversight—something that is largely absent from Bangladesh's Act.

As debates continue whether the Act

should be repealed or reformed, it's clear that balancing urgent energy needs with transparent governance will be critical for the country's long-term economic stability and public trust.

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