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**NON-GOVERNMENTAL ORGANISATIONS  
(NGOS) IN BANGLADESH: AN  
ASSESSMENT OF THEIR  
LEGAL STATUS**

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## Abstract

Despite multiple efforts, the amount of poverty in Bangladesh has remained alarmingly high by any standard. Two salient characteristics of poverty alleviation in Bangladesh are: their poor accessibility for the 'target' population (the rural poor), and lack of co-ordination between government and the Non-Government Organisations. The moment the state alone is unable to combat poverty then the NGOs come into the picture to fill the void. First Britain as a colonial power, then the East Pakistan Government and the Government of Bangladesh have promulgated Ordinances and Regulations for the practical regulation of NGOs. The loopholes and flaws within the legal framework have given the NGOs opportunities to violate the Ordinances and Regulations. A better situation could be achieved by modifying and strictly implementing such state rules, ensuring accountability, effective state control, and meaningful NGO-State collaboration and co-operation.

## Introduction

The paper will first outline the overall situation of Non-Government Organisations (NGOs<sup>1</sup>) in Bangladesh, then set out the legal issues in detail and finally make proposals for improvements. State-NGO relations in Bangladesh have moved through stages of indifference and ambivalence (Kalimullah, 2000; News from Bangladesh, 1999e; Lewis and Sobhan, 1999; White, 1999; Khan, 1999; compare Baig, 1999 on Pakistan; Sen, 1999 on India). In other parts of the Muslim world, state has in general been sceptical or strict towards NGOs, human rights and community groups (Huband, *et al.* 1999; Huband, 1999; Galpin, 1999). When the state in Bangladesh tried to control the activities of NGOs, the donors<sup>2</sup> put pressure on the state, which responded by imposing more paperwork on the NGOs, thus increasing their transaction costs. The state has failed to make NGOs more transparent, functionally or financially. So, NGOs can easily violate laws because of the weakness of the state and their own strength which over time has been fed by the donors.

## NGOs in Bangladesh

Since the independence of Bangladesh in 1971, the state has largely failed to assist the poor or reduce poverty, and NGOs have grown dramatically, ostensibly to fill this gap. There are more and bigger NGOs here than in any other country of equivalent size. ADAB (The Association of Development Agencies in Bangladesh) had a total membership of 886 NGOs/PVDOs in December 1997, of which 231 were central and 655 chapter (local) members (ADAB, 1998), the ADAB Directory lists 1007 NGOs including 376 non-member NGOs. The NGO Affairs Bureau of the Government of Bangladesh (GOB), which has to

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<sup>1</sup> NGOs are the non-profit development organisations or NGDOs for this paper. Most NGOs in Bangladesh are foreign aided development organisations. Although NGO activities are described as 'voluntary' activity in this paper this has been due to the official documents and laws which includes all voluntary or nonprofit work. Salamon and Anheier (1997) tried to define nonprofit organisation as

- a) *Organised*, i.e., institutionalised to some extent.
- b) *Private*, i.e., institutionally separate from state.
- c) *Non-profit-distributing*, i.e., not returning any profits generated to their owners or directors.
- d) *Self-governing*, i.e., equipped to control their own activities.
- e) *Voluntary*, i.e., involving some meaningful degree of voluntary participation, either in the actual conduct of the agency's activities or in the management of its affairs (Salamon and Anheier, 1997).

**NGOs (Non-Governmental Organisations):** The World Bank usually refers to nongovernmental organisations as any group or institution that is independent from government and that has humanitarian or co-operative, rather than commercial, objectives. Specifically, the Bank focuses on NGOs that work in the areas of development, relief or environmental protection, or that represent poor or vulnerable people (The World Bank, 1996). This definition of NGO has been used in this paper.

<sup>2</sup> The official donors are DFID, NORAD, CIDA, SIDA etc. The other donors are Oxfam, CUSO, and ActionAid etc.

approve all foreign grants to NGOs working in Bangladesh, released grants worth about 250 million US \$ in FY 1996-97 to 1,132 NGOs, of which 997 are local and 135 are foreign (NGO Affairs Bureau, 1998). NGOs have mainly functioned in order to service the needs of the landless, usually with foreign donor funding as a counter-point to the state's efforts (Lewis, 1993).

Despite their numbers, NGOs have brought little change in levels of poverty. Even the largest NGOs in Bangladesh taken together cover only a fraction of the population: perhaps only 10-20 percent of landless households (Hashemi, 1995).

NGOs in Bangladesh have not originated from Grass Root Organisations (GROs) in civil society. Rather it is NGO workers who set up groups, which clients then join to get microcredit and other services. Most Bangladeshi NGOs are totally dependent upon foreign funds. The volume of foreign funds to NGOs in Bangladesh has been increasing over the years and stood at just under 18 percent of all foreign 'aid' to the country in FY 1995-96. Donors increased their funding from 464 NGO projects in 1990-91 to 746 in 1996-97, a 60 per cent increase in six years; the total amount disbursed showed a 143 per cent increase over the period (NGO Affairs Bureau, 1998). However, the disbursement of funds to NGOs is highly skewed. The top 15 NGOs accounted for 84 per cent of all allocation to NGOs in 1991-92, and 70 percent in 1992-93 (Hashemi, 1995). NGO dependence on donor grants has kept the whole operation highly subsidised. For example, the annual working costs of BRAC's (one of the largest NGOs in Bangladesh) branch-level units are still more than three times their locally generated income (Montgomery et al, 1996).

### **Legal Status of NGOs, Past and Present**

The term 'legal status of NGOs' means law as it pertains to NGOs<sup>3</sup>. The most significant steps of Ershad Government (1982-1990) regarding NGOs were the abolition of the NGO Standing Committee, the creation of the NGO Affairs Bureau (NAB) and the appointment of an Advisor for NGO Affairs with Ministerial status (White, 1999). The NAB started functioning with effect from 1st March 1990. It was headed by a Director-General and began as the contact point between the State and various foreign and local NGOs receiving foreign donations. As all NGO activities came under the purview of the NAB, NGOs were supposed to be regulated by the NAB instead of the Department of Social Welfare. Within a short period of time, the Bureau had shown promise by its quick clearance of NGO applications. However, the procedures still remained complex, and needed further improvement.

### **The Law and NGOs in Bangladesh**

The state in Bangladesh requires each NGO to register formally with NAB, and to renew this registration every five years. Each project must be approved in advance by the NAB, as must

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<sup>3</sup> In 1860, the then Provincial Government of Bengal promulgated the Societies Registration Act No. XXI to improve the legal position of societies for the promotion of literature, science or the fine arts, for diffusion of knowledge or for charitable purposes. The First Ordinance No XLVI of 1961 was promulgated on 2nd December, 1961 by the Martial Law Administration of President Ayub Khan. It made registration mandatory for all NGOs working in what was then East Pakistan and made the Director of Social Welfare responsible for ensuring registration. The Foreign Donations (Voluntary Activities) Regulation Ordinance 1978 was promulgated on 15th November 1978 by President Ziaur Rahman to regulate the receipts and expenditure of foreign donations for voluntary activities. The Foreign Donations (Voluntary Activities) Regulation Rules were promulgated on 12th December, 1978 requiring all NGOs intending to receive foreign funds to be registered under specified prescribed rules. The Ershad Government promulgated the Foreign Contributions (Regulations) Ordinance 1982 on 6th September, which reiterated that no individual representing NGOs or the organisations themselves would be allowed to give or receive any foreign contribution without prior permission from the state. The government amended the Foreign Donations (Voluntary Activities) Regulation Rules 1978 on 14th May, 1990.

all foreign funding. Each NGO must receive all funding through a single, specific bank account, and the bank must submit full reports to the central bank, which then reports to the NAB and to the Economic Relations Division (ERD) of the Finance Ministry. The NAB also regulates the use of foreign consultants. For projects and programmes of disaster-relief, requirements are similar but the NAB must decide more rapidly. Each NGO must submit annual auditor's reports to the NAB, having appointed its auditors from the list approved by the NAB. Penalties for false statements, failures to submit declarations or other contraventions of the law include heavy fines payable by the NGO and/or imprisonment of NGO directors. The transaction costs for NGOs in securing permissions and approvals are very high, in both avoidable delays and unnecessary paperwork. Far too much unnecessary information is required, usually in multiple copies.

State regulations define the term 'Voluntary Activity' as an activity undertaken, with partial or complete support from external sources, by any person or organisation to render voluntary services pertaining to agricultural, relief, missionary, educational, cultural, vocational, social welfare and other developmental activities in the country. Although the definition seems to cover almost all kinds of voluntary activities, the state retains the right to include or exclude any activity as "voluntary"<sup>4</sup>. The state apparently intended to widen the scope of the definition in order to prevent both the donors and recipients from making or receiving grants/donations in contravention of official ordinances<sup>5</sup>.

The ordinances/regulations/circulars vested the NAB all its responsibilities regarding coordination, regulation and monitoring of foreign and foreign assisted non-government voluntary organisations and individuals working in Bangladesh. The NAB is charged with certain responsibilities<sup>6</sup>. While considering the application for registration, the NAB is required to seek approval from the Home Ministry<sup>7</sup>.

<sup>4</sup> The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (hereafter FDRO, 1978), for example, defined 'foreign donations' as donations, contributions or grants of any kind made for any voluntary activity in Bangladesh by any foreign government or organization or a citizen of a foreign state, or by any Bangladeshi citizen living or working abroad (Ordinance XLVI : 1978). The foreign contributions (Regulation/Ordinance, 1982, hereafter FCO, 1982, replaced the term itself by 'foreign contribution', defined as any donation, grant or assistance made by any government, organisation or citizen of a foreign state (Ordinance XXXI : Section 3 : 1982). According to FCO, 1982, any foreign payment, in cash or kind, even a ticket for a journey abroad, has to be considered as a foreign contribution.

<sup>5</sup> The ordinances and regulations are

- a) The Foreign Donations (Voluntary Activities) Regulation Ordinances, 1978.
- b) The Foreign Donations (Voluntary Activities) Regulation Rules, 1979.
- c) The Foreign Contributions (Regulation) Ordinance, 1982.
- d) Working procedure for Foreign and Foreign assisted Bangladeshi Non-Government Voluntary Organizations, 1993.

<sup>6</sup> The Responsibilities are:

- a) Arranging 'one-stop service' for NGO registration and processing of project proposal, NGOs are not required to go to any other office or authority for this purpose. (Circular: Section 2: 1993).
- b) Approving project proposals submitted by NGOs, release project funds approve appointments of expatriate officials/consultants and their tenure of services (Circular: Section 2: 1993).
- c) Scrutinizing and evaluating reports and statements submitted by NGOs.
- d) Coordinating, monitoring, inspecting and evaluating NGO programmes and auditing their income and expenditure of accounts.
- e) Collecting fees/charges fixed by the government.
- f) Examining and taking necessary action on the basis of reports on NGO programmes.
- g) Enlisting Chartered Accounts for auditing NGO accounts.
- h) Approving receipts of 'one-time contribution' by NGOs. Such contribution is made for buying equipment or for construction of a house/building (Circular: Section 2: 1993).

NAB is also responsible for maintaining communication with relevant Ministries/Agencies on subjects related to operations of NGOs in the country and for obtaining views/opinions from these agencies when required. Government ordinance/regulations require necessary assistance and co-operation from concerned Ministries/

Projects may be for one or multiple years. NGOs can submit a five year project proposal, commensurate with an identified priority area of the five year plan of the state. The NAB arranges approval and release of the funds on a priority basis for such projects. The targets specified in the project proposal, however, must be achieved within the stipulated period. Usually funds for the following year can be released for the project if its implementation strategy and achievement of target for the year is considered to be satisfactory by the Bureau (Circular: Section 7 (h): 1993).

Existing NGO regulations make exception for projects for assistance to disaster-affected areas. For disaster rehabilitation programmes, NGOs have to submit their project proposal with requisite details on a prescribed proforma FD-6 (Circular: 7.1(a):1993). The NAB communicates its decisions with 21 days from the day of the receipt of the project proposal and forwards it to the relevant Ministry for its opinion. The Ministry must send its decision to the NAB within 14 days (Circular: Section 7.1(b):1993).

The state and its machineries have from time to time introduced several rules and procedures but, due to their complexity and weakness of the state, NGOs can easily evade them. The rules for receipt and use of foreign donations<sup>8</sup> and the banking transactions of NGOs<sup>9</sup> are interesting examples. I shall elaborate them below.

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Divisions, other Subordinate Departments/Directorates, Divisional Commissioners and Deputy Commissioners for smooth discharge of the stipulated responsibilities of NAB. The Ordinances/Regulations also require that different Ministries/Divisions of the government and their subordinate offices will consult NAB prior to entering any Agreement/Memorandum of Understanding (MOU) with foreign and foreign assisted Bangladeshi NGOs. Before signing such Agreements/MOUs the relevant NGO shall have to be registered under section 3(2) of the Foreign Donations (Voluntary Activities) Regulation Ordinance 1978 (Circular : Section 4: 1993). Such agreements (MOU) are usually signed between an NGO and the government for programmes like running a certain number of schools on behalf of the government, or collaborative programme like Expanded Immunization Programme.

<sup>7</sup> The Home Ministry is required to give its decision within 60 days of receipt of the letter from the NAB. In considering the application, the Home Ministry is expected to look into the following matters:

- (a) Whether the organisation or person(s) involved is/are involved in anti-state/anti-social activities and whether the persons concerned had been convicted for these or any other immoral act.
- (b) Identities of the members of the executive committee of the organisation, their relationship and social status.
- (c) Previous experience of the organisation in social welfare activities.
- (d) Whether the organisation has its own office (Circular: Section 6.1 (d): 1993).

If the NAB does not receive the Home Ministry's decision within the specified time, the NAB is required to send a written reminder to the Home Ministry after 30 (thirty) days (Circular: Section 6.1(d): 1993). It will then be presumed that the Ministry does not have any objection to the application for registration of the NGO concerned. The NAB is required by law to issue the letter of registration 90 days of receipt of the application. The registration remains valid for 5 years unless cancelled by the state (Circular: Section 6.1(d): 1993). State retains the right to cancel the registration of an NGO. Registration can be renewed for 5 years provided NAB is satisfied with the performance of the NGO. Renewal applications should be accompanied by the constitution of the NGO, names and addresses of the members of the executive committee and minutes of the annual general meetings of the NGO and the fee for renewal or registration.

While scrutinizing, the NAB has to consider whether the project contributes to socio-economic development, without duplicating existing state and non-government programmes (Circular: Section 7(1): 1993). After scrutiny, the NAB forwards the proposal to the relevant Ministry, which has to reply within 21 days. If it does not, the NAB can assume that the Ministry has no objection to the project (Circular: Section 7(d): 1993). However, if the Ministry has an objection to the project or recommends modification of the project, the arguments will have to be communicated to the NAB in detail. If it finds the objection/modification unacceptable, the NAB may approve the project after obtaining clearance from the Prime Minister's Office (Circular: Section 7(e): 1993). The NAB, if necessary, can approve the project proposal after making changes and modifications. But in such a case the opinions and limitations of donor agency/agencies and relevant NGOs should be considered (Circular: Section 7(f): 1993). The NAB is required to communicate its decision within 45 days of receiving the project proposal with the requisite details (circular: Section 7(g): 1993).

<sup>8</sup> Any person or organisation registered as an NGO may receive or operate any foreign donation only with prior approval or permission of the state (Regulation Rules: Section 4(1): 1978). To receive/utilize foreign donations for

### Submission of Annual Reports

NGOs are required to prepare annual reports on their activities within three months of the end of the financial year and send copies to the NAB, ERD, the relevant Ministry, Divisional Commissioner(s), Deputy Commissioners and the central Bank.

### Power of Inspection

The State may, at any time inspect the accounts and other documents of NGOs. The state may require the NGO to submit a declaration as notified in the official gazette (Ordinance No. XLVI: Section 4(1):1978). Failure to produce any accounts or other documents or failure to furnish any statement or information by the NGO is a contravention of state regulations (Ordinance XLVI: Section 4(3): 1978). The NAB has the responsibility and power to audit and inspect the accounts of NGOs (Circular: Section 10(a): 1993).

The accounts of any NGO must be audited by the person/s appointed by the relevant NGO or persons enlisted/approved by the NAB. Audit reports must be submitted to the NAB within two months of the end of the financial year.

From the above discussion we have a clear picture of the manner/procedure regarding the way the state of Bangladesh regulates those NGOs which finance charitable work through foreign donations. The donor agencies led by The World Bank (WB) have strongly supported the formulation of the State's policy on NGOs, particularly in the direction of streamlining the administrative and legal framework within which NGOs operate, to increase their effectiveness (Zareen, 1996).

### **Critical Assessment**

NGOs in Bangladesh have increasingly become subject to question and criticism from state, political parties, intellectuals and the public in general. Let us critically discuss the issues in brief from a legal standpoint.

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approved projects NGOs must submit the application (through FD-2 form in triplicate) to the Director General of the NAB. The NAB issues the order to release foreign funds after consideration of the activities and budget of the NGOs approved projects, the progress and implementation of on-going projects and documents relating to receipt of foreign funds. The NAB sends copies of the order to the ERD, Bangladesh Bank (the central bank), relevant Ministries, Divisional Commissioner(s)<sup>8</sup> and donor agencies for information and necessary action. In case of an approved project, to receive further installment of a foreign donation the NGO has to submit an application using form FD-2 in triplicate. Subsequently, statements of foreign donations received and spent in the previous year must be submitted on form FD-3 in triplicate. The bureau communicates its decision within 14 days of receipt of the application, after examining the annual progress report on the project.

Applications to appoint/extend the tenure of expatriates in approved projects have to be submitted by the relevant NGO to the NAB for approval or form FD-9. The NAB will ask the Home Ministry to comment within 25 days. Each proposal for appointment of expatriate personnel must be within the person-months approved by the NAB. Statements of their emoluments (even if received from outside Bangladesh) must be submitted to the NAB every year.

<sup>9</sup> To facilitate easy accounting, all persons or organisations registered as NGOs must receive all funds in foreign exchange through a single specified account opened in any scheduled Bank of Bangladesh which must submit statements of such funds to the central bank, i.e., The Bangladesh Bank (Regulation Rules: Section 4(4): 1978). The scheduled banks maintaining such accounts (in both foreign currency and Bangladeshi Taka<sup>9</sup>) are now required to submit a statement on foreign funds to the Bangladesh Bank and the Director General of NAB every six months (Circular: Section 5(h): 1993). At present the Bangladesh Bank is supposed in its turn to submit statements to the ERD as well as to the Director General of NAB. All NGO payments exceeding Taka 10,000 have to be made by cheque and all salaries and allowances must be paid through bank accounts (Circular: Section 5(I): 1993).

Recently there have been allegations of misuse of funds, gender discrimination, and nepotism against a large NGO called GSS. A state and another donor investigation found that the rural level female workers of GSS were compelled to go on maternity leave without pay. They also found that GSS bought lands worth millions of Taka to build its headquarters in Dhaka. The donors stopped funding the NGO too (Kabir, 1999; News from Bangladesh, 1999c). In the long process of NGO development in Bangladesh, many NGOs have certainly empowered themselves with structures and buildings, while empowerment of the poor beyond better services has been rather limited. Recently, NGO activities and expenditures came under fire in the National Parliament and other fora (The Daily Star, 1999b; NFB, 1999d). One Member of Parliament (MP) alleged that some NGOs raised money on false promises of jobs and credit, but misappropriated it. Another MP claimed that some NGOs make loans at the high rate of 14% and resort to “inhuman torture” on debtors who fail to repay on time (News from Bangladesh, 1999a). The relevant minister gave a face-saving answer to all these allegations but in reality there is poor control by the state on NGOs in Bangladesh. This was reiterated by the head of NAB in another occasion (News from Bangladesh, 1999b).

In absence of an effective monitoring system, millions of Taka are channeled into the country both legally and under cover to finance a wide range of ‘religious activities’. Government officials, businessmen, top police officials and some priests of mosques believe ‘fundamentalist groups with outside connections’ are taking full advantage of the government’s lapses. In addition to meeting the costs of running *madrakas* (religious schools), the money is mostly spent on ‘motivational’ purposes. As part of the process, foreign books are translated into Bangla, leaflets are published and distributed among the *madraka* students, cassettes are released and teachers are selected to deliver messages. The money is also spent to organize public meetings, where top leaders deliver ‘religiously heated speeches’. Moreover, buying lands to set up *madrakas*, paying teachers and motivated activists are all included in the pay list. Moreover, recruitment of foreign instructors and sending motivated activists abroad are also common. NAB served show-cause notices to several NGOs for spending several millions of Taka without required authorization from the Bureau (The Daily Star, 2001).

Any powerful NGO may deliberately manipulate the Home Ministry or the relevant Ministry when it has not delivered an opinion within the stipulated time (as mentioned in Circular 1993) so that the application may be passed without any objection. If this happens, the illegal issue would not be eliminated.

According to law<sup>10</sup>, no person or organisation may receive or spend foreign loans/grants without the prior state approval. The NAB Report submitted to the Prime Minister’s Secretariat in 1992 stated that various NGOs had disbursed Taka 1.5 billion without prior state permission in the financial year 1990 to 1991. Quite often, large amounts of money come into the country illegally. ‘The Salvation Army’ received Taka 12.5 million without the state approval (Government Report, 1992); similarly, ‘Sheba Shongho’ spent Taka 13.5 million without state approval, and the ‘Finnish Free Mission’ also violated state instructions (Report-1, 18th August, 1992; *Bhorer Kagoj*, 1992).

According to a Government Inspection Report (1992), senior officials of some NGOs quite often travel abroad and, without state approval, obtain foreign donations. According to this report the accounts provided by the NGOs may fail to match those provided by the Bangladesh Bank, although according to law<sup>11</sup>, if any organisation wants to carry out a charitable programme, then it should receive any foreign currency through an approved bank in Bangladesh. This restriction was imposed to give the state a true picture of the total amount of foreign currency in the hands of NGOs, as well as giving it indirect control of the flow of foreign

<sup>10</sup> The Foreign Donation (Voluntary Activities) Regulation Ordinance 1978 Section 3(1) and Section 3(3) and the Foreign Contribution (Regulation) Ordinance 1982, Section, 4(1).

<sup>11</sup> The Foreign Donation Regulation Act of 1978.



funds to the NGO sector. Yet, according to another act<sup>12</sup>, any organisation/person can bring any amount of foreign currency into Bangladesh. Therefore, as a result of this dual system, no-one can know the total amount of foreign currency actually received by any NGO. Close observation of NGO activities in Bangladesh would further substantiate the problem.

According to a nineteenth century Act<sup>13</sup>, voluntary societies cannot undertake business oriented projects. As in the same Act, upon the dissolution of the society and payment of all its debts and liabilities, no property whatsoever shall be paid to or distributed among the members of the society but should be vested in the managing committee. In a 1961 Ordinance there is provision for gaining profit in order to create job opportunities. Both the Act and Ordinance apply to the same cases. As a consequence, some NGOs are flourishing simultaneously as service-oriented organisations and as profit-oriented business organizations (Davis and McGregor, 2000). The state is also being deprived of tax by NGOs taking advantage of loopholes in the regulations (The Daily Star, 2000b). Some senior officials of certain NGOs have used loopholes to become affluent<sup>14</sup>.

BRAC is currently alleged to be running successful businesses like a commercial organisation, contrary to its charitable status. BRAC's cold storage, press, a marketing organisation named 'Aarong', a real estate company, and a restaurant etc. are highly profitable. BRAC received state approval to open a commercial bank for microlending (Financial Times, 1998). The court said that the running of a bank by a charitable organisation is illegal (News from Bangladesh, 2000). BRAC has also opened a private university. BRAC provides no accounts of their commercial organisation's income or expenditure to any state department. Karim (2000) points out that BRAC generates 79 per cent of its income from its microcredit programmes and business sources. As BRAC is not registered under the Ordinance of 1961, if ever the dissolution of BRAC occurs then all its property will be vested in the managing committee. BRAC possesses more than 50 modern automobiles (Zarren, 1996).

The Government Report (1992) reports a complaint against PROSHIKA (another large NGO) that, although PROSHIKA is registered under 1961 Ordinance, it has still developed a transport company of 28 buses at a cost of 30 million Taka. At a cost of 15 million Taka, PROSHIKA has also established a press and a garment industry and is investing Taka 5 million in a video library. Recently it has started an internet and software business. In some cases, service-oriented NGO projects are basically market-oriented, with the objective of earning profits through long term capital investment. BRAC's cold storage project (costing Taka seventy million) and Ganosastha Kendro's (GK, another large NGO) highly profitable clinic, university and medicine businesses are striking examples. Allegations have also been made against GSS, another large NGO which used donors' funds to open a printing press, media business but not audited and taxed as per rules of the state (Kabir, 1999). The Finance minister told in a seminar that most NGOs are engaged in banking violating the law (The Independent, 1999).

The Government Report (1992) states that ADAB's (Association of Development Agencies in Bangladesh) dishonesty is evident as it has several bank accounts. This violates state rules, when any NGO must receive foreign donations through a single bank account (Regulation Rules: Section 4(4): 1978). The power to appoint any state-registered firm as an auditor is currently vested in the NGOs themselves, which is alleged to have resulted in auditors giving favourable reports on their clients. The NAB is further reported to have 2 audit supervisors but not a single auditor, so that the state is unable to obtain a clear picture of the actual status of NGOs in the country. Only a random sample of audit reports are examined, so most NGOs are not reviewed.

<sup>12</sup> The Exchange Control Regulation Act, 1947.

<sup>13</sup> The 1860 Societies Registration Act.

<sup>14</sup> The Government's Audit Report, 1992.

After audit and inspection, if a complaint is lodged against an NGO, virtually no appropriate action is taken. Usually a note is passed to the NGO to correct the error, which is a trivial measure. Due to the strong support of donors for NGOs, the state has in the recent past had to scrap its own desire to withdraw the registration of a number of NGOs and even to change the head of the NAB, who had appeared tough with NGOs which had indulged in irregularities (Hashemi, 1995). When the NAB cancelled the registration of three NGOs for financial irregularities, the head of a diplomatic mission in Dhaka personally intervened, brought the issue to the attention of the Prime Minister's office and got the cancellation order withdrawn. This action created great dissatisfaction among the officials of the Bureau (Hashemi, 1995).

NGOs are non-democratic institutions, often dominated or dictated to by one individual, and many have a serious ownership problem. As NGOs are heavily dependent on foreign resources, then, in the absence of accountability, the flow of money from the outside can make the NGOs corrupt, controversial and autocratic (Zarren, 1996). Despite the negative effects, ironically real in most cases, NGOs are accountable to the donor countries rather than the state of Bangladesh (Islam, 1995).

In reality, the State is unable to control the NGOs. The NGOs often work against the directions and decisions of the state. Weak administration on the one hand and strong national and international backing on the other encourage some NGOs to defy the state and to work according to their own whims. In the recent past, the registration of ADAB (Association of Development Agencies in Bangladesh) was cancelled by the NAB but reinstated within a few hours. This was naturally achieved by a powerful international lobby. There is a tug of war between the NAB and the Social Welfare Directorate which gives the NGOs opportunities to break the rules (*The Daily Inquilab*, September 23, 1992; *The Daily Sangbad*, January 6, 1993).

## **Recommendations**

The following recommendations would improve the existing legal status of NGOs in Bangladesh, by reducing bureaucracy, removing legal contradictions and making the NGOs more accountable. Sadly, donors might resent such improvements.

State Rules/Acts/Ordinances should be replaced/modified to reflect the current critical atmosphere<sup>15</sup>. The state should remove all administrative and procedural bottlenecks created through promulgation of various Ordinances and streamline the existing working procedures, enabling NGOs to complete all formalities within the shortest possible time. The state should appraise the strength and weakness of the measures for regulating the NGOs and ensure promulgation of flexible and effective rules and regulations.

### Improving NGO Efficiency

Just to renew an NGO's registration, it takes more than two months to prepare papers which are in the event not thoroughly scrutinized. As the state has the authority, in any case of serious allegations, to cancel the registration of any NGO or stop its activities and inform the donor, then once any NGO is registered, renewal procedures should be simplified.

Some of the Foreign Donation (FD) forms and procedures followed by the NAB are complex and cumbersome. The application forms and procedures should be simplified, through discussion between the GOB and NGOs. With regard to registration, the Home Ministry should give approval/disapproval within sixty days of receiving the application from the NAB regarding

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<sup>15</sup> Some sections of the Ordinance of 1961 may be incorporated in the Ordinance of 1978.

the appointment/extension of the tenure of expatriates, within 25 days. Reminders could be sent to the National Security Intelligence (NSI) by the NAB.

Appropriate action should be taken by the administrative Ministries/Divisions/Departments to give their advice to the NAB within 21 days with regard to approval of NGO projects.

To enable NGOs to prepare budgets and implement projects within the time limit of financial year, if the report about a particular NGO is satisfactory, then the NGO could be given clearance for other projects in the same year without further investigation by the NAB.

The existing procedure each year of requiring that projects and clearance of funds be approved by the state should be changed. NGOs which have approval for a project should be able to use foreign funds until the project is completed, with no annual renewal. Since the funds must be received through specific NGO bank accounts, the state will be able to monitor the flow of foreign funds to the NGO sector and to each NGO. It will be the business of NAB officials to check whether an NGO has several bank accounts.

The National Security Intelligence (NSI) should be aware of each NGO's activities so that it is ready to comment on an application without further inquiry. If the NGO had done anything highly objectionable during the last 29 years, it should have been closed and the relevant donor informed.

For NAB approval of projects, the NGOs should be required to submit the names of the members of the Board/Executive Committee and the number of staff positions in each category, not staff names.

### Improving the Law

According to a circular<sup>16</sup>, 'No such project would be approved if it offends the feelings of the people of any religion, has adverse effects on the culture and values of the country or if the project is based on a political programme'. Around 90% of the laws in Bangladesh are secular. Around 87% of the population is Muslim (BBS, 1998) and Islam is the state religion in Bangladesh. So, there are legal problems in Bangladesh arising from unresolved conflicts in the law. Now, women's independence/women's empowerment programmes are against the beliefs of many strict Muslims, but 'gender-development' is a leading concern of western donors. So, a specific political party could firmly resist women's development and the NGOs would have to end women's development programmes (Rafi and Chowdhury, 2000; Shehabuddin, 1999; Chazan, 1998; compare Khan, 2000 on Pakistan). This would be unethical as well as undesirable.

Recently unrest started when Islamic teachers and students organised a general strike in a north-eastern town of Bangladesh and demonstrators attacked a rally of women clients of NGOs and set fire to the offices of several NGOs. Several more were injured. A rally was organised by NGOs which have lent money to millions of poor Bangladeshi women to start small shops or businesses such as poultry breeding and weaving. Several thousand women who benefitted from such loans took part. Islamic groups said they objected to women taking part in celebrations to commemorate the 1971 victory over Pakistan which led to the independence of Bangladesh. But NGOs said the fundamentalists had objected to Muslim women going out to work. Human rights groups urged the state to take action against Islamic fundamentalists who attacked women taking part in a rally to commemorate the country's independence struggle (The Daily Star, 2000a; Chazan, 1998). Another similar conflict erupted in Faridpur, a district town in central Bangladesh (The Daily Star, 1999a). Therefore, the state

<sup>16</sup> The Bengali version of circular 1993, 'Paripatra' Section 6(KA).

must clearly define what kinds of programme would affect native culture or strike the sentiment of the people of any religion.

There is supposed to be investigation<sup>17</sup> as to whether any NGO is involved in any political or anti-cultural activity under the guise of a development programme. Now, CARITAS is involved in consciousness-raising, making people aware of their rights, teaching them to be independent and morally strong and thus empowering people at the grass-roots level. This is not a crime; few people see empowering people as an anti-state activity. This section of the circular should therefore be modified.

### Holding NGOs Accountable

The state audit system is ineffective. A mechanism must be developed under which the state officials involved in the development process make regular field visits to NGO programmes. Such state officials should also conduct impact evaluations on completion of the projects, to enhance their insights into the programme dynamics and the operation of NGOs.

Commercial activities of NGOs should be duly taxed and profits from them should be used for development work. The law should be changed accordingly and NAB should make it sure that it is implemented properly. In conformity with law, immediate legal action ought to be taken against the officials of several NGOs who are involved in misappropriation, embezzlement or accused of misconduct, irregularity or law-breaking.

Theoretically, the state is accountable for its activities and programmes to Parliament and ultimately to the public but the NGOs remain unaccountable. This cannot be accepted. NGOs must be regulated by Parliament. If the government can remain above narrow party interests and if the opposition party can remain strong and responsible, then an effective parliamentary committee could be created to scrutinize and evaluate the activities and programmes of the NGOs.

### **Conclusion**

In Bangladesh NGOs play a pivotal and pragmatic role when the state does not reach the poor and meet their needs. The NGOs' umbrella body (which is required to elect its executive committee) is not broad-based. Its membership is often confined to friends and relatives and elections to the executive committee are often not properly held. This surely frustrates the potential of NGOs as democratic voluntary organisations. Nevertheless, NGOs cannot function in isolation from the main streams of political, economic and social life in the country. They must conform to certain standards, adhere to state regulations and have their work coordinated at state level. NGOs can only complement the state's activity. Due to donor pressure the state cannot ask NGOs to become more transparent and accountable or to co-operate more with the state. The state is very weak in Bangladesh (Wood, 1997). Instead the state creates undue hindrances which only increase the transaction costs of NGOs without encouraging or forcing the NGOs to respond more to the needs of the poor.

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<sup>17</sup> According to the English version of the 'Paripatra' (Section 7.1-3).

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