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NGO Legal Frame Work in  
Bangladesh (Salient Features)

# NGO Legal Frame Work in Bangladesh

In Bangladesh there are few laws which regulate the registration of NGOs/organization and for receiving foreign fund.

There are almost 4 (four) main laws which concern registration and functioning of the organization. These laws describe the constitution of organization, purposes, objectives, functions of Board and their scope of work. All these laws underline that the organizations to be formed and registered under these laws will be non profit, charitable and Trust.

Most of the NGOs register themselves as per **Societies Act 1860**.

The salient features of this "Act".

- This "Act" is for registration of literary, scientific and charitable societies.
- This "Act" states that suits can be made against the societies or they can also file suits.
- This "Act" states also that if any member of the organizations are guilty of offences shall be punished as strangers.

[At present few NGOs funds are being striped stopped due to tax defalcation for their Executive Directors]

- dissolution of the organization – If the Government is one of the contributor or a member the association cannot be dissolved without permission of the Government.
- Members may be defined as disqualified members.
- Any person can inspect documents by paying fees in the Registrar office.
- The Registrar of Joint Stock Companies shall register the organization.

## **2. Ordinance of XLVI of 1961 passed by the Ministry of Labor and Social Welfare.**

The salient features of this ordinance

- This ordinance shall control and provide registration.
- states procedure of registration.
- states if any organization do not receive registration, they may apply for registration.
- 4 (four) conditions are mandatory for registration:-
  - (i) Audited accounts
  - (ii) Submission of Annual Report with audited account.
  - (iii) Maintain Bank account.
  - (iv) Furnish all records regarding to accounts and other records.

- The registration authority may suspend or dissolved the Governing Body of registered organization anytime after conducting enquiry.
- The registration authority shall have exclusive decision to dissolve the Governing Body, where as the Governing Body shall not have any authority to dissolve the agency.

[There is no provision for appeal or procedure of the Governing Body to move against dissolution of registration of any organization.]

- There are penalties for furnishing false statement and representation also.
- No court shall take any cognizance of any offence made under this ordinance except it is made by the registration authority or by any authorized officer.
- There is a procedure of indemnity if any person do anything on good faith.
- The government takes the power to amend and also delegate power.

### 3. **The Foreign Donation (Voluntary activities) Regulation Ordinance 1978.**

The salient features are:

- Definitions "foreign donation" "organization" "voluntary activity".
- Regulation of voluntary activity – No person would be able to operate any activities without permission.
- Power of Inspection – The government may any time make inspection.
- Penalty for false declaration – The government may impose penalty for false declaration.
- Cognizance of offence would only take when the complaint is made by government.

#### **The Foreign Donation (Voluntary Activities) Regulation Rules 1978 states:-**

- ❖ regarding application for registration.
- ❖ application for receiving foreign donation.
- ❖ declaration of fund, schemes and submission of reports on activities.
- ❖ This Ordinance provides seizure of books of accounts at any time.
- ❖ This rule also speak out how the service of order or direction can be given.

The Foreign Donation Regulation Ordinance and its amendment speak more of restrictions rather than co-operating with the organizations as how they can work independently or without any apprehension or fear or without interventions.

1. SOCIETIES REGISTRATION  
ACT NO. XXI OF 1860

2. Ordinance No. XLVI of 1961  
Social Welfare Ordinance

**Societies Registration**  
**<sup>2</sup>Act No. XXI of 1860**

[ 1860 : Act XXI ]

[ 21 st May, 1860 ]

An Act for the Registration of Literary, Scientific and charitable Societies.

**preamble.**

Whereas it is expedient that provision should be made for improving the legal condition of societies established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, <sup>2</sup>[the diffusion of political education] or for charitable purposes; It is enacted as follows :—

**Societies formed by memorandum of association and registration.**

1. Any seven or more persons associated for any literary, science or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-stock Companies <sup>3\*\*\*</sup> form themselves into a society under this Act.

**Memorandum of association.**

2. The memorandum of association shall contain the following things (that is to say)—

the name of the society:

the objects of the society:

the names, addresses and occupations of the governors, council, directors, committee of other governing body to whom, by the rules of the society, the management of its affairs is entrusted.

A copy of the rules and regulations of the society, certified to be a correct copy by not less than three of the members of the governing body, shall be filed with the memorandum of association.

**Registration Fees.**

3. Upon such memorandum and certified copy being filed the registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the registrar for every such registration a fee of fifty <sup>4</sup>[taka], or such smaller fee as the <sup>5</sup>[Government] may from time to time direct; and all fees so paid shall be accounted for to the <sup>5</sup>[Government].

**Annual list of managing body to be filed.**

4. Once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if the rules do not provide for an annual general meeting, in the month of January, a list shall be filed with the Registrar of Joint-Stock Companies of the names, addresses and occupations of the governors, council, directors, committee or other governing body then entrusted with the management of the affairs of the society.

<sup>2</sup> The act (with the exception of the first four sections) imbased on the Literary and Scientific Institutions Act., 1854 (17 & 18 Vict., c. 112), ss. 20 *site seq.*

It has been declared to be in force in all the Provinces and Calpital of the Federation, except the Sheduled District, by s. 3. of the Laws Local Extent Act, 1874 (XV of 1874).

It has been declared, by notification under s. 3 (a) of the Scheduled District Act, 1874 (XIV of 1874), to be in force in the Schedule Districts, namely ;

The District of Sylhet. *See* Gazette of India, 1879, Pt. i, p. 61.

<sup>2</sup>These words were added by the Societies Registration (Amendment) act, 1927 (XXII of 1927).

<sup>3</sup>The words and figures "under Act XIX of 1857" were repealed by the Repealing Act, 1874 (XVI of 1874), *See* now the Companices act, 1913 (VII of 1913) s. 288.

<sup>4</sup> This word was substituted for the word "rupees" by act VIII of 1973, s. 3 and 2nd Sch, (w.e.f. 26-3-1971).

<sup>5</sup> Subs. ibed, for the word, "Provincial Government".

**Societies enabled to alter, extend or abridge their purposes.**

12. Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either the meaning of this Act. or to amalgamate such society either may submit the proposition to the members of the society in a written or printed report and may convene a special meeting for the consideration thereof according to the regulations of the society :

But no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof , nor unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes of three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.

**Dissolution of societies and adjustment of their affairs.**

13. Any number not less than three-fifths of the members of any society may determine that it shall be dissolved, and thereupon it shall be dissolved forthwith, or at the time then agreed upon and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable hereto, if any, and if not, then as the governing body shall find expedient, provided that, in the event of any dispute arising among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the Chief building of the society situate; and the Court shall make such order in the matter as it shall deem requisite:

**Assent required.**

Provided that no society shall be dissolved unless three-fifths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or by proxy at a general meeting convened for the purpose:

**Government consent.**

Provided that <sup>1</sup>[whenever the Government] is a member of or a contributor to, or otherwise interested in, any society registered under this Act, such society shall not be dissolved <sup>2</sup>[without the consent of the Government]<sup>3</sup> \*\*\*

**Upon a dissolution no member to receive profit.**

14. If upon the dissolution of any society registered under this Act there shall remain after the satisfaction of all its debt and liabilities any property whatsoever, the same shall not be paid to or distributed among the members of the said society or any of them, but shall be given to some other society to be determined by the votes of not less than three-fifths of the members present personally or by proxy at time of the dissolution, or in, default thereof, by such Court as aforesaid:

**Clause not to apply to Joint-stock companies,**

Provided, however, that this clause shall not apply to any society which shall have been founded or established by the contributions of shareholders in the nature of a Joint-stock Company,

**Member defined, Disqualified members.**

15. For the purposes of this Act a member of a society shall be a person who having been admitted therein according to the rules and regulations there of, shall have paid a subscription or shall have signed the roll or list of members thereof, and shall not have resigned in accordance with such rules and regulations; but in all proceedings under this Act no person shall be entitled to vote or to be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

<sup>1</sup>The words within square brackets were substituted for the words "whenever any Government" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973). Second Schedule (w.e.f 26th March, 1971).

<sup>3</sup> The words "without the consent of Government of the province of registration" were substituted for the words "without the consent of Government" by A. O. 1937.

**Governing body defined.**

16. The governing body of the society shall be the governors, Council, directors, committee trustees or other body to whom by the rules and regulations of the society the management of its affairs is entrusted.

**Registration of societies formed before Act. Assent required.**

17. Any company or society established for a literary, scientific or charitable purpose, and registered under <sup>1</sup> Act XLIII of 1850, or any such society established and constituted previously to the passing of this Act but not registered under the said <sup>2</sup> Act XLIII of 1850, may at any time hereafter be registered as a society under this Act, subject to the proviso that no such company or society shall be registered under this Act unless an assent to its being so registered has been given by three-fifths of the members present personally, or by proxy, at some general meeting convened for that purpose by the governing body.

In the case of a company or society registered under <sup>1</sup> Act XLIII of 1850, the directors shall be deemed to be such governing body.

In the case of a society not so registered if no such body shall have been constituted on the establishment of the society, it shall be competent for the members thereof, upon due notice to create for itself a governing body to act for the society thenceforth.

**Such societies to file memorandum etc., with Registrar of Joint-stock Companies.**

18. In order that any such society as is mentioned in the last preceding section obtaining registry under this Act, it shall be sufficient that the governing body file with the Registrar of Joint-stock Companies <sup>2</sup> \*\*\* a memorandum showing the name of the society, the objects of the society, and the names, addresses, and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in section 2, and a copy of the report of the proceedings of the general meeting at which the registration was resolved on.

**Inspection of documents Certified copies**

19. Any person may inspect all documents filed with the registrar under this Act on payment of a fee of one <sup>3</sup> [taka] for each inspection, and any person may require a copy or extract of any document or any part of any document, to be certified by the registrar, on payment of two annas for every hundred words of such copy or extract; and such certified copy shall be *prime facie* evidence of the matters therein contained in all legal proceedings whatever.

**To what societies Act applies.**

20. The following societies may be registered under this Act :—

Charitable societies, <sup>3</sup>\*\*\*, societies established for the promotion of science, literature, or the fine arts, for instruction the diffusion of useful knowledge, <sup>4</sup> [the diffusion of political education], the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical invention, instruments, or designs.

<sup>1</sup> The words "of the Province of registration" were omitted by Act VIII of 1973.

<sup>2</sup> Rep. by the Indian Companies Act, 1866 (X of 1866). s. 219.

<sup>3</sup> The words and figures under Act, XIX of 1857, repealed by the Repealing Act, 1874 (XVI of 1874), see now the Companies Act, 1913 (VII of 1913), s. 288

<sup>4</sup> Subs. by Act VIII of 1973, s. 3 and 2nd Sch, (w.e.f. 26th March, 1971).



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GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH

MINISTRY OF LABOUR AND SOCIAL WELFARE

(Labour and Social Welfare Division)

Dacca, the 2nd December, 1961

ORDINANCE NO. XLVI OF 1961

AN ORDINANCE

To provide for the registration & control of voluntary social welfare agencies.

WHEREAS it is expedient to provide for the registration & control of Voluntary Social Welfare Agencies, and for matters ancillary thereto.

Now, THEREFORE, in pursuance of the declaration of the seventh day of October 1958 & in exercise of all powers enabling him in that behalf, the President is pleased to make & promulgate the following Ordinance :

1. **Short title, extend & commencement.**—(1) This Ordinance may be called Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date as the Government may by notification in the official Gazette, appoint in this behalf.

2. **Definitions.**—In this Ordinance, unless there is anything repugnant in the subject or context.—

- (a) "Agency" means a Voluntary Social Welfare Agency, & includes any branch of such agency;
- (b) "Governing body" means the council committee, trustees or other body, by whatever name called, to whom by the constitution of the agency, its executive functions the management of its affairs are entrusted;
- (c) "Prescribed" means prescribed by rules made under section 19;
- (d) "Register" means the register maintained under section 4, & registered shall mean registered under this Ordinance;
- (e) "Registration Authority" means the Director of Social Welfare, Government of Bangladesh, & includes an officer authorized by the Government, by notification in the official Gazette, to exercise all or any of the powers of the Registration Authority under this Ordinance;
- (f) "Voluntary Social Welfare Agency" means an organisation, association or undertaking established by person on their own free will for the purpose of rendering Welfare services in any one or more of the field mentioned in the schedule & depending for its resources on public subscriptions, donations or Government aid.

3. **Prohibiting against establishing or continuing an agency without registration.**—No agency shall be established or continued except in accordance with the provisions of this Ordinance.

4. **Application for registration etc.**—(1) Any person intending to establish an agency, and any person intending that an agency already in existence should be continued as such, shall in the prescribed form on payment of the prescribed fees, make an application to the Registration Authority accompanied by a copy of the constitution of the agency, & such other documents as may be prescribed.

(2) The Registration Authority may, on receipt of the application make such enquiries as it considers necessary & either grant the application, or, for reasons to be recorded in writing, reject it.

(3) If the Registration Authority grant the application, it shall issue, in the prescribed form, a certificate of registration to the applicant.

(4) The Registration Authority shall maintain a register, containing such particulars as may be prescribed, of all certificates issued under section (3).

**(5) Establishment & continuance of agency.**—(1) An Agency not in existence on the coming into force of this Ordinance shall be established only after a certificate of registration has been issued under sub-section (3) of Section 4.

(2) An agency already in existence shall not be continued for more than six months from the date on which this Ordinance comes into force, unless an application for its registration has within thirty days of such date, been made under sub-section (1) of Section 4.

(3) Where an application as aforesaid has been made in respect of an existing agency & such application is rejected, then not with standing the period of six months provided in sub-section (2) the agency may be continued for a period of thirty days from the date on which the application is rejected, or if an appeal is preferred under section 6, until such appeal is dismissed.

**6. Appeal.**—If the Registration Authority rejects an application for registration the applicant may, within thirty days from the date of the order of the Registration Authority, prefer an appeal to Government & the order passed by the Government shall be final & given effect by the Registration Authority.

**7. Conditions to be complied with by registered agencies.**—(1) Every registered agencies shall—

- (a) maintain audited accounts in the manner laid down by the Registration Authority;
- (b) at such time & in such manner as may be prescribed, submit its Annual Report & Audited Accounts to the Registration Authority & publish the same for general information;
- (c) pay all money received by it into a separate account kept in its name at Bank or Banks as may be approved by the Registration Authority, &
- (d) furnish to the Registration Authority such particulars with regard to accounts & other records as the Registration Authority may from time to time require.

(2) The Registration Authority, or any Officer duly authorized by it in this behalf, may at all reasonable times inspect the books of account & other records of the agency, the securities, cash & other properties held by the agency, & all documents relating thereto.

**8. Amendment of the constitution of registered agency.**—(1) No amendment of the constitution of a registered agency shall be valid unless it has been approved by the Registration Authority, for which purpose a copy of the amendment shall be forwarded to the Registration Authority.

(2) If the Registration Authority is satisfied that any amendment of the constitution is not contrary, to any of the provisions of this Ordinance or the rules made thereunder, it may, if it thinks fit approve the amendment.

(3) Where the Registration Authority approves an amendment of the constitution, it shall issue to the agency a copy of the amendment certified by it, which shall be evidence that the same is duly approved.

**9. Suspension or dissolution of governing bodies of registered agency.**—(1) If after making such enquiries as it may think fit, the Registration Authority is satisfied that a registered agency has been responsible for any irregularity in respect of its funds or for any mal-administration in the conduct of its affairs or has failed to comply with the provisions of this Ordinance or the rules made there under, it may by order in writing suspend the governing body.

(2) Where a governing body is suspended under sub-section (1) the Registration Authority shall appoint an administrator, or a caretaker body consisting of not more than five person, who shall have all the authority & powers of the governing body under the constitution of the agency.

(3) Every order of suspension under sub-section (1) shall be placed by the Registration Authority before a Board, consisting of not more than five persons, constituted by the Government for the purpose, which shall have the power to make order within six months as to the re-instatement : or the dissolution & reconstitution, of the governing body, as it may think fit.

(4) The Governing body constituted after of dissolution & reconstitution is made under sub-section (3) may appeal to the Government within thirty days from the date of such order, & the decision of the Government shall be final & shall not be called in question in any court.

**10. Dissolution of registered agency.**—(1) If at any time Registration Authority has reason to believe that a Registered agency is acting in contravention of its constitution, or contrary to any of the provisions of this Ordinance or the rules made thereunder, or in a manner prejudicial to the interest of the public, it may after giving such opportunity to the agency of being heard if it thinks fit, make a report thereon to the Government.

(2) Government, if satisfied after considering the report that it is necessary or proper to do so, may order that the agency shall stand dissolved from the date mentioned therein.

11. (1) No registered agency shall be dissolved by its governing body or members thereof.

(2) If it is proposed to dissolve any registered agency, not less than three-fifths of its members may apply to the Government in such manner as may be prescribed, for making an order for the dissolution of such agency.

(3) The Government, if satisfied after considering the application that it is proper to do so, may order that the agency shall stand dissolved on & from such date as may be specified in the order.

**12. Consequences of dissolution.**—(1) Where any agency is dissolved under this Ordinance, its registration thereunder shall stand cancelled on & from the date the order of dissolution takes effect, & the Government may—

- (a) Order any Bank or other person who holds money, securities or other assets on behalf of the agency not to part with such money, securities & assets without the previous permission in writing of the Government.
- (b) Appoint a competent person to wind up the affairs of the agency, with power to institute & defend suit & other legal proceedings on behalf of the agency, & to make such orders & take such action as may appear to him to be necessary for the purpose; and
- (c) Order any money, securities & assets remaining after the satisfaction of all debts & liabilities of the agency to be paid or transferred to such other agency, having objects similar to the objects of the agency, as may be specified in the order.

(2) Orders made by the person appointed under clause (b) of sub-section (1) shall on application, be enforceable by any Civil Court having local jurisdiction in the matter as a decree of such court.

**13. Inspection of documents etc.**—Any person may, on payment of the prescribed fee inspect at the office of the Registration Authority any document relating to a registered agency, or obtain a copy of or an extract from any such document.

**14. Penalties & procedure.**—(1) Any person who—

- (a) Contravenes any of the provisions of this Ordinance or any rule or order made thereunder; or
- (b) In any application for registration under this Ordinance, or in any report or statement submitted to the Registration Authority or published for general information thereunder, makes any false statement or false representation;
- (c) shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both.

(2) Where the person committing an offence under this Ordinance is a company, or other body corporate, or an association of persons, every director, manager, secretary & other officer thereof shall, unless proved that the offence was committed without his knowledge or consent be deemed to be guilty of such offence.

(3) No Court shall take cognizance of an offence under this Ordinance except upon complain in writing made by the Registration Authority or by an officer authorized by it in this behalf.

15. **Indemnity.**—No suit, prosecution or other legal proceeding shall be filed against any person for any thing which is in good faith done or intended to be done under this Ordinance.

16. **Power to amend schedule.**—The Government may by notification in the official Gazette, amend the schedule so as to include therein or exclude there from any field of Social Welfare Service.

17. **Power to exempt.**—The Government may by notification in the official Gazette, exempt any agency or class of agencies from the operation of all or any of the provisions of this Ordinance.

18. **Delegation of powers.**—The government may, by notification in the official Gazette, delegate all or any of its powers under this Ordinance either generally, or in respect of such agency or class of agencies as may be specified in the notification to any of its officers.

19. **Rules.**—The Government may, by notification in the official Gazette, make rules for carrying into effect the provisions of this Ordinance.

### THE SCHEDULE

(SEE SECTION 2F)

- (i) Child Welfare.
- (ii) Youth Welfare.
- (iii) Women's Welfare.
- (iv) Welfare of the physically & mentally handicapped.
- (v) Family Planning.
- (vi) Recreational programmes intended to keep people away from anti-social activities.
- (vii) Social Education, that is, education of adult aimed at developing sense of civic responsibility.
- (viii) Welfare & rehabilitation of released prisoners.
- (ix) Welfare of juvenile delinquents.
- (x) Welfare of the beggars & destitutes.
- (xi) Welfare of the socially handicapped.
- (xii) Welfare & rehabilitation of patients.
- (xiii) Welfare of the aged & infirm.
- (xiv) Training in social work.
- (xv) Co-ordination of social welfare agencies.

The Foreign Donations  
(Voluntary Activities)  
Regulation Ordinance, 1978

<sup>1</sup>[(2) Notwithstanding anything contained in sub-section (1), whoever receives or operates any foreign donation in contravention of the provisions of this Ordinance or any rules made thereunder shall be liable to pay a penalty of double the amount or value of the donation received or, as the case may be, operated, or to imprisonment for a term which may extend to three years or both].

<sup>2</sup>[6A. Cognizance of offence.—No court shall take cognizance of an offence under this Ordinance or any rules made thereunder except on a complaint made by the Government].

7. Power to make rules.—The Government may by notification in the official Gazette, make rules to carry out the purpose of this Ordinance.

DHAKA ;  
*The 15th November, 1978.*

ZIAUR RAHMAN, BU  
MAJOR GENERAL,  
*President.*

K.M. HUSAIN  
*Deputy Secretary.*

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<sup>1</sup> Added by Ordinance No. XXXII of 1982

<sup>2</sup> Inserted by Ordinance No. XXXII of 1982

The Foreign Donations  
(Voluntary Activities)  
Regulation Rules, 1978

4  
1982  
Foreign Contributions  
(Regulation)  
Ordinance, 1982

<sup>1</sup>[(3) No approval or permission for receiving or operating any foreign donation for undertaking or carrying on voluntary activity shall be accorded without prior approval of the Ministry of Home Affairs].

<sup>2</sup>[(4) Every person or organization registered under sub-rule (3) of rule 3 shall receive all funds in foreign exchange through an account <sup>3</sup>[opened in any scheduled Bank of Bangladesh which shall submit statements of such funds to the Bangladesh Bank.]

(5) The Bangladesh Bank shall submit statements of the funds so received for each person or organization separately to the External Resources Division in June and December every year.

**5. Submission of declarations.**—(1) All declarations under sub-section, (3) of section 3 shall be submitted to the Government in the Ministry of Finance (External Resources Division).

(2) all declarations under sub-rule (1), if it relates to receipt of foreign donations, shall be submitted in Form FD-3, and if it relates to its utilisation, in Form FD-4.

(3) All declarations in respect of a person or organisation carrying on voluntary activity immediately before the commencement of the Ordinance shall be submitted within thirty days from such commencement and every six months thereafter, and in respect of other such persons or organisations in every six months.

<sup>4</sup>[5A. **submission of schemes, etc.**—<sup>5</sup>[(1) Every person or organisation shall submit to the External Resources Division and the Department of Social Welfare his or its project on voluntary activities along with plan of its operation showing the estimated cost, expected receipts, source of receipts, purpose and objects and duration thereof on or before the 31st March preceding the financial year in which such project is to commence.]

(2) Each person <sup>6</sup>[who is not a Bangladesh national,] engaged in voluntary activity shall submit his particulars with reference to nationality, period of stay in Bangladesh, remuneration, the agency under whose supervision he is undertaking or carrying on voluntary activity, etc., to the Ministry of Home Affairs and the Department of Social Welfare.

(3) Each organization shall <sup>7</sup>[annually] submit to the Ministry of Home Affairs and the Department of Social Welfare a statement showing all relevant particulars relating to age, qualification, nationality, period of service with the organization, remuneration, etc., of persons engaged in different schemes undertaken or carried on by it.

(4) Each organization shall obtain prior clearance of the Ministry of Home Affairs and Department of Social Welfare for employment of <sup>8</sup>[any staff, who is not a Bangladesh national,] for its voluntary activity.

**5B. Submission of report on activities.**—Every person or organization shall submit <sup>9</sup>[yearly] reports on his or its activities to the External Resources Division with copies to the administrative Ministry, the Ministry of Home Affairs and the Department of Social Welfare.]

<sup>1</sup> Substituted by S. R.O. No. 352-L/82, dated 6-10-82 by the Ministry of Home Affairs which was published in the Bangladesh Gazette, Extra, October 6, 1982.

<sup>2</sup> Added by S.R.O. No. 352-L/82, dated 6-10-82 by the Ministry of Home Affairs.

<sup>3</sup> Substituted by S.R.O. No. 422-L/84 dated 19-9-84 by the Ministry of Home Affairs which was published in the Bangladesh Gazette, Extra, September 19, 1984.

<sup>4</sup> Inserted by S.R.O. No. 352-L/82, dated 6-10-82 by the Ministry of Home Affairs.

<sup>5</sup> Substituted by S.R.O. No. 422-L/84, dated 19-9-84 by the Ministry of Home Affairs.

<sup>6</sup> Inserted by S.R.O. No. 422-L/84, dated 19-9-84 by the Ministry of Home Affairs.

<sup>7</sup> Substituted by S.R.O. No. 422-L/84, dated 19-9-84 by the Ministry of Home Affairs.

<sup>8</sup> Substituted by S.R.O. No. 422-L/84, dated 19-9-84 by the Ministry of Home Affairs.

<sup>9</sup> Substituted by S.R.O. No. 422-L/84, dated 19-9-84 by the Ministry of Home Affairs.



গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

রাষ্ট্রপতির সচিবালয়

জন বিভাগ

প্রজ্ঞাপন

ঢাকা, ৩০ বৈশাখ, ১৩৯৭/১৪ মে, ১৯৯০

এস, আর, ও, নং ১৮০-আইন/৯০—Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (XLVI of 1978) এর section 7 এ প্রদত্ত ক্ষমতাবলে, সরকার Foreign Donations (Voluntary Activities) Regulation Rules, 1978 এর নিম্নরূপ সংশোধন করিলেন, যথাঃ—

উপরি-উক্ত Rules এর—

(১) শীর্ষে "Ministry of Home Affairs Political Branch Section IV" শব্দগুলি ও সংখ্যাটির পরিবর্তে "PRESIDENT'S SECRETARIAT PUBLIC DIVISION" শব্দগুলি প্রতিস্থাপিত হইবে ;

(২) সর্বত্র "Director" শব্দটির পরিবর্তে "Director General" শব্দগুলি প্রতিস্থাপিত হইবে ;

(৩) rule 2 তে clause (a) এর পরিবর্তে নিম্নরূপ clause (a) এবং (aa) প্রতিস্থাপিত হইবে, যথাঃ—

(a) "NGO Affairs Bureau" Means the Non-Government Organisation Affairs Bureau established by the Government ;

(aa) "Director General" means the Director General in charge of the NGO Affairs Bureau, Government of the people's Republic of Bangladesh ; or such other officer as the Government may, by notification in the official gazette, authorities to exercise the powers and perform the functions of Director General under these rules;" ;

(৪) rule 3 এর—

(ক) sub-rule (3) এর—

(অ) "sub-rule (3)" শব্দটি, বন্ধনীসমূহ এবং সংখ্যাটির পরিবর্তে "sub-rule (2)" শব্দটি বন্ধনীসমূহ ও সংখ্যাটি প্রতিস্থাপিত হইবে ; এবং

(আ) "carrying on any voluntary activity" শব্দগুলির পর "and such registration shall, unless earlier cancelled, remain valid for five years" শব্দগুলি ও কমাগুলি সংযোজিত হইবে ;

(খ) sub-rule (3) এর পর নিম্নরূপ sub-rule সংযোজিত হইবে, যথাঃ—

"(4) A person or an organization registered under sub-rule (3) may, at least six months prior to the date of expiry of his or its registration, apply in such form as the Director General may specify in this behalf, for renewal of his or its registration.

(5) The Director General may, on receipt of an application under sub-rule (4), call for any information from the applicant which he may consider necessary and the applicant shall furnish the information called for within the period specified by the Director General in that behalf.

(6) The Director General may, after considering the information supplied under sub-rule (5), if any, renew the registration for a period of five years.

**6. Maintenance of books of accounts.**—(1) Every person or organization undertaking or carrying on voluntary activities shall maintain books of accounts—

(a) Where the foreign donation relates to articles only, in Form FD-5 ;

(b) Where the foreign donation relates to currency, in the cash book and ledger book on double entry basis.

(2) Accounts under sub-rule (1) shall be maintained on a half-yearly basis, one for the period commencing on the 1st day of July and ending on the 31st day of December, and the other for the period commencing on the 1st day of January and ending on the 30th day of June.

(3) All books of accounts maintained under this rule shall be audited by a chartered accountant as defined in the Bangladesh Chartered Accountants Order, 1973 (P. O. 2 of 1973), and two copies of accounts so audited shall be furnished to the Secretary, Ministry of Finance (External Resources Division) with a copy to the administrative Ministry concerning the activity of the project.

**7. Bank accounts.**—A separate Bank Account shall be maintained by every person or organisation authorised under these rules for each foreign donations.

**8. Seizure of books of accounts.**—(1) Every seizure of books of accounts and other documents under section 4 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the Code.

(2) The officer or officers responsible for seizure of books of accounts and other documents under sub-rule (1) shall return them if no action is taken as required by the Ordinance.

**9. Manner of service of order or direction.**—An order under section 6 or any other order or direction made or issued under the Ordinance shall be served on the person or organisation concerned in the following manner, that is to say,—

(a) by delivering or tendering to that person or as the case may be, organisation, or to his or its duly authorised agent ;  
or

(b) by sending it to him by registered post with acknowledgement due to the address of his last known place of residence or the place where he carries on, or is known to have last carried on business, or the place where he personally works for gain, or is known to have last worked for gain, and in case the person is an organisation to the last known address of the office of such organisation ; or

(c) if it cannot be served in any of the manner aforesaid, by affixing it on the outer door or some other conspicuous part of the premises in which that person resides, or carries on or is known to have last carried on business, or is known to have last worked, and in case the person is an organisation on the outer door or some other conspicuous part of the premises in which the office of that organisation is located, or is known to have been last located, and the written report whereof should be witnessed by at least two persons.

(গ) sub-rule (3) তে—

(অ) "Ministry of Home Affairs and the Department of Social Welfare" শব্দগুলির পরিবর্তে "NGO Affairs Bureau and the Ministry of Home Affairs" শব্দগুলি প্রতিস্থাপিত হইবে ; এবং

(আ) "schemes undertaken or carried on by it" শব্দগুলির পর "according to details of project personnel as shown in the project proforma" শব্দগুলি সংযোজিত হইবে ;

(ঘ) sub-rule (4) এ—

"Ministry of Home Affairs and the Department of Social Welfare" শব্দগুলির পরিবর্তে "NGO Affairs Bureau and the Ministry of Home Affairs." শব্দগুলি প্রতিস্থাপিত হইবে ;

(ঙ) sub-rule (4) এর পর নিম্নরূপ নূতন sub-rule (5) সংযোজিত হইবে, যথা :—

"(5) Every project on voluntary activities submitted under sub-rule (1) shall be accompanied by a treasury challan showing receipt of such service charge as the Government may, from time to time, determine in this behalf." ;

(চ) rule 5B তে—

"External Resources Division with copies to the administrative Ministry, Ministry of Home Affairs and the department of Social Welfare" শব্দগুলি ও কমাটির পরিবর্তে "NGO Affairs Bureau with copies to the administrative Ministry, the Ministry of Home Affairs and the External Resources Division" শব্দগুলি ও কমাটি প্রতিস্থাপিত হইবে ;

(ছ) rule 5B এর পর নিম্নরূপ নূতন rule-5BB সন্নিবেশিত হইবে, যথা :—

"5BB. Deposit of fees and service charges.—The fees payable under sub-rule (8) of rule 3 and the service charges payable under sub-rule (5) of rule 5A shall be deposited in the Government treasury under খাতঃ অলাভজনক প্রতিষ্ঠান রেজিস্ট্রেশন ফি কোড নং ১-০৩২৩-০০০০-১৮৩৬ এর অধীন" এনজিওদের রেজিস্ট্রেশন, রেজিস্ট্রেশন নবায়ন, প্রকল্প অনুমোদন বাবদ ফি/সার্ভিস চার্জ আদায়।

(১০) rule 6 এর sub-rule (3) তে—

"to the Secretary, Ministry of Finance (External Resources Division) with a copy to the administrative Ministry concerning the activity of the project" শব্দগুলি, কমাটি ও বন্ধনীগুলির পরিবর্তে, "along with a certificate from the auditors in Form FD-4, to the NGO Affairs Bureau with a copy to External Resources Division and the administrative Ministry concerning to the activity of the project" কমাগুলি, শব্দগুলি, অক্ষরগুলি ও সংখ্যাটি প্রতিস্থাপিত হইবে ;

(১১) rule 7 এর পরিবর্তে নিম্নরূপ rule 7 প্রতিস্থাপিত হইবে, যথা :—

"7. Bank Accounts.—Only one bank account shall be maintained by every person or organisation authorised under these rules for receiving foreign donations :

Provided that separate bank accounts for separate projects may be maintained for internal transactions after the donations have been received through the only bank account opened under sub-rule (4) of rule 4."

রাষ্ট্রপতির আদেশক্রমে,

সোহেল আহমদ

পরিচালক।

(7) No person or organisation shall undertake or carry on any voluntary activity after the date of expiry of his or its registration for undertaking or carrying on such activity ;

Provided that a person or an organisation may, in exceptional circumstances, be allowed by the Director General to undertake or carry on such activity for a period not exceeding six months from the date of such expiry if his or its application for renewal of registration is pending with the Director General.

(8) An application under sub-rule (1) for registration or under sub-rule (4) for renewal of registration shall be accompanied by a treasury challan showing receipt of such fee as the Government may from time to time, determine in this behalf.";

(৫) rule 4 এর—

(ক) sub-rule (2) তে "Government in the Ministry of Finance (External Resources Division)" শব্দগুলি ও বন্ধনীগুলির পরিবর্তে "NGO Affairs Bureau" শব্দগুলি প্রতিস্থাপিত হইবে ;

(খ) sub-rule (3) বিলুপ্ত হইবে ; এবং

(গ) sub-rule (4) এর পরিবর্তে নিম্নরূপ sub-rule (4) প্রতিস্থাপিত হইবে, যথা :—

"(4) Every person or Organisation registered under sub-rule (3) of rule 3 shall receive the funds—

(a) in foreign exchange, or

(b) in local currency if such funds are originated abroad in foreign exchange and received in local currency in Bangladesh, through only account opened in any scheduled Bank, which shall submit statements of such funds to the Bangladesh Bank and the NGO Affairs Bureau." ;

(ঘ) sub-rule (5) এ "External Resources Division" শব্দগুলির পর "and the NGO Affairs Bureau" শব্দগুলি সন্নিবেশিত হইবে ;

(৬) rule 5 এর—

(ক) sub-rule (1) এ "Ministry of Finance (External Resources Division)". শব্দগুলি ও বন্ধনীগুলির পরিবর্তে "Presidents Secretariat, Public Division, NGO Affairs Bureau and the External Resources Division" শব্দগুলি ও কমাগুলি প্রতিস্থাপিত হইবে ;

(খ) sub-rule (2) তে "shall be submitted in Form FD-3, and if it relates to its utilization, in Form FD-4." কমাগুলি, শব্দগুলি, অক্ষরগুলি ও সংখ্যাগুলির পরিবর্তে "and its utilization, shall be submitted, in Form FD-3" শব্দগুলি, কমা, অক্ষরগুলি ও সংখ্যাটি প্রতিস্থাপিত হইবে ;

(৭) rule 5A এর—

(ক) sub-rule (1) এ "External Resources Division and the Department of Social Welfare" শব্দগুলির পরিবর্তে "NGO Affairs Bureau" শব্দগুলি প্রতিস্থাপিত হইবে ;

(খ) sub-rule (2) তে—

"Ministry of Home Affairs and the Department of Social Welfare" শব্দগুলির পরিবর্তে "NGO Affairs Bureau and the Ministry of Home Affairs." শব্দগুলি প্রতিস্থাপিত হইবে ;

(5) **Penalty etc.**—(1) Whoever receives or makes any foreign contribution in contravention of the provisions of section 4 shall be punishable with imprisonment for a term which may be extended to six months, or with fine not exceeding two times the amount or value of the contribution, or with both.

(2) No court shall take cognizance of an offence under this Ordinance except on a complaint made by the Government or any officer authorised by it in this behalf.

DHAKA

The 6th September, 1982.

H.M. ERSHAD. ndc. psc

LIEUTENANT GENERAL  
Chief Martial Law Administrator.

S. RAHMAN

Deputy Secretary.

# THE TRUSTS ACT, 1882

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## THE SCHEDULE.

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<sup>1</sup>Act No. II of 1882

[13th January, 1882]

An Act to define and amend the law relating to Private Trusts and Trustees.

## Preamble

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows :—

## CHAPTER I

## PRELIMINARY

Short title.  
Commencement.

1. This Act may be called the <sup>2</sup>Trusts Act, 1882 : and it shall come into force on the first day of March, 1882 .

## Local extent.

<sup>3</sup>[It extends to <sup>4</sup>[the whole of <sup>5</sup>[Bangladesh]]. But nothing herein contained affects the rules of <sup>6</sup>[Muslim] law as to *waqf*,

<sup>1</sup>For report of the Indian Law Commission on the private Trusts Bill which they were instructed to consider among others, *See Gazette of India, 1880, Supplement, p. 104, and for the Statement of Objects and Reasons See Gazette of India, 1880, pt V, p. 476; for Report of the Select Committee, See ibid, supplement, 1882, p. 67; for proceedings in council, See ibid, supplement, 1881, p. 687; and ibid., supplement, 1882, p. 68.*

<sup>2</sup>The word "Indian" omitted by A. O., 1949, Sch.

<sup>3</sup>Subs. *ibid.*, for the first sentence of this paragraph, as amended by A. O., 1937.

<sup>4</sup>The former words "all the Provinces" had been amended by the Central Laws (Statute Reform) Ordinance, 1960 (Ord XXI of 1960), s. 3 and 2nd Sch. (with effect from the 14th Oct., 1955) to read as "the whole of Pakistan".

<sup>5</sup>The word "Bangladesh" was substituted for the word "Pakistan" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch. (with effect from the 26th March, 1971).

<sup>6</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch., for "Muhammadan" (with effect from the 26th March, 1971).

(Chapter I.—Preliminary. Chapter II.—Of the Creation of Trusts.)

or the mutual relations of the members of an undivided family, <sup>save</sup> as determined by any customary or personal law, or applying to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second Chapter of this Act applies to trusts created before the said day.

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner :

Interpretation clause—"trust".

the person who reposes or declares the confidence is called the "author of the trust"; the person who accepts the confidence is called the "trustee"; the person for whose benefit the confidence is accepted is called the "beneficiary"; the subject-matter of the trust is called "trust-property" or "trust-money"; the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust":

"author of the trust";  
"trustee";  
"beneficiary";  
"trust-property";  
"beneficial interest";  
"instrument of trust";  
"breach of trust":

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust":

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force; a person is said to have "notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Contract Act, 1872, section 229; and all expressions used herein and defined in the Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

"registered";  
"notice".

IX of 1872.

Expressions defined in Act IX of 1872.

CHAPTER II

OF THE CREATION OF TRUSTS

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or

Lawful purpose.

<sup>1</sup>Sec. 2 omitted, by Act VIII of 1973, s 3 and 2nd Sch. (with effect from the 26th March, 1971).

*(Chapter II.—Of the Creation of Trusts.)*

(b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

*Explanation.*—In this section the expression “law” includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

*Illustrations*

(a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

Trust of  
immoveable  
property.

5. No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of  
moveable  
property.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

Creation of  
trust.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

*Illustrations*

(a) A bequeaths certain property to B, “having the fullest confidence that he will dispose of it for the benefit of C”. This creates a trust so far as regards A and C.

(Chapter II.—Of the Creation of Trusts)

(b) A bequeaths certain property to B, "hoping he will continue it in the family". This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c) A bequeaths certain property to B, requesting him to distribute it among such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(e) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

7. A trust may be created—

Who may create trusts.

(a) by every person competent to contract<sup>1</sup>, and,

(b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

8. The subject-matter of a trust must be property transferable to the beneficiary.

Subject of trust.

It must not be merely beneficial interest under a subsisting trust.

9. Every person capable of holding property may be a beneficiary.

Who may be beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Disclaimer by beneficiary.

10. Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

Who may be trustee.

No one is bound to accept a trust.

No one bound to accept trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Acceptance of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

Disclaimer trust.

<sup>1</sup>See s.11 of the Contract Act, 1872 (IX of 1872).

(Chapter II.—Of the Creation of Trusts. Chapter III.—Of the Duties and Liabilities of Trustees.)

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them ~~sole trustee or trustees~~ from the date of the creation of the trust.

Illustrations

(a) A bequeaths certain property to B and C, his executors, as trustees ~~for D. B and C prove A's will.~~ This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it and to pay out ~~of the proceeds A's debts.~~ B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lakh of ₹[Taka] to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III

OF THE DUTIES AND LIABILITIES OF TRUSTEES

Trustee to execute trust.

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, ~~except~~ as modified by the consent of all the beneficiaries being competent to contract.

~~Where the trustee is incompetent to contract,~~ his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

~~Explanation.—~~ Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

Illustrations

(a) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(b) A, a trustee of certain land for X, Y and Z, is authorized to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

<sup>1</sup>Subs. by Act, VIII of 1973, for "rupees" (w.e.f. 26th March, 1971).

*(Chapter III.—Of the Duties and Liabilities of Trustees.)*

(c) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent and B requests A to make the loan. A may refuse to make it.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Trustee to inform himself of state of trust property.

*Illustrations*

(a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion of protection of the title thereto.

Trustee to protect title to trust-property.

*Illustration*

The trust-property is immovable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the [Registration Act, 1908], the trustee's duty is to cause the instrument to be registered.

14. The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

Trustee not to set up title adverse to beneficiary.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

Care required from trustee.

<sup>1</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3, 2nd Sch., for "Indian Registration Act, 1877" (with effect from the 26th March, 1971).

*(Chapter III.—Of the Duties and Liabilities of Trustees.)**Illustrations*

(a) A, living in 1[Chittagong], is a trustee for B, living in 2[Dacca]. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as cash, and payable at 2[Dacca]. The bills are dishonoured. A is not bound to make good the loss.

(b) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(d) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(f) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h) A, a trustee for B, allows the trust to be executed solely by this co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

Conversion  
of perishable  
property.

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

*Illustrations*

(a) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

<sup>1</sup>Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (XXI) of 1960, s. 3 and 2nd Sch., for "Calcutta" (with effect from the 14th October, 1955).

<sup>2</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch., for "Karachi" (with effect from the 26th March, 1971).



Chapter III.—Of the Duties and Liabilities of Trustees.

16. A bequeaths to B his three leasehold houses in [Chittagong] and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Trustee to be impartial.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

Illustration

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

Trustee to prevent waste.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

Accounts and information.

20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:—

Investment of trust-money.

(a) in promissory notes, debentures, stock or other securities <sup>1</sup>[of the Government]:

<sup>2</sup>[Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by <sup>3</sup>[the] Government, shall

<sup>1</sup>Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), s. 3 and 2nd Sch., for "Calcutta" (with effect from the 14th October, 1955).

<sup>2</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch., (with effect from the 26th March, 1974) for "of any Provincial Government or of the Central Government, or of the United Kingdom of Great Britain and Ireland".

<sup>3</sup>Provided also by the Indian Trusts (Amend.) Act, 1924 (XXIII of 1924), s. 2.

<sup>4</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch., for "any such" (with effect from the 26th March, 1974).

## (Chapter III.—Of the Duties and Liabilities of Trustees.)

be deemed, for the purposes of this clause, to be securities of [the] Government];

2\* \* \* \* \*

<sup>3</sup>[(c) in stock or debentures of, or shares in, Companies the interest whereon shall have been guaranteed by the Government;]

<sup>4</sup>[(d) in debenture or other securities for money issued under the authority of any Bangladesh Act, or on behalf of any municipal body or port trust or city improvement trust;]

(e) on a first mortgage of immovable property situate in <sup>5</sup>[Bangladesh]: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; or

(f) on any other security expressly authorized by the instrument of trust, or by any rule which the [Supreme Court] may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on

<sup>1</sup>Subs. by Act VIII of 1973, s. 3 and 2nd Sch. for "such" (with effect from the 26th March, 1971).

<sup>2</sup>Clauses (b) and (bb) omitted, *ibid.*, (with effect from the 26th March, 1971).

<sup>3</sup>Clause (c) was subs., *ibid.* for the original clause (with effect from the 26th March, 1971).

<sup>4</sup>Clause (d) was subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch., for clause (d) (with effect from the 26th March, 1971), which had been subs. by the Indian Trusts (Amendment) Act, 1906 (XX of 1906), s. 2, for the original clause.

<sup>5</sup>Subs. *ibid.* for "a Province" (with effect from the 26th March, 1971), which had been subs. by the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951), s. 3 and 3rd Sch. for "the Provinces and the Capital of the Federation," which had been subs. by A. O., 1949, Arts 3(2) and 4, for "High Courts".

<sup>6</sup>Subs. *ibid.* for "High Court" (with effect from the 26th March, 1971).

## (Chapter III.—Of the Duties and Liabilities of Trustees.)

any security mentioned or referred to in clauses (d), (e), and (f) shall be made without his consent in writing.

1[20A.—(1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value : Power to purchase redeemable stock at a premium.

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (c) and (d) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.]

21. Nothing in section 20 shall apply to <sup>2</sup> \* \* \* in case the trust-money does not exceed three thousand <sup>3</sup>[taka] a deposit thereof in a Government Savings Bank. Deposit in Government Savings Bank.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction. Sale by trustee directed to sell within specified time.

*Illustrations*

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary sustains. Liability for breach of trust.

<sup>1</sup>S. 20 A. ins. by the Indian Trusts (Amdt) Act, 1916 (I of 1916), s. 3.

<sup>2</sup>The words "investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an advance under the Land Improvement Act, 1871, or", were omitted by the Bangladeshi Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch., (with effect from the 26th March, 1971).

<sup>3</sup>Subs. *ibid.*, for "rupees" (with effect from the 26th March, 1971).

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fiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases :—

- (a) where he has actually received interest :
- (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:
- (c) where the trustee ought to have received interest, but has not done so:
- (d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

- (e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.
- (f) where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the net profits made by such employment.

*Illustrations*

(a) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. B is answerable to C for the loss.

(c) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (a), (b), (c) or (d). Instead of so doing he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and

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interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(e) The instrument of trust directs the trustee to invest trust-money either in any such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.

(f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g) Trust-property is invested in one of the securities mentioned in section 20, clause (a), (b), (c) or (d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

No set-off  
allowed to  
trustee.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability  
for predecessor's  
default.

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee :

Non-liability  
for co-trustee's  
default.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application :

(b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealing therewith or allows him to retain it longer than the circumstances of the case reasonably require;

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- (c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

Joining in receipt for conformity.

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

*Illustration*

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

Several liability of co-trustees.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Contribution as between co-trustees.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability of trustee paying without notice of transfer by beneficiary.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of trustee where beneficiary's interest is forfeited to the Government.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication <sup>1</sup>[to the Government], the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the <sup>2</sup>[Government] may direct in this behalf.

<sup>1</sup>The words "to Government" have successively been amended by A. O., 1937 and A. O., 1961, Art.2 (with effect from the 23rd March, 1956), to read as above.

<sup>2</sup>The word "Government" was subs. for the words "Provincial Government" by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch. (with effect from the 26th March, 1971).

(Chapter III.—Of the Duties and Liabilities of Trustees.)

Chapter IV.—Of the Rights and Powers of Trustees.)

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

Indemnity of trustees.

## CHAPTER IV

### OF THE RIGHTS AND POWERS OF TRUSTEES

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

Right to title-deed.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary.

Right to reimbursement of expenses.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to be recouped for erroneous over-payment.

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Right to indemnity from gainer by breach of trust.

*(Chapter IV.—Of the Rights and Powers of Trustees.)*

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

Right to apply to Court for opinion in management of trust-property.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

Right to settlement of accounts.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

General authority of trustee.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

1\* \* \* \* \*

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

<sup>1</sup>The second paragraph of this section was rep. by the Amending Act, 1891 (XII of 1891), s. 2 and Sch. I.



(Chapter IV.—Of the Rights and Powers of Trustees.)

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

Power to sell in lots, and either by public auction or private contract.

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Power to sell under special conditions. Power to buy in and re-sell.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Time allowed for selling trust-property.

Illustrations

(a) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to convey.

40. A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature :

Power to vary investments.

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the

Power to apply property of minors, etc., for their maintenance, etc.

*(Chapter IV.—Of the Rights and Powers of Trustees.)*

whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen :

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

Power to give receipts.

42. Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to compound, etc.

43. Two or more trustees acting together may, if and as they think fit,—

- (a) accept any composition or any security for any debt or for any property claimed;
- (b) allow any time for payment of any debt;
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,
- (d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

(Chapter IV.—Of the Rights and Powers of Trustees.

Chapter V.—Of the Disabilities of Trustees.)

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

44. When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Power to several trustees of whom one disclaims or dies.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

Suspension of trustee's powers by decree.

## CHAPTER V

### OF THE DISABILITIES OF TRUSTEES

46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

Trustee cannot renounce after acceptance.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Trustee cannot delegate.

*Explanation.*—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

*(Chapter V.—Of the Disabilities of Trustees.)**Illustrations*

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

Co-trustees cannot act singly.

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Control of discretionary power.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Trustee may not charge for services.

50. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to any Official Trustee, Administrator-General, Public Curator or person holding a certificate of administration.

Trustee may not use trust-property for his own profit.

51. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

Trustee for sale or his agent may not buy.

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee may not buy beneficiary's interest without permission.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee for purchase.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

(Chapter V.—Of the Disabilities of Trustees. Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on mortgage by, or on the personal security of, himself or one of his co-trustees.

Co-trustees may not lend to one of themselves.

## CHAPTER VI

### OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Rights to rents and profits.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to specific execution.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

Right to transfer of possession.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

#### Illustrations

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(b) A bequeaths 1[Tk] 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the 1[Tk] 10,000.

(c) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to inspect and take copies of instrument of trust accounts, etc.

<sup>1</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch., for "Rs." (with effect from the 26th March, 1971).

*(Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)*

Right trans-  
fer beneficial  
interest.

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest :

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

Right to  
sue for execu-  
tion of trust.

59. Where no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

Right to  
proper trust-  
tees.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

*Explanation I.*—The following are not proper persons within the meaning of this section :—

A person domiciled abroad: an alien enemy: a person having an interest inconsistent with that of the beneficiary: a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

*Explanation II.*—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

#### Illustrations

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(b) A bequeaths certain jewels to B in trust for C. B dies during A's life time; then A dies. C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

*(Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)*

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of <sup>1</sup>[Bangladesh] or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Right to compel to any act of duty.

*Illustrations*

(a) A contracts with B to pay him monthly <sup>2</sup>[Tk] 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the net profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Wrongful purchase by trustee.

Nothing in this section—

- (a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or
- (b) entitles the beneficiary to have the property declared subject to the trust or retransferred where he, being competent to contract, has himself, without coercion

<sup>1</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch., for "Pakistan" (with effect from the 26th March, 1971).

<sup>2</sup>Subs. *ibid* for "Rs."

## (Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)

or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

Following trust-property —into the hands of third persons;

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

into that into which it has been converted.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as merely as may be the same as his rights in respect of the original trust-property.

## Illustrations

(a) A, a trustee for B of <sup>1</sup>[Tk] 10,000, wrongfully invests <sup>1</sup>[Tk] 10,000 in the purchase of certain land. B is entitled to the land.

(b) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

Saving of rights of certain transferees.

64. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or

(b) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes and negotiable instruments in the hands of a *bona fide* holder to whom they have passed in circulation, or shall be deemed to effect the Contract Act, 1872, section 108, or the liability of a person to whom a debt or charge is transferred.

IX of  
1872

Acquisition by trustee of trust-property wrongfully converted.

65. Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

<sup>1</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch. for "Rs." (with effect from the 26th March, 1971).



*(Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)*

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Right in case of blended property.

67. If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

Wrongful employment by partner-trustee of trust-property for partnership purposes.

The partners having such notice are jointly and severally liable for the breach of trust.

*Illustrations*

(a) A and B are partners. A dies, having bequeathed all his property B in trust for Z, and appointed B his sole executor. B instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(b) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

68. Where one of several beneficiaries—

- (a) joins in committing breach of trust, or
- (b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or
- (c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or
- (d) has deceived the trustee and thereby induced him to commit a breach of trust,

Liability of beneficiary joining in breach of trust.

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

(Chapter VI.—Of the Rights and Liabilities of the Beneficiary.  
Chapter VII.—Of Vacating the Office of Trustee.)

Rights and liabilities of beneficiary's transferee.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

## CHAPTER VII

### OF VACATING THE OFFICE OF TRUSTEE

Office how vacated.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Discharge of trustee.

71. The trustee may be discharged from his office only as follows :—

- (a) by the extinction of the trust;
- (b) by the completion of his duties under the trust;
- (c) by such means as may be prescribed by the instrument of trust;
- (d) by appointment under this Act of a new trustee in his place;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or
- (f) by the Court to which a petition for his discharge is presented under this Act.

Petition to be discharged from trust.

72. Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

Appointment of new trustees on death, etc.

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted dies, or is for a continuous period of six months absent from <sup>1</sup>[Bangladesh], or leaves <sup>1</sup>[Bangladesh] for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the

<sup>1</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch. for "Pakistan" (w. e. f. 26th March, 1971).

*(Chapter VII.—Of Vacating the Office of Trustee.)*

trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

- (a) the person nominated for that purpose by the instrument of trust (if any), or
- (b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

Appointment  
by Court.

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wishes of the person, if any, empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust; and (d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

Rules for  
selecting new  
trustees.

75. —Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Vesting of  
trust-pro-  
perty in new  
trustees.

(Chapter VII.—Of Vacating the Office of Trustee. Chapter VIII.—Of the Extinction of Trusts.)

Powers of new trustees.

Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

Survival of trust.

75. On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

## CHAPTER VIII

### OF THE EXTINCTION OF TRUSTS

Trust how extinguished.

77. A trust is extinguished—

- (a) when its purpose is completely fulfilled; or
- (b) when its purpose becomes unlawful; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked.

Revocation of trust.

78. A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

- (a) where all the beneficiaries are competent to contract—by their consent;
- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

#### Illustration

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

(Chapter VIII.—Of the Extinction of Trusts. Chapter IX.—  
Of certain Obligations in the Nature of Trusts.)

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

Revocation not to defeat what trustees have duly done.

## CHAPTER IX

### OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

80. An obligation in the nature of a trust is created in the following cases.

Where obligation in nature of trust is created. Where it does not appear that transferor intended to dispose of beneficial interest.

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

#### Illustration

(a) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(b) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(c) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(d) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Transfer to one for consideration paid by another.

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Trust incapable of execution or executed without exhausting trust-property.

<sup>1</sup>The second paragraph of section 82 was omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch., (with effect from the 26th March, 1971).

## (Chapter IX.—Of certain Obligations in the Nature of Trusts.)

## Illustrations

(a) A conveys certain land to B—

"upon trust," and no trust is declared; or

"upon trust to be thereafter declared," and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

"in trusts for C," and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(b) A transfers <sup>1</sup>[Tk] 10,000 in the four per cents. to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(c) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(d) A bequeaths <sup>1</sup>[Tk] 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.Transfer for  
illegal  
purpose.

84. Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Bequest for  
illegal  
purpose.

85. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest  
of which  
revocation is  
prevented  
by coercion.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

Transfer  
pursuant  
to rescinda-  
ble contract.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

Debtor be-  
coming cre-  
ditor's repre-  
sentative.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

<sup>1</sup>Subs. by Act VIII of 1973, s. 3, and 2nd Sch. for "Rs." (with effect from the 26th March, 1971).

## (Chapter IX.—Of certain Obligations in the Nature of Trusts.)

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Advantage  
gained by  
fiduciary.

*Illustrations*

(a) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(b) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(c) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(d) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(e) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease clandestinely stipulates with the lessor for payment to himself a lakh of ₹[Taka]. A holds the lakh for the benefit of the partnership.

(f) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(g) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage  
gained by  
exercise of  
undue  
influence.

90. Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Advantage  
gained by  
qualified  
owner.

<sup>1</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch. for "rupees" (with effect from the 26th March, 1971).

## (Chapter IX.—Of certain Obligations in the Nature of Trusts.)

## Illustrations

(a) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A village belongs to a Hindu family. A, one of its members, pays nazrana to Government and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.

(c) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

Property acquired with notice of existing contract.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Advantage secretly gained by one of several compounding creditors.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Constructive trusts in cases not expressly provided for.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

## Illustrations

(a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

(c) A makes a gift of a lakh of 1[taka] to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to 1[Tk] 10,000. The gift is void as to 1[Tk] 10,000, and B holds that sum for the benefit of A.

<sup>1</sup>Subs. by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch. for "Rs". (with effect from the 26th March, 1971).



(Chapter IX.—Of certain Obligations in the Nature of Trusts.)

95. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Obligor's  
duties, liabi-  
lities and  
disabilities.

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

96. Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

Saving of  
rights  
of bona fide  
purchasers.

<sup>1</sup>The Schedule was omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), s. 3 and 2nd Sch. (with effect from the 26th March, 1971).

National Parliament of Bangladesh  
The Foreign Donations  
(Voluntary Activities) Regulation  
Ordinance 1978, Amendment Bill.

2004

two version

**NATIONAL PARLIAMENT OF BANGLADESH**

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**The Foreign Donations (Voluntary Activities) Regulation  
Ordinance, 1978 - Amendment Bill**

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**Mr. Abdul Mannan Bhuiyan**

**Ba:S:Mu:-2003/2004-3937com/b-1,100 copy, 2004**

To be presented to Parliament

**The Foreign Donations (Voluntary Activities) Regulation  
Ordinance, 1978, Amendment  
Bill**

It is important to amend The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978);

For this purpose, the following ordinance has been prepared: -

**1 Short Title:** - (1) This Ordinance may be called The Foreign Donations (Voluntary Activities) Regulation (Amendment) Act, 2004.

(2) It will come into effect immediately.

**2 Deletion of words:** - the words "person or", "himself or", "persons and", "him or", and "he or" shall be deleted wherever it is in The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978. This is an attempt to divert from presumed Personal ownership of NGOs to legally independent Institutional structures which must have been the objective of the previous law but including the word 'persons' must have been misinterpreted due to its dual meaning in law.

In effect, this makes the Trustees/Board of an NGO, stewards of its assets and not owners. The Code is also working towards a similar trajectory.

**3 Amendment of section 2 of Ordinance No. XLVI of 1978:** - (1) sub-section (b) of section 2 of The Foreign Donations (Voluntary Activity) Regulation Ordinance, 1978, shall be replaced as follows: -

"(b) "Organisation" means a non-governmental voluntary organisation, called by whatever name, established by persons on their own free will for the purpose of undertaking or carrying on voluntary activities in Bangladesh and depending for its resources on foreign donations, in cash or in kind, in addition to local subscriptions or donations;"

(2) Sub-section (c) of section 2 of the above Ordinance shall be replaced as follows: -

"(c) "NGO" means non-governmental voluntary organisation, outside the government structure, with the meaning of "organisation" as in sub-section (b);"

(3) After sub-section (d) of section 2 of the above Ordinance, the following sub-section (e), sub-section (f) and sub-section (g) shall be added: -

- (e) "irregularity" means misuse or misappropriation of funds, or incurring expenditures against activities not approved under a project, or incurring expenditure against approved activities in excess of budget provision beyond acceptable limits as is determined by the Government, or violation of financial discipline of the organisation, or any provisions of this Ordinance or any rules or orders made there under;
- (f) "mal-administration" means administering the affairs of the organisation in violation of any of the provisions of this Ordinance and rules or orders made there under;
- (g) "political activity" means accepting membership of, directly supporting or getting aligned with any political party, and includes any activity which may be interpreted as political, or may affect politics, or such other activities which may be interpreted to be detrimental to national independence, sovereignty, culture, ethnic and religious sentiment, etc., and shall not include activities like empowerment of poor and disadvantaged, awareness raising, etc. as long as those are not intended towards giving any direct political gain to any political party;"

**4 Amendment of section 3 of Ordinance No. XLVI of 1978:** - In the beginning of sub-section (2) of section 3 , of The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978, "An" shall replace "A" and in the same way in the beginning of sub-section 4 of the above section, "An" shall replace "A".

**5 Amendment of section 4 of the Ordinance No. XLVI of 1978:** - (1) In the title of section 4 of The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978, "Power of inspection" shall be replaced by "Power of inspection, monitoring and evaluation". The Government may have the power of inspection but not power of monitoring and evaluation. This Law instead should specify the types of Documents that the government believes will give a fair and true picture of an NGO's operations and require NGOs to submit such documents /returns to it on an annual / semester /quarterly basis. A similar requirement applies to companies i.e. Company Annual Returns.

This authority should however not be vested directly in the Government but the government can appoint a separate body /commission to deal with the regulation and inspections of NGOs. An existing example is the Charities Commission in England.

(2) After sub-section (1) of section 4 of the above Ordinance, the following sub-section (la) and sub-section (lb) shall be added as: -

"(1a) The Government may, monitor, the progress of any voluntary activity undertaken or carried on by any organisation registered under sub-section (2) of section 3, in the manner as specified by the Government from time to time. Whatever needs to be monitored has to be specified from the onset of the law and in future may be amended as per the requirement of the sector but this clause is too open ended and does not add any value if the law is to protect NGOs and public interest.

(1b) The Government may, at any time, by order, cause an evaluation to be made, by one or more of its officers, or any external evaluator appointed for the purpose, of any voluntary activity, on-going or completed, of any organisation registered under sub-section (2) of section 3."

The government cannot do this. This clause needs major re-drafting. The government or the authority appointed by the government only if 'led to believe' that the operations of an NGO are no longer in 'good faith' and in accordance to the law can, due to 'public interest', order for an NGO's operations to be inspected. Usually for an inspection to be carried out, there has to be 'due cause' otherwise this clause leave plenty of room for abuse.

(3) In Sub-section (2) of section 4 of the above Ordinance, "or evaluator, as the case may be," shall be added after "to such officer or officers"; "or evaluator" shall be added in the middle of "officers" and "may"; "inspection, monitoring and evaluation under sub-section (1), (1a) and 1(b)" shall replace "inspection under sub-section (1)".

**6 Addition of new section after section 5 of Ordinance No. XLVI of 1978: -**  
After section 5 of The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978, the following new section 5A and 5B shall be added as: -

**"5A. Consequences of dissolution: -** (1) Where registration of any organisation is cancelled under sub-section (1) of section 6 of this Ordinance, or any organisation is dissolved for any other reason, the Government may-

- (a) Order any Bank or other person who holds money, securities or other assets on behalf of the organisation not to part with such money, securities and assets without the previous permission in writing of the Government.
- (b) Appoint a liquidator to wind-up the affairs of the organisation with power to institute and defend suit and other legal proceedings on behalf of the organisation, and to make such orders and take such action as may appear to him to be necessary for the purpose; and
- (c) Order any money, securities and assets remaining after the satisfaction of all debts and liabilities of the organisation to be paid or transferred to such other organisation having objects similar to the objects of the organisation, as may be specified in the order.

(2) Orders made by the liquidator appointed under clause 1(b) of sub-section (1) shall on application, be enforceable by any Civil Court having local jurisdiction in the matter as decree of such court.

(3) Where any organisation opts for its own closure or dissolution under the provisions of its Constitution, it shall seek permission of the Government, and if the permission is accorded by the Government, the above procedure shall be followed.

**5B. Association of NGOs, etc.:** - There shall be an association of the NGOs, to be formed by interested organisations registered under sub-section (2) of section 3, in the manner specified by the Government by notification in the official gazette, to facilitate coordination amongst the NGOs, and also to advise the Government in relevant matters, which itself shall not be an organisation as defined in sub-section (b) of section 2 and not undertake or carry on any voluntary activity." The Association proposed here, would it have a regulatory power? This clause is too ambiguous for material.

**7 Amendment of section 6 of Ordinance No. XLVI of 1978:** - After sub-section (2) of section 6 of The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978, the following new sub-section (3) and sub-section (4) shall be added as: -

**"(3) Suspension or dissolution of governing bodies of registered organisation:** - (a) If the government is satisfied that an organisation referred to in sub-section (1) of section 3 has been responsible for any irregularity in respect of its funds or for any mal-administration in the conduct of its affairs, or has failed to comply with the provisions of this Ordinance, or the rules made there under, or any order issued by the Government in this regard, or has involved in any political activity, or any activity influencing politics, directly or indirectly, it may by order, in writing, suspend or dissolve the governing body; This clause under law is know as 'Power of custodian' this is the power of the relevant authority to act in protection of the assets of an institutions where they are led to believe that these assets are endangered under the current trustees etc. It is usually effected after an inspection order and based on the results of the inspection, if the relevant authority is satisfied that the organisation has not met the requirements as stated under law then they may suspend the governing body either in part or as a whole, or specific individuals in the governing body or even employees whom they believe may have facilitate the process of mal-practice or misconduct, pending removal. The period of suspension should be specified and the specific process to be undertaken during such suspensions should also be specified. A process to re-instate suspended parties should also be clearly stated otherwise the current clause leave room for indefinite suspension with no specific cause.

This clause again has been poorly drafted because it is a very powerful clause and therefore requires extra efforts to be put into providing specific procedures to ensure a just and fair action. The clause is also not supposed to be in favour of the

government but in favour of the NGO and its beneficiaries and it is meant to protect the asset of the NGO on behalf of its beneficiary to enable it achieve its original mission.

Provided that no order under this section shall be made without giving such organisation a reasonable opportunity of being heard.

(b) Where a governing body is suspended or dissolved under clause (a), the Government shall appoint a caretaker body consisting of not more than five persons including one representative from NGO Affairs Bureau and one from Department of Social welfare, who shall have all the authority and powers of the governing body under the constitution of the organisation.

(c) The caretaker body constituted under clause (b) shall form a new governing body as per constitution of the organisation within 90 days of its dissolution.

(d) If the caretaker body is unable to form a new governing body within 90 days as per clause (c), it shall report to the Government in writing giving reasons for its failure. In such event the Government may order the caretaker body to continue for a further 90 days to form a new governing body, or the Government shall take over forthwith.

**(4) Removal of chief executive or official of registered organisation:** - (a) If the Government is satisfied that the Chief Executive or any other official of an organisation referred to in sub-section (1) of section 3 has been responsible for any irregularity in respect of its funds or for any mal-administration in the conduct of its affairs, or has failed to comply with the provisions of this Ordinance, or the rules made there under, or any order issued by the Government in this regard, or has caused the organisation to be involved in any political activity, or any activity influencing politics directly, it may by order, in writing, remove such Chief Executive or official : This clause is another one that has been poorly drafted and leaves plenty of room for abuse. The appointment and removal of a CEO of an NGO is the responsibility of the NGO's governing body and can only be removed by an external authority under the clause mentioned above (if redrafted) but the government cannot be in a position to write to the CEO and staff of an NGO to terminate their duties.

Provided that no order under this section shall be made without giving such person a reasonable opportunity of being heard.

(b) Where a Chief Executive or an official is removed under clause (a), the organisation shall appoint a new Chief Executive or the official as per its constitution with the approval of the Government within 30 days. (NGO CEOs should be appointed on merits in a fair and transparent manner and the government cannot be involved in this process.



(c) If the organisation fails to appoint a new Chief Executive or the official, the Government shall appoint a new Chief Executive or the official, as the case may be. This clause is irrelevant and should be totally excluded.

**PERSONAL VIEW:** According to my observation, the overall objective of this law in relation to the background provided below is basically what the Code is trying to achieve and may be well intended to protect the NGOs and their beneficiaries. However, despite the importance of this document, the relevant authority did not invest in good legal draftsmanship and research that has led to a document, which could be very controversial and abusive in nature depending on whom is sitting on the regulatory side.

This Law has also put total responsibilities on the Governing Body of the NGOs but has not addressed issues that are very relevant to enabling the governing body effectively carryout its role as trustees of the NGO's resources. I believe that accountability and empowerment are joined at the hip and the two cannot be separated

Generally speaking, updating the regulations in the sector per se is not a negative move since the laws currently are outdated and have not grown with the sector. However, this law can be redrafted into a useful tool. A consultative forum of NGOs to advocate for responsible institutions and carryout a mass education and awareness in the NGO sector on their legal responsibility and accountability can also be put in place before finally enacting it.

### **Statement related to Motive and Cause**

The Foreign Donations (Voluntary Activities) Regulation Ordinance was enforced in 1978 . This Ordinance was slightly amended subsequently in 1982 through a decree no. 32. Besides, there was no amendment to this Ordinance in the last 25 years. By this time the activities of foreign and foreign aided Bangladeshi NGOs have increased to a great extent. These organizations are carrying out activities in almost all the areas of social and economic development, also in other new areas. In every village of the country there are organizations that are engaged in voluntary activities. Compare to that, due to apparent weakness and deficiency in the existing law it has been felt the necessity to amend and update the Ordinance.

After ascending into power, the government formed ministerial committees with an aim to immediate reform in few areas of the society. Among them, the “Review of NGO Activities and related Rules and Regulations ” is one of them. The committee reviews in detail the activities of the foreign and foreign-aided Bangladeshi NGOs and their related rules and regulations. This committee has exchanged views twice with the representatives of registered NGOs. In addition to this the committee has also exchanged views with representatives of donor countries / agencies. Hereafter the committee submitted a report to the Prime Minister on 24 April 2003 with detailed recommendations

In light of the suggestions made by the ministerial committee, it is necessary to amend ‘The Foreign Donation (voluntary activities) Regulation Ordinance, 1978’ with an aim to operate systematically and accountably the activities of foreign and foreign-aided Bangladeshi NGOs.

**Abdul Mannan Bhuiyan**  
Responsible Minister

Recommendation  
(In Bangla and English)  
(Necessary explanation shall be made)

### সুপারিশমালা

বাংলাদেশে এনজিও কার্যক্রমের বিদ্যমান অবস্থা এবং সংশ্লিষ্ট বিভিন্ন আইন, বিধি-বিধান ও পদ্ধতিসমূহ সর্বাঙ্গীণ পর্যালোচনাতে কমিটি সর্বসম্মতিক্রমে নিম্নোক্ত সুপারিশমালা প্রণয়ন করে :

১. এফ.ডি. আইনকে উদারকরণ :

- ১.১ কোন এনজিও'র বিরুদ্ধে ব্যবস্থা গ্রহণের ক্ষেত্রে প্রযোজ্য এফ.ডি. অর্ডিন্যান্স এর বিদ্যমান বিধান কঠোর বিধায় উক্ত অর্ডিন্যান্সে The Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961, এর Section 9 এর আলোকে নিম্নরূপ বিধান সন্নিবেশিত করা যায় :

**Section xxx : Suspension or dissolution of governing bodies of registered organisation.-** (1) If the Government is satisfied that an organisation referred to in sub-section (1) of section 3 has been responsible for any irregularity in respect of its funds or for any mal-administration in the conduct of its affairs, or has failed to comply with the provisions of this Ordinance, or the rules made there under, or any order issued by the Government in this regard, or has involved in any political activity, or any activity influencing politics, directly or indirectly, it may by order, in writing, suspend or dissolve the governing body :

Provided that no order under this section shall be made without giving such organisation a reasonable opportunity of being heard.

(2) Where a governing body is suspended or dissolved under sub-section (1), the Government shall appoint a caretaker body consisting of not more than five persons including one representative

from NGO Affairs Bureau and one from Social Welfare Department, who shall have all the authority and powers of the governing body under the constitution of the organisation.

(3) The caretaker body constituted under sub-section (2) shall form a new governing body as per constitution of the organisation within 90 days of its dissolution.

(4) If the caretaker body is unable to form a new governing body within 90 days as per sub-section (3), it shall report to the Government in writing giving reasons for its failure. In such event the Government may order the caretaker body to continue for a further 90 days to form a new governing body, or the NGO Affairs Bureau shall take over with the approval of the Government.

**Section xxx : Removal of chief executive or official of registered organisation.**-(1) If the Government is satisfied that the Chief Executive or any other official of an organisation referred to in sub-section (1) of section 3 has been responsible for any irregularity in respect of its funds or for any mal-administration in the conduct of its affairs, or has failed to comply with the provisions of this Ordinance, or the rules made there under, or any order issued by the Government in this regard, or has involved in any political activity, or any activity influencing politics, directly or indirectly, it may by order, in writing, remove such Chief Executive or official :

Provided that no order under this section shall be made without giving such person a reasonable opportunity of being heard.

(2) Where a Chief Executive or an official is removed under sub-section(1), the organisation shall appoint a new Chief Executive or the official as per its constitution with the approval of the Government within 30 days.

(3) If the organisation fails to appoint a new Chief Executive or the official, The NGO Affairs Bureau shall appoint a new Chief Executive or the official with the approval of the Government.

১.২ একই সাথে এতদসংশ্লিষ্ট নিম্নের শব্দগুলোর সংজ্ঞাও আইনে সন্নিবেশিত করা যায় :

"Irregularity" means misuse or misappropriation of funds, or incurring expenditure against activities not approved under a project, or incurring expenditure against approved activities in excess of budget provision beyond acceptable limits as is determined by the Government, or violation of financial discipline of the organisation, or any provisions of this Ordinance or any rules or orders made there under ;

"Mal-administration" means administering the affairs of the organisation in violation of any of the provisions of this Ordinance and rules or orders made there under;

২. সংস্থা বিলুপ্তির কারণে উদ্ভূত পরিস্থিতি মোকাবেলা :

২.১ কোন এনজিও'র বিলুপ্তি ঘটলে বা বিধি মোতাবেক এর কার্যক্রম স্থগিত বা বন্ধ ঘোষণা করা হলে সংস্থার ব্যবস্থাপনাগত অন্তর্বর্তীকালীন শূন্যতা দূর করা এবং এর সম্পদ ও দায়দেনার সূচী সংরক্ষণ বা নিষ্পত্তির যথাযথ ব্যবস্থা গ্রহণ নিশ্চিত করার ব্যাপারে এফ.ডি. আইনে কোনরূপ বিধান না থাকায়

এবং এ মর্মে যথোপযুক্ত বিধান আইনে থাকা প্রয়োজন বিবেচনা করে The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961, এর Section 12 এর আলোকে নিম্নরূপ বিধান সন্নিবেশিত করে এফ.ডি. আইনের একটি নিরসন করা যেতে পারে :

**Section xxx: Consequences of dissolution.-** (1) Where registration of any organisation is cancelled under sub-section (1) of section 6 of this Ordinance, or any organisation is dissolved under the said Ordinance for any other reason, the Government may-

- (a) Order any Bank or other person who holds money, securities or other assets on behalf of the organisation not to part with such money, securities and assets without the previous permission in writing of the Government.
  - (b) Appoint a liquidator to wind-up the affairs of the organisation with power to institute and defend suit and other legal proceedings on behalf of the organisation, and to make such orders and take such action as may appear to him to be necessary for the purpose; and
  - (c) Order any money, securities and assets remaining after the satisfaction of all debts and liabilities of the organisation to be paid or transferred to such other agency or organisation having objects similar to the objects of the organisation, as may be specified in the order.
- (2) Orders made by the liquidator appointed under clause (b) of sub-section(1) shall on application, be enforceable by any Civil Court having local jurisdiction in the matter as degree of such court.

(3) Where any organisation opts for its own closure or dissolution under the provisions of its Constitution, it shall seek permission of the Government, and if the permission is accorded by the Government, the above procedure shall be followed.

৩. এনজিওদের রাজনৈতিক কর্মকান্ড সংক্রান্ত :

৩.১ এনজিওদের দলীয় প্রকৃতির রাজনৈতিক কার্যকলাপে অংশগ্রহণ, কিংবা কোন ব্যক্তির রাজনৈতিক মতাদর্শ প্রচারে সংস্থাকে ব্যবহার, ইত্যাদি ব্যাপারে বিধিনিষেধ আরোপ করা প্রয়োজন। এ মর্মে উপরের ৪.৫ অনুচ্ছেদে প্রস্তাবিত বিধান যথোপযুক্ত বলে কমিটি মনে করে। তবে এক্ষেত্রে রাজনৈতিক কর্মকাণ্ডের একটা সংজ্ঞা দেয়া প্রয়োজন বিধায় নিম্নরূপ সংজ্ঞা এফ.ডি. আইনে সন্নিবেশিত করা যেতে পারে :

"Political Activity" means accepting membership of, supporting or getting aligned with any political party, and includes any activity which may be interpreted as political, or may effect politics, directly or indirectly, or such other activities which may be interpreted to be detrimental to national independence, sovereignty, culture, ethnic and religious sentiment, etc., and shall not include activities like empowerment of poor and disadvantaged, awareness development, etc. as long as those are not directed towards giving any political gain to any political party;

৪. 'সংগঠন' এর সংজ্ঞা :

৪.১ প্রচলিত এফ.ডি. আইনে Section 2 এর sub-section (b) তে প্রদত্ত "organisation" এর সংজ্ঞাটি ত্রুটিপূর্ণ বধায় উক্ত sub-section (b) নিম্নরূপভাবে প্রতিস্থাপন করা যায় :



(b) "Organisation" means a non-governmental voluntary organisation, called by whatever name, established by persons on their own free will for the purpose of undertaking or carrying on voluntary activities and depending for its resources on foreign donations, in cash or in kind, in addition to local subscriptions or donations;

৫. 'এনজিও' এর সংজ্ঞা :

৫.১ প্রচলিত এফ.ডি. আইনে 'এনজিও' কথাটির নিম্নরূপ সংজ্ঞা সংযোজন করা যেতে পারে :

"NGO" means non-governmental voluntary organisation, outside the government structure, with the meaning of "organisation" as in sub-section (b);

৬. 'এডাব' প্রসঙ্গে :

৬.১ এনজিও সংগঠনসমূহের মধ্যে সুসমন্বয় নিশ্চিত করা এবং এতদবিষয়ে সরকারকে যথাযথ পরামর্শ প্রদানের নিমিত্তে এনজিওদের একটি এসোসিয়েশন/ফেডারেশনধর্মী প্রতিষ্ঠান গড়ে তোলার লক্ষ্যে প্রচলিত আইনে যথাযথ বিধান সন্নিবেশিত করা যায়। উক্ত এসোসিয়েশন/ফেডারেশন এর স্বরূপ, দায়িত্ব ও কর্তব্য, সরকারের সাথে সম্পর্ক, পরিচালনা পদ্ধতি, নির্বাচন পদ্ধতি, পরিচালনা ব্যয় নির্বাহ, ইত্যাদি বিষয়ে বিস্তারিত বিধানসহ পৃথক বিধিমালা প্রণয়ন করা যায়।

৬.২ এফ.ডি. বিধিমালার ফরম এফ.ডি.-২ ও এফ.ডি.-৩ থেকে 'এডাব'কে তহবিল সংশ্লিষ্ট তথ্যাদি প্রদান সংক্রান্ত অংশ বাদ দেয়া যেতে পারে।

৭. গঠনতন্ত্র ও নির্বাহী কমিটি অনুমোদন :

- ৭.১ প্রতিটি সংস্থার গঠনতন্ত্র ও নির্বাহী কমিটি এনজিও বিষয়ক ব্যুরো কর্তৃক অনুমোদিত হতে হবে এবং গঠনতন্ত্রে বিদ্যমান আইন বিধির সাথে সংগতিপূর্ণ নয়, এরূপ কোন বিধান অস্বীকৃত থাকতে পারবে না। এ মর্মে যথাযথ বিধান এফ.ডি. বিধিমালায় অস্বীকৃত করার পদক্ষেপ গ্রহণ করা যায়। একই সাথে কোন সংস্থার কমিটি নিয়ে বিরোধ উত্থাপিত হলে ব্যুরো যাতে যথাযথ সমাধান দিতে পারে, সে মর্মে ব্যুরোকে আইনানুগ ক্ষমতা দিয়ে নিম্নরূপ বিধান উক্ত বিধিমালায় সন্নিবেশিত করা যায় :

“Rule xxx : The Constitution of any organisation registered under the provisions of these Rules, shall not contain anything inconsistent with the provisions of the Ordinance, these Rules and any executive orders made thereunder, and shall have to be approved by the Government.

Rule xxx : The Governing Body, or the Executive Committee, or, in whatever name the apex policy making body of the organisation is called, of any organisation registered under the provisions of these Rules, shall have to be approved by the Government.

- ৭.২ কোন সংস্থার নির্বাহী কমিটি বা গঠনতন্ত্রে যে কোনরূপ পরিবর্তনও সরকার কর্তৃক অনুমোদিত হতে হবে।
- ৭.৩ সংস্থার কার্যক্রমের ধারাবাহিকতা বজায় রাখার লক্ষ্যে কোন নিবন্ধিত সংস্থা কোন সময়ে বৈদেশিক সাহায্য গ্রহণ না করলেও যথারীতি ব্যুরোর নিকট বিধি মোতাবেক বিভিন্ন প্রতিবেদনসমূহ যথানিয়মে দাখিল করার নির্দেশনা জারী করা যায়।

৮. সম্পদ ব্যবস্থাপনা :

- ৮.১ এনজিও সংগঠনের সম্পদ Trust Property হিসাবে গণ্য করে এবং স্থানীয় এনজিও'র ক্ষেত্রে সংস্থার নির্বাহী কমিটিকে ও বিদেশী এনজিও'র ক্ষেত্রে সংস্থার পরিচালনাকারী কর্তৃপক্ষকে Board of Trustee হিসাবে দায়িত্ব প্রদান করে প্রচলিত বিধিমালায় নিম্নরূপ বিধান সন্নিবেশিত করা যায় :

“Rule xxx : The property, moveable or immovable, belonging to an organisation, registered under the provisions of these Rules, shall be considered as trust property, and shall be deemed to have been vested in the Governing Body, or the Executive Committee, or in whatever name the apex policy making body of the organisation is called, as the Board of Trustees for that property, unless otherwise directed by the Government.

৯. কর্মকান্ডের ক্ষেত্র, কর্মপদ্ধতি ও কর্ম এলাকা সংক্রান্ত :

- ৯.১ এনজিও কার্যক্রমে শৃংখলা আনয়নের লক্ষ্যে এনজিও সমূহ কর্তৃক তাদের ঘোষিত কর্মকান্ডের ক্ষেত্র, কর্মপদ্ধতি ও কর্ম এলাকা, ইত্যাদি যথাযথ অনুসরণ এবং ঐতলো যাতে এনজিও বিষয়ক ব্যুরোর অনুমোদন ব্যতীত পরিবর্তন করা না হয়, তা নিশ্চিত করার জন্য প্রধানমন্ত্রীর কার্যালয় কর্তৃক জারীকৃত পরিপত্রের মাধ্যমে প্রয়োজনীয় নির্দেশনা দেয়া যেতে পারে।

১০. এনজিওদের মাইক্রোক্রেডিট কার্যক্রম সংক্রান্ত :

- ১০.১ কোন এনজিও মাইক্রোক্রেডিট কার্যক্রমে উপযুক্ত কর্তৃপক্ষ কর্তৃক নির্ধারিত হারের অধিক হারে সুদ/সার্ভিস চার্জ আদায় করতে পারবে না এবং ঋণ আদায় কার্যক্রমে কোনরূপ নিপীড়নমূলক পদক্ষেপ গ্রহণ করা যাবে না, মর্মে যথাযথ বিধান প্রধানমন্ত্রীর কার্যালয় কর্তৃক জারীকৃত পরিপত্রে অন্তর্ভুক্ত করা যায়। গভর্নর, বাংলাদেশ ব্যাংককে আহ্বায়ক করে গঠিত কমিটির সুপারিশ পাওয়ার পর উক্ত সুপারিশের আলোকে সুদ/সার্ভিস চার্জের হার নির্ধারণ, পরিবীক্ষণ, ইত্যাদি বিষয়ে যথোপযুক্ত পদক্ষেপ গ্রহণ করা যায়।

## ১১. এনজিওদের ব্যবসায়িক কর্মকান্ড সংক্রান্ত :

১১.১ প্রধানমন্ত্রীর কার্যালয় কর্তৃক জারীকৃত পরিপত্রে এতদবিষয়ে নিম্নরূপ বিধান সংযোজন করা যায় :

“বৈদেশিক অনুদানের অর্থ কেবলমাত্র Voluntary Activities এর জন্য ব্যবহার করতে হবে। এতদসত্ত্বেও কোন এনজিও যদি ব্যবসায়িক কার্যক্রম গ্রহণ করতে চায়, সেক্ষেত্রে বিস্তারিত তথ্যাদি দাখিল করে এনজিও বিষয়ক ব্যুরোর পূর্বানুমতি নিতে হবে। এরূপ কার্যক্রমের ক্ষেত্রে প্রযোজ্য দেশের প্রচলিত আইনের বিধানসমূহ এনজিওদের ব্যবসায়িক কার্যক্রমেও সমভাবে প্রযোজ্য হবে। ইতিমধ্যে যেসব এনজিও ব্যবসায়িক কার্যক্রম গ্রহণ করেছে, এনজিও বিষয়ক ব্যুরো সেগুলো খতিয়ে দেখবে এবং সেগুলোর ব্যাপারে বিস্তারিত তথ্যাদি দাখিল করে ব্যুরোর ঘটনাস্তোর অনুমতি নিতে হবে।”

## ১২. সঞ্চয় তহবিল সংক্রান্ত :

১২.১ এনজিও'র সঞ্চয় তহবিলের সুষ্ঠু পরিচালনা নিশ্চিত করার ব্যাপারে বাংলাদেশ ব্যাংকের গভর্নরের সভাপতিত্বে গঠিত কমিটির সুপারিশের আলোকে যথাযথ ব্যবস্থা গ্রহণ করা যায়।

১৩. বিবিধ তহবিল সৃষ্টি ও পরিচালনা প্রসঙ্গে :

১৩.১ প্রধানমন্ত্রীর কার্যালয় কর্তৃক জারীকৃত পরিপত্রে নিম্নরূপ বিধান সন্নিবেশিত করা যায় :

“এনজিও বিষয়ক ব্যুরোর অনুমতি ব্যতীত কোন এনজিও কোনরূপ বিশেষ তহবিল পরিচালনা করতে পারবে না।”

১৩.২ ইতিমধ্যে যেসব এনজিও provident fund, welfare fund, scholarship fund, ইত্যাদি নামে বা অন্য কোন নামে বিশেষ তহবিল চালু করেছে, সেগুলো এনজিও বিষয়ক ব্যুরো খতিয়ে দেখবে এবং এগুলোর যথাযথ ব্যবস্থাপনা নিশ্চিত করার ব্যবস্থা গ্রহণ করবে।

১৪. "Assistance to other organisation" খাতে অর্থ ব্যয় সংক্রান্ত :

১৪.১ প্রধানমন্ত্রীর কার্যালয় কর্তৃক জারীকৃত পরিপত্রে নিম্নরূপ বিধান সন্নিবেশিত করা যায় :

"কেবলমাত্র অনুমোদিত প্রকল্পভুক্ত কর্মসূচী ব্যতীত অপর কোন কার্যক্রমের জন্য কোন নিবন্ধিত সংস্থা অপর কোন সংস্থাকে কোনরূপ আর্থিক বা অন্যবিধ সহায়তা দিতে পারবে না। কোন প্রকল্পের সম্পূর্ণ কার্যক্রম সহযোগী সংস্থা দ্বারা বাস্তবায়ন করা যাবে না। সুনির্দিষ্ট যৌক্তিকতা প্রদর্শন করে প্রকল্প কার্যক্রমের অংশবিশেষ বাস্তবায়নের দায়িত্ব সহযোগী সংস্থাকে প্রদান করা যাবে। সে মর্মে বিস্তারিত তথ্যাদি দাখিল করে ব্যয়ের অনুমতি নিতে হবে।"

১৫. বিদেশী এনজিওদের কার্যক্রম পরিচালনা প্রসঙ্গে :

১৫.১ প্রধানমন্ত্রীর কার্যালয় কর্তৃক জারীকৃত পরিপত্রে নিম্নরূপ বিধান সন্নিবেশিত করা যায় :

"বিদেশী এনজিওগুলো কেবলমাত্র তাদের প্রধান কার্যালয় থেকে প্রাপ্ত অর্থ ছাড় করাতে পারবে এবং স্থানীয়ভাবে প্রকল্প প্রস্তাব প্রণয়ন করে অন্য কোন দাতা সংস্থার কাছ থেকে অর্থ গ্রহণ করতে পারবে না। সরকারের উন্নয়ন কার্যক্রমে এনজিওদের সম্পৃক্ত করার ক্ষেত্রে স্থানীয় এনজিওদেরকে অগ্রাধিকার দেয়া হবে এবং পাশাপাশি বিদেশী এনজিওদের আবেদনও বিবেচনা করা হবে।"

১৬. ক্রয়/নিয়োগ সংক্রান্ত নীতিমালা :

১৬.১ এনজিওদের ক্রয়/নিয়োগ কার্যক্রমে স্বচ্ছতা ও জবাবদিহিতা নিশ্চিত করার লক্ষ্যে এনজিওদের সাথে পরামর্শ করে সার্বজনীনভাবে প্রযোজ্য সাধারণ নীতিমালা প্রণয়ন করা যেতে পারে।

১৭. শিক্ষা কার্যক্রমের পাঠ্যসূচী প্রসঙ্গে :

১৭.১ এনজিও কর্তৃক পরিচালিত আনুষ্ঠানিক শিক্ষা কার্যক্রমে কেবলমাত্র বোর্ডের প্রকাশিত পাঠ্যপুস্তক এবং উপানুষ্ঠানিক শিক্ষা কার্যক্রমে উপানুষ্ঠানিক শিক্ষা অধিদপ্তর কর্তৃক প্রকাশিত পুস্তক ব্যবহার এবং অনুমোদিত পাঠ্যসূচী অনুসরণের নির্দেশনা দিয়ে প্রধানমন্ত্রীর কার্যালয় কর্তৃক জারীকৃত পরিপত্রে

যথাযথ বিধান সংযোজন করা যায়। তবে অনুমোদিত পাঠ্যসূচী বহির্ভূত প্রয়োজনীয় অন্য কোন বিষয় পাঠ্যসূচীর অন্তর্ভুক্ত করার প্রয়োজন দেখা দিলে পূর্বাঙ্কেই সরকারের অনুমতি নিতে হবে।

### ১৮. পরিবীক্ষণ ও মূল্যায়ণ :

১৮.১ এনজিও কার্যক্রম পরিবীক্ষণ ও মূল্যায়ণের জন্য এনজিও বিষয়ক ব্যুরোকে ক্ষমতা প্রদান করা যেতে পারে। জেলা পর্যায়ে জেলা প্রশাসক ও উপজেলা পর্যায়ে উপজেলা নির্বাহী অফিসার এনজিও বিষয়ক ব্যুরোর পক্ষে এনজিও কার্যক্রম তদারকি ও পরিবীক্ষণ করবেন। এ ব্যাপারে এফ.ডি. বিধিমালায় সুনির্দিষ্ট বিধান সংযোজন করা যায়।

### ১৯. এনজিও কার্যক্রম, তাদের অবদান ও ইম্প্যাক্ট এর নিরপেক্ষ মূল্যায়ণ :

১৯.১ স্বাধীনতার পর হতে এ যাবত এনজিওদের সার্বিক কার্যক্রম এবং বাংলাদেশের আর্থ-সামাজিক উন্নয়নে উক্ত কার্যক্রমের অবদান ও ইম্প্যাক্ট এর একটি নিরপেক্ষ মূল্যায়ণ করা যায়। সম্পূর্ণ সরকারী অর্থ ব্যয়ে এবং দেশীয় কোন নিরপেক্ষ ও নির্ভরযোগ্য প্রতিষ্ঠান, অথবা, কোন নিরপেক্ষ ও নির্ভরযোগ্য সামাজিক গবেষণা প্রতিষ্ঠান, সুখ্যাতিসম্পন্ন চার্টার্ড একাউন্টিং ফার্ম, দক্ষ ও অভিজ্ঞ জরিপকারী/রেটিং এজেন্সী, ইত্যাদির সমন্বয়ে গঠিত একটি কনসোর্টিয়াম, এর মাধ্যমে প্রস্তাবিত মূল্যায়ণ কার্যক্রম সম্পন্ন করা হলে সত্যিকার সুফল প্রাপ্তি সম্ভব হবে। এ প্রক্রিয়া সম্পন্ন করার দায়িত্ব প্রধানমন্ত্রীর কার্যালয়ের নিয়ন্ত্রণাধীন এনজিও বিষয়ক ব্যুরোর উপর ন্যস্ত করাই সমীচীন।

### ২০. এনজিও বিষয়ক ব্যুরো :

২০.১ এনজিও বিষয়ক ব্যুরো কর্তৃক এনজিও প্রকল্প অনুমোদন প্রক্রিয়া দ্রুততর ও সহজতর করার লক্ষ্যে সংশ্লিষ্ট মন্ত্রণালয়/বিভাগে প্রকল্প প্রস্তাব প্রেরণ করে ২১ দিনের মধ্যে মতামত আহবান করার বিদ্যমান পদ্ধতি বাতিল করে এনজিও বিষয়ক ব্যুরোতে আন্তঃমন্ত্রণালয় সভা আহবান করে মন্ত্রণালয়/বিভাগের মতামত নেয়ার প্রক্রিয়া চালু করা যেতে পারে।

- ২০.২ ব্যুরো যাতে প্রচলিত আইন বিধির সুষ্ঠু প্রয়োগ ও সময়মত কার্যকর ব্যবস্থা গ্রহণে মনোযোগী হয়, সে মর্মে যথাযথ পদক্ষেপ গ্রহণ করা যায়। এ লক্ষ্যে বিধি-বিধানগুলো সম্পর্কে ব্যুরোর কর্মকর্তা-কর্মচারীদেরকে নিয়মিত ওরিয়েন্টেশনের ব্যবস্থা রাখা যেতে পারে। পাশাপাশি এনজিওদের জন্যও একই বিষয়ে ওরিয়েন্টেশনধর্মী প্রশিক্ষণের আয়োজন করা সমীচীন হবে।
- ২০.৩ ব্যুরোর সাংগঠনিক কাঠামো সুষ্ঠু পর্যালোচনা পূর্বক যুক্তিসংগতভাবে পুনঃবিন্যাসের পদক্ষেপ গ্রহণ করা যায়। ব্যুরোর জনবল কাঠামো ও অন্যান্য সুবিধাদির ব্যবস্থা বাস্তবানুগ ও সময়ের চাহিদার সাথে সামঞ্জস্যপূর্ণ পর্যায়ে উন্নীত করা যায়।
- ২০.৪ ব্যুরোর জন্য একটি নিজস্ব অফিস ভবন নির্মাণের ব্যবস্থা গ্রহণ করা যায়।

