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# NON-GOVERNMENTAL ORGANISATIONS

An Indian Perspective \*1

Enakshi Ganguly Thukral

India has a long history of social work or voluntary work. Though this history can be traced back to the early socio-religious (reformist) movements, both in the medieval period and again in the 1800s, it was the Gandhian influence in encouraging voluntary work in constructive programmes as an integral part of the freedom struggle that laid the foundation for the modern day voluntary action. At the same time, the influence of the Christian missionaries in influencing the growth of voluntary action cannot be undermined.

"The major factors influencing the growth of voluntary action during the post-independence period are: pre-occupation with the state-initiated national reconstruction programmes and the principal responsibility and role of development and social transformation assumed by the government; constructive work-stream of power-politics renouncing freedom fighters; the Naxalite movement; the JP movement; natural disasters; increased funding donors during the late 1970s through to the 1980s; and activism and professionalisation of NGOs during the same period." (AVARD: 1991: pp.i-ii)

Consequently this period saw the sudden growth of a number of voluntary action groups. Since there is no complete census, it is difficult to estimate the exact number of such groups in the country today. However, as per rough estimates there are about a lakh (100,000) NGOs in India, of whom about 25,000 to 30,000 are active. (ibid: p.ii)

What is a Non-Governmental Organisation (NGO)?

The nomenclature itself gives rise to a number of questions. As one understands it, any organisation that is not 'governmental' would come under this category, profit motive notwithstanding. "The diversity of NGOs strains any simple definition or clarification". (World Bank : 1988) This is because NGOs include such a wide variety of groups, institutions and organisations that are entirely or largely independent of government and are characterized by "humanitarian or co-operative rather than commercial objectives". (ibid) In Africa such organisations like to call themselves voluntary development

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\* This paper has drawn heavily upon Participatory Research in Asia (PRIA's) documentation for and on NGOs - and on discussions with Mr. Harsh Sethi from the Centre for Study of Developing Societies, Mr. Vinay Jha from the Centre for Policy Research, Ms Maja Daruwala, and Mr. P.M. Tripathi from AVARD. I also acknowledge my thanks to all my friends in the NGO sector whose experiences I have drawn upon. However, the opinions reflected in the paper are those of the author.

organisations while in the United States they are most often called private voluntary organisations or PVOs. In India, too, they are referred to sometimes as voluntary groups/organisations or NGOs. The optional term 'voluntary organisation' has its own problems that arise out of the meaning of the word 'voluntary', especially since almost all organisations employ salaried staff, though perhaps at lower than market rates, to undertake its work. The explanations offered for the use of this nomenclature is that the initiative to undertake the activity is based on a social commitment and is an initiative undertaken 'voluntarily' as against doing it at someone's behest. Basically, therefore, whatever be the nomenclature used, "these are non-profit, autonomous, democratic organisations established by a group of private (non-governmental) individuals or organisations having a formal legal status, a clearly defined constituency, and definite cultural, economic, educational or social objectives and programmes". (AVARD: 1991-15) In other words, a voluntary organisation must have the following components :

1. The initiative comes from within the group or from an individual.
2. The motive is based on social commitment and is non-profit.

Therefore, the type of organisations under consideration are basically non-governmental, non-profit, development-promoting organisations, based on initiatives voluntarily taken by citizens, professionals and individuals to focus attention on one or many of the developmental aspects.

This category needs further streamlining because there is no one amalgamous body which can be called the NGO body in India. They are disparate and distinct in their origin, nature, the way they function, ideological stance, background etc. The above broad category would therefore include various kinds of groups, based on the kind of activities they undertake, the size of the group they work with, the methodology they adopt etc.

Two broad categories of groups under consideration here could be:

1. Groups that are involved in service delivery. This could be a whole package of developmental services or could be services in one area - health, education, income generation, legal aid etc.
2. Groups that direct their strategy towards conscientization, awareness-building and advocacy - be it legal, cultural, human rights, funding etc. and act as support organisations for grassroots groups.

Of course, most groups would come somewhere in-between, because they are involved to some extent in both kinds of activities. These categories are not binding nor are they all-encompassing because there can be no 'models'. Most groups begin with one kind of activity but find themselves spreading out as the demands arise from the people they work with.

Two other ways of dividing NGOs would be:

1. Those that work directly with the people/beneficiaries/ target groups, organising them around issues of land rights, forest rights, rights of slum dwellers, providing them with health care, income generation activities, education etc.
2. Those that support the above groups by providing them with information services, legal help, documentation, funding, networking etc. and may at the same time be working towards larger policy changes.

The bottom line of course is that the effort is **non-profit**.

Although most activities aiming at social and economic development, social change etc. are political in nature, we are not in our present analysis including groups that have party affiliations in their organisational capacity, even though individuals within it may have certain leanings in their present capacity.

Therefore, for the purpose of this paper, we shall include only those organisations and associations which are non-profit, voluntary, non-governmental and have a legal entity, i.e. those that are registered under one of the acts available to give it such status. The term NGO, Voluntary Organisation or Volags have been used interchangeably to refer to the same set of organisations.

### **The Constitutional and Legal Status of NGOs**

The Constitution of India guarantees certain Fundamental Rights to all its citizens. One of them is the right to freedom enshrined in Article 19. Amongst the several freedoms guaranteed under this article is the freedom to form associations or unions [Art.19(4)(c)]. This is the constitutional provision which enables a group of persons to get together and set up a voluntary or non-profit organisation, or a NGO as it is now popularly called.

This right, like all other fundamental rights, is a regulated or limited right. Article 19(4) states, "Nothing in sub-clause of the said clause shall affect the operation of the existing law insofar as it imposes or prevents the state from making any law imposing on the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

The right to form associations and unions is regulated by several substantive legislation. These include legislation which define such associations/unions and lay down the parameters of their functioning. There are also legislation that regulate the 'financial behaviour' of these associations/unions. We shall, however, discuss only those legislation that pertain to the

voluntary sector.

These legislation give the group of people who have undertaken an activity of 'people's development' a legal entity or legal status vis-a-vis the society at large, the beneficiaries, the funding agencies (be it the government or foreign funders), and also offer organisational protection to individual members.

Of course, a group of individuals can get together in the form of loose coalitions and decide to undertake similar activities as associations without a legal status. But most often it has been seen that there comes a time in the life of an association or an organisation when it feels the need to become a legal entity. A very good example is the 'Chhatra Yuva Sangharsh Vahini', set up under the leadership of the socialist leader, Jai Prakash Narain, during the famous movement in the 1970s led by him, popularly known as the J.P. movement. When the movement split up, the young men and women who were part of the Vahini spread themselves out in the various parts of the country to carry on the work they had set out to do - to bring about social and economic change and generate awareness etc. Over the years, most of them have set up organisations which are registered and have a legal entity largely because they found it difficult to individually keep facing up to confrontations with the governmental machinery and opposing interest groups. Secondly, they found that it was not possible to carry on their work with no funds or resources, both for their own survival and for that of the work they had undertaken.

However, it is also true that acquiring a legal status has both advantages and disadvantages. While a group or organisation gets recognition as an independent entity, this status also makes certain demands in terms of financial management and meeting with various statutory obligations under different laws and regulations.

Some of the laws which voluntary/non-profit organisations use to register themselves are:

1. as a society under the Societies Registration Act 1960;
2. as a trust under the Indian Trust Act 1882, or Charitable and Religious Trusts Act 1920;
3. as a union under the Trade Union Act 1926;
4. as a co-operative under the Co-operative Societies Act.

### Society

The most common form of registration adopted by organisations for acquiring a legal entity is to register themselves as a Society under the "Societies Registration Act of 1860". Because most NGOs are registered societies, this act needs to be examined in some detail.

The nineteenth and the early twentieth century saw the rise of a number of indigenous

organisations which devoted themselves to social and religious reforms. They catered to health, education and other welfare needs of the people they worked with. It was with the view to regulate and monitor the activities of these organisations that the British rulers enacted the Societies Registration Act (Act xxi of 1860), which was initially for the Bombay Presidency and was subsequently enacted as a Central Act (hereinafter called the Societies Act).

This Act describes itself as "An Act for the Registration of Literary, Scientific and Charitable Societies". The preamble of the act says, "Whereas it is expedient that provision should be made for imposing the legal conditions of societies established for the promotion of literature, science or fine arts, or for diffusion of useful knowledge (including the diffusion of political education) or for charitable purposes..."

The following societies may be registered under this Act:

"Charitable societies, the military orphan funds, societies established at the several presidencies of India, societies established for the promotion of science, literature or the fine arts, for instruction of the diffusion of useful knowledge (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 collection or natural history, mechanical and philosophical inventions, instruments or designs". As we can see, the Act covers a whole range of activities, and is therefore meant for more groups than just those under consideration.

Under this Act, any seven or more persons associated with the activities listed above and who subscribe to the memorandum of associations of the organisation can register themselves into a society. The Societies Act, being an enactment of the Central Government, has gone through some revisions as several states have enacted their own Acts or rules or amended the central act in its applicability to the state. Thus, societies registered in Maharashtra and Gujarat have also to register themselves simultaneously as a Public Trust under the Bombay Public Trust Act 1950, which is applicable to these two states.

In some states the registration certificate has to be renewed periodically, for e.g. in Uttar Pradesh the certificate of registration is valid for only five years and has therefore to be renewed. This provision does not exist in the Central Act.

It is felt that these amendments brought out by the State Acts have made the Societies Registration Act "move in the direction of other statutes like the Cooperatives Act, and its representatives are acquiring increasingly greater control over the manner and style of functioning of such organisations" (PRIA (I) undated, pg.7)

In spite of the objectives of this Act as laid out in the preamble, in recent usage the Act has been utilized for a number of other purposes as well, e.g. setting up of youth groups,

legal literacy, women's groups, research on environment and development, carrying out income-generating programmes etc.

The Government of India has also used the Act to float its own organisations. The Council for Advancement of People's Action and Rural Technology (CAPART), the National Labour Institute, The National Dairy Development Board are some examples.

Though the original purpose of the Act was to set up a society to provide services to and assist a set of beneficiaries who it was assumed were not members of the society, however, many NGOs registered under the act are presently operational entities and not membership associations. As a result, some of them have run into difficulties under the Income Tax Act of 1961 where it has been interpreted that such societies are not meant for charitable purposes.

It is obvious that this Act, which was conceived almost a hundred and thirty years ago, was not structured to accommodate a number of perfectly legitimate 'charitable activities' such as social forestry, income generation activities etc.

### Trust

An organisation can also decide to register itself as a Trust which is of two types, private and public. A private trust has to be registered under the Indian Trust Act 1882. There is no central law to govern the constitution of public trusts. However, a formal document of a public trust may be registered under the Registration Act. There are, however, some other legislation which affect public, religious and charitable trusts in certain parts of the country like the Charitable Endowments Act 1980, Charitable and Religious Trusts Act 1920, the official Trusts Act, Section 92 of the Code of Civil Procedure, and the Bombay Public Trust Act 1950.

However, it the Indian Trust Act 1882 which is a Central Act and which governs the setting up, constitution and functioning of a private trust. According to this Act, 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 and/or the owner. The person reposing or declaring the confidence is called the 'author' of the trust whilst the person accepting such confidence is called the 'trustee'.

There is no specification in the Act regarding the number of trustees. The mode of creation of a legal entity is very simple. The act is extremely flexible and provides for minimum government interference and regulation.

However, because the Indian Trust Act clearly indicates that trustees cannot enjoy any pecuniary benefits from or of the property or funds held by the trust, no member of the trust

or the board of trustees is allowed to become a full-time employee of the trust or in any other way seem to be deriving income from it. The trustees are individually and collectively responsible for any mismanagement in the affairs of the trust, in the lapse of which their personal property and assets can be attached. At the same time, once appointed, the trustees cannot ordinarily be removed. There is no mechanism for this provided in the Act. Unlike in the Societies Registration Act 1860, trust rules and its deed can only be altered if it is so provided for in the original deed.

Registration of a trust has been effectively used by groups, especially those who are interested in creating a governing body or a board of trustees, comprising of only non-staff members. Most big business houses and private persons interested in charitable or religious work use this mode of registration. In fact, many private institutions for education and health care, which are largely profit-making bodies, are run by trusts.

### **The Trade Union Act 1926**

Even though seldom used, groups and organisations involved in organising and building people's movement have the option of registering themselves as a Trade Union under the Trade Union Act 1926.

As in the Societies Registration Act 1860, seven persons can apply for registration under this act to the Registrar along with a copy of the rules of the trade union.

Those groups and organisations which are involved with people's movements like forest produce gatherers, organising construction workers, i.e. fighting for the rights of workers - both organized and unorganized - have relied on this Act for gaining a legal entity.

Being registered as a trade union gives a legal status to the organizers to work with a very large number of people who can be members of the trade union. As a result, this gives them a certain advantage in terms of relating to issues of a large number of beneficiaries within one legal entity, for e.g. the Self-Employed Women's Association (SEWA).

### **The Co-operative**

Organisations or groups who are involved in organising people around income-generating activities, find it useful to register themselves as a Co-operative, for example, Fishermen's Co-operative, Forest Grower's Co-operative, co-operatives of women involved in social forestry, to name a few.

The co-operative movement in India dates back to over a 100 years when the first Co-operative Act was introduced in 1904. Largely speaking, a co-operative is an institution which is aimed at the social and economic betterment of its members who get together in an



enterprise set up for mutual aid.

A co-operative can be a form of organisation most appropriate for enhancing the economic status of its members who join it on a voluntary basis. It provides for an opportunity for equality of share-holding and decision-making to all its members.

However, since 1904, the law has been changed and modified. There is now no central act. Each state has a different act. Opting for co-operative as a form of registration means following the rules and procedures laid down by the laws of different states.

In several states the law has been changed and modified in such a way that it has resulted in a high degree of control in the hands of the government and its nominees.

Most organisations register themselves as a society which then in turn helps the people they work with to set up a co-operative around a specific activity.

Though available as an effective form of registration, the historical experience of the functioning of co-operatives does not give much hope. One of the primary reasons for this has been the 'power factor'. Heterogeneous membership of the co-operatives means that often persons of unequal status become members. As a result, the power groups who are socially, culturally or economically powerful tend to dominate and manipulate the co-operatives for their own benefit.

Another important reason for not registering as a co-operative is that government regulations often take control of co-operative societies and utilize them as vote banks as well as sources of funds for party workers. For all these reasons, co-operatives, though a useful form of registration, have not been often used by groups or organisations.

"One concern among many voluntary organisation is to select an appropriate form of organisation to give legal shape to their on-going work".(PRIA (2): undated: pg.58) Some organisations are engaged in more than one kind of activity. One form of registration may be appropriate for one kind of activity while not for the other. So organisations often use two kinds of registration. For example, though The Self-Employed Women's Association (SEWA) began as a trade union, it gradually evolved other forms of registration like co-operatives and trust to promote its developmental and economic activities. And the Vidhayak Sansad and the Shramjivi Sanghathana, though formed by the same people, work in tandem. The Vidhayak Sansad is a registered trust and undertakes development programmes like medical care, running of creches etc. while the Shramjivi Sanghathana is the people's organisation wing and was formed to provide a mechanism for the struggle of the tribals of the area.

Once the organisation is registered, its basic form and to a large extent even its activities will be regulated by the act it chooses to be regulated under.

While registration gives the organisation a legal form, it also gives it the right to get grants/funding from various sources, foreign and Indian. But once again there are certain legislation regulating the financial aspects of the organisation. The two major legislation are the Income Tax Act 1956 and the Foreign Contribution (Regulation) Act 1976. Both these Acts while regulating the 'financial behaviour' of the organisation are also very important tools in the hands of the already all-powerful government. It is because of this that it is important to understand these acts as tools of governmental/state control.

### **The Income Tax Act**

Under the Income Tax Act, income from property held for charitable and religious purposes and income of charitable and religious trusts from voluntary contributions have been granted certain tax exemptions. "Charitable purposes" here include relief of the poor, education, medical relief and advancement of any other object of general public utility not involving the carrying on of any activity of profit. This definition is inclusive and not exhaustive.

The Act (under Section 12) provides that only income derived from voluntary contribution received by a trust or an institution created wholly or partly for charitable or religious purposes is granted certain exemptions. But when such contributions are made with a specific direction that they shall form a part of the 'corpus fund' of such an organisation, this exemption is not be available. On the one hand, organisations are being constantly told how important it is for them to be self-reliant so that they do not have to depend on grants and donations for which it is essential to have a large enough 'corpus fund'. But, on the other hand, legal provisions of this nature only add to the insecurity of the NGOs and ensure that they hardly ever become self-reliant, which in turn affects the quality and efficiency of their work.

This Act treats work of voluntary organisations at par with that of a business trust, charitable hospitals, dispensaries, educational institutions etc. So all kinds of organisations, both religious (often communal) and secular, big and small fall into the same category for purposes of the act. In fact, there are special concessions available to boarding schools, public schools, hospitals and dispensaries, many of which function purely for profit. But these concessions are not available to those voluntary organisations which are engaged in non-formal or adult education or even primary health care or community health programmes.

The voluntary organisations have to justify their non-profit status to the Income Tax Department every year. It is well-known that most voluntary organisations, especially small grassroots groups which function on show-string budgets, survive from grant to grant. It is extremely important and desirable that they should be financially self-sufficient. However, the Income Tax Act makes it impossible for Volags to carry out any activity to raise resources on their own because any surplus generated through these activities, for e.g. sale

of publications, is liable to be taxed.

It is true that members of religious institutions undertake charitable work. But there are many others which are purely religious. Why should the latter be given the same concessions as those who are involved in much more socially useful activity and actually need these concessions? The solution could be that the wing of religious institutions involved in 'charitable work' be registered separately as a trust or a society and avail of the exemptions for that activity.

Making the income tax laws applicable to NGOs more stringent is seen by the organisations as "politically motivated acts to clip their wings". Withdrawal of 35cc tax exemptions without any provocation, which virtually choked flow of local funds to voluntary agencies, led to the closure of many rural development projects started by 'industrial and business houses.....' (K.Shah, 1991).

### **The Foreign Contributions Regulation Act 1976 (FCRA)**

A large number of NGOs in India, as in most other developing countries, are dependent on foreign donors for funding. However, to enable the NGOs in India get funds from foreign donor agencies, they must have what is popularly called a FCRA number. The FCRA or the Foreign Contribution Regulation Act 1976 requires that a voluntary organisation must be registered with the Ministry of Home Affairs and have its permission to accept grants from foreign donors. 'Foreign source' does not include funding received from United Nations or any of its specialized agencies: the World Bank, IMF or any such agency as recognised by the Central Government.

India has had a fairly long history of foreign support to its voluntary efforts. However, in recent years, particularly since the mid-sixties, this flow of foreign support to development initiatives and action has increased in volume. In 1971, in the aftermath of the Indo-Pak war, the Government of India, worried about the activities of the foreign agencies in India, introduced the Foreign Contributions Regulation Act in 1976. The FCRA was enacted during the Emergency to regulate the acceptance and utilization of foreign grants and contributions, whether in Indian or foreign currency, by certain persons or associations having definite cultural, economic, educational, religious or social programmes. All NGOs fell into this category. The Ministry of Finance provided all ministries and chief secretaries of states a check-list of areas of research for sensitivity clearance and security risk.

The responsibility of its implementation was vested with the Ministry of Home Affairs and the Ministry of Internal Security. The act required the NGO receiving the grant to intimate the Ministry whenever a foreign contribution was received. This did not prove very effective because if a NGO did not intimate the ministry, there was no way the government could become aware of it. The Act was amended in 1984.

"The Law was set right, one providing for registration and the second alternative was 'prior permission' to be obtained before receiving the same." (Estimates Committee: 1986-87:4) Justifying the changes made, the Secretary of the Ministry stated during evidence", "Two main things were brought in. One was that there can be registration, a provision for enabling the organisation which gets foreign contribution regularly not to repeatedly ask for permission,... By making this provision it became obligatory for the (organisation) to make a report and subsequently we also provided for yet another return by which even if the person does not get any contribution as long as he has registered, he has to give us intimation (half yearly, i.e. 30 June & 31 December) to the effect that he has not received any contribution at all so that there is no room for any doubt. In respect of each and every association that registers, we have to ensure that every such report comes to the government. So it is now obligatory to see that all the organisations which are registered have sent their reports. Thereafter, a scrutiny is taken of the cases where Rs 5 lakhs or more amount was received during the previous year. All this work has to be done by the Assistant Directors whose posts are additionally created." (Estimates Committee, 1986-87).

Therefore, two main things were brought in:

1. In order to accept foreign contributions, with effect from 1.1.1985, every organisation having a definite cultural, economic, educational, religious or social programme would have to be registered under the FCRA 1976. Thereafter, it would have to report to the Ministry every 6 months, irrespective of whether or not it has received foreign funds. A scrutiny would be taken of organisations receiving Rs.5 lakhs or more.
2. The introduction of the alternative provision of 'prior permission' to get foreign funds.

Describing the reaction of the Volags to the amendments, Shah commented, "The Foreign Contribution Regulations Act of 1976 and its 1985 amendment, they believe, derives its rationale from a notion that activities of agencies receiving foreign funds require greater surveillance and scrutiny". (Shah K., 1991)

To begin with, organisations were being registered and a FRCA number was being allotted to them. However, the Home Ministry found it very difficult to process so many papers and defaults (up to 31.12.1986, 10,595 associations were registered, 2,705 associations had not submitted their returns for the year 1985, whilst 1,643 organisations had not submitted their returns within the prescribed time). As a result, the practice became that no new registrations were granted by the Ministry of Internal Security. Instead, an organisation had to receive prior permission for every new grant it received, making it face the very same problem that the amendment had set out to solve.

Over the years, the FCRA has become one of the most important vehicles of

governmental control over Volags. It can refuse to grant registration or withdraw registration. And since most organisations depend heavily on foreign funding for their survival, this puts the organisations in great difficulties. Some of the reasons for refusal/cancellation of registration are:

1. Engaged in fundamentalist religious activities.
2. Suspected of misutilization of foreign contribution.
3. Suspected of being a front organisation of a political party.
4. Suspected of engaging in anti-national activities etc.
5. Having links with another organisation prohibited/ required to obtain prior permission or being investigated for any offence.
6. Reported to be non-existent/paper organisation.
7. Conversions through dubious means.

Since there is no case law on this Act, the reasons given for cancellation are often left to the discretion of the dealing officer. During evidence for the Estimates Committee, the representatives of the Home Ministry had stated, "If we find that the antecedents of the organisation are not good or if there is any other adverse report, particularly about an organisation in a sensitive area, we have to refuse them". In fact, the security officer of the Ministry of Home Affairs has admitted, "It would be very difficult to prove that registration was refused on the basis of certain reports".

In 1985-1986 as many as 146 organisations were prohibited from receiving foreign contributions on their own whilst 23 organisations were asked to obtain prior permission (Estimates Committee 1986-87). Some of the organisations that have had their FCRA registrations cancelled or have received show-cause notice from the ministry are CROSS, AWARE, AVARD and, more recently, the Indian Social Institute, DISHA, in Gujarat, and a whole range of Gandhian institutions (discussed in detail later).

The other acts that also apply to NGOs are those meant for personnel management - the labour laws, Industrial Disputes Act etc. - which are the same as in the case of any other institution or organisation employing people, profit or non-profit.

### **Accountability of NGOs to their Beneficiaries**

This is a question that promptly sets the hornet's nest buzzing because it means that all of us have to take a good look at ourselves.

Who decides to whom the NGO has to be accountable and to what extent or what makes one accountable? Since the initiative of setting up of the organisation is 'voluntary', the decision to lay out the parameters of functioning also vests largely with it. The accountability and its extent is therefore also seen as 'voluntary'. At the same time, the

moment an organisation is set up, even if the initiative is voluntary, it is entering into a social contract with the people it works with. Then comes the question of accountability - are you willing to accept responsibility of your voluntarism, i.e. will you honour the contract?

As I see it, accountability is seen/judged by three factors:

1. Has the organisation taken the opinion/sought the participation of the people it seeks to help and benefit? In other words, is there a felt need for the kind of activities being undertaken by any organisation? Of course, accountability cannot always be taken to its logical end. For e.g. in a caste-ridden society such as India, any action that goes against the interests of one group will be opposed by that group and not seen as benefiting the people, especially if the group in question dominates by way of numerical strength. Voluntary organisations often view it as something one has to live with as against some other important but less sensitive issues, say, providing clean drinking water or health care. In other words, there will seldom be a felt need for programmes that challenge what is seen as the established norm, even if it violates someone else's rights. A similar response will come for something like child labour or even in certain cases, Sati. Here the organisations may have to go against the interests of the beneficiaries and work against the felt needs of certain groups.
2. Has the group been able to successfully execute the programme it has laid out in its charter or mandate?
3. Has the group undertaken follow-up action that arises out of the main course of action?

There are a few other problems as well. Take an example - Organization 'Z' is a city-based 'support organisation'. It has no sustained contacts with the 'people'. It provides support to organisations or people who work directly with the people. Whom is it accountable to? Since its ultimate goal is social change and conscientization of the people, as is also that of the grassroots groups it works with, is it the people that it is accountable to or the groups it supports? Can the persons in the village hold this organisation accountable? And if so, how? Another problem that often arises in India, as in most other countries, is that groups and institutions are based around individuals. The 'supporting organisation', therefore, does not reach the stage of becoming an institution by itself. As a result, it is the individuals around whom the organisation is built on whom the accountability continues to be vested. Sometimes these individuals are so powerful that no one even dares question them.

Besides, activists in the 'support organisation' are by and large not all middle class urban young men and women. They are the ones who bring in the funds and the professional 'expertise' and networking skills. They form the link with the outside world. In many cases,

even if built into the mandate of the organisation, beneficiaries find it impossible to question them. This, therefore, by and large remains an inert relationship.

Since, by their very definition, NGOs are set up 'voluntarily' and at no one's behest, it also has the choice of shutting 'shop' when it wishes. This creates major problems, as happened when the individual around whom the organisation was built decided to migrate to another country. So he shut 'shop' and disappeared with some very valuable documents and information on a particular subject, which 'migrated' with him and is now no longer available to the activists.

These are examples of actual situations. As we have seen, the government's role in tightening the noose around the neck of the NGOs has been very strong. At the same time, a very dangerous trend is being witnessed. Over the past decade there has been a mushrooming of voluntary organisations all over the country, each one an institution in itself. In some quarters it is said that setting up an NGO has become the best alternative to unemployment. It brings funds as well as recognition. What has been even more serious is that many of them have emerged as 'feudal lords' in the area they work in because they are able to bring in funds, have access to higher authorities etc. They are looked up to by the people they work with for help and guidance, who more often than not never question them. They are also able to ensure that no second organisation can move in and work in the same area. In fact that is the reason why many a good cause taken up with enthusiasm and initiative falls through when it comes to the stage of needing collective action.

The mechanism for accountability of NGOs to the state and the funding organisations, though value-loaded, is much more institutionalized and established.

### **NGOs and Funding**

Since by their very definition NGOs are not profit-making bodies, they have to raise funds to sustain themselves.

The nature of funding also significantly affects their overall organisation and functioning.

Some of the sources of funding are:

- Contribution (cash and/or kind) by programme participants/beneficiaries, individual groups, communities.
- Donations by individuals or institutions.
- Grant-in-aid and loans by government or government-sponsored bodies.
- Loans by commercial banks.
- Grants/donations by indigenous non-governmental funding agencies.

- Grants/donations by foreign and international funding agencies.
- Interest/dividends earned on endowments/securities.
- Income from productive ventures.
- Service charges and consultancy fees.
- Sale proceeds of publications.
- Membership fees.

However, the major sources of funding remains foreign agencies or funding from the government. Contribution from participants and credit from banks also form a substantial portion of the funds for some organisations.

### **Indian Funding**

Though funding for traditional social work activity is available to some extent from private trusts in India, Volags involved in development and social change are seldom interested in them. Besides, these trusts, unlike many of the foundations abroad, have very limited funds. The Government of India is therefore the biggest Indian funder. For the first time, the Seventh Five Year Plan (1985-90) earmarked about Rs.1000 to Rs.1500 million of its plan expenditure for certain rural development programmes in the central and state sectors in collaboration with NGOs. Government funds are channelled through its ministries or government bodies like the Central Social Welfare Board, Khadi and Village Industries Corporation, NWDB, CAPART etc. Funding from these sources:

1. are available for specific schemes and programmes;
2. do not help build institutions, i.e. do not provide institutional funding;
3. entail bureaucratic and procedural obstacles.

Government funding is available only for activities that entail implementation of state-sponsored activities or activities which do not question government policies or bring the organisation into direct conflict with it. It, therefore, has little role for organisations that act as pressure groups or watch-dogs.

### **Foreign Funding**

The dependence of NGOs on foreign funding has been increasing steadily. It had reached Rs.6851 million in 1988. Funding comes from bilateral, multilateral and other independent funding bodies. Bilateral aid is from donor government to the Government of India. This funding depends upon the bilateral agreement signed by the two governments. Funding is also received from what are know as multi-lateral institutions which include all the UN bodies, the World Bank, the IMF etc. As mentioned earlier, the organisation must have a FCRA registration to receive foreign funds. However, funds received from multilateral institutions do not require FCRA registration. These agencies have operational



collaboration directly with the NGOs or through the government. Of all the UN bodies, UNICEF's assistance is the largest.

Then there are the various solidarity groups, foundations and independent funding organisations from the North countries, a large number of whom are church-based, both Protestant and Catholic. As mentioned earlier, funding from such groups to the NGOs is regulated by the Ministry of Home Affairs and requires the organisations to have a FCRA registration. Before the FCRA was enacted in 1976, the People's Action for Development India (PADI) was set up under the Ministry of Agriculture, Department of Rural Development, to receive and channel foreign funds to NGOs after obtaining clearance from the concerned ministries of the Government of India. Subsequently in 1987, PADI was merged with the Council for Advancement of Rural Technology to form a new organisation called the Council for Advancement of People's Action and Rural Technology (CAPART), which is now an important and major body for government funding to NGOs. The major donor countries are - USA, West Germany (now Germany), UK, Switzerland, Norway, Denmark, Netherlands, Belgium, Canada and Australia. Italy and Sweden also provide substantial assistance to India's NGOs. Like the funds from the Government of India, almost all the funding received from these foreign donors is also project-based or programme-based. This leaves very little scope for long-term planning or institutional capacity-building.

More and more organisations are depending on foreign funding largely due to the paucity of local/indigenous resources. Also, they are attracted by the comparatively simpler procedures of fund disbursement followed by these donor agencies.

However much as most organisations would like to feel independent of the funding agencies in the work they undertake, even though they are financially dependent on them, this does not often happen. Even when there is no direct interference from the funding organisations, there are indirect pressures that can be felt. Each donor agency has its own priority about areas of funding and while some donors are explicit in stating them, others, unknown to the applicants, keep it in mind when inviting proposals. Those organisations, desperate for funds, often find themselves having to modify their proposals to suit the funding guidelines.

### **Relationship with State**

As has already been mentioned, though voluntary organisations have been working in various sectors for a long time, it was only in the Seventh Five Year Plan that the government tried for the first time to define a relationship between the NGOs and the states:

"There has been an inadequate recognition of their role in accelerating the process of social and economic development. Therefore, during the Seventh Plan serious efforts will be made to involve voluntary agencies in various development programmes.

particularly planning or implementation of programmes of rural development." [(See Appendix I) Involvement of voluntary organisations, Planning Commission 1985-90, Vol.II,p.68].

To qualify for government funds voluntary agencies must satisfy the following criteria:

"Voluntary agencies are essentially non-profit and non-partisan organisations. The criteria for enlisting help in relation to the rural development programmes can be as follows;

1. The organisation should be a legal entity.
2. It should be based in a rural area.
3. It should have broad-based objectives serving the social and economic needs of the community as a whole and mainly of weaker sections. It must not work for profit, but on a no-profit no-loss basis.
4. Its activities should be open to all citizens of India, irrespective of religion, caste, creed, sex or race.
5. It should have the necessary flexibility, professional competence and organising skills to implement programmes.
6. Its office bearers should not be elected members of any political party.
7. It must declare that it will adopt constitutional and non-violent means for rural developmental purposes.
8. It should be committed to secular and democratic concepts and methods of functioning."

The document goes on to lay down areas in which NGOs can co-operate with the government and help to implement programmes. By and large, all the areas listed are those in which the government has a major role and the NGO's role is to help in the implementation of the government's programme or act as facilitator for the successful execution of the programmes already planned out and decided upon by the government. Of course there are often programmes or projects that are planned by the organisations and then undertaken with funds from the government. This is the role of the state as 'funder' described earlier. This funding is made through either one of the ministries or autonomous governmental bodies through whom the government channelize its funds. Agencies like to work with governmental grants because it gives them credibility - as long as they are not seen as being co-opted. However, grants from the government take a long time in coming, i.e. there is a great deal of red-tapism involved and the amounts sanctioned are most often small grants. Besides, the government does not make institutional grants and expects that some part of the funding for the programme (usually 10%) will be met by the organisation itself. This is often a difficult situation especially if the institution is just starting out and has not built any assets or capital of its own.

Recognising the need for promoting and strengthening voluntary efforts and the need to evolve new and flexible procedures for providing financial assistance to NGOs, the Government of India set up a committee in February 1988 to look into this.

This committee was set up under the chairmanship of Mr P B Krishnaswamy, Additional Secretary, Department of Administrative Reforms and Public Grievances, to review certain aspects of government-NGO relations. Apart from representatives from various government departments, ministries and bodies, it also had five selected NGO representatives. This committee had been assigned the task of examining the existing procedures for processing project proposals for grants-in-aid made by NGOs for implementation of anti-poverty programmes and to suggest measures to streamline this process. It was also to review and suggest improvements in arrangements for monitoring and evaluating the utilization of grants made.

The committee submitted its report in August 1988. It made certain recommendations regarding dissemination of information so that the NGOs had greater access to them, ensuring their involvement. It also made suggestions regarding the mechanism of disbursement of funds and the involvement of the state governments. (see Appendix II) These recommendations, however, have still to be implemented.

Theoretically speaking, one might say that the Indian voluntary organisations (if they are not indulging in any 'unlawful' activity) and the state share an ideal relationship, one of peaceful co-existence. The state can exercise control either at the registration stage of the NGO or at the stage of allotment of the FCRA registration to the extent that it can deny both or either registration. But once registered, if the organisation is not indulging in 'criminal' activities or spreading what is seen by the state as violence, and there is no financial impropriety on the part of the organisation, the state has no need to, and usually does not, intervene. But, then, this is really an ideal situation one is talking about. There is no denying that the powers of the 'state' are infinite and so is its ability to exercise controls, and make interventions in the activities of the organisation. The state controls are usually exercised to the extent that the NGOs are able to withstand its pressures and voice their dissent and/or challenge such interference. Sometimes, however, the situations are particularly oppressive, especially in the rural areas and places further away from the capital of both state and central, where activists are constantly coming up against interference or controls being exercised by the officials.

The government may exercise control either by 'assertive action' or deliberate inaction. Legislative changes, arbitrary arrests under various laws, withholding or controlling funding would come under this category.

The most famous case of exercise of governmental control was the setting up of the Kudal Commission headed by Justice P. D. Kudal and was set up under the Commission of

Enquiry Act 1952.

The Kudal Commission was appointed by the Government of India on 17 February 1982 after the Lok Sabha passed a resolution requesting the appointment of such a commission to inquire into the working and activities, including publications and sources and misuse of funds of three Gandhian Bodies - the Gandhi Samarak Nidhi, the All India Sarva Seva Sangh and The Association of Voluntary Agencies for Rural Development (AVARD) - plus "other organisations closely connected with them". (Appendix III) In this category, more than 1000 organisations spread all over India were included. The Commission also tried to indict Shri Jai Prakash Narain, Shri Morarji Desai, Shri L. C. Jain and others.

The Commission's first interim report, submitted on 25 October 1985, conceded that "unlike most other Commissions, no specific allegations were formulated and notified by the Government at the time of issue of notification constituting the Kudal Commission of Inquiry on the Gandhi Peace Foundation and other organisations. In fact, the terms of reference of the Commission are not confined to the examination of alley action only but are much wider in scope." (Noorani: 1986). But the Commission stated that it had found 450 matters that required detailed inquiry - "some of the matters so identified are of a very grave nature and relate to the jeopardizing of the security of the state, maintaining links with foreign organisation which are supposed to be conduit organisations of foreign intelligence agencies mobilising large funds both from internal and external sources, diverting and misutilising the funds so mobilized for unauthorized purposes and taking active part in political activities... publishing politically motivated literature containing explosive material aimed at creating unrest and disharmony among the masses to encourage such tendencies as may help in destabilizing the country, denigrating the name of Mahatma Gandhi by setting anti-Gandhian literature, mishandling the relics of Gandhiji etc." (sic) The Kudal Commission alleged that the very persons who came to control these Gandhian institutions realised that a more effective way to mobilize foreign funds was to float an institution involved in development work in rural areas and appeal to foreign funding organisations for financial assistance.

The Commission took five years (17.02.1982 - 31.01.1987), instead of the six months allotted to it initially, to complete its inquiry. During the period, the Commission submitted seven reports - six interim and one final.

The final report made various recommendations regarding a large number of regulatory and punitive measures that it felt needed to be taken up to control the Volags and their office bearers. It also included suggestions to amend the Societies Registration Act, making it more difficult for voluntary organisations to be registered, an amendment in the FCRA 1976, and also made suggestions to "make suitable legislative provisions to either stop entry of foreign funds into the country through voluntary organisations or regulate their inflow through Government channels only and keep watch over their utilization." (Appendix IV).

This whole exercise generated a great deal of distrust and hostility between the voluntary organisations and the government that has not completely disappeared, though it has somewhat eased over the years.

In 1986, the Government of India, in collaboration with 12 selected NGO representatives, initiated a move to set up a Statutory National Council of Rural Voluntary Agencies with counterparts at the state level to lay down a code of conduct to regulate the 'behaviour' and functioning of the NGOs. This move was strongly opposed because it was seen as a government trap to control NGOs (AVARD: 1991:p.95). Finally this proposal had to be dropped. (See Appendix IV for Draft Bill for proposed Council of Rural Voluntary Agencies and draft rules as well as draft code of conduct).

As we had seen, both the FCRA and the Income Tax Act have been tightened. At present more than 140 agencies are required to seek prior permission from the government before accepting any foreign contribution.

The Planning Commission has recently set up a Voluntary Action Coordination Cell to look into the setting up of a National Platform for Voluntary Organisations for Accelerated Rural Development. The consequences of setting up of a council of such a nature is being hotly debated.

What should the role of a NGO in a state system be? Should the organisation set up an alternative system of providing the services the state should be providing? In other words, should it take over the duties of the state, and if it does, is this the practical solution in terms of being a long-term viable and replicable solution? Ideally, NGOs should be part of the pressure group that ensures and monitors that the state undertakes the duties laid out for it in the Constitution and the programmes and policies it has made. "It is important to examine that NGOs play a distinctive role and not a role of substituting the state, that NGOs do provide necessary services where it is crucial but in the provision of these services they do not replace the official delivery mechanism or absolve the state from paying its moral and constitutional role in this regard". (PRIA (3): undated:p. 21). NGOs have neither the financial resources nor the infrastructure to undertake activities on such a large scale as the state. Therefore, setting up a parallel system may not be the solution, instead activating and pressuring the dormant and non-functional ones might be a better solution.

However, a programme successfully undertaken by an organisation can be a model. It can be a successful micro-experiment to indicate how a certain activity can be undertaken. The replication of such an endeavour should be left to the government.

In some of the ministries/departments/government bodies at the centre, there are advisory or decision-making committees where NGOs are represented. There are similar committees or fora with some NGO representation at the state and district levels. But it has

been seen that till now such efforts have been marginal in nature. In fact the Seventh Plan document reflects the government's thinking on the government-NGO relationship:

"There has to be mutual trust and understanding between Government and Voluntary Agencies at the village level. If at the higher levels there is general interference to Voluntary Agencies, at the village level there is often open hostility. For want of an established forum where Voluntary Agencies could be given an opportunity to explain their positions and defend themselves or bring field problems to the notice of the State Governments, the situation that now prevails is not conducive to full participation of Voluntary Agencies..."

In conclusion, one can say that, on the whole, the state-NGO relationship in the prevailing situation can be described as a 'mixed one'. There are areas of co-operation as well as confrontation and this is likely to continue. However, "As has been witnessed over the past two decades very clearly, the attack and the intimidation of voluntary activists, their organisations and members have often been quite sharp, including repression and intimidation from the state, and its agencies, whenever voluntary action has seriously challenged and criticised the dominant development practice, policies and programme. There is much reason to believe that the tendency of the state to react with force has increased, and is likely to continue to do so". (Report of the VANI National Seminar held in Thiravanthapuram, Kerala, 21-22 April, 92:23)

What further changes are likely to emerge in this delicately balanced relationship between the state and what is now increasingly being referred to as the 'third sector', in the light of the government's new economic policies and structural adjustment are still to be seen. What roles will the NGOs be expected to play in the government's efforts at privatisation? Can they continue to play their present combination of roles? Or will they be expected to become appendages of the state, taking over of its responsibilities? Or will they be slowly snuffed out? These are the questions that confront the 'third sector' today.

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