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NGOs Bewildered

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NGO movement in Nepal is gradually taking a new shape. Despite allegations and counter - allegations for and against the growing role of NGOs in advocacy, social welfare, service delivery, research and development sectors, NGOs themselves are trying to review and consolidate their position in order to be more effective and meaningful. Since NGOs are the product of the existing society, the impact of the socio-political environment on NGO movement cannot be ignored. NGOs as an agent of change therefore need to be examined in the prevailing social context only. The legal status and emerging challenges of NGOs have been examined in this paper from the Nepali perspective, and attempts have been made to give some conclusive remarks on the future prospects as well.

Background

The political movement of 1990 is a landmark event not only in the political and constitutional development of Nepal but also in the emergence of new development concepts that recognize and promote the value of private as well as NGO sectors in the task of nation-building. While reducing the role of state in national affairs, the new legal regimes formulated under the changed democratic framework have, despite shortcomings, tried to innovate additional devices with a view to encourage people to act as development partners and directly share the benefits and losses through participatory mechanism. Thus the non-government sector, widely known as NGO or PVO, has grown as phenomena in Nepal in recent years. The credit for this partly goes to the enthusiastic international development agencies and partly to the success stories of NGO movement in some developing nations such as Bangladesh, The Philippines and Malaysia. But even after half a decade of democratic experiment the question as to the status, role and achievements of NGOs in Nepal is still as burning as ten years ago

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when the country had very restrictive NGO regulatory mechanism and adverse legal and political environment. The basic issue that the NGO protagonists of Nepal need to address now is to make a correct "diagnosis" of the problem, then prescribe the remedy that is more practical than rhetoric. Such diagnosis must be made on the basis of pragmatic assessment of the existing situation. While doing so, some questions being raised about NGOs must be critically appreciated before dealing with the basic issues. Why have NGOs not been able to win the confidence of the people and international development partners ? Despite new policy commitments and legislative initiatives, why are the government and donor counterparts shy about fully joining hands with NGOs ? Have the NGOs failed to perform and deliver goods ? What is wrong with NGOs ? The moot question therefore the NGOs in Nepal have left unanswered is their failure to restore its clean image as development agent that has recently been painted as "donor driven dollar harvesters". Answer to all questions is not possible in a small paper, however, only basic legal issues are touched upon, keeping image question at the background.

NGO's Image

The image of an NGO till now projected as informal, less expensive, flexible, easily accessible, productive, result oriented, less bureaucratic, time bound, specialized, participatory, focussed, efficient and effective agent suited to development and other national needs, has occasionally been found severely tarnished with blames and abuses. No indepth research to identify and examine the reasons has not yet been done in Nepal. But anti-NGO propaganda continues to appear in media as ever with no appreciation of NGO contributions and without giving them any opportunity for defence. Paradoxically, however, the mushroom growth of NGOs in the registration desk of His Majesty's Government has no visible sign of decline. NGOs are becoming the victim of negativism in Nepal now. Apprehension of financial manipulation on the one hand and failure from the responsible quarters to appreciate the advantages of freedom and flexibility enjoyed by NGOs on the other hand, may be considered the key

factors responsible for destroying the name of NGO and have jeopardized the right reflection of the image.

After the advent of democracy NGOs in Nepal have started working independently in a real sense. Some advocacy and community development NGOs have done excellent works despite many constraints. Sustainability without resources (both human and material) is impossible. Policy and legislative back up can make a big difference in creating the right politico-legal environment. Administrative overheads is the least preferred agenda in the donor's grant criteria. Nevertheless, some selected NGOs are doing their best and producing good results. The tragedy, however, is that no body studies success stories and appreciate NGO contributions. There is a need to review and reveal achievements also. If no one else does, the NGOs themselves have to do it. The purpose of this paper, however, is to examine the problems and vices rather than virtues which in fact are universally proved, hence, need no repetition. The main issue in question right now is 'image' problem.

To be precise, the NGO image problem has been excessively magnified by some outsiders who are not fully prepared to appreciate the strengths and advantages of NGO. The source of negative propaganda to a large extent is the government itself which may be compared with big NGOs in many developing countries. Hence, government as a competitive agency in terms of grant seeker and recipient body but circumscribed by regulatory and bureaucratic features, does not feel comfortable with the liberty enjoyed by an NGO as a private sector agency. However, it does not mean that an NGO is a sacred body free of all vices. NGOs as a legal and functional entity do have vices and many genuine problems. Neither the NGO alone is a cause nor an effect. Problems are basically the offshoots of the existing environment - legal, political, cultural and to a certain extent donor driven. Ignorance and lack of management skills and institutional support from the concerned sector is equally responsible for many maladies. To be more specific, setting aside legal malady three additional maladies may be noted for clarity as follows.

- a) Donor driven malady
- b) NGO driven malady
- c) Government driven malady.

All these three maladies are equally responsible for poor performance and bad image of NGOs. Basis for receiving grants from many donors is personal contact, unconditional acceptance of imposed idea and programme, connections, vested interest, paper work than performance, imposition of obligations, frequent change of schemes and venue, publicity, one sided transparency, master-servant relation, disregard of feedback from NGOs, no guarantee of continuity, no commitment but only lip services, short-term investment, abrupt closure of project, no opportunity for correction and improvement, inconsistency of approach, advanced evaluation process in crude situation, western biases, no institutional support, too much expectations from locals, imposed consultants etc. Not a single NGO can get across the test of such persecution if it has to continue receiving support from donors. These maladies exist almost in all donors, except a few who appreciate flexibility and quality and are committed to host-country development.

Mostly visible NGO driven maladies are lack of management skills, very little paper work, poor record, financial weakness, poor language and non-communication, poor result, slowness, too much of dependency, inferiority complex, tendency to avoid issues, poor accountability, non-compliance of project proposals and procedures, high expectations, light comments, no local input, beggar attitude, poor coordination, politicization, non-sustainability etc.

Well known government driven maladies are control tendency, non-cooperation, non-transparent, inefficiency, bureaucratic resentments, negativism, fund biased outlook lack of coordination, shifting responsibility, technical rigidity, conservative approach, etc.

If an NGO has to work under these circumstances in any countries the result of any undertakings will be questionable and the image question will never be answered. Image issues are equally applicable to donors. Adjustments of attitudes among development partners and pragmatism may provide the right solution to this issue. Objective considerations and suitable approach must be made a basis by all the actors and partners of NGO sector before dwelling into the issues inherent in development efforts and NGO management. Advantages from strengths and lessons from failure have to be derived by all concerned.

If we assess the overall situation the environment in totality is not very bad, it can be improved and challenges addressed. But for Nepali NGOs time is running out. In such circumstances it is but natural for NGOs to be bewildered. Even the legal framework has not been able to fully create a congenial environment for NGO functioning due to lack of appropriate climate suitable for the growth of a competitive development NGO.

Legal Environment :

In fact, lack of law means no restriction. NGOs can enjoy freedom and autonomy at its best in absence of laws. But for this, good and less governance is needed. More regulations means more government and many constraints. Therefore we have to create proper legal environment through law in order to reduce the role of state and law in NGO sector for future. Hence, the role of law under the new framework should be more facilitative and less restrictive. Law not only empowers its 'creature' but at the sametime it prescribes as well as proscribes behavioral norms, there upon limits the freedom which would otherwise have given wide range of flexibility.

Until 1990, before the commencement of the constitution of the kingdom of Nepal 1990, the concept of NGO understood in the modern sense did not exist in Nepal. The Society Registration Act, 1960 was framed almost 36 years ago; it had hardly become functional as no one ever felt the need of private sector to facilitate development effort

which was exclusively placed under the government domain. It was only in 1977 when a new dimension was given to NGO sector by promulgating two parallel enactments. In order to recognize and regulate NGOs as development and social welfare agency, Society Registration Act 1977 was introduced which brought under it many non-governmental legal entities with diverse objectives and functions, including clubs and study centres. But these entities, called NGOs, were placed under total control of local administrative wing of the government which had power to issue mandatory directives and resolve conflicts also. Thus, the then legal environment was not congenial for functional NGOs.

In addition to the Society Registration Act, another enactment called Social Services National Co-ordination Council Act, 1977 was promulgated with a view to bring in all functioning NGOs and INGOs within the fold of the "Social Services National Co-ordination Council", a supreme body, to be chaired by Her Majesty the Queen and predominantly constituted by government high officials. The main objective of this Act was to channelize the funds and regulate social welfare activities in the name of coordination. This council had the supreme authority to dissolve any NGOs registered under the Society Registration Act also in the pretext of noncompliance of the constitution of the concerned NGO and the law of the land. In this way, legally speaking, NGOs were made subservient vehicles to be driven only by government.

Even the then Constitution of Nepal 1962 had a severe restriction on freedom of union and associations on political and 'public policy' grounds. In a nutshell it could be said that there existed no legal environment in favour of NGOs at all till 1990 when the political movement replaced the partyless political system by a multiparty parliamentary democracy that brought a radical change not only in political environment and people's attitude alone, but also opened new opportunities for competitive and innovative ideas through NGO sector as well.

A simple change in political environment happened to pave the way for many NGOs, INGOs and aid agencies to work in partnership. A new wave emerged and NGOs started reaching out to grassroot people and contribute to the constitution making and civil rights awareness process. It could happen even within the existing orthodox legislative framework governing NGOs but, of course, in the changed democratic environment. Till now more than the change in legal environment, democratic environment created by political movement and the new constitutional framework, which is quite sophisticated and loaded with modern features of constitutionalism, is more dependable than the reformed legislation.

The constitution of the kindom of Nepal 1990 is the basic legal document against which all other legislative frameworks have to be tested. The legal environment created by the constitution is apprennt in the preamble which gives primacy to basic human rights and other democratic values as unamendable features of the constitution. The elaboration of basic human rights has been made in Article 12 in the form of Right to Freedom to form unions and associations. Accordingly the Society Registration Act 1977 was amended deleting the controlling features. The Chief District Officer (CDO) still happens to be the final authority in districts in registration and renewal matters. The Social Services National Coordination Council Act, 1972 has now been replaced by the Social Welfare Act, 1992 which has made optional for the interested NGOs to register their names in the Social Welfare Council, headed by the Minister. However, the retractive measures still exist which enable the Council to dissolve and reconstitute the NGOs registered under the Council. Moreover, the project funds to be given to NGOs by donors have to be mandatorily channelized through Council. Surprisingly, however, neither the donors nor any NGOs are interested to comply with this provision of the enactment.

Such provisions have given a strange feeling in the mind of NGO activists and leaders as to the justification of NGO registration under the Council. The Council during the last four years has failed to create any impact on NGOs, and interest of an NGO to

register its name under the council has declined. It has yet to be seen how the new Ministry recently formed as Ministry of Women Development and Social Welfare responds to NGO issues.

A positive development has taken place in favour of NGOs with the commencement of local government laws in 1991. Local Government bodies are asked by laws to encourage NGO participation while designing, implementing and managing local development projects at district, municipality and village levels. Avenues to seek expert services through NGO have also been opened. An NGO may directly work as partners in development projects with local elected bodies under new laws. Similarly, sectoral laws like Forest Act, 1992 and Forest Rules 1995 have given the status of NGOs in powers and responsibilities to Forest Users Groups involved in Community Forestry Management. Even the Water Resources Act, 1992 and Electricity Act 1992 have opened doors for NGOs and user groups to be development partners.

Government's Commitment to liberalize economy by encouraging private sectors to invest in development efforts is bound to bring in NGOs and INGOs in Nepal. But the real problem emerging out of these legal developments has been the dilution of the very basic concept of 'NGO' understood by the concerned sectors.

Functionally, an NGO registered under the Society Registration Act, 1977 and other legal entities registered as 'user's group' under local government laws or Forest Act, 1992 hardly have any difference. Even a non-profit organization registered under the Company Act may operate similarly as an NGO in various circumstances. The question, therefore, naturally arises as to what does an NGO really mean in Nepal? Should we have any definition as such to differentiate the nature and function? May be the dilution of difference is more advantageous for private sector development than the qualified artificial differentiation made about NGOs/PVOs. Moreover, a new area still undefined is open regarding legislative framework governing the registration and operation of regional and international NGOs/groups in Nepal, except the clearance

needed from the government. In this matter INGOs have larger range of wilderness open for their operation than local NGOs.

Conclusive Remarks :

Left in the wilderness, NGOs and INGOs feel bewildered in Nepal. Inadequency of laws are sometime blessing in disguise but when problems have to be encountered government's highhandedness through policy instruments may invite more problems before NGOs than other development partners. The problems may compound more when thousands of NGOs and INGOs start operating at different institutional levels in various places, and institutional conflict start brooming with no specified body to handle the problem.

Imparting management skills and urgency to extend institutional support are essential to make an NGO effective, funcional and meaningful. But how these non-governmental legal entities holding different titles and nomenclature under different laws may operate in absence of clarity of conceptual basis, vagueness in definition and accountable institution and understandable legal environment, is a big question that needed immediate answer. The Social Welfare Council, a supreme legal entity created by the Social Welfare Act, has failed to act like a coordinating and supporting body due to structural and fuctional vagueness. INGOs, more bewildered than nationa/local NGOs, are unable to confidently operate in a wide playground where neither the umpire nor the players are clear about their respective rights and obligations. What is needed in Nepal is not freedom for NGOs but legal and institutional clarity. For this a perusal of existing laws and policies governing NGOs/PVOs/INGOs is urgent. Based on such studies, a liberal democratic environment may have to be created through appropriate legal instrument that should at least be simple, comprehensive and technically sound. An NGO once registered under the new legal instrument should not find itself losing its identity and freedom rather than being legally empowered.

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