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# LST REVIEW

Volume 10 Issue 143 September 1999



## CIVIL SOCIETY AND DEFENDERS OF HUMAN RIGHTS

### HUMAN RIGHTS AND EQUAL OPPORTUNITY

*MR BRADMAN WEERAKOON*

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4th March 1998

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### CIVIL SOCIETY ORGANISATIONS IN SOUTH ASIA: A COMPARATIVE STUDY OF NGOs IN BANGLADESH, INDIA, NEPAL AND SRI LANKA

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**LAW & SOCIETY TRUST**

# **LST REVIEW**

*(This is a continuation of the  
Law & Society Trust Fortnightly Review)*

EDITOR

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## **Law & Society Trust**

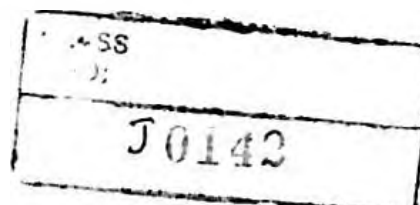
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## **Editor's note .....**

The Trust organised a two day residential workshop in August on Human Rights and Equal Opportunity. Participants were drawn from the public sector, the NGO community as well as the private sector. We publish in this issue the keynote address delivered at this workshop by Mr Bradman Weerakoon. In the first part of his address, Mr Weerakoon pays tribute to Dr Tiruchelvam for his contribution to human rights, law reform and civil society and in particular to the proposed equal opportunity legislation which Dr Tiruchelvam pioneered. While it is so hard to carry on our activities without the guidance and the vision of Dr Tiruchelvam, it is precisely what we have to do, to ensure that the foundation he laid for a just and peaceful society will be consolidated by our activities.

We also publish the text of the Declaration on Defenders of Human Rights of 4<sup>th</sup> March 1998. This Declaration, reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants, recognises the right of everybody, individually and collectively, to promote and strive for the promotion and protection of human rights at the international and national levels. It also endorses the right to meet or assemble peacefully, to form and join NGOs or groups and to communicate with NGOs or inter-governmental organisations. Given the present day context in which defenders of human rights are increasingly threatened and sometimes physically attacked (a very sad example was, of course, Dr Tiruchelvam himself), it is imperative that publicity be given to the Declaration and States themselves undertake to "defend the defenders of human rights."

In his article on Civil Society Organisations in South Asia, Masaaki Ohashi of Japan compares the situation of NGOs in four South Asian countries - India, Sri Lanka, Bangladesh and Nepal and concludes that, overall, the situation in Sri Lanka is commendable where NGOs are concerned as there is hardly any governmental interference in their activities.



## Human Rights and Equal Opportunity\*

*Mr. Bradman Weerakoon*

In her letter inviting me to speak to you at this Workshop, Mrs. Damaris Wickremasekera, Director of the Trust, reminded me that we can only appropriately respond to the tragic death of Dr. Neelan Tiruchelvam by strengthening our own personal resolve to address the issues of human rights and justice to which he was committed, with a greater involvement and a sense of urgency.

It is in that spirit that I have accepted her invitation and I dedicate these words to my friend Neelan's memory.

My ears and mind are yet filled with the moving and beautiful sentiments expressed by so many speakers at the Inter-Faith Commemoration on the 20th of this extraordinary man's contribution to our country and the world. Today's meeting, too, is essentially for him and the powerful impact of his actions and his written and spoken words on the political and social history of our times. Each of us would have connected in different ways to Neelan's engagement with the myriad causes he espoused. The consistent and central thread in all of these was that they were about doing something for those who were disempowered, victimised, vulnerable and dispossessed.

Our career trajectories were different. I linked with him in mainly in two roles - first, as a public official gladly accepting and using his mediating advice in the formulation of public policy and secondly, as a fellow member of civil society in many diverse and compelling causes which demanded human rights, equality, and justice.

The issues that Neelan was engaged in ranged from the plight of children in the face of armed conflict, to reproductive rights for women, to the

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\* Keynote address at the Human Rights and Equal Opportunity Workshop organised by the Law & Society Trust, 24-25 August 1999 at the Pegasus Reef Hotel, Wattala.

formulation of a regional legal instrument for the protection of the millions of refugees scattered throughout the Indian sub-continent. In relation to some of these issues we made small advances. But there is much unfinished business. And that is why we feel his loss so terribly and that is why all those who stood beside him need to do so much more to advance and progress the work he was engaged in with so much dedication, determination and, ultimately, with the sacrifice of his own life.

The central or core values he stood for, peace, reconciliation, respect for fundamental rights, multiculturalism, pluralism - indeed all the issues which will be at the heart of our discussions here - have been propelled to the forefront of the public debate in this country since his death. It has been said, as it was in the case of Martin Luther King and other great fighters for peace, that you might kill a man but you cannot kill an idea. If that were so, perhaps in death, Neelan may be just as powerful an advocate for the cause he espoused than in life itself.

Three recurring strategic directions seemed to be highlighted the Inter-Faith commemoration of Neelan Tiruchelvam's life and work which would be useful for us to remember as we grapple with the primary dilemma all of us who work in the human rights arena face, of transforming intention into practice.

First, the need to continue in the search for authentic solutions. Not just solutions which are opportunistic, or populist or might serve only for the short term. Secondly, the quality of perseverance; of never giving up, whatever the odds, the obstacles and the forces ranged against you, and third, the faith in the power of dialogue, of negotiating, of continuing to persuade until you convince.

Neelan recognised the power of words, of language and articulation, as his masterful speeches in Parliament on so many subjects close to his heart showed. In a totally different context one remembers Winston Churchill of whom it was said, that he mobilised, during the darkest moments of the second World War, the English language and put it into battle. That was all the resource he had at the time.

I thought to reflect on the importance of the proposed Equal Opportunity legislation, locating it in the current scene and the challenges the legislation is likely to face. This may lead us to some possible strategic responses.

I, therefore, propose to:

- \* Assess briefly the current national Human Rights situation from the perspective of a former government official. We went through some very bad patches in the period 1990 to 1993 and the nimble, creative and at times unconvincing, responses which governments use in attempting to defend a poor human rights record may be illuminating in underscoring the facade which is often constructed to obscure the reality. Neelan was not easily taken in by these gestures. But he, like many others, was thankful for small advances and mercies.
- \* Comment briefly on some emerging global trends, which I find personally rather disturbing, particularly the rather obvious breaching of international law norms in the recent bombings of the former Yugoslavia.

**Locating Equal Opportunity in the overall human rights discourse:**

Almost everybody would concede that the cornerstone of a democratic state would be equal opportunity for all its citizens. While we cannot be all equal because of obvious innate differences among each other, equality of opportunity is a basic right. The dilemma of how to reconcile this with the obvious inequalities which tradition, custom and practice impose, is one that we face along with many other nations and it would be instructive to learn, as we will hear the experiences of other countries. The conceptual and philosophical issues surrounding equality have been articulated in the seminal work of Locke and Rousseau in the theory of the Social Contract and more recently in the work of the Harvard liberal political philosopher John Rawls in his theory of justice as fairness, which I have no doubt Neelan was well acquainted with. The Chapter on Equal Opportunity in the 1998 State of Human Rights Report analyses extremely competently the developing situation in this area and raises a number of relevant concerns and issues.

We have today, since the Law & Society Trust's 1998 report, a draft Bill before us for our perusal. It has not yet been presented to Parliament but appears a very important piece of legislation awaiting the parliamentary process. I would for that reason like to turn to some of the challenges this much needed piece of legislation may face. The success in the implementation of this far reaching legislation will depend on how we contend with the

formidable societal compulsions to maintain the present inequalities that exist. How do we convince certain entrenched and vested interests to give up voluntarily the powers and privileges they now enjoy. That is the critical problem. Groups of whatever kind - ethnic, gender, linguistic, caste, class, or religious groups - which by virtue of being a majority exercise power, are loath to lose it and will put up a strong defence to retain what they have.

Equal Opportunity legislation in the public and so far, private domains must, therefore, assume a central place in the strategy to bring to reality the multi-ethnic, multi-religious, pluralistic society we profess we are. In such an eventuality, discrimination, real or perceived, on the basis of race or ethnicity, religion, language or sex would be completely antithetical. In a way, since the whole question of the nature of the Sri lankan state is today in issue, the equality of ethnic opportunity assumes a heightened importance. The entirety of this legislation, therefore, gets an urgency and immediacy which may have not been there in other countries. But everywhere the sense of alienation which minorities feel is fuelled by the perception of unfair treatment, disproportionate allocation of resources, and discriminative practices.

A look at some of the officially available statistics is indeed disconcerting.

Elizabeth Nissan's research referred to in the LST's 1998 Report, informs us that Tamil recruitment to the General Clerical Service at Independence in 1949 was 40.7% per cent. In 1981, 32 years after Independence it had dropped to 5.4 per cent. What are the reasons for this precipitous decline?

In the 1994 Census of Public and semi-Government Sector Employment the ethnic breakdown for employment in the State sector alone is as follows:

Sinhalese	-	91.2%
Sri Lankan Tamil	-	5.2%
Indian Tamil	-	0.2%
Moors	-	2.7%

Almost the same ethnic proportions are visible in the Provincial and semi-government sectors. As we know the 1981 General Census (we did not have a Census in 1991 and the next is scheduled for 2001) indicated that the ethnic breakdown in Sri Lanka was as follows:



Sinhalese	-	74%
Sri Lankan Tamil	-	12.5%
Indian Tamil	-	5.6%
Moors	-	8%

Obviously the minority communities do not appear to have received their fair share of government employment during this period. The proportions for them are much less than the 'ethnic ratio' scheme might have warranted.

Why are we concerning ourselves with Equal Opportunity at this time? The Draft Constitution and, in particular, the provisions on devolution was to be the government's major instrument to resolve the ethnic issue. The draft legislation on Equal Opportunity would support and strengthen the fundamental rights enshrined in the Constitution.

The reasons adduced for the introduction of Equal Opportunity legislation include the following:

- \* that the right to equality in the Fundamental Rights provisions even in the Draft Constitution could only be challenged in Court if the violation of the right were due to **executive and administrative** action (State action in the Draft Constitution) by public authorities. The Constitutional right to equality cannot be invoked in the case of acts done by private persons, commercial firms and non-governmental bodies;
- \* the proposed legislation, however, would also apply to the corporate and private sectors. Any act of discrimination by a private firm like the refusal to provide a service on the grounds of ethnicity would be unlawful and would render the firm liable to conviction if it did not conform to the directions of the Commission on Equal Opportunity;
- \* Equal Opportunity legislation would cover many dimensions of potential unequal treatment, not only ethnicity/race and sex/gender, but also religion, political conviction, caste, age and disability;
- \* the legislation provides for proactive measures through guidelines etc., (best practices) by the Commission and so

makes remedial action possible without the need for the authority to await a written individual complaint.

There is a very important further reason for equal opportunity legislation when the devolution of powers to regional or provincial authorities takes place. It would ensure to a greater extent the right to equal treatment of individuals who would have to live in the devolved units. One recalls the charges of discriminative behaviour by the provincial authorities against those who were minorities in Tamil majority areas in the days of the old North-East Provincial Council. Thus, to this extent, the legislation would help to relieve the anxieties of Sinhalese and Muslim individuals about their right to use their language, and practice religion as they continue to live in the regions of devolved power. And, to that extent, the draft legislation could help to at least weaken the reasons sometimes adduced by opponents of the devolution principle and process.

As I mentioned, bringing this legislation to fruition, however well intentioned it be, at this time would be very challenging. While we may proclaim to being a multi-ethnic, multi-religious, multi-cultural and pluralistic society, we are yet at the end of the 20th century far from being so in fact. We have all to admit to being guilty to a great deal of prejudice and stereotyping especially as we operate in our private domains. We are also yet highly stratified. With regard to the markers of differences identified above - ethnicity, sex, religion, and so on - we tend to place people in superior or inferior positions. Our cultural traditions, customs and practices too seem to condone and endorse these personally ascribed inequalities.

See, for example, the various ways in which people in private conversation, if not in public, address one another with the equivalent of the word *you* - *umba*, *thamuse*, *oba* and *thamunnanse* not to mention, *tho*, *thopi*, etc. in anger. You may say that this usage is dying out but have attitudes changed that much?

The Equal Opportunity legislation also presumes we are ready to give equal place to the **disabled**. But what is the reality here? The widespread and prevalent use of derogatory nicknames in private conversations and sometimes in the media, teledrama and popular literature for the disabled as in - *nondiya*, *pottaya*, *goluwa* etc., and the ethnic stereotyping - *thambiya*, and *demala*, for example, reflects a deeply ingrained mentality of superiors and inferiors which would need a sustained effort to overcome. In addition to the earlier

stereotypes pertaining to the Tamils, the war presently makes a man or woman belonging to the Tamil community a perceived security threat. In addition to whatever else may operate against them, how does a Government department, a public corporation or even a private sector firm give a Tamil individual a job without some discomfort at least over whether the organisation is inviting a security threat. Equal Opportunity legislation will have to contend with this problem too at least in the short term.

And as for gender/sex differentiation, although Sri Lanka is far ahead of the other South Asian countries in regard to female equity, male dominance especially in the private sector, has been very well documented in a number of studies by CENWOR and other research institutions. The level of domestic violence, the structure and pattern of female employment and the open violence and harassment against women which a war situation encourages, are particularly illustrative. Discrimination on the basis of sex has been very adequately documented by women's groups and CENWOR. Although the Executive President and Prime Minister are women only 4.6% of parliamentarians are women - 13 in a Parliament of 225 - and in the Cabinet the ratio is even less. There are other indices too where inequality is manifest. Below are a few examples:

- Education at postgraduate level - Men 63%, Women 36%
- Labour participation rate - Men take up 64% of all jobs; Women 32%.
- Dry Zone Agricultural work (in peak season) - Men work an average of 426 hours; Women do better at 560 hours of work.

However, in the same category of Dry Zone agricultural activity, as regards leisure and sleep - men as may be expected, do better, spending 294 hours in such non-activity; while women make do with much less - 160 hours.

- Sri Lanka Administrative Service (1993 figures) - only 17% are women;
- In the Scientific fields - 20% are women;
- Planning Service - 29.7% are women.

So this is the difficult milieu in which the Government is attempting to take the Equal Opportunity Bill through Parliament. What are the options it has at this time?

If both the major parties agree, and there has been an attempt to seek consensus outside of parliament on this, it is likely that the Bill will be passed in Parliament. However, implementation would need the total collaboration of civil society, and this Workshop which is part of a continuing attempt to further extend awareness of the need for and the implications of Human Rights and Equal Opportunity legislation, will be a material contributory factor.

The nature of the challenges that face liberal civil society in this and other arenas to expand human rights almost makes even the most committed individual give up. As Norberto Bobbio the Italian philosopher of Law and Politics has said, our activities like those of Neelan Tiruchelvam's have always to be based on respect for constitutional order and the rejection of undemocratic methods, including both the corruption which has sometimes characterised the political mainstream, as well as the terrorism which opposes it.

This becomes the delicate and dangerous path for the liberal and the moderate, and the price to be paid for walking that difficult path is, as we have seen in Neelan's life and the manner of its ending, extremely high.

# **Draft Declaration on Defenders of Human Rights\***

**4 March 1998**

**Revised text by the Chairman-Rapporteur of the draft declaration**

The General Assembly,

Reaffirming the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

Reaffirming the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

Stressing that all members of the international community shall fulfil, jointly and separately their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international co-operation to fulfil this obligation, according to the United Nations Charter,

Acknowledging the important role of international co-operation for and the valuable work of individuals, groups and associations in contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or

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\* E/CN.4/1998/WG.6/CRP.1/Rev.I.

threats to national sovereignty, national unity or territorial integrity, and from refusal to recognise the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

Recognising the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

Reiterating that all human rights and fundamental freedoms are universal, indivisible and interdependent and interrelated, and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of these rights and freedoms,

Stressing that the primary responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

Recognising the right and the responsibility of individuals, groups and associations to promote respect for, and foster knowledge of, human rights and fundamental freedoms at the national and international level,

Declares:

### **Article I**

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.

### **Article 2**

1. Each state has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political as well as other fields and the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all these rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in this Declaration are effectively guaranteed.

### **Article 3**

Domestic law consistent with the United Nations Charter and other international obligations of the State in the field of human rights and fundamental freedoms, is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed, and within which all activities referred to in this Declaration for the promotion, protection and effective realisation of those rights and freedoms should be conducted.

### **Article 4**

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations nor as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

### **Article 5**

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organisations, associations, or groups;
- (c) To communicate with non-governmental or intergovernmental organisations.

### **Article 6**

Everyone has the right, individually and in association with others,

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

- (b) As provided in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge of all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms, and, through these and other appropriate means, to draw public attention on these matters.

#### **Article 7**

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles, and to advocate their acceptance.

#### **Article 8**

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the Government of one's country and in the conduct of public affairs.
2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organisations concerned with public affairs, criticism and proposals for improving their functioning and to draw attention to any aspect of their work which may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms.

#### **Article 9**

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in this Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of violation of these rights.
2. To this end, everyone whose rights or freedoms are allegedly violated, has the right, either in person or through legally authorised representation, to complain to and have that complaint promptly reviewed in a public hearing



before an independent, impartial and competent judicial or other authority established by law, and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms; as well as enforcement of the eventual decision and award without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

- (a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms by petitions or other appropriate means to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;
- (b) To attend public hearings, proceedings and trials, to form an opinion on their compliance with national law and applicable international obligations and commitments.
- (c) To offer and provide professionally qualified legal assistance or rather relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

## **Article 10**

No one shall participate, by act or failure to act where required, in violating human rights and fundamental freedoms, and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

## **Article 11**

Everyone has the right, individually and in association with others, to the lawful exercise of his or her profession' Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct of ethics.

## **Article 12**

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this Declaration.

In this connection, everyone is entitled, individually and in association with others, to be effectively protected under national law in reacting against or opposing, through peaceful means activities and acts, including those by omission, attributable to States which result in violations of human rights and fundamental freedoms as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

## **Article 13**

Everyone has the right, individually and in association with others, to solicit, receive and utilise resources for the express purpose of promoting and

protecting human rights and fundamental freedoms, through peaceful means, in accordance with Article 3 of this Declaration.

#### **Article 14**

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, inter alia:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the State's periodic reports to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institutions.

#### **Article 15**

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education, and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

#### **Article 16**

Individuals, non-governmental organisations and relevant institutions have an important role in contributing to making the public more aware of questions

relating to all human rights and fundamental freedoms through activities such as education, training and research in those areas to further strengthen, inter alia, understanding, tolerance, peace and friendly relations among nations and amongst all racial and religious groups, bearing in mind the various backgrounds of societies and communities, in which they carry out their activities.

#### **Article 17**

In the exercise of the rights and freedoms referred to in this Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

#### **Article 18**

1. Everyone has duties towards and within the community in which alone the free and full development of his personality is possible.
2. Individuals, groups, institutions and non-governmental organisations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Likewise, they have an important role and a responsibility in contributing as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realised.

#### **Article 19**

Nothing in the present Declaration shall be interpreted as implying for any individual group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in this declaration.

## **Article 20**

Nor shall anything in the present Declaration be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organisations contrary to the provisions of the United Nations Charter.

# **Civil Society Organisations in South Asia:**

## **A comparative study of NGOs in Bangladesh, India, Nepal and Sri Lanka\***

**Masaaki Ohashi\*\***

### **1. Introduction**

Since the end of the World War II, development has been set as a universal objective of the world, and thus every country has been categorised into one of several groups according to its level of development. It is an undeniable obligation for a country which is categorised as a less developed one to strive for development. The conventional promoters of development have been the State and the market, and essential ingredients for it are capital and technology. In the recent years, the importance of the market for development has been overwhelmingly emphasised, while the expected role of the State is shrinking.

NGOs, or civil society organisations in general, have emerged as the third promoter of development in the last few decades. They are expected to complement the State whose role is shrinking, as they are cheaper and more effective than the State. These organisations are also playing a vital role in the field of conflict prevention and resolution, promotion of mutual understanding, relief and rehabilitation of victims and so on. Human rights, art and culture, state policy, journalism are some of other major fields where civil society organisations are playing a vital role.

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\* Paper presented at the Seminar on "Current Situation in Civil Society Organisations in South Asia" held on 24 March 1999 in Delhi at the Japan Foundation, jointly organised by the Japan Foundation, the National Foundation for India, and the Centre for the Study of Developing Societies. Reproduced with permission from the author. Edited for publication.

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There are many NGOs in the South Asian countries covered by this study. Each country has a particular situation of NGOs shaped by various factors, such as its socio-economic conditions, domestic politics, geo-political positions and international relations, history, law and regulation, etc.

A number of country-wise studies on NGOs have been conducted, as they are in focus for many international and national agencies. There are, however, very few studies which compare country-to-country NGO situations in the region and try to find some common as well as particular features. These findings may clarify what factors are positive, and what are negative, for the sound development of civil society organisations in countries of the region. This is the first objective of this study.

Another aim of this study is to offer information on civil society organisations in the region to Japan, which has very limited understanding of and relations with those organisations. The information will include not only this study but also individual reports of organisations visited during the country-wise surveys.

This study will continue to cover Pakistan and to renew information of Bangladesh in the coming months. This monograph covers only 4 countries in the region: Bangladesh where the author has stayed for 5 years and visits regularly, India where the author currently is for one year, Nepal, and Sri Lanka, where a ten-day survey was conducted this year for each country.

It should be mentioned here that without substantial support and encouragement from the Director of the Japan Foundation New Delhi office, Mr. Tadashi Ogawa, this study would not have been completed. Mr. Leben Washio, the Deputy Director of the same office participated in the field survey and contributed to this report.

## **II. What is a NGO/Civil Society Organisation?**

There is a wide range of discussion on civil society and definition of NGOs. As the objective of this study is not to deepen the discussion and the definition, a practical and simple definition has been adopted for this study.

An NGO is an organisation which meets the following conditions:

- (1) a group of individuals who have a common aim based on voluntary will
- (2) independent from the State, religion, political parties or private companies;
- (3) the aim(s) is/are not to concern one's own benefit, but dealing with poverty, health, education, gender inequality, human rights, environment, etc. and to deal with conflict and war in terms of its prevention, promotion of mutual understanding, relief and rehabilitation of victims, and so on.
- (4) an organisation fully governed by people of the country.

The definition of a civil society organisation, of which NGO is a part, is similar to the above. The aim(s) of it is/are, however, not limited to contribute to weaker sections, but to contribute to the field of art and culture, conservation of cultural heritage, journalism, academia, policy and law, and any other one(s) closely related to the present civil society life.

### **III. Contemporary History of NGOs**

The Indian continent has a long history of voluntary work for humanitarian purposes. Several NGOs in India originated during the British Colonial period. This study, however, concentrates on the emergence and rapid increase of NGOs in the last few decades.

The following points are found salient in relation to NGOs:

- (1) every South Asian country under this study has commonly experienced a rapid increase of NGOs (called "NGO mushrooming") in either in 1980s or 1990s;
- (2) this "mushrooming" phenomenon took place after the importance of NGOs was positively emphasised by international development agencies in 1980s;



- (3) political changes, particularly the establishment of democratic regimes in Bangladesh and Nepal, have triggered this phenomenon;
- (4) in cases of Bangladesh and Sri Lanka, natural as well as man-made calamities also contributed to the increase of NGOs;
- (5) in India, the commencement of official subsidies to NGOs was the reason. This also applies to Japan where the subsidies started in 1989 and 1990.

### **III-1. Bangladesh**

Since its independence from Pakistan in 1971, NGOs in Bangladesh have been gradually increasing. At the beginning, the majority of them were foreign and their main function was the distribution of emergency relief among victims of war and natural calamities in the early '70s.

Some national NGOs were established during the same period mainly aiming to start development works. It is clear that, year by year, the number of Bangladeshi NGOs are constantly increasing while the presence of international NGOs is increasing slowly.

The fall of the autocratic regime in 1990 and the establishment of a democratic government in the following year gave rise to the emergence of many new NGOs. Under the new government, it is now much easier for citizens to get NGO registration, as a part of their democratic rights.

Until the middle of 1990, the total number of NGOs was 382 (293 national and 89 international). It became more than one thousand in the fiscal year of 1995/96: 1014 NGOs (882 national and 132 international). At the end of January 1999, the number reached 1308 NGOs (1163 national and 145 international).

### **III-2. India**

For Indian NGOs, the fall of the Indira Gandhi regime in 1977, which had posed emergency rule, brought about the first spring. NGOs got not only freedom from oppression under the emergency rule, but also public recognition of their role, as the then anti-government movement was led by

J.P. Narayan, who was a prominent Gandhian, in other words an NGO activist. The number of NGOs began to increase during this time.

The Indian Government officially recognised the importance of NGOs for development at the 7th Five Year Development Plan in 1985 and started to provide various subsidies to NGOs. This induced the "NGO mushrooming" phenomenon in the late '80s and the early '90s. A large number of NGOs were established during this period.

In the course of this mushrooming, unfortunately, some NGOs were found not to be genuine. They were mainly established to provide job opportunities to educated youth, or, in worse cases, to secure money for political gains and/or embezzlement. Thus NGOs have been under criticism from the government and the media from the mid '90s.

Still the central government is providing a variety of subsidies to NGOs today. It is noteworthy that only the Indian government provides substantial financial support to NGOs in the region.

### III-3. Nepal

It is well known that the first NGO in Nepal is the *Shree Chandra Kamdhenu Charkha Pracharak Mahaguthi* established in 1926 by Mr. Tulsi Mehar, who was deeply inspired by Gandhi's social activities in India. But the then Rana autocratic regime regarded it as anti-national activities and expelled Mr. Mehar from the country.

The Pahchayat regime came into power in 1960. There were only a dozen of NGOs legally registered and functioning in Nepal during this period. All of them were affiliated to the Social Service National Co-ordination Council (SSNCC) of which the Queen was the chairperson. SSNCC tended to control NGOs in its efforts to co-ordinate NGOs and "to maintain maximum possible uniformity"<sup>1</sup> among them. International NGOs were not welcome at that time.

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<sup>1</sup> Masky, B.K. "Non-governmental Organisations in Development" Centre for Development and Governance," Katmandu, 1998, p.80.

Parliamentary democracy was established in 1990 because of the peoples' movement in which some NGOs also participated. Since then, the situation for NGOs in the country has changed drastically for the better.

As a consequence, the number of national NGOs has increased totalling approximately 8500 in February 1999. International NGOs are also increasing in number. Additionally, there is a substantial number of national NGOs which are not registered and which receive funds from international NGOs and/or individuals.

#### **III-4. Sri Lanka**

There seems three occasions on which NGOs increased its number since the 1970s. The first occasion was 1977 when the United National Party hereinafter (UNP) came into power. Sri Lanka Freedom Party hereinafter (SLFP). UNP had a more liberal attitude towards NGOs than the former SLFP which placed more emphasis on the state for the realisation of welfare and development.

The large-scale violence on Tamil people in July 1983 which created more than 100,000 internally displaced people in and around the capital, and the continuing ethnic conflict was the second occasion. Most NGOs are engaged in relief and rehabilitation of the internally displaced people and victims of conflicts.

The most recent occasion was the emergence of an alliance government, the People's Alliance hereafter (PA) in 1994.

### **IV. Numbers and Scales of Financial Resources**

#### **IV-1. Numbers**

It is not easy to know the exact number of NGOs or civil society organisations in the South Asian countries. There are some reasons for this: first, there is no common definition of an NGO; second, there are plural ways of legal registration of organisations in each country; third, governments of India and Sri Lanka do not publicise the number of registered NGOs on the soil; and fourth certain NGOs are either not registered or dormant, despite the need for registration.

The approximate number of NGOs of each country is, however, available. These numbers differ according to the year of counting/estimating and the available sources of information. It is needless to say that if local organisations which do not receive foreign fund are also included in the numbers of NGOs, these figures will increase by at least 10 to 50 times.

Reflecting the size of the country, India has an extremely large number of NGOs; estimated some years ago as approximately 30,000.<sup>2</sup> The number of NGOs in Nepal was 8414 as of March 2 of 1999<sup>3</sup> which are affiliated to the Government's Social Welfare Council, and therefore, eligible to receive foreign funds. There a few dozen NGOs in Nepal which are affiliated with other government organs in Nepal. Sri Lanka seems to have the third highest number with about 3000 NGOs<sup>4</sup> but this estimated number also include those NGOs not in receipt of foreign funds. Bangladesh counts 1163 NGOs as of January 1999.<sup>5</sup>

The top and second position of the number of NGOs in countries must be exchanged with each other when national populations are taken into consideration. Table-1 gives a clear picture that Nepal which has a population of 21.5 million has the outstanding number of NGOs in the country, followed by India whose population is 929.0 million.<sup>6</sup>

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<sup>2</sup> OASHIM, "NGO TAIKOKU INDO (A large NGO country INDIA." Akashi-Syoten, Tokyo, 1997. This estimation was made based on Patel, C's preface for "Financial Assistance Available to Voluntary Organisations Source Book," United Way of Vadodara, 1995, AVARD "Government-NGO Interface in India's Development," ANGOC Monograph Series No. 11, Manila, 1992 and some others.

<sup>3</sup> Stated by Mr. Jiban Ram Bhattarai, Director, Social Welfare Council, Katmandu. There are some more NGOs which receive foreign funds but are registered only under either other ministries or the King Mahendra Nature Conservation Trust but not affiliated under the Social Welfare Council (SWC).

<sup>4</sup> A monograph, "Promoting Three Basic Freedom," published by Law & Society Trust (year unknown, likely 1997 or 98) cites an unpublished government report that estimates the number as 3000 by 1990, while Hosaka M. estimate 2000 in "NGO ga kaeru Asia (Asia which NGOs change)" ed. Saito C. Commons, Tokyo, 1998.

<sup>5</sup> The NGO Affairs Bureau of the Prime Minister's Office, the Bangladesh Government. There are 145 foreign NGOs beside them.

<sup>6</sup> The population data are from UNDP "Human Development Report 1998."

**Table-1: Estimated numbers of NGOs, populations and ratios**

	Bangladesh	India	Nepal	Sri Lanka
NGO Number	1,163	30,000	8,414	3,000*
Population (million)	118.2	929.0	21.5	17.9
Population per NGO	101,633	30,967	2,555	5,967

\* This includes those NGOs which do not receive foreign funds.

#### **IV-2. Scales in terms of funds and major NGOs**

It is publicly known that NGOs in Nepal and Bangladesh are, in general, much more affluent than those in India. This is partly supported by the following data.

In case of Bangladesh, the total amount disbursed to NGOs in the fiscal year of 1995/96 is \$ 259.3 million which is 20.6% of ODA (net disbursement in 1995) for this country.<sup>7</sup>

For India, no official figures are available. The author once estimated the amount to be in the mid 90s as between US\$ 530 million to 1 billion.<sup>8</sup> By taking the middle amount of the estimates, it might be around 765 million, three times more than that of Bangladesh.

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<sup>7</sup> The NGO Affairs Bureau of the Prime Minister's Office, the Bangladesh Government.

<sup>8</sup> OHASHI, M. "Indo no NGO no Zaigen to Seihu (Financial Sources for NGOs in India and the Government)", Keisen University Kiyou, 1997, Tokyo. This estimation was calculated based on information from following documents; KOTHARI, S. "Social Movements and the Redefinition of Democracy" in Oldsuburg ed., India Briefing, Westview Press, 1993, p.143; AVARD, "Government-NGO Interface in India's Development," ANGOG Monograph Series No. 11, Manila, 1992, p.14, MUKHERJEEK.K. "Social Change Voluntary Organisations" in Gandhi Marg vol. 15 No. 4, 1994, p.406, etc.

While Indian NGOs may have a larger absolute amount than Bangladeshi ones, their relative populations as well as NGO numbers (as shown in Table-1) make it clear that NGOs in Bangladesh have more financial resources than those in India.

Partly reflecting this fact, there are some gigantic NGOs in Bangladesh. The famous BRAC (Bangladesh Rural Advancement Committee) employs more than 20,000 full time staff and runs about 30,000 Non-formal Primary Schools beside other fields, such as rural development, micro-credit, adult education, health, etc. Its annually mobilising fund is approximately Taka 11 billion (about US\$ 250 million, including beneficiaries, savings and loans. Foreign contribution to this is 16.8%).<sup>9</sup> Because of its outstanding size and scale, BRAC is often called as the second government in Bangladesh.

Though organisationally not an NGO but a special bank, the Grameen Bank also has a similar number of staff serving two million direct beneficiaries. The second largest NGO is PROSHIKA which has about 3,000 full time staff. Several organisations own multi-story buildings on their own land in and around the capital city, and covers almost all districts in the country. It is said that there are a few dozens of NGOs which employ more than a hundred staff, while there are many small local NGOs in Bangladesh.

In contrast, India has no such large scale NGO or Grameen Bank type institution. Sarvodaya was once a huge and nation-wide movement, but has been gradually losing its impact and integrity, and organisationally fragmented.

Most NGOs are operating within the boundary of a state, except some nationally networking NGOs and some gigantic cooperatives. Relatively larger and renowned NGOs have a few hundred staff each.

It should be mentioned that Indian NGOs receive funds not only from external private and official agencies, but also from domestic sources, i.e. the government and the private co-operate sector. The former provides a substantial amount since few decades whereas the latter is small and new. Still it is an important point as none of the South Asian countries has these sources on such a scale.

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<sup>9</sup> Data on BRAC are as of February 1997 taking from its Annual Report 1998.

The reasons why Bangladeshi NGOs receive a larger amount of funding than Indian NGOs follows:

- (1) Bangladesh has been regarded by many donors as a laboratory of aid, due to its handy size, and its reputation of chronic poverty and frequent disasters. In contrast, India has been deemed as too big and its problems too complicated to tackle.
- (2) Western donors tend to prefer NGOs in Bangladesh as more cheap and effective service providers.
- (3) The Bangladesh government as well as public do not have strong sentiments against foreign assistance.
- (4) India is rather sensitive to foreign money. The government has a clear and strong attitude towards external aid. In a public campaign, "the recipient of foreign funds" can be used to create a negative image of NGOs in India.

Reasons for the difference of NGO sizes may be as follows:

- (1) Bangladesh is a small and flat country, one can easily travel around. In contrast, India has an area 23 times larger than Bangladesh and the population 8 times larger.
- (2) India consists of 25 states and 7 direct territories which have large autonomous power. Languages also differ from state to state and sometimes also within a state. In Bangladesh, 98% of the population speak Bengali and there is no state system.

The estimated amount for Nepali NGOs varies from US \$ 40 million to US \$ 200 million.<sup>10</sup> These figures are smaller than Bangladesh and India. But as shown in the Table-2, Nepali people are receiving, in relative terms, a similar, or few times more, financial resources than Bangladesh, and several times more than India.

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<sup>10</sup> These estimations are from Maskey 1998, p.103. The US dollar figures are calculated based on the exchange rate of 1995, 50.45 Rs. per 1\$.

Despite the fact that the Nepali NGOs receive a large amount, none of them has developed its size to a national level like BRAC and PROSHIKA in Bangladesh. Staff numbers of some large and prominent Nepali NGOs, such as BASE, RRN (Rural Reconstruction, Nepal), CSD (Centre for Self-help Development) remain a range of few to several hundreds covering several to a dozen districts out of 75 districts in the country.

**Table-2: Nepal's Population, NGO Number and financial Resources for NGOs Comparing with Bangladesh and India**

Nepal	With Bangladesh	With India
Population	18.2%	2.3%
Number of NGOs	723.5%	20.0%
40 million \$	15.4%	5.2%
200 million %	77.1%	26.1%

It is partly explained from the Table-2 that the number of NGOs in Nepal is 7 times more than in Bangladesh, and also relatively more than in India. A large number of NGOs are taking shares from the total sum.

Another reason for the non-existence of large NGOs in Nepal can be attributed to its geographical character, i.e. a lot of mountains and hills, and to its under-developed transportation infrastructure. Under such conditions, an NGO has to spend more financial resources and time for transportation which would decrease efficiency of the its performance. The third and last reason is that since most NGOs were established after 1990, they have not been able to establish stable relations with donors as well as to accumulate enough resources.

Sri Lanka has one mammoth NGO, *Sarvodaya Shramadana Movement*, which used to have more than 2000 full time staff in about 10 group organisations covering about a half of all villages in the country. Currently there are about 1200 staff and its annual budget estimated as US \$ 2 to 4 million. Other big NGOs, such as *Seva Lanka*, have a few hundred staff. Taking into account its relatively small population, there are some large NGOs in Sri Lanka. It



is apparent that the majority of NGOs are Colombo based and only a very few cover the whole Island.

Although not an NGO, *Sanasa* (Thrift and Credit Cooperatives - TCCS) is the biggest non-profit private organisation. It has its grassroot level groups all over the Island holding about 4500 staff in different organisations including newly registered *Sanasa* Development Bank. In terms of its relative size, *Sanasa* is comparable in size and function to the Grameen Bank in Bangladesh.

No estimate of the total financial resources of Sri Lankan NGOs is so far available. *Sarvodaya* used to receive a good grants from Western donors but its peak has passed. As mentioned in the previous Section, new NGOs seem to be growing and getting more donor funding during the last few years. They deal mainly with the ethnic conflict and refugee issues.

## **V. Attitude of Governments and Legal Systems for NGOs**

### **V-1. Bangladesh**

The attitude of the Bangladesh government towards NGOs has been consistently positive from the birth of the country.

At the time of independence, the country was heavily damaged by the war in 1971 and also by a series of natural disasters around that time. Thus, there was a pressing need for resources for relief and rehabilitation. This newly born country also needed international recognition as an independent state. Thus the government positively accepted international aid including that of NGOs. A large number of international NGOs came into the country for relief and rehabilitation activities.

During this period, local NGOs were gradually formed mainly for development. Since then, the government has recognised the role and importance of NGOs in relation to development. This is also partly due to the pressure from donor countries which prefer NGOs to be involved in development activities.

At the beginning, the government did not have any integrated policy for NGOs. Many ministries individually approved various NGOs. From 1979 to the early 1980s, the government introduced legal provisions covering all

NGOs. According to the system, all NGOs have to get registered at the Ministry of Social Welfare and obtain permission for receiving foreign funds from the External Resource Division (ERD) of the Planning Commission.

In the 1980s, the government created an NGO Affairs Bureau under the Prime Minister's office (then the President's office) which is the sole institute responsible for all affairs of NGOs on behalf of the government. The creation of this Bureau is a result of a request from the NGOs themselves.

## V-2. India

As mentioned in the previous Section, the Indian Government has positively recognised the importance of NGOs for welfare and development, and accordingly has offered a wide range of subsidies to NGOs since 1985. This subsidy system is very unique in the region in terms of its volume and the range of NGOs it covers.

Most NGOs get their legal registration according to Societies Registration Act of 1860, or Indian Trusts Act of 1882. The Companies Act of 1956 and Charitable and Religious Act of 1920 are also sometimes used for the purpose. It should be mentioned that there are some differences in the registration manner in each State, but this study will not deal with that aspect. As indicated, many of these laws were enacted during the colonial period.

Sharply contrasting this liberal attitude of the government towards NGOs, it keeps a clear and strong attitude toward foreign funds in order to control them. Any NGOs which receive foreign funds have to obtain prior permission following the Foreign Contribution [Regulation] Act (FCRA). This Act was introduced during the emergency period in the mid '70s. It is often said that its aim is to prevent foreign funds flowing to the anti-government movements through NGO channels: Thus, such permission is issued not by the Welfare or Finance Ministry, but by the Home Ministry.

It should be mentioned here that the Indian Government is also reluctant to accept foreign NGOs which like to set up offices with foreign resident expatriates. For instance, there is no Japanese NGO registered in India while there are several in Bangladesh and Nepal, and a few in Sri Lanka.

### V-3. Nepal

Although Nepal government now regards NGOs as its partners for development, its legal provisions for NGOs have not been integrated well and some NGOs do not comply with these regulations. As a result of such non compliance, the government has been frustrated with this noncompliance and has halted the annual renewal of a large number of NGOs since last year.

Soon after the restoration of democracy, Social Welfare Act was enacted in 1992. This Act provides for the establishment of a Social Welfare Council (SWC) as the successor of the SSNCC. The SWC is the sole government agency charged with the coordinating of NGOs, However, affiliation to the SWC is not compulsory for NGOs. Although the majority of Nepali NGOs are affiliated with the SWC, several NGOs remain, outside the SWC.

The Society Registration Act, enacted in 1959 and amended a few times since then, has been the most common law for NGO to get the legal status. While some NGOs are registered under the Company Act of 1964. Others do not have any registration at all. Some of these NGOs have had problems with foreign donors regarding accountability of the utilisation of funds.

Mainly due to non-compliance of regulations by NGOs, the SWC instructed all district administration offices last year to order NGOs to request the SWC's prior permission to receive foreign funds when its annual registration renewal is due, and to halt the renewal in case of non-compliance with this provision. failure of submitting the permission. As neither getting the prior permission from the SWC nor the request of permission at the time of annual renewal, had been a regular practice for most NGOs, many of them have had their registration suspended for months. NGOs are protesting against these measures on the ground that since present administrative organs do not have the capacity to handle the process, and as such these new regulations amount to harassment.

In sum, the legal provisions and the administration system for NGOs in Nepal are still immature mainly due to the short period of democracy. The relationship between the government and NGOs could not develop well in this short period. And also since Nepal did not experience colonial rule, it did not have the benefit of legal as well as administrative infrastructure left by the British in other parts of the region.

#### **V-4. Sri Lanka**

The Sri Lankan government has the least intention to administer NGO activities and the flow of foreign funds in the region. For instance, neither legal registration nor permission to receive foreign funds are compulsory for a NGO in this country, if the NGO does not receive a grant from the government and does not collect funds from the public. In fact, most NGOs have legal status, although there is no penalty for non-registration.<sup>11</sup>

NGOs are registered largely under the Voluntary Social Services Organisations (Registration and Supervision) Act No. 31 of 1980 (VSSO Act). Other relevant acts include the Mutual Provident Societies Act No. 55 of 1949, the Companies Act No. 17 of 1982, the Trust Ordinance No. 9 of 1917, and the Inland Revenue Act No. 29 of 1979. The laws look similar to those of India. The Sarvodaya Shramadana Movement has a unique statutory position.

Recently the government amended the VSSO Act to provide that if there are irregularities in the functioning of an NGO, the government can intervene. Some NGOs are actively opposing this move, while others do not seem to have a strong opinion on this issue.

Since the government's intervention with NGOs is minimal, there is less friction between NGOs and the government except on the point mentioned above. This situation is unique in comparison to the other countries in the region.

#### **VI. National level Associations of NGOs**

There are advantages as well as disadvantages in having an NGO association or a federation in a country. The most positive advantage is that the association has more power to negotiate with the government as the representative of NGOs. One negative disadvantage is that the association may, on behalf of the government, control, if not oppress, some NGOs due to their critical and/or unique ideas and activities. Plural NGO associations, or sectoral NGO networks might be better options than a single association in one country.

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<sup>11</sup> Law & Society Trust, "Note on the Accountability of Non-Government Organisations," *Fortnightly Review*, Issue No. 68, 16 November 1993, Vol IV, p.14.

Bangladesh has one large and single NGO association - the Association of Development Agencies in Bangladesh (ADAB). ADAB has played a vital role, such as the realisation of the government's "one window and one step" service. Some NGOs and individuals are, however, critical of the ADAB as it has been reflecting the political changes in the government.

In India, AVARD (Association of Voluntary Agencies for Rural Development) and VANI (Voluntary Action Network India) are known as national level NGO associations, beside some sectoral networks, such as VHAI (Voluntary Health Agencies in India). Both organisations, however, cover very few NGOs in the country which has about 30,000 NGOs in total.

AVARD was established in 1958 and had J.P. Narayan, the prominent Gandhian leader of the anti-government movement in the mid 1970s, as its President for years. Currently it has several hundred member NGOs.

VANI was established in 1988 as a loose network of like-minded NGOs that shared similar concerns about the Code of Conduct on NGOs that the Government planned to impose. VANI has now a few hundred member NGOs from different parts of India. It has been active in demanding the abolition of the Foreign Contribution [Regulation] Act (FCRA).

In addition, It is needless to say that there are many state and district level NGO associations and networks in India. However, there is a certain need for national level associations as the central government is the main actor for subsidies and regulation of foreign funds of NGOs.

Nepal Federation of NGOs (NFN) is also a large association in the country, having 1200 member NGOs out of about a total of 8,500. This was established in 1991 after the restoration of democracy. Currently NFN is very active in negotiating with the government regarding the need to recommence the renewal of NGOs. In comparison with ADAB in Bangladesh, its organisational size is much smaller, and recently the size has been diminishing due to financial problems.

In Sri Lanka, the National NGO Council was established in 1981. Although this was once active, nowadays few NGOs place importance on it. There are some sectoral networks, such as the Consortium of Humanitarian Agencies, which deal with the ethnic conflict. It seems that, proportionate to the government's reluctance to intervene in the NGO sphere, the need for a

national level NGO association in this country is also small.

## VII. Difference of Operating Sectors

As South Asia is "the poorest, the most illiterate, the most malnourished and the least gender-sensitive region"<sup>12</sup> and 78% of its total population is living in rural areas,<sup>13</sup> rural development and poverty alleviation are the most important sectors for NGOs. In fact, the majority of NGOs in the region are engaged in these sectors. This however, differs country to country due to social and political contexts in which NGOs operate.

A good example is Bangladesh where most of the NGOs have concentrated on rural development and poverty alleviation. As elaborated in the next Section, the methodologies to tackle these problems are also developed in the country.

The operating sector map of NGOs in Nepal is similar to that of Bangladesh as both the countries share similar socio-economic conditions. However, Nepal also has serious problems of trafficking of women, and bonded labour, in addition to Bhutanese refugees. A larger number of NGOs are thus involved in human rights protection than in Bangladesh. On the other hand, it is assumed that the number of independent think-tanks in Nepal is less than in other countries. This can be attributed again to the short period of democracy. There are several private consulting agencies for development.

Sri Lanka apparently has less NGOs involved in rural development and poverty alleviation, as it has already achieved a fair degree of human development. Instead, she has a continuing ethnic conflict which has created multi-dimensional and manifold problems. Sri Lanka has, therefore, more NGOs working in the field of refugee issues, human rights and equality, and policy studies for conflict resolution.

India is more similar to Bangladesh and Nepal than Sri Lanka, but it has a number of NGOs in many fields. Among them, think-tanks some of which receive fund from the government's University Grand Commission (UGC), advocacy NGOs, and corporate philosophy organisations are unique to India.

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<sup>12</sup> HAQ. M, and HAQm K, "Human Development in South Asia 1998" UPL, Dhaka, 1998, p.2.

<sup>13</sup> UNDP "Human Development Report 1998" p.209.

## **VIII. Other Salient Features of NGOs in South Asia**

In this Section, salient features of NGOs in each country, which are either not explained in previous Sections or to be emphasised again, are described comparing them with other countries in the region.

### **VIII-1. Bangladesh: A Laboratory for Conscientisation and Micro-Credit**

Achieving self-reliance through "conscientisation of the poor through functional education, formation of their groups, and their empowerment based on unity to realise justice including fair share" is a strategy for rural development adopted by many NGOs in South Asia since the late 1970s. NGOs in Bangladesh, a laboratory of development aid, have elaborated this conscientisation strategy, publishing several text books based on Paulo Freire's concept of the "Pedagogy of Oppressed" and also organisational structures, such as landless villagers' groups as well as associations of those groups.

This economic strata based strategy have created certain impacts in Bangladesh and in the region. However, it was gradually realised not only that "self-reliance" of poor villagers' group was not easy to achieve, but also that the definition of "self-reliance" was not clear.

Meanwhile, another strategy has been invented in the same laboratory throughout the 1980s by Professor Yunus under the name of the Grameen Bank. This micro-credit strategy is to provide a small capital to individuals as a non-collateral loan. The borrower then participates in a rural market utilising his/her entrepreneurship and earn some income.

Micro-credit is now globally regarded as a panacea for poverty by many national as well as international development agencies, since this brings about more concrete and quick returns to individuals than conscientisation, and more importantly, since this has a market-friendly character.

In Bangladesh, the government and the World Bank have jointly formed an organisation, called the PKSF (Palli Kalayan Sahajya Foundation), to provide low interest loans to NGOs which follow the Grameen Bank model. As the borrowing NGO can secure some profits from the difference between the low borrowing interest rate and the market level ending interest rate paid by the poor, many NGOs have gone to PKSF and multiplied micro-credit, in many cases, in poorer quality.

In Nepal, the Rural Micro-Credit Development Centre (RMDC) has recently been set up and will soon start to finance Grameen Development Banks in five development regions and two NGOs, Centre for Self-help Development (CSD) and NIRDHAN. Although this may not succeed in hilly areas of Nepal where the population is scattered and thus transaction costs will be more than the profit, it is anticipated that it would become popular in the Tarai plain where the majority of the population lives.

Micro-credit is familiar to many NGOs in India, and many organisations have started similar activities but on a much smaller scale. The government, which has its own small credit programmes, has not assisted NGOs with capital funds for this purpose.

Most NGOs in Sri Lanka seem to have some distance from these trends. But there are some exceptions, such as *Satyodaya* in Kandy which still adopts the conscientisation strategy, and *Sarvodaya Shramadana Movement* which has its own micro-credit section and seeks to connect it to the group formation process.

There are a number of studies which point out the limitations and dangers of the strategy itself and/or the manner of its implementation. For instance, most micro-credit schemes tend to leave out weaker sections which cannot participate in market fully without additional support, like training, marketing, information, etc.

Realising these, some conscious NGOs in Bangladesh such as BRAC and ASA, have started to improve this strategy. It is, therefore, important to carefully monitor Bangladeshi NGOs as to how they elaborate on their strategies in relation to rural development and poverty alleviation, so that, NGOs in other countries in the region can learn from the experience of Bangladeshi NGOs.

#### **VIII-2. India: Government's Financial Assistance**

As mentioned in Section IV-2, the salient feature of Indian NGOs is the availability of domestic resources, such as central government's Grant-in-Aid, which does not exist in any other country in the region. Indian NGOs thus are more free from Western donors.



Another point mentioned earlier is that India is more sensitive to foreign money than other countries. "Receiving foreign funds" can spoil the image of an NGO in India. The state patronage plus this sensitivity against foreign funds may lead most NGOs to depend solely on the state.

It seems that receiving foreign funds is not preferable for Indian NGOs because an alien influence may penetrate through it. Logically, however, there is a similar possibility of state influence or control over NGOs through government financial assistance, although this is also subject to the situation of democracy in the country. Anyhow, if the assumption is right, NGOs, a civil society organisation, would lose their most fundamental character that they could be critical to the authority, and are degraded to as apparatuses or accessories of the government for development. In considering the present socio-political situation in India, it can be argued that NGOs should be more aware of this possibility and its consequences.

The core matter is not the original place of funds, i.e. foreign or domestic, but its character, the motive behind the fund, and the long term consequences of dependency on one or a few sources.

### **VIII-3. Nepal: Dump Yard of Aid, Participation, Political Party**

#### **1. Dump Yard of Aid**

While Bangladesh is called a laboratory of aid, Nepal can be named a dump yard of aid as a relatively large amount of foreign funds is flowing to a large number of NGOs in Nepal without proper control. There are several individuals and small groups in developed countries who love the Himalayan Kingdom and want to contribute to something positive, but do not know how to proceed.

A laboratory is better than the dump yard, because an experiment at the laboratory at least requires a hypothesis and end up with a result(s), whereas aid dumping brings about only dumpers' self-satisfaction. They rarely care about the impacts and consequences of aid and/or their effectiveness. As a result, there are many fake NGOs whose main aim is profit making in the country.

This seems to be one of the main reasons for the on-going criticism by the government and the media of NGOs. Those responsible for creating this problem are, however, not in Nepal, but in the North.

## **2. Participation**

For Nepali NGOs, the word of "participation" is almost an indispensable adjective. Almost all NGOs adopt the Participatory Rural Appraisal (PRA) and its various techniques in project operations, and aim at "Participatory Development." In education too, participatory approach is always emphasised by NGOs. No other country in the region uses this word so popularly.

Although participation in development activities is definitely important, its overuse may make participation merely ritualistic and perfunctory. It seems that it is necessary to be more specific: whose participation at what stage, why they participate (or why they do not participate), how they should participate, how the participation is appreciated by authorities etc.

Participation is important, but its application in a vague or ritualistic manner may negate its real importance.

## **3. NGOs' relations with Political Parties**

It is neither realistic nor favourable that a NGO be political, although an attribute of an NGO for the purposes of this paper was that they be "independent from political parties." It is only in Nepal that a number of people have pointed out NGOs affiliation with particular political parties.

It is impossible to investigate the actual affiliation or relations. Also there is a large grey zone between the leaders of an NGO having political views and opinions which nobody can prohibit, and an NGO being *de facto* a subsidiary organisation of a political party. From this point of view, the degree of affiliation may not be fully known, but there are strong public perception on this. As far as the author observed, a few NGOs seem to have close relations with particular parties.

One possible reason why this happens particularly in Nepal is that the number of intellectuals who are usually the main players of both NGOs and in politics is still small in the country.

#### **VIII-4. Sri Lanka: Tolerance and Less Friction**

The most salient feature regarding NGOs in Sri Lanka is, as mentioned in Section V-4, the government's tolerant attitude toward NGOs and foreign funds.

In contrast, other three governments in the region have been positively seeking to regulate them. These governments have probably legitimised their intention based on the need for coordination for development and for prevention against the infiltration of alien influence.

These reasons do not seem well supported if the Sri Lankan situation is considered. As is widely known, Sri Lanka is one of the models of social development. Although the government is not actively coordinating with NGOs.

#### **IX. Additional Comments**

In the era of globalisation, NGOs have been publicly recognised as indispensable partners for development. In other words, NGOs have become a part of the world's development regime. Now they receive more funds to deliver various social services including primary education which was previously an exclusive task of the State, and small credit, which was task of banks.

On the other hand, there has been a traditional perception that an NGO is a representative of local people or a supporter and promoter of local people's movements and organisations. NGOs also pay the role of a watchdog. These general perceptions have however, become much less applicable to NGOs today.

With regard to problems of misuse of funds and/or corruption by NGOs, India and Nepal have faced severe criticism in this regard. Possibly worse is the case of siphoning out funds and the suppression of people by an NGO.

Beside these problems, most NGOs in the region have to depend on donors for funds. Major donors are official ones from the North, but some are domestic ones, such as in India. Anyhow, some degree of donor-drivenness is inevitable for NGOs. Very few NGOs have their own endowment funds and/or income generating activities in the region.

One possibility to overcome problems and limitations mentioned above is to strengthen ties between civil society organisations in the South and North. As global citizens who can put nationalism aside, there are many common points to share. The sound development of civil society organisations including NGOs is one of them, not as donors and recipients, but as partners who need each other for the development of civil society organisation in each side, such ties should be promoted.

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