

ANOMALIES IN NGO LEGISLATIONS

Thesis submitted by

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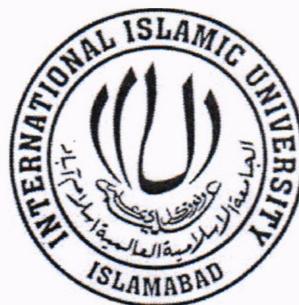
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DECLARATION

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THESIS STATEMENT

“The crucial provisions in NGO legislations need to be isolated and integrated to ensure a harmonized scheme of law in the light of international practices”

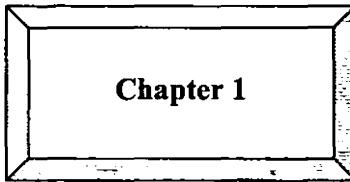
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ACRONYMS AND ABBREVIATIONS

AOA	Articles of Association
BOND	British Overseas NGOs for Development
CBOs	Community Based Organizations
CCP	Code of Civil Procedure, 1908
CNIC	Computerized National Identity Card
CRO	Companies Registration Office
CSOs	Civil Society Organizations
CV	Curriculum Vitae
EAD	Economic Affairs Division
EU	European Union
FBR	Federal Board of Revenue
GOP	Government of Pakistan
HMRC	Her Majesty's Revenue and Customs
IFRC	International Federation of Red Cross and Red Crescent Societies
IHH	International Humanitarian Help
INGO	International Non Governmental Organization
MOA	Memorandum of Association
MOI	Ministry of Interior
MOU	Memorandum of Understanding
NGO	Non Government Organization
NIT	National Investment Trust
NPO	Not for Profit Organization / Non Profit Organization
PCP	Pakistan Centre for Philanthropy
PDMA	Pakistan Disaster Management Authority
PMC	Program Manager Certification
PNF	Pakistan NGO Forum
R&C	Registration and Control
SECP	Security and Exchange Commission of Pakistan
SPM	Senior Program Manager
UK	United Kingdom
VSWA	Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961



Chapter 1

INTRODUCTION

In developing countries generally there is a situation of scarcity of revenues; therefore, the governments are not in a position to accomplish their role of welfare states. The involvement of NGOs in taking over some of the responsibility of government at this crucial time plays a very important role in order to ensure sustainability. As a result the government encourages such organizations by offering them tax exemptions and other tax incentives. The donations to such organization are also being encouraged by the government by allowing rebates to the donors as well.

There are different laws in Pakistan under which Not for Profit Organizations are being formed and operated. These different laws were made to constitute and operate different type of not for profit organizations which will be distinct from each other in respect of their definition, scope, purpose and procedure. But at present these laws are being practiced in place of one another, therefore, various amendments are required for clarity in the legislation in order to isolate them among other legislations.

The objective of this study is not to elaborate the existing legislations and procedures of different existing laws of NGO and not to write any guide book, but in fact the purpose of study is to identify and discuss the purposes and scope of creating these different laws related to NGO and the study includes the suggestions regarding amendments in the legislation in order to achieve the harmonized scheme of law on the basis of international practices related to NGOs. Furthermore some amendments will be suggested to make these laws separate from each other with respect to their purpose of promulgation or enactment.

1.1 Definition of NGO

The word NGO has not been defined in any legislation related to NGO. The word NGO is being generally used for organizations established for the purpose of welfare activities for general public. However, the word NGO has been generally defined as under:

"A non-governmental organization (NGO) is any non-profit, voluntary citizens' group which is organized on a local, national or international level, task-oriented and driven by people with a common interest."¹

Blacks Law Dictionary defines Nongovernmental organizations as under:

"Any scientific, professional, business or public-interest organization that is neither affiliated with nor under the direction of a government; an international organization that is not the creation of an agreement among countries, but rather is composed of private individuals or organizations. Examples of nongovernmental organizations, which are often granted consultative status with the United Nations, include Amnesty International, Greenpeace, and the International Committee of the Red Cross."²

Rafiq's Law Dictionary defines Nongovernmental organization as under:

"A private international organization that acts as a mechanism for cooperation among private national groups in both domestic and international affairs, particularly in economic, social, cultural, and technical fields."³

The Johns Hopkins University conducted research on the scope of "nonprofit". In the study the word nonprofit has been defined as:

- (i) "Organizations, that is, institutionalized to some extent;
- (ii) Private, that is, institutionally separate from government;

¹ <http://www.ngo.org/ngoinfo/define.html> (accessed in May 2009)

² Blacks Law Dictionary, Bryan A. Garner, Eighth Edition, 2004 at 1080

³ Rafiq's Law Dictionary, Muhammad Abdul Basit, Federal Law House, First Edition, 2007 at 719

- (iii) Non-profit-distributing, that is, not returning profits generated to their owners or directors;
- (iv) Self-governing, that is, able to control their own activities; and
- (v) Voluntary, that is, non-compulsory and involving some meaningful degree of voluntary participation.”⁴

The word “philanthropy” has also been used for welfare activities, whereas there is a clear distinction of the word charity and philanthropy. It has been explained that “this overlap in meaning and use misses a crucial distinction between the two words. Charity is aimed at providing immediate relief to some lack or need. This commonly occurs in the shape of welfare disbursements, where people ‘in need’ are typically provided with food, shelter or money. Philanthropy has the broader and longer-term connotation of ‘social investing’ actions that move beyond charity towards building human and social capital.”⁵

The word Nongovernmental organizations (NGO) and Not for Profit Organization (NPO) are normally used simultaneously. As the word NGO has been defined differently by each writer, however, the litmus test of the NGO is the non-distribution of its profits and assets among their members. It means that NGO may do commercial activities by way of any business or investments and profits but if the profits, returns and assets are not for the division among their members and all their sources are solely towards the accomplishment of their declared aims and objectives of social development then this organization is said to be an NGO.

The other important aspect in determining the status of NGO is the ownership rights of the organization. In business setups the ownership of the organization lies with the shareholders or proprietors, whereas in NGO the members are having the controlling rights and they cannot be termed as owners of the organization, therefore, they cannot sell their ownership rights to any other person, in contrast to the business organization.

The right to establish NGO or unions has also been guaranteed by the Constitution of Pakistan in Article 17(1), which states as under:

⁴ The Center for Civil Society Studies at Johns Hopkins University defines nonprofit - <http://www.idealists.org/info/Nonprofits/Basics2> (accessed in May 2009)

⁵ The Legal Framework of the Non Profit Sector in Pakistan, Zafar H Ismail, <http://www.pide.org.pk/pdf/psde%2018AGM/The%20Legal%20Framework%20Of%20The%20Nonprofit%20Sector.pdf> (accessed June 2009)

"Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality."⁶

Types of NGO

The NGOs can be classified by way of orientation and by level of co-operation.

Classification of NGOs by orientation⁷:

- **Charitable Orientation.** The NGOs which are involved towards the direct help of the poor people by way of providing them food, cloth, medicine, housing etc. in times of war or disasters.
- **Service Orientation.** The NGOs which are involved in the provision of services to the beneficiaries like health service by way of establishing hospitals, medical centers, education services by establishing, school, college, universities and transport service etc.
- **Participatory Orientation.** The NGOs which are implementing the projects by involving the local people of the locality in self-helped projects by contributing cash, tools, land, materials, labour etc.
- **Empowering Orientation.** The NGOs which are not directly associated with the charitable activities but in philanthropic activities for the social, political, economic development of the country.

Classification of NGOs by operation:

- **Community-based Organizations (CBOs).** These are the NGOs which arise by the initiatives of the community; therefore, they are called Community Based Organization. CBOs are normally established for the benefit of the beneficiaries of locality; hence these are small organizations but may also be supported by NGOs of national or international level.

⁶ Constitution of Pakistan 1973, Article 17(1), M. Rafiq Butt, Mansoor Book House, Edition 2003 at 73

⁷ <http://www.gdrc.org/ngo/ngo-types.html>, (accessed on June 2009)

- **Citywide Organizations.** The charitable activities of these organizations are restricted to a city hence called as Citywide Organization, The Chambers of commerce and industries are the example of these organizations.
- **National NGOs.** The NGOs which are working at national level, means they have large number of beneficiaries and huge budgets which may also lead to large scope of work as well. The examples of these NGOs are Edhi Welfare Trust, Pakistan Red Crescent, Agha Khan Foundation etc. These NGOs also have different branches in different cities of the country.
- **International NGOs.** These NGOs are normally working as donor agencies and mainly provide funds to the local NGOs. As these NGOs are not directly providing benefits to the beneficiaries rather they have some contractor or local agencies between them. International NGOs are those which are working in more than one country. The examples of these NGOs are International Humanitarian Help (IHH), Qatar Charitable Organization, International Red Cross etc.

1.2 NGO Laws in Pakistan

Not for Profit Organizations are being formed and operated in Pakistan under different laws. These are (a) **Societies** under the Societies Registration Act, 1860, (b) **Social Welfare Agencies** under the Voluntary Social Welfare Agencies (Registration and Control Ordinance of 1961, (c) **Company not for profit** under the Companies Ordinance of 1984, (d) **Cooperative Society** under the Cooperative Societies Act of 1925, (e) **Trusts**, under the Trust Act of 1882 and (f) **Charitable Endowment Trusts** under the Charitable Endowment Act of 1890. There are some other laws for the operation and regulation of nonprofit organizations in Pakistan.

1.3 Need for study

These different laws were made to constitute and operate different type of not for profit organizations which will be distinct from each other in respect of their definition, scope, purpose and procedure. But at present these laws are being practiced in place of one another, therefore, various amendments are required for clarity in the legislation in order to isolate them among other legislations e.g. The Trust Act, 1882 is “An act to define and amend the law relating to Private

Trusts and Trustees”⁸. It means that this law was enacted only for the purposes of private trusts but the legal practice has stretched this act for the establishment and operation of Public welfare trusts, whereas the act does not provide any provision in this regard. Furthermore, NGO registered under any NGO registration Act cannot appeal for any sort of donation “except in accordance with the provisions”⁹ of Charitable Fund 1953, whereas, an organization established under any of the above law is using the benefit of non presence of any such restriction in that particular law. Hence the clarity in the existing legislation is required in order to isolate these laws with respect to the purpose of enactment or promulgation.

Furthermore, the extensive modernization is also required in order to harmonize them with current international practices and procedures. There are many other bottleneck/catches which are also needed to be addressed in these legislations to step in to the new era of international world. Moreover, in many stances the accountability mechanisms have loosely been enforced and applied inconsistently.

Due to the huge funding and development programs of the non profit organizations these organizations are now included in the Corporate Sector of the country. Many development Projects, hospitals, universities, educational institutions and different business ventures / commercial activities are being executed under the umbrella of NGOs.

After the enforcement of Kerry-Lugar bill, it is being considered that the role of NGOs will rise up in the country and the major part of aid under said act shall come through NGOs for the uplifting of the country. According to “Enhanced Partnership with Pakistan Act of 2009” which is publically known as Kerry-Lugar Bill the following assistance has been approved by the American Congress for Pakistan:-

“These are authorized to be appropriated to the President, for the purposes of providing assistance to Pakistan under this title and to provide assistance to

⁸ Heading of preamble of Trust Act, 1882, Mansoor Book House, Edition 2003 at 29

⁹ Section 3(1) of the Charitable Funds (Regulation of Collections) Act, 1953, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, Edition 2007 at 173

Pakistan under the Foreign Assistance Act of 1961, up to \$1,500,000,000 for each of the fiscal years 2010 through 2014.”¹⁰

Therefore, it is imperative to evaluate the existing legislation relating to not for profit organizations by keeping in view the international legislations of NGO and social and cultural needs of our society. So that the NGOs could perform in such environment where they can materialize their aims and objectives actively but under the supervision of the authority in a systematic way that their performance could not be hurt at any cost.

Many reports, working papers and articles have so far been published on the legal frame work of NGOs in Pakistan. The significant contribution made in this area are “The Legal Frame work of the nonprofit sector in Pakistan”¹¹ by Mr. Zafar H. Ismail; “Policy and Legal Frame work for NGOs in Pakistan”¹² by Mr. Irfan Mufti; “Legal Frame work for NGOs in Pakistan”¹³ by Ms. Farida Shaheed and Sohail Warraich; “Laws and Regulations governing non-governmental organizations in Pakistan” by Ms. Sadiqa Salahuddin¹⁴; “Nonprofit Sector in Pakistan” by Dr. Aisha Ghaus-Pasha, Haroon Jamil and Muhammad Asif Iqbal.

Moreover, few bills were proposed and sent to the legislators for the amendment in the present legal system related to NGOs, but the same could not compel or appeal the legislators to identify the real issues, impediments, contradictions or confusion and direction to move forward.

Therefore, this endeavor is made to identify in detail the anomalies in the existing main legislation of NGO by addressing every legal issue relating to them along with proposed improvement required to be made in these areas.

¹⁰ Section 102(a) of Enhanced Partnership with Pakistan Act of 2009 - http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:s1707enr.txt.pdf (Which publically known as Kerry Lugar Bill was accessed in Feb 2009)

¹¹ The Legal Frame work of the nonprofit sector in Pakistan, <http://www.pide.org.pk/pdf/psde%2018AGM/The%20Legal%20Framework%20Of%20The%20Nonprofit%20Sector.pdf> (Accessed in Feb 2009)

¹² Policy and Legal Frame work for NGOs in Pakistan http://zunia.org/uploads/media/knowledge/Policy_%26_Leg_Fmwrk_Pakistan.doc (Accessed in Feb ... 2009)

¹³ Legal Frame work for NGOs in Pakistan <http://www.icnl.org/knowledge/library/index.php> Accessed in May 2009)

¹⁴ Laws and Regulations governing non-governmental organizations in Pakistan <http://www.icnl.org/knowledge/library/index.php> Accessed in May 2009)

1.4 Abstract

The study provides different important subjects, related to NGOs, in the eyes of different laws which explain with clarity the scheme of different legislation to understand the variances in these laws, the variances which are essential as per the purposes of its enforcement and variances which are against the uniformity of legislations of NGO as well as the study also discusses the amendments required for the purpose to harmonize these laws with the international standards and legislation of NGO.

The study has been divided in eight chapters. It has covered almost all legal important issues related to an NGO. It has discussed the anomalies related to the establishment of an NGO. Chapter "Establishment of an NGO" covers the differences in the registration process under different laws of NGOs and the requirement of different documents under each category. It has also discussed the scope of work allowed and restricted under each category of registration, as well as the restriction on the selection of name for an NGO (if any) under each law.

The next chapter contain about the requirements of Constitution of the NGO. Constitution is the basic document of an NGO under which the business of the NGO is being run. Under this chapter rights, duties and liabilities of member under each law of NGO has been discussed as well as the requirements of meeting and its quorum under each category, various process involved in the dissolution of an NGO under each category and the presence of conflict with the clauses of tax laws.

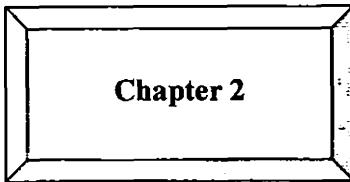
Chapter four of the study enumerates the importance and role of regulatory body for an NGO. In fact under various laws there is no regulatory body present which regulate the functions of NGO. This chapter also discusses the NGO's obligations towards the regulatory body (if any) or other departments of the Government or assignees.

Financial Administration is the critical aspect of the NGO, which has been alleged as a matter of routine on NGOs. The study discusses the source of funding and its right of appeal for fund raising under different laws of NGO in Pakistan and furthermore, if there is any restriction on right of appeal for fund raising is present then whether the same has clearly been provided under the other laws or not. What law provides under each category of registration for the administration of finances shall also be observed with its pros and cons.

Chapter six of the study discusses the laws to deal with the International NGOs which are inclined to work in Pakistan. The registration of international NGOs in Pakistan, Regulatory bodies for international NGOs in Pakistan, Regulatory role of tax department and INGOs Obligations towards the law of NGO in this country has been discussed in this chapter.

Chapter seven “International Scheme of Legislations” highlights the areas to harmonize the present scheme of NGO legislation in accordance with the international standards.

In last chapter of conclusion and suggestions, the important points for the area of concern of a statute shall be highlighted with recommendations.



Chapter 2

ESTABLISHMENT OF AN NGO

2.1 REGISTRATION

2.1.1 Mandatory or discretionary Registration

In our country two or more persons can associate to pursue for welfare activities for which no legal formalities are required to be completed, hence this is being considered as a simplest forum. This forum does not want to give the staying role to the Government in their welfare activities rather to have their personal control and decision making power without any hindrance of other person. They are of the view if the donors have confidence on them then why they should go to involve themselves in the compliance of a huge list of obligations.

The legal framework governing the nonprofit sector in Pakistan is both outdated and confusing. There are a number of laws under which a nonprofit organization may be registered. Furthermore, due to guaranteed right of two or more persons to form a union or association under article 17 of the Constitution of Pakistan the registration of such organizations cannot be made mandatory. Although, the Voluntary Social Welfare Agencies Ordinance has made the registration of NGOs mandatory but it faced criticism of contradiction of constitutional right, but due to weak enforcement of the said law the matter is still not agitated in any courts of justice. A large number of organizations hence are not registered in Pakistan. Thus, the sector may be divided into 'registered' and 'un-registered' NGOs.

2.1.2 Registering Authority

As there are different laws for the registration of NGOs hence the registering authorities are also large in numbers. But except the SECP no authority has such detailed information about the registered NGOs. For the Association under section 42 of the Companies Ordinance, 1984 the

members have to apply for the availability of name which after due verification from the record is being allowed, whereas no other authority has complete record of registered NGOs under their relevant law, hence cannot confirm the availability of name of NGO rather demanding undertaking from the NGO that no such NGO is being working in their locality with the proposed name. For the registration of societies under Societies Registration Act, 1860, District Office of the Industry Department has also been nominated as the office of the Registrar of Societies. Although there is no law for the governing of Public Trusts, however, these are being registered under Registration Act with the office of Sub-Registrar. The social welfare agencies are being registered by Ministry of Social Welfare and Special Education at Federal level and Provincial Social Welfare Department agency in the provinces. The Registrar of Companies also register the Association under section 42 of the Companies Ordinance, 1984, however, the head office of Securities and Exchange Commission of Pakistan at Islamabad has to be approached for license before the submission of registration documents to the Companies Registration Office.

The authorities either should have complete record of registered organization under their respective laws or the registration may be made under single registering authority, even under different law, as to provide a harmonized scheme of registration process.

2.1.3 Documentations, Requirements and Process of Registrations

The registration requirements are different under the various laws, but all of them involve a large amount of documentation. Different documents and procedure has to be followed along with the different time line and cost. The amendments in the present legislation is required to avoid this lengthy process and a huge list of documents in order to encourage the civil society to perform their welfare activities in a legal and documented way rather to keep themselves under the status of unregistered organizations.

For the registration of Society under Societies Registration Act, 1860 an application to the Registrar of Societies has to be sent along with the following documents:

- Memorandum of Association
- Rules and Regulations of the society.
- List of members not less than seven
- List of office bearers / Managing Committee

- Undertaking from the applicant that no society with this name has already been working in this locality
- Proof of society address
- Receipted challan of prescribed fee
- Attested copies of CNIC.¹⁵

No time line has been specified under the statute, furthermore, the restriction of scope of work may create collusion between the members and the officer in charge. Therefore, the members are left with only two options whether to remain themselves as unregistered society or to bear the underhand cost of registration. Normally Memorandum of Association contains many works related to relief activities but due to non presence of these various welfare activities directly in the act and the unlimited power of the officer in charge create this problem. Even though, this is considered to be one of the softest Acts with respect to registration requirements and to reporting under other laws.

Zafar H. Ismail in his study on the project “The Legal Framework of The Nonprofit Sector in Pakistan” has also termed the NGO laws as draconian laws in Pakistan, he reports in the conclusion as under:

“The overall implications of the legal framework that governs the nonprofit sector appears to be a mixed bag of laws ranging from the draconian to the very lax. In conclusion one would not be wrong in stating that while the laws are generally supportive of the sector, the discretion permitted in implementation creates an environment which is not encouraging.

Unregistered, unincorporated associations of individuals is not prohibited by law. This is perhaps the most important existing public benefit sub-sector giving expression to the benevolent urge to perform acts of self help, public benefit and philanthropy. A telling testimony to the cumbersome and inhibiting environment for registration has been recorded by Ghaus -Pasha, Jamal and Iqbal [2002] when they conclude that, of the nearly 45,000 estimated number of organizations (excluding those involved in trade union and political activities) working in the non-profit sector more than 34 percent have preferred

¹⁵ Section 2 & 3 of the Societies Registration Act, 1860, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Laws House, Edition 2007 at 5

not to register themselves, even under the VSAW Ordinance of 1961 where this is mandatory.”¹⁶

For the registration of Trust the documents and procedure in place consist of the following documents required to be presented before the office of the Sub / Joint Registrar:

- Trust Deed containing Aims and objectives along with the Rules and Regulations of the Trust on stamp paper of worth of Rs.500 or as per the value of property being transferred in the name of Trust.
- Resolution from the Board of Trustees authorizing the person to present this deed of trust before the sub-registrar on their behalf.
- Proof of registered office address.
- List of Trustees
- Attested copies of CNIC.

Although it is the fastest process being used for the establishment of an NGO. However, the officer and the staff of the Sub-Registrar offices are normally not equipped with this process due to its registration under different Act, Registration Act, 1908, neither any process nor the list of required documents are mentioned in the legislation. In fact the registration under section 18 of the Registration Act, 1908 is also not mandatory, the said section just mention that “any document not required to be registered under section 17 may also be registered under this act”¹⁷, therefore, the trust is being registered under optional registration section. Furthermore, the registration of trust as compared to their other routine work is very rare, therefore, the registration always becomes critical and has normally always been handled by bearing the extra underhand cost.

The social welfare agencies are being registered by Ministry of Social Welfare and Special Education at Federal level and Provincial Social Welfare Department agency in the provinces. The registration application has to be accompanied with the constitution of the agency. The

¹⁶ The Legal Framework of The Nonprofit Sector in Pakistan by Zafar H. Ismail

<http://www.pide.org.pk/pdf/psde%2018AGM/The%20Legal%20Framework%20Of%20The%20Nonprofit%20Sector.pdf> (Accessed in June 2009)

¹⁷ Section 18, of the Registration Act, 1908, Mansoor Book House, Edition 2003 at 60

constitution must contain all aspects as mentioned as per Schedule I of the Rules¹⁸. The minimum number of members although has not been mentioned in the statute however, the minimum number of members required by them are eleven. The reporting requirements as compared to the Societies Registration Act are much higher in this legislation. As the Agencies have to publish their annual reports and audited accounts as well as there is restriction that they have to receive all funds in separate bank accounts. No time line is given for completion of registration process and further it comes purely under the Ministries, hence, the time period for the completion of registration process always becomes a question.

The registration of Association under section 42 of the Companies Ordinance, 1984 at first stage requires the license from the Securities and Exchange Commission of Pakistan (SECP) at Islamabad.

“A not-for-profit association (more commonly called an NGO) may be registered as company under the provisions of the Companies Ordinance, 1984. Any such association is required to obtain license under Section 42 of the Ordinance read with rule 6 of the Companies (General Provisions and Forms) Rules, 1985 from the Security and Exchange Commission of Pakistan (the Commission) prior to its registration as a company limited by guarantee. The license is issued for a period of five (5) years, renewable for further term (s) of five (5) years each.”¹⁹

The SECP issues license after due consideration of the application that the proposed NGO is bonafide with all its aspects. Furthermore, in addition to the cumbersome documents it also requires the clearance from Ministry of Interior in case where the NGO is expecting or receiving foreign donations or any one or more member of the NGO is foreigner. As no time limit is mentioned in the statute for the completion of this process hence it may take months or especially in cases of interior clearance it may take years for clearance from Ministry and they are also not bound to answer or mention the reasons of pendency of clearance. Anyhow after receiving the license from SECP, the application for the incorporation / registration of the Association has to be processed with Companies Registration Office (CRO). Furthermore, the license terms have to be incorporated in the Memorandum of Association and it cannot be altered without prior approval from SECP.

¹⁸ Rule 3, Schedule (I), Elements of the Constitution of an Agency, The Voluntary Social Welfare Agencies (Registration and Control) Rules, 1962, Federal Law House, Edition 2007 at 206

¹⁹ Guide lines for the Registration u/s 42 of the Companies Ordinance, 1984 - http://www.secp.gov.pk/Guides/aso_42_16_01_2012.pdf (Accessed in June 2009)

Once the process of Memorandum and Articles of Association is finalized by the head office then the process of its incorporation starts with the Companies Registration Office by filing other necessary documents like Form 1, 21, 27, 28, 29, power of Attorney, Copies of CNICs²⁰ and then Association become incorporated. But when they proceed for tax registration and later on tax exemption it comes to the knowledge of the members that some mandatory clauses are required to be incorporated in the Memorandum for which the process of amendment in the Memorandum of Association starts. Therefore, at least the SECP should ensure at the time of approving the memorandum and articles of association of the Association that the relevant statutory clauses required for the purpose of tax exemptions have been incorporated in their constitution.

The documentation requirement for the registration should be made simplest in a harmonized way as the basic requirement for the registration under each law should be the Constitution of the NGO, particulars of members, registered office address or some undertakings. Therefore, it is possible to design the forms and documents in such a way which can harmonize the documentation, furthermore the process of registration especially in association under Companies Ordinance and Agency under social welfare agencies should be made simplest to encourage the registrations. Furthermore, the registrations should be encouraged with some obvious benefits because the registration in fact cannot be made mandatory as it is the Constitutional right of the public to form any association.

2.1.4 Benefits of Registration:

There are number of welfare activities which are being conducted by unregistered organizations, No law restrict the execution of welfare activity by one or more person under a registered forum. Especially in our culture of Islamic values a large number of zakat and khairat has been distributed by following the Islamic concepts. The people generally not go for such institutes which are registered; they distribute their donations only on the basis of their personal satisfactory relation. Until laws and enforcement authorities do not place restriction on such organization to get themselves registered in order to receive these donation, they will not like to opt the status of registered organization. The other aspect by which these unincorporated charities can be forced to

²⁰ Section 30 of the Companies Ordinance, 1984, Practical Approach to the Companies Ordinance, 1984 by Nazir Ahmed Shaheen, Edition 2004 at 125

get themselves registered is the benefits available to a registered NGO. Therefore the legislator should also focus on granting of benefits to registered organization rather only on focusing on punitive measures.

"There are some benefits available to a registered NGO which are as follows:

1. *The ability to enforce by-laws;*
2. *Statutory requirements that force an NGO to become organized;*
3. *Legal status "at the official level and among donors;"*
4. *The ability to open a bank account;*
5. *The ability to sign contracts;*
6. *The ability to indemnify employees; and*
7. *The ability to qualify for financial assistance and tax exemption."*²¹

Furthermore, the benefits of obtaining the status of approved NPO can only be acquired if the organization is a registered NGO. But NGOs are not automatically declared as an approved NPO just after getting themselves registered, they have to follow a cumbersome process and documentation to become eligible for this approval. The approval can be granted by the Federal Board of Revenue if they meet specified conditions. The approval remains valid until withdrawn for non-compliance. Allowance to tax payers in respect of donations is only possible if the institution is approved for this purpose.

The legislators should consider the provision of further benefits and recognitions to the registered NGOs on the basis of their performance and compliance which shall encourage the voluntary registration of NGOs.

Grant B. Stillman in his project "NGO Law and Governance" has defined some benefits of registration of NGO, these are explained as under:

1. "Unincorporated associations are simple to get started, but in practice it becomes complicated for a nonlegal association to enter into contracts of employment with its staff,

²¹ Pakistan Civil Society – Past and Present http://www.ngohandbook.org/index.php?title=Pakistan_NGO_Sector (Accessed in Feb 2010)

open bank accounts or lease premises. There are obviously legal and financial risks for founders to make such commitments and that is usually the reason why another form becomes inevitable when the NGO reaches a certain size.

2. Registered charities and foundations usually enjoy tax exemption privileges, so it is a worthwhile abiding by the form restrictions and reporting requirements.
3. The key benefit for founders and members of a nonprofit corporation is that they are not ordinarily personally exposed to the debts and other liabilities incurred by the NGO, which now has a separate legal personality of its own. Responsibility for the NGO's debts and liabilities stops with the cash, property and other assets held by that NGO.”²²

2.1.5 Artificial Judicial person

“Both non-profit companies and societies have the legal status of judicial entities. But social welfare agencies clearly do not have a corporate status. The relevant law for social welfare agencies is a law, which registers agencies, but does not create entities. As such, they do not acquire the status of juridical entity through their registration.”²³ However the NGO can be sued with its own name and they institute any case against any person or organization by its own name, but without having the right of owning any property in the name of NGO.

2.2 Name

The criteria and its procedure for the selection of name of an NGO should be provided in the laws, whereas the present legislation does not fulfill the requirements. Not only the identical names should be discouraged to protect and safeguard the name of the existing serving NGO but the law should also provide some other conditions or restriction to protect that the name is not inappropriate or deceptive or is designed to exploit or offend the religious susceptibilities of the people or designed to reflect the unauthorized patronage of any importance.

Furthermore, as the NGOs are being established under various laws, therefore, the laws should also provide some identification which enables the public to understand that under which law the NGO is established and governed.

²² NGO Law and Governance by Grant B. Stillman <http://www.adbi.org/files/2007.12.26.book.ngo.law.governance.pdf> (Accessed in Feb....2010)

²³ Policy and legal Frame work for NGOs in Pakistan – Irfan Mufti

2.2.1 Identical names

The Companies Ordinance, 1984 provides that the name of NGO should not be identical to the name of NGO already in existence but other laws for NGO do not provide the same. However, in Society registration the undertaking from the members is being taken at the time of registration with the subject that no other NGO with the same name already exists in their locality. But the NGO with the same name may be registered at any other place or on the jurisdiction of other Registrar, as they do not have central electronic database to avoid the registration of another NGO with the same name already in existence.

2.2.2 Mandatory suffix of NGO's name

There are different words being used by NGOs in their name e.g. Trust, Society, Foundation, Agency, Welfare Organization etc. which create confusion for the general public to understand their legal status. The reason for this confusion is due to non-availability of any mandatory word required to add in the name of the NGO which makes easier to understand their legal status.

2.2.3 Prohibited suffix

There is no prohibition specifically mentioned in any law for not using any specific word which may refer to the legal status of the NGO under any other Law related to NGO. e.g. it is not mentioned in the Societies Registration Act that the word "Trust" cannot be used as suffix with NGO name, therefore, the Society with the name of Trust can be registered under Societies Registration Act, which may confuse the public that this NGO is registered under Trust Act. In practice some time on the basis of registrar's judicious capability some verbal instructions are being imposed not to use some specific word, which in fact have no ground to the satisfaction of promoters or legal counsels.

2.2.4 Mistreat of suffix

The use of different suffix confuses the public or the donor about the legal status of the NGOs. For example it is not mentioned in any legislation about the use of particular suffix, so an Association under Section 42 of the Companies Ordinance, 1984 can use the suffix as "Society" even not being registered under Societies Registration Act, 1860 or "Trust" even not incorporated under Trust Act. Hence the mistreat of suffix should also be condemned but only after necessary amendments in their relevant legislation.

2.2.5 Suffix conversion with change in status

As there is no mandatory suffix which differentiates the NGOs legal status, hence law also does not provide the conversion of legal status of the NGO under one law to another. For example an organization registered under society may convert its status into agency or charitable company but due to absence of such restriction of suffix the change of its legal status cannot be portrayed through its name at all times.

2.3 Scope of work of NGOs

2.3.1 Scope of work under various laws

Different scope of work has been allowed under different NGO Laws, but it does clearly integrate or disintegrate them in respect to the scope of work. The question is not understandable that details of scope of works has been mentioned in the laws along with the word charitable purposes, whereas it is clear that NGOs are being established for charitable or philanthropic purposes then what compels to mention the description of work, it is obvious that no illegal activity shall be allowed, therefore, the mentioning of details create confusion.

Section 20 of the Societies Registration Act, 1860 provides the list of work or the scope of work of NGOs under which Societies can work under Societies Registration Act, 1860.²⁴

The question arises from the plain reading of the scope that whether the societies other than charitable societies can be governed under this Act. Whether, all other purposes mentioned other than the charitable societies are not for charitable purposes. Whether, any other purpose or activity which is not mentioned in this scope cannot be governed under this Act. The answer of all such questions shall be “negative” therefore; it creates confusion for the followers.

As regard to Trust Act, 1882, it provides that it is an Act to define and amend the law relating to Private Trust and Trustees. Therefore, this Act is not for the purpose of NGOs because their purpose is to serve the humanity in general or public benefits. Beneficiaries in private trust are specific individuals, i.e ascertained person or capable of being ascertained. Beneficiaries in public trust are general or a class thereof incapable of ascertainment.

²⁴ Scope of Work , Section 20 of the Societies Registration Act, 1860 “charitable societies, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions instruments, or designs and Deeni Madaris, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, Edition 2007 at 15”

Hence the practice of using the Trust Act, 1882 for the establishment and governance of public trust is not correct. Therefore, the law should specifically mention the provision that no NGO for public benefit can be registered or governed under this Act.

The word trust and waqf are used simultaneously but contains different concept and being run under different laws. No religious motive is required for the establishment of a trust whereas the Waqf under Muslim law is generally made for religious and charitable purposes. The property of the trust vests in the trustees who control the affairs of the trust, whereas the Waqf property vests in God and is being managed by Mutawalli of the Waqf.

Similarly the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 provides the scope of activities under which an agency can work under this act. The detail of these welfare services are mentioned in the Schedule, part of this act.²⁵

Although it covers almost many areas but still there are many areas which are covered under the specified purpose but their aim is for general public benefit, so whether an organization dealing with those purposes can be incorporated under this act? Further, this creates problems at the time of registration of agency particularly it then depends on the officer in charge of the registration department whether to allow the registration of agency which includes some other purposes which are not categorically mentioned in the Act, which lead to mal practices, as well. The law should be crystal clear as well as it should also provide the extension up to which the meaning of specified purposes can be extended, as it is mentioned in the preamble of the Act, that it is an Ordinance to provide for the registration and control of voluntary social welfare agencies and by agency it means an organization established by persons of their own free will for the purpose of welfare services furthermore, law has placed restriction that no agency shall be established or continued except in accordance with the provision of this Ordinance, so how it will be possible for an organization for welfare activities but with some other object which are not specified in the schedule to work as an NGO in Pakistan.

The Associations under section 42 of the Companies Ordinance, 1984 can only be incorporated for the purpose of promotion of commerce, art, science, religion, sports, social services, charity or

25 Scope of Work, Schedule of the Voluntary Social Welfare Agencies Ordinance, 1961 "child welfare, youth welfare, women's welfare, welfare of the physically and mentally handicapped, family planning, recreational programmes intended to keep people away from anti-social activities, social education, that is, education of adults aimed at developing sense of civic responsibility, welfare and rehabilitation of released prisoners, welfare of juvenile delinquents, welfare of the socially handicapped, welfare of the beggars and destitute, welfare and rehabilitation of patients, welfare of the aged and infirm, training in social work, co-ordination of social welfare agencies" Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, Edition 2007 at 203

any other useful object²⁶ under the license issued by Securities and Exchange Commission of Pakistan with the intention of the promoters to apply its profits, if any, or other income in promoting its objects and to prohibit the payment of any dividend to its members. Now a days a restriction has also been placed by the SECP at the time of granting license that the Memorandum of Association of the proposed association should contain single object which is again creating problems and confusion for those who wants to work for more than one field on the basis of their commitments or past experience in these areas of work. Therefore such restrictions which are even not described in the statute should not be imposed as the word charity covers all those aspects for which the purpose is to provide benefit to the general public without the intention of earning profit. Therefore, the agencies should encourage the registration of NGOs rather than to impose such illegal condition or unwarranted restriction which keeps these organizations to work in the status of unincorporated organizations.

The Charitable Funds (Regulation of Collections) Act, 1953 only "provides for the regulation, administration and accounting of collections of charitable donations and for the prevention of frauds"²⁷. This Act is not for the registration and establishment of NGO, rather it is in fact the compulsion on the NGOs not to collect the donations / funds or appeal for the same except before taking the permission for the same under this Act. It also creates question that why a separate act was required for this purpose instead of incorporating this amendment in the present legislation of NGOs. Furthermore, if these changes have become enforced after the passing of said Act, then why these necessary restrictions have not been incorporated in other NGOs laws.

2.3.2 Prohibited scope of work

The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 preclude the scope of religious teaching, worship and political activities. Other NGO legislation does not place such specific restriction of scope. The other legislation have specifically detailed out the scope of work allowed, it means the aims and objectives not covered under these details cannot be regulated by NGOs under these laws. The question arises that if the legislator decided to treat the scope of religious teaching or worship, deeni madaris²⁸ under different way then why this scope has been specifically included in the Societies Registration Act, 1860 because it is also an Act

²⁶ Section 42 of the Companies Ordinance, 1984, Compilation of Corporate Laws, Federal Law House, Edition 2008 at 28

²⁷ Preamble of The Charitable Funds (Regulation of Collections) Act, 1953, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, Edition 2007 at 169

²⁸ Section 21 of the Societies Registration Act, 1860, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, Edition 2007 at 15

which relates to NGOs, and why there should not be a separate legislation for this specific purpose. Further, if it comes under NGO then why this scope is not allowed in all NGO legislations.

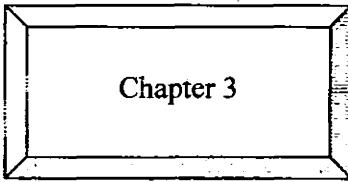
In short it can be stated that all activities / scope of work related to public welfare and not for the purpose of profits / assets distribution among its members should come under NGO ambit, and there should not be any restriction in their scope of work or activities which are ultimately for the public welfare.

2.3.3 Mistreat of scope of work

Different scope of work has been allowed under legislation with the exception of word "charitable activity". The word charitable activity was either present in their original legislation or comes after amendment in the said legislation. Therefore, due to vast meaning and scope of this word as discussed earlier all activities performed by NGOs are for charitable or philanthropic purposes, hence scope of work cannot be restricted after the said amendments. However, a legal due diligence is required to see as to why the list of scope of work has been mentioned along with the word of charitable in the statutes.

2.3.4 Identical scope of work

The scope of work either should be the same in all laws related to NGO or it should be different under each legislation. The identical scope of work under various legislations of NGO creates confusion for the public to understand and decide under which legislation they have been registered or incorporated. Hence there should be different scope under different legislation or same scope under all legislation but with the acceptance of different rights and obligations of the members, which can make the members easy to decide on principles that under which legislation or status the organization wants to establish and govern themselves. Furthermore, the status should be progressive which enables the members to improve their status of compliance to laws which obviously also improve the reliance of public in such organizations.



Chapter 3

CONSTITUTION OF THE NGO

3.1 Body of constitution

3.1.1 Requirement of Constitution

Written constitution / rules and regulation are mandatory for NGO registered under any law related to NGO. Generally the requirements for the Constitution of the NGO (Rules & Regulations or Deed etc.) under NGOs laws are the same as to presence of the followings in their constitution i.e name, address, area, aims and objects, rights and obligations of members and office bearers, financial administration, meetings, elections, dissolution and amendments in the constitution. Whereas it varies in some aspects for which the laws demand different compliance, these are as follows:

a) Number of persons / members

The minimum number of members required to form society under Societies Registration Act, 1860 are “seven or more persons”²⁹. And According to Companies Ordinance, 1984 the minimum number of members shall not be, at any time, less than three³⁰ for the association set up under Section 42 of the Companies Ordinance, 1984. Whereas no numbers of members have been fixed under Voluntary Social Welfare Agencies Ordinance, 1961. All these laws belong to the establishment and governing of NGOs, whereas the requirement of members are different under each law which create confusion.

b) Office Bearers

The mandatory office bearers under NGO legislation are different. According to Companies Ordinance, 1984 a Chief Executive Officer and three Directors are to be

²⁹ Section 1, Societies Registration Act, 1860, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, Edition 2007 at 5

³⁰ Section 47 of the Companies Ordinance, 1984, Compilation of Corporate Laws, Federal Law House, Edition 2008 at 31

appointed among the members of the Board. As per Societies Registration Act, 1860 the names, addresses, and occupation of the governors, council, directors, committee or other governing body to whom, by the rules of the society, the management of its affairs is entrusted has to be mentioned in the Memorandum of Association of the Society. Normally these three designations of President / Chairman, Secretary and Treasurer are at least being appointed by the members at the time of registration of society. Although the designated office bearers has not been fixed under the Voluntary Social Welfare Agencies Ordinance, 1961 but Schedule I or Schedule II of the Voluntary S.W.A.(R&C) Rules, 1962 requires the designation of all office bearers with their method of election and term. The office bearers can be fixed as in the case of Companies Ordinance, 1984 which will also be a step towards the harmonization of legislation.

c) Registration Fee & Forms

Although the Registration Fees and Forms are different under different laws, but the contents of requirements should not be stretched upto a level which creates hindrance for the civil society to get them registered as NGO under the laws of Pakistan.

d) Minimum Subscription

The commitment of a minimum subscription of a particular amount has to be mentioned in the Memorandum of Association of the Association registered under section 42 of the Companies Ordinance, 1984 whereas no such restriction has been placed under any law related to societies and agencies, however, the Trust act related to private trusts placed the subject matter/ property a basic essential for the registration of the trust. Therefore, either the restriction of minimum subscription at the time of dissolution of NGO should be made mandatory in every statute, or no restriction should be fixed as the members are not for the purpose of earning profit rather they are supposed to contribute their time and efforts.

e) Initial Contribution

There is no requirement of initial contribution from the members in the proposed NGO under any law of NGOs, however, under Trust Act, 1882, which in fact does not relate

to the NGOs for public benefit, but placed the property being the pre-requisite for the creation of a Trust.

f) Personal Appearance before the Registration Authority

No personal appearance is required for the establishment of Association under section 42 of the Companies Ordinance, 1984 and for the agency under Voluntary Social Welfare Agencies (Registration & Control) Ordinance, 1961, whereas the personal appearance is being required by the Sub-Registrar for the declaration of Trust and Society Registrar also some time requires the presence of Managing Committee Members which in fact is not a written procedure just depends on the will of the officer in charge for the registration of the Societies.

Furthermore in contrast to the differences under each law almost all the laws related to NGOs placed following similar restrictions which have to be incorporated in the Memorandum and Constitution of the NGO. These are as under:

a) Personal Benefits

The purpose of personal benefits has not been allowed under any NGO legislation, but direct restriction of remuneration of services has not been placed in the statute except trust act that “in the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust”³¹ whereas the distribution of profits and leftover assets has been prohibited in almost every statute. Whereas, the SECP at the time of issuance of license also places restriction of even not to provide remuneration of services / salary. This restriction is baseless and against the natural justice, there may be condition of disclosure of salary taken by the members so that donors can analyze how much remuneration has been taken by the members. Furthermore, the condition of reasonable salary cannot be placed as the word reasonable may differ in each case.

³¹ Section 50 of the Trust Act, 1882, 1984, Mansoor Book House, Edition 2003 at 99

b) Business Activity

The business activities have not been permitted under the NGO laws. However, the commercial activities conducted by the NGOs should not be condemned if it is clear that the purpose of such investments / commercial activities is not to earn profit for their personal benefits but to plough back the funds / returns for the promotion and achievement of its declared aims and objectives, then the purpose of business for the sustainability of the activities of the NGOs should be encouraged as the welfare activities of the NGO become ensured rather than to remain dependant on the donations.

c) Funding Restrictions

Although it is not mandatory requirement to mention in the constitution of the NPO regarding the funding restriction placed by the Charitable Funds (Regulation of Collections) Act, 1953, however, under this law “no person shall make any collection for any private fund unless before the commencement of the collection a declaration in respect of the private fund has been duly made in the prescribed form and been duly delivered by hand or by registered post, acknowledgment due, to the sanctioning authority, and his name and address is duly shown as a promoter or collector of the fund in the declaration”³²

The District Officer from whom the permission has to be sought, in practice, has considerable discretion in either granting or rejecting the application without specifying any reason.

d) Financial Accountability

Almost every law requires the maintenance of financial record but only the Voluntary Social Welfare Agency and the Association under Companies Ordinance, 1984 requires the audit of these accounts. The Company law requires the association to keep the accounts in accordance with the international standards and audited by qualified chartered accountant.

³² Clause (b) Sub Section (1) of Section 4 of the Charitable Funds (R&C) Act, 1953, 1984, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, Edition 2007 at 174

The Voluntary Social Welfare Agencies Ordinance requires the statement of donation and Audited Accounts of the Association on annual basis.

3.1.2 Conflict with the clauses of tax laws

Income Tax Rules, 2002 specify the condition of some clauses in the Constitution of the NGO. It has been specifically mentioned in the said rules that the approval under section 2(36) of the Income Tax Ordinance, 2001 shall not be granted if the constitution does not provide the following clauses:

- (a) “the audit of the annual accounts of the organization every year by a qualified accountant as specified in clause (a) of sub-rule (1) of rule 213;”³³

This restriction has been placed only in the Companies Ordinance, 1984 whereas the restriction of audit by a Chartered Accountant is not mandatory in other statutes related to NGOs.

- (b) “where the organization is registered under the Societies Registration Act, 1860 (XXI of 1860), the Voluntary Social Welfare (Registration Control) Ordinance, 1961 (XLVI of 1961), or any other law in substitution thereof relating to the registration of welfare organization, for the quorum of a meeting of the members of the body in which the control of the affairs of the organization vests, being not less than four or one-third of the total number of the members of such body, whichever is greater;
- (c) where the organization is a Trust as defined in the Trust Act, 1882 (II of 1882), for the quorum of a meeting of the members of the body in which the control of the affairs of the trust vests, being not less than three or one-third of the total number of the members of such a body, whichever is greater;”³⁴

These clauses (b) and (c) of Rule 213 of the Income Tax Rules 2002 relate to the quorum of the meeting of the members of the NGO, whereas the quorum of the meeting under societies registration Act is three-fifth of the total members and the quorum of the meeting for the Association under section 42 of the Companies

³³ clause (a) of sub-rule (1) of rule 213 of the Income Tax Rules, 2002, Facilitation and Taxpayers Education Wing, September 2008 at 146

³⁴ Clause (b) and (c) of rule 213 of the Income tax Rules, 2002, Facilitation and Taxpayers Education Wing, September 2008 at 146

Ordinance, 1984 is 25% of the total voting power present in person but being not less than two members, is present at that time when the meeting proceeds to business. Therefore, there is a clear conflict in the quorum required under tax laws and under laws related to NGOs.

- (d) “for the transfer of its assets, in the event of its dissolution, after meeting all liabilities, if any, to another organization which is an approved non-profit organization, within three months of the dissolution under intimation to the Commissioner;”³⁵

The Income Tax Laws placed this condition of not only to transfer the assets of the NPO to other NGO at the time of dissolution but also to that NGO which has also been approved as an NPO by the Income Tax Authorities. This condition has not specifically been mentioned in their respective laws hence create contradiction.

- (e) “for the utilisation of its money, property or income or any part thereof solely for promoting its objects;”³⁶

Almost in all respective laws of NGO the main aim of the funds utilization has been accepted for the promotion of its declared objects but the presence of this condition in their constitution is not mandatory except required at the time of acquiring license from SECP for the purpose of incorporation of Association under section 42 of the Companies Ordinance, 1984.

- (f) “for prohibiting any portion of its money, property or income being paid or transferred directly by way of dividend, bonus or profit to any of its members or the relative or relatives of a member or members”³⁷

Payment of remuneration for services or otherwise to its members, whether holding an office in the company or not, has been prohibited by the SECP as a basic condition of license for association, whereas the Income Tax Law only provides for the restriction of payment of bonus, dividend or profit and not the payment of remuneration of services. This restriction is also not mentioned in statutes,

³⁵ clause (d) of sub-rule (1) of rule 213 of the Income Tax Rules, 2002, Facilitation and Taxpayers Education Wing, September 2008 at 147

³⁶ clause (e) of sub-rule (1) of rule 213 of the Income Tax Rules, 2002, Facilitation and Taxpayers Education Wing, September 2008 at 147

³⁷ clause (f) of sub-rule (1) of rule 213 of the Income Tax Rules, 2002, Facilitation and Taxpayers Education Wing, September 2008 at 147

(g) "for the maintenance of accounts of the organization being kept in a scheduled bank or in a post office or national savings organization, National Bank of Pakistan or nationalized commercial banks;"³⁸

No such restriction has been placed by any statute related to NGO and in fact the justification of this condition could not be understood.

(h) "for prohibiting the making of any changes in the constitution, memorandum and articles of association, trust deed, rules and regulations or bye-laws, as the case may be, without the prior approval of the Commissioner: Provided this clause will have effect only in cases where the approval is granted; and"³⁹

The condition of permission from the relevant registering authority at the time of amendment in the constitution is already there then why this additional permission from Income Tax Authorities has been placed, and why the condition for the permission from the Income Tax Authorities has not been placed in their relevant legislation. e.g what if the permission is granted by the Income Tax Authorities and not by the relevant registering authority and what if the permission is granted by the registering authority and not by Income Tax Authority.

(i) "for restricting the surpluses or monies validly set apart, excluding restricted funds, upto twenty-five per cent of the total income of the year: Provided that such surpluses or monies set apart are invested in Government securities, NIT units, a collective investment scheme authorized or registered under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003, mutual fund, a real estate investment trust approved and authorized under the Real Estate Investment Trust Rules, 2006, or scheduled banks."⁴⁰

This restriction is always being understood by the officer's as per their judicious approach and understanding, according to some it is the 25 percent of net income and according to others it is the 25 percent of turnover. Furthermore, the question arises whether this condition has any weightage of judicial understanding and even practicable. The condition of the spending of the donation within the prescribed

³⁸ clause (g) of sub-rule (1) of rule 213 of the Income Tax Rules, 2002, Facilitation and Taxpayers Education Wing, September 2008 at 147

³⁹ clause (h) of sub-rule (1) of rule 213 of the Income Tax Rules, 2002, Facilitation and Taxpayers Education Wing, September 2008 at 147

⁴⁰ clause (i) of sub-rule (1) of rule 213 of the Income Tax Rules, 2002, Facilitation and Taxpayers Education Wing, September 2008 at 147

time should be reviewed by the legislature whether the condition is fulfilling the intention of the lawmakers or not.

3.1.3 Amendment in Constitution

Various process and procedures have been mentioned in each statute for the amendment in the Constitution of NGO. But the main differences in processes of amendments are for the quorum of the meeting, number of meetings e.g. in Societies Registration Act confirmation of amendment in the constitution by the members in second special meeting convened for this purpose by an interval of one month after the former meeting is required, and permission from the registering authorities. Whereas if the organization is already registered with the tax department the approval as NPO (Non-profit Organization) shall not be granted if the condition of permission from the Commissioner Income Tax has not been mentioned in the Constitution.

Therefore, for Association under Companies Ordinance, and Agencies under Voluntary Social Welfare Ordinance has to take permission not only from registering authority but also from the Commissioner Income Tax before making any amendment in their Constitution, whereas Societies Registration Act, does not provide any permission from the registration authority but for the purpose of approval as an NPO the duly approved updated constitution is required from the registering authority. The question arises that when the condition of permission from the relevant registering authority is present in the legislation then why the additional permission from Income Tax Authorities has been required, why this mandate has not been given to the registering authorities only or vis-a-viz. The permission from duplicate of authorities may create confusion in case of conflict of understanding between the authorities.

3.2 Rights, duties & liabilities of member

3.2.1 Remuneration of services and profit distribution

No law prohibit the remuneration of Services of the member of the NGO, however, the Securities & Exchange Commission of Pakistan while providing registration to Association under section 42 of the Companies Ordinance, 1984 place condition on the license that payment of remuneration for services or otherwise to its members, whether holding an office in the Association or not, shall be prohibited. Furthermore, clause 211(2)(f) of the Income Tax Rules, 2002 placed restriction that the NGO shall not be granted the status of Approved Non-Profit Organization (NPO) under

section 2(36) of the Income Tax Ordinance 2001 unless its constitution place restriction for prohibiting any portion of its money, property or income being paid or transferred directly by way of dividend, bonus or profit to any of its members or the relative or relatives of a member or members; Therefore, question of non-entitlement of remuneration of services or salary is not based on natural justice. The management of NGO is not a part time job and the members have to play a full time role in the achievement of their declared aims and objectives. Similarly this condition is not integrated with the international legislation related to governing of NGOs. As the staff of the NGO can get salaries up to any range then why the members are not entitled for it, whether the legislator intends to organize these NGOs through the staff which cannot reach at such level of devotion towards the objects of the NGO as against that member who has created or who has conceived the blue print of the organization. Therefore, the restriction may be placed that the members shall not be entitled for the profits / assets / surplus of the NGOs and they are bound to declare their personal salaries or benefits to the general public.

3.2.2 Right to sue and be sued

The Societies Registration Act, 1860 provides the organization a status of artificial judicial person, by which the Society get the right to sue and be sued in its own name. Hence the Society can have the property and bank accounts in its own name rather in the name of their member and enforce its rules against them. Therefore, the acts of the members in execution of their job are indemnified and any decision of the court against the society shall only be enforced against the property of the society, until the member is found personal guilty.

Registered Society being juristic person / *sui juris*, could file and maintain suit but such suit should be filed through its President, Chairman or Secretary as per rules and regulations of the Society. Where rules and regulations of registered society did not authorize any of its office-bearers then such suit could be filed in the name of any person / member to be appointed by governing body of said Society.

The Association under the Companies Ordinance, 1984 are also having the status of artificial judicial person, hence has the same right to sue and be sued in their own name, Whereas the Agency under the Voluntary Social Welfare Agencies Ordinance are not having the status of artificial judicial person. However it can sue and be sued in its own name and institute other legal

proceedings, but it cannot own property. Further, it is protected from litigation and prosecution for anything done in 'good faith'⁴¹.

3.2.3 Obligation towards the property of NGO

The basic obligations under each law towards the property of the NGO are to spend the property solely towards the accomplishment of its declared aims and objectives and not for the purpose of spending for personal benefits or earning personal profits. Each law placed such restriction that members should refrain themselves to use the property or the assets other than for the purposes specified by the NGO.

According to Societies Registration Act, 1860 the property which belongs to society shall vests with the members of the governing body for the time period they are member. The member of the society may be sued for the damage or loss to the society if the property of the society is being held by the member in contravention of the provisions of the act or rules.

The Trust Act, 1882, also placed restriction that "a trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust."⁴² The Trustee is also bound to fulfill the purposes of the trust, and to obey the directions of the author of the trust related to the property of the trust.

According to the Companies Ordinance, 1984 the board shall conduct and manage all the affairs of the Association, exercise all the powers, and do all such other things as may be necessary for carrying out the financial affairs of the Association. The property of the Association shall be applied in defraying the expenses and shall be applicable in or towards the acquisition by purchase, lease or otherwise and furnishing and maintenance of suitable premises and assets for the use of the Association and shall be subject to the general control and direction of the Board.

3.2.4 Limited liability of minimum subscription

The commitment of a minimum subscription of a particular amount has to be mentioned in the Memorandum of Association of the Association registered under section 42 of the Companies Ordinance, 1984 by saying that "the limit of liability of its members shall not be less than a reasonable amount having regard to all the circumstances of the case"⁴³ whereas no such

⁴¹ The Legal Framework Of The Nonprofit Sector In Pakistan -Zafar H. Ismail

⁴² Section 51 of the Trust Act, 1882, Mansoor Book House, 2003 at 99

⁴³ Clause (iv) of sub rule (4) of Rule (6) of Companies (General Provisions and Forms) Rules, 1985, Practical Approach to the Companies Ordinance, 1984, Nazir Ahmed Shaheen, Federal Law House, 2004 at 152

restriction has been placed under any law related to societies and agencies. Therefore, either the restriction of minimum subscription at the time of dissolution of NGO should be made mandatory in every statute, or no restriction should be fixed as the members are not for the purpose of earning profit rather they were supposed to contribute their time and efforts.

3.3 Meetings & Resolutions

3.3.1 Statutory Meetings

The Societies Act according to the rules of the society ask the members to conduct the annual general meeting of the society once in every year and to provide the annual list of governor, council, directors, committee or other governing body who are entrusted with the management of the affairs of the society, after the annual meeting of the members whereby any elections are held or appointments made. Furthermore, special meeting may be called whenever society required altering, extending or abridging their purposes.

The Annual General meeting of the Association shall be held, in accordance with the provisions of Section 158 of the Companies Ordinance, 1984 “within eighteen months from the date of incorporation of the Association and thereafter once at least in every calendar year within a period of four months following the close of its financial year and not more than fifteen months after the holding of its preceding annual general meeting”⁴⁴ as may be determined by the directors. Furthermore, the directors may, whenever think fit call an Extraordinary General Meeting. All meetings of the members other an annual general meeting shall be called “Extraordinary General Meetings”

As the Voluntary Social Welfare Agency Ordinance is law of registration only, hence does not provide for the statutory meetings of the agency however, the schedule provides that the agency should provide the procedure for calling different types of meetings, notice of the meetings and the quorum for the different types of meetings.

Normally laws only provide binding of annual statutory meeting on the NGO, which is even not clearly mentioned in every law, however, the legislator should consider the mandating of some other statutory meetings of the members as the members have no monetary interests in the NGOs hence their non-attention may cause loss to the property and aims of the NGOs. Furthermore,

⁴⁴ Sub section (1) of Section 158 of the Companies Ordinance, 1984, Practical Approach to the Companies Ordinance, 1984, Nazir Ahmed Shaheen, Federal Law House, 2004 at 460

strict provisions should be incorporated with the enforcement power that the attendance of the members can be secured for the better prospects of the beneficiaries.

3.3.2 Process of Meetings & Resolutions

For the Associations at least “twenty-one days notice”⁴⁵ of meeting is required to be sent to such persons who under the Ordinance are entitled to receive the same. The chairman of the Board shall preside the meeting and in case chairman is not present within fifteen minutes after the time appointed then any of the director present in the meeting may be elected as the chairman of the said meeting. Furthermore, at any general meeting a resolution put to the vote in the meeting shall be decided on a show of hands unless a poll is demanded. On a show of hands every member present in person shall have one vote and upon a poll every member present in person shall have one vote.

The Societies Act, just provides, the process of meeting required to be held under section 12 of the Societies Act, when any “alteration, extension or abridging”⁴⁶ in purpose of the society is required. For such meeting governing body may submit the proposition to the members and may convene a special meeting for their consideration thereof. Such report shall have to be sent to every member of the society ten days prior to the special meeting and confirmation. A second special meeting may be convened by the governing body at an interval of one month after the former meeting. The question arises that why the process of meeting has only been given for special meeting and not for annual general meeting then what shall be the process for AGM under the law.

The Trust Act, and Voluntary Social Welfare Agencies law does not provide any provision related to the process of the meeting of the members of the NGO. If the laws does not relate to the administration of the NGOs rather just for the purpose of registration then the NGOs which are just registered with these laws then how will these be administered? The answer would be that these NGOs be administered according to their constitution or rules and regulations. If it is the case then there will be no harmonization and even it then merely depend on the will of the members rather on some standards or statutory binding provisions. The legislator, therefore, should either impose restriction in Voluntary Social Welfare Agencies Ordinance for registration

⁴⁵ Sub section (3) of Section 158 of the Companies Ordinance, 1984, Practical Approach to the Companies Ordinance, 1984, Nazir Ahmed Shaheen, Federal Law House, 2004 at 461

⁴⁶ Section 12 of the Societies Registration Act, 1860, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, 2007 at 9

of agencies under other laws or to bring some amendment in this legislation related to the internal administration of NGOs.

3.3.3 Quorum

The quorum of the meeting under Societies Registration Act is “three-fifth”⁴⁷ of the total members and the minimum quorum of the meeting for the Association under section 42 of the Companies Ordinance, 1984 is “two members present personally who represent not less than twenty five percent of the total voting power⁴⁸”, is present at that time when the meeting proceeds to business, furthermore, no quorum has been fixed under Voluntary Social Welfare Agencies Ordinance, whereas as per clause 211(2)(c) of the Income Tax Rules 2002 the quorum of the meeting of the members in case of Societies, Voluntary Social Welfare Agency is not less than four or one-third of the total number of the members of such body, whichever is greater and for Trust the quorum of a meeting of the members of the body is not less than three or one-third of the total number of the members of such a body, whichever is greater;

Therefore, there is a clear conflict in the quorum requirement under each law and also its comparison with the tax requirements.

3.4 Election & Appointments

3.4.1 Life time appointment

According to Companies Ordinance, 1984 the term of members of the Association is for life time unless the membership has been terminated or ceased due to the death of the member of the Association or in the event when a members fails to pay the amount due to him.

A member may be expelled from the membership by the board if:

- a) the member refuse to follow the decision of the board of members;
- b) the member act in contravention to the provision of the constitution;

⁴⁷Section 12 of the Societies Registration Act, 1860, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, 2007 at 9

⁴⁸ Clause (b) of subsection (2) of Section 160 of the Companies Ordinance, 1984, Practical Approach to the Companies Ordinance, 1984, Nazir Ahmed Shaheen, Federal Law House, 2004 at 476

- c) the member has been declared by the court as a person who have committed fraud, or if being declared bankrupt or insane; or
- d) the member commit any act of discredit; or
- e) the member is acting prejudicial to the interest of the association.

The same concept of permanent membership of the members has been acknowledged in the Societies Registration Act, until they are disqualified or have resigned from the membership.

Normally the concept can be understood by a prudent person that the creator of the organization has the main concept and will for the establishment of the organization. The motivation he has cannot be lesser than his followers which will be best for the organization to work efficiently for the attainment of the objectives of the NGO. Therefore, the lifetime term of the members of the NGO is commendable. However, the life time term of chairmanship or any other designation is a question prevailing in this sector.

The arguments in this context are both in favour and against. As mentioned earlier the creator has better understanding and commitment towards the organization. Evidently it remains the initiative of one person who due to the requirements of law has to associate some other persons for the purpose of establishment of NGO. Hence, he made himself as the Chairman of NGO for a term of life time. By keeping the positive response this is not a bad practice if he kept himself as chairman for life time term as people normally know the NGO by his name and the donors also rely on his personality. It can be seen that well known NGOs in Pakistan are those which are based on the face of personalities. e.g Eidhi Welfare Trust, Shaukat Khanum Memorial Trust, Sahara Trust, Agha Khan Foundation etc. Therefore, it has been stated that donors are relying on the person heading the organization, hence the term of the chairman should be lifetime and he should not be allowed to resign from the membership as he is the one in whom the donors have placed their reliance.

However, the other group criticizes the said concept of life time term of the chairman of the NGO as this may lead to the dictatorship in the structure of the organization and the advice and the decisions of the other members shall have no important role, hence the contribution of other members remain only to follow the line of the chairman and not to interfere in his decisions. Pakistan Center of Philanthropy which is a certification agency also does not commend this

concept. The international practices and standards also promote democratic concept of administering the NGO. The democratic concept provides the members to play an important role and contribute to the organization by giving advice in the meeting by taking not only the full responsibility of their advice but also with his utmost full capability and free will, as a result the decision of the board shall be after due consultation of authoritative members and after due consideration of its pros and cons. Therefore, any such arrangement shall lead only towards the betterment of the NGO contribution towards its social liability. All NGOs following this concept of democratic arrangement are well recognized by the international community and the world but it seems different in Pakistan.

3.4.2 Term of appointments and its intimation to regulatory body

The members of the NGO are the permanent members to whom the property of the NGO vests. The members are responsible for the attainment of the declared objectives of the NGO for which they have established the organization. The term of members of governing body are life time under each law of NGO however, they can be removed by the resolution of the other members or due to their inability to perform its functions. At time of vacancy in the board of members it has to be filled through election of a new member in the board.

The office bearers hold temporary post, the appointments of which are also made through election for a particular period of time under each law or as per the rules and regulation of the NGO. The appointment of Chief Executive and the Directors under the Companies Ordinance are for a term of three year, whereas, they are eligible for re-appointment or re-election for further term or terms. "The intimation of election of the Chief Executive and the Directors has to be filed with Registrar within 14 days"⁴⁹ from the date of appointment or election.

Under the Societies Act, 1860 the Annual list of members and office bearers has to be filed on or "before the fourteenth day of succeeding the day on which the annual general meeting of the society is held or in the month of January if the constitution of the society does not provide the same"⁵⁰. Therefore, under this law the term of office bearers is one year impliedly which however, can be reappointed for other terms, but the constitution of the society may provide some other term as this has not explicitly been mentioned in the statute.

⁴⁹ Subsection (3) of Section 205 of the Companies Ordinance, 1984, Practical Approach to the Companies Ordinance, 1984, Nazir Ahmed Shaheen, Federal Law House, 2004 at 569

⁵⁰ Section 4 of the Societies Registration Act, 1860, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, 2007 at 6

3.4.3 Eligibility and requirements to participate in election

The association in general meeting from time to time lay down the qualifications and conditions subject to which any person or class of persons shall be admitted to membership of the association.

However the right to establish NGO or unions has also been guaranteed by the Constitution of Pakistan in Article 17(1).⁵¹

Therefore, every person of sound mind, eligible to enter in to a contract can become a member, in addition the relevant law of NGO has placed some other condition like the person should be committed to the aims and objectives of the NGO, the person undertakes, to subscribe minimum subscription at the time of dissolution of NGO etc. or he shall be committed to the Articles or the Constitution of the NGO.

According to Societies Registration Act, a member shall be the person who has been admitted as member in the Society in accordance with the rules and regulations and who has paid a subscription and has signed the list of members.

Every person can become a member in the Trust who is capable to hold property and is competent to contract.

The Voluntary Social Welfare Agency (Registration & Control) Ordinance does not define the eligibility of membership and does not place any restriction for the admission as member in the Agency, however, the Schedule (I) of the Rules states that the constitution of the agency must explain the eligibility criteria for membership, the categories of membership and procedure of admission, therefore, anything decided by the member at the time of registration of agency shall be applicable for all members.

Hence there are different eligibility requirement under each law but it is common that the person must be able to enter in to contract as in NGO there is a reliance and confidence of the donors /public upon him, therefore, the person who cannot be held responsible for his acts should not be admitted as a member in the NGO.

51 "Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality" Constitution of Pakistan 1973, Article 17(1), M.Rafiq Butt, Mansoor Book House, Edition 2003, 73

3.4.4 Election

The inclusion of a person in the board of members of association requires endorsement from the existing member of the association. The board after receiving the application decides whether to include him as member in the association or not. The board has to make the decision within three months from the date of application of membership. No person who is minor or lunatic can be elected as member of the association. After becoming the member the person shall be responsible to follow the articles and rules and regulations of the association. In any case the board is fully empowered to reject the application of membership without assigning any reason on it.

In Society no person shall be entitled to vote or to be counted as a member whose subscription at the time shall have been in arrear for a period exceeding three months.

The Trust deed should explain the election process and meeting of trusts. The Trust does not explicitly explain the process of election of any person as a member of the Trust. As the Trust Act is not the relevant law for NGOs therefore, in practice the trust deed is the basic constitutional document / contract between the members through which they are performing their functions, hence the procedure or conditions whatever decided or set by the trustees in the trust deed shall be the source of resolution of any matter relating thereto.

No procedure of election as member in the Agency has been defined in the Voluntary and Social Welfare Agency (Registration & Control) Ordinance, 1961.

However, Pakistan Centre for Philanthropy and the Tax department also does not recommend the inclusion of the relatives as the member in the NGO. PCP not only recommends the democratic structure in the NGO but also give weightage to the inclusion of female members in the Board of Governing Body of the NGO.

It is although recommended by the civil society that the NGO structure should be democratic but there should not be a condition or any restriction that the family members cannot be included in the Board of Members. Because it is the matter which depend on the donors if they agree and has rely on these members then there is no loss to the administration. Because the concerns of the creators of the NGO should be given weightage that everyone who established the NGO always desires that the administration should be under his control, obviously with compliance of laws, and his name should be acknowledged by the public, therefore, their desire of respect on the basis of their hardworking and the initiation of welfare work is genuine and be respected.

3.5 Dissolution

3.5.1 De-Registration / Dissolution by Regulatory Body

If registered authority is satisfied that there is in agency any “irregularity in respect of the funds or for any maladministration in the conduct of its affairs or has failed to comply with any provision of the Voluntary Social Welfare Agency Ordinance, 1961, the authority may suspend the governing body”⁵². However, when the registration authority has reason to believe that the agency is acting in contravention to the provision of the Ordinance, or their acts are prejudicial to the interest of the public the authority may dissolve the agency from the date mentioned in the ordinance, but no such order shall be made by the authority without giving proper notice of being heard.

The Association incorporated under section 42 of the Companies Ordinance, 1984 is also treated as company. The dissolution of the association may also be processed by the authority if the association is found guilty of contravention of any provision of the Ordinance and it in the eyes of the authority founds to be just to proceed the dissolution proceedings with the court of jurisdiction.

The Societies Act does not provide any provision / empowerment of any authority to process / initiate the dissolution of the Society being regulatory authority on the basis of contravention of any provision of the society Act. The same is the situation in Trust Act, as there is no regulatory body of the trusts, therefore, the winding up / dissolution of the trust proceeding is not allowed to anybody other than governing body / members of the Trust.

Furthermore Code of Civil Procedure⁵³ is to grant the court full power for the proper administration of public trusts. If there is no trustee the court can appoint one. If there is a trustee who does not do his duty, the court can remove him and appoint another. The court can frame a scheme and can also give further directions for the proper administration of the trust.

3.5.2 Voluntary dissolution

Under Societies Registration Act, 1860 a society can be dissolved voluntarily be the members if not less than three fifths of the members of any society decided that the society shall be dissolved;

⁵² Subsection (1) of Section 9 of the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961, Compendium of Social Welfare Laws, Mehboob Pervez Awan, Federal Law House, 2007 at 197

⁵³ Section 92 and 93 of the Code of Civil Procedure, 1908, Aamer Raza A. Khan, Irfan Afzal Printers, Ninth Edition at 253

therefore upon their resolution the society shall stand dissolved forthwith. At the dissolution of the society all necessary steps shall be taken by the members for the disposal and settlement of the property of the society, its claim and liabilities, according to the rules of the said society. If any dispute arises among the members of the society the matter shall be referred to the Court of civil jurisdiction in which the registered office of the society exist. It is a compulsion that no society can be dissolved unless three fifths of the members give their votes for dissolution of the society in the general meeting called for this purpose.

However, where the government is a member or a contributor to the society, members with the vote of not less than three fifths can dissolve the Society unless the consent of the Government of the Province has been taken in advance.

The Trust is extinguished when the purpose is completely fulfilled or when the purpose becomes unlawful or it become impossible to fulfill the purpose of the establishment of the trust. As mentioned earlier that the Trust Act is not the relevant law for NGO therefore, the dissolution process written in the trust deed shall be applicable for trust.

In Social Welfare Agency the members if desire to dissolve the agency may apply to the provincial government by not less than three fifths members of the agency for making order of dissolution. If the provincial government after considering the application is satisfied with the facts of the agency, may order the dissolution of agency with immediate effect or from the date as mentioned in the order.

The association incorporated under section 42 of The Companies Ordinance, 1984 under condition of license are bound to mentioned in their memorandum and articles of association that upon dissolution of the association, no property or assets if remains shall be transferred to its members rather these will be transferred to any other Organization of the similar objects on the approval by the members in their general meeting.

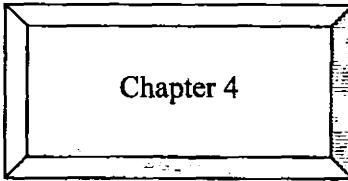
Whereas the Income Tax Law places the condition, that the assets of the NPO at the time of dissolution of NGO, shall only be transferred to another approved non-profit NGO under section 2(36) of the Income Tax Ordinance, 2001. This condition has not been specifically mentioned in their respective laws hence create contradiction.

3.5.3 Amalgamation & Mergers

No specific provision of NGOs merger has been mentioned in any NGO laws. Therefore, if two NGOs are going to be merged into a new NGO or one NGO is going to be merged with another NGO, then the NGO, who has transferred its all assets and liabilities to another NGO, has to initiate separately the process of winding up. Because only through merger, the legal status of another NGO will not be dissolved except by proper process of law through court.

If the NGO is an approved NPO under section 2(36) of the Income Tax Ordinance, 2001 or the constitution of the NGO has clauses of Rule 213 of the Income Tax Rules, 2002 then the NGO is under obligation to transfer its assets only to another approved NPO under same section of the Income Tax Ordinance under intimation to the tax department.

The process of mergers should be specifically incorporated in each law related to NGO as there are number of such cases pending in the courts for which these laws are not playing any guiding role for the judges.



Chapter 4

REGULATORY BODY & NGO'S OBLIGATIONS

4.1 Presence of regulatory body

Delicate balancing is necessary between the freedom of association of the individuals who form NGOs and the need for protection of the public from any fraud, abuse, infringement of the rights of others. Therefore, the law should insist on adequate internal reporting mechanism within NGOs so that they can police themselves and ensure that their activities are appropriate.

To regulate these NGOs there should be an institution playing the role of regulatory body. In the absence of regulatory framework a competitive atmosphere cannot be placed in system. NGOs are being registered / incorporated under various laws, however, after incorporation there is no comprehensive role of the regulator. e.g. for Association incorporated under Companies Ordinance, 1984 and bound to file their audited accounts as well as annual return to the Securities & Exchange Commission of Pakistan and the Societies are also bound to file their audited accounts to the Registrar office, but in fact they have no regulatory role over these NGOs. The regulatory role if any exist over these NGOs are of the Tax department if they are registered with them otherwise there are numbers of organization who after registration raised their funds and perform their activities but without intimation to anybody or authority and they are not answerable to anyone.

4.2 Role of regulatory body

Laws related to NGOs have regulatory provisions for the regulation of these NGOs, some provisions are related to sanctions that in violation of any provision of the law the member of the governing body may be made responsible personally, some also empowers the change of governing body or any member of it. Under company law the CRO is empowered to remove any director of the company or initiate any change in the management of the association if they feels that the association is not being operated by the management in accordance with the articles and the actions of the management are in contravention with the provision of the laws and the articles of association. These supervisory clauses are although mentioned in some laws but still they

cannot be called as the regulatory body for these NGOs. As they sometimes, act as the custodian of the public files and some record of the NGOs but they are not acting as regulating agency / authority.

4.3 NGO's obligations to regulatory body

Under the Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 the organizations are bound to maintain the accounts of the Agency and also provide the audited accounts annually to the authority. It also requires the performance report along with the detail of future projects of the NGO.

Societies Registered under Societies Registration Act, 1860 are required to submit annually the list of its members. However, the audited accounts of the society are required to be presented before the members in their annual general meeting for approval.

The Association incorporated under section 42 of the Companies Ordinance, 1984 is required to file its annual return in Form – B along with the audited accounts of the Association.

No obligation exist for NGO incorporated as trust as the law firstly not directly relates to them, secondly no body exists having regulatory role over these trusts. The Trusts are being created by registration under Registration Act, with Sub Registrar, hence they have no mechanism for their regulation.

4.4 Regulatory role of tax department

The most important regulatory role if exists over these NGOs is the role of tax department. The NGOs under Income Tax Law come under the definition of Company which includes:

“(v) a trust, a co-operative society or a finance society or any other society established or constituted by or under any law for the time being in force”⁵⁴

Therefore, the NGOs are treated as Company under the Income Tax Ordinance, 2001. By virtue of its registration / incorporation these NGOs are not being declared as non-profit organization by the tax law. The Income Tax Ordinance, 2001 declares NGOs as non-profit organization under section 2(36) of the Income Tax Ordinance, 2001 after detail scrutiny and evaluation of these NGOs under Rule 213 of the Income tax Rules 2002. The NGOs who properly enclosed the documents with the

⁵⁴ Sub clause (v) of clause (b) of Sub Section (2) of Section 80 of the Income Tax Ordinance, 2001, Facilitation and Taxpayers Education Wing, Edition June 2011 at 108

application as required to be filed under Rule 211 of the Income Tax Rules 2002 and the constitution of the NGO also have the clauses mandatory to be present in the constitution of the NGO under Rules 213 of the Income Tax Rules, 2002 may be granted approval under section 2(36) of the Income Tax Ordinance, 2001.

Section 2(36) of the Income Tax Ordinance, 2001 defines:

“(36) —non-profit organization means any person other than an individual, which is:

- (a) established for religious, educational, charitable, welfare or development purposes, or for the promotion of an amateur sport;
- (b) formed and registered under any law as a non-profit organization;
- (c) approved by the Commissioner for specified period, on an application made by such person in the prescribed form and manner, accompanied by the prescribed documents and, on requisition, such other documents as may be required by the Commissioner;

and none of the assets of such person confers, or may confer, a private benefit to any other person;”⁵⁵

The approval under section 2(36) of the Income Tax Ordinance, 2001 is not being granted as a matter of right for every NGO. The NGO has to satisfy the Commissioner Inland Revenue for the compliance of all requirements and conditions of Rule 211, 212 and 213 of the Income Tax Rules 2002. The NGO has to apply to the Commissioner along with the documents / information as required under the Income Tax Rules 2002⁵⁶:

⁵⁵ Sub Section (36) of Section 2 of the Income Tax Ordinance, 2001, Facilitation and Taxpayers Education Wing, Edition June 2011 at 13

⁵⁶ Rule 211 of the Income Tax Rules, 2002⁵⁶(a) a duly attested copy of the constitution, memorandum and articles of association, rules and regulations or bye-laws, as the case may be, of the organization specifying the aims and objects for which it is established; (b) certified copy of the registered trust deed, in case of a Trust; (c) a certified copy of certificate of registration in the case of an organization registered under the Societies Registration Act, 1860 (XXI of 1860), the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (XLVI of 1961), or under any other law in substitution thereof relating to the registration of welfare organization as applicable; (d) duly attested copies of the balance sheet and of revenue accounts of the organization as audited by a “qualified accountant” for the year immediately preceding the year in which the application is made; (e) the names and addresses of the promoters, directors, trustees, president, secretary, treasurer, manager and other office bearers, as the case may be, of the organization, and indicating clearly their family relationships, if any, with each other; (f) a detailed report with regard to the performance of the organization for achieving its aims and objects during the preceding financial year preceding the date on which application is made, duly evaluated and certified by an independent certification agency approved by an authority designated by the Government of Pakistan for this purpose or, till that authority is established, under arrangements made by the or Commissioner of Income Tax” Facilitation and Taxpayers Education Wing, Edition September 2008 at 144

There are statutory clauses which are mandatory to be included in the constitution / Memorandum & Articles of Association / Trust deed. These clauses are aimed for the better administrative and financial control with transparency, with the clear restriction that the no money of the NGOs shall revert back to its members and shall be used solely for the promotion of the declared aims and objectives of the NGO. The approval under section 2(36) of the Income Tax Ordinance 2001 shall not be granted if the constitution, memorandum and articles of association, trust deed, rules and regulations or bye-laws, as the case may be, do(es) not provide the statutory clauses mentioned in Rule 213 of the Income Tax Rules, 2002.⁵⁷

In addition to above the Commissioner has to further satisfy himself that the NGO has been established with the purpose of public benefit and not either for personal motives or for the benefits of any particular persons and further is not being established to propagate the view of any particular party or sect. The Commissioner has to evaluate either himself or through any independent evaluation agency that the NGO is able and willing to achieve its declared aims and objects of the NGO. Commissioner may refuse the approval of the NGO as approved nonprofit organization if the Commissioner is satisfied that the NGO:

- (a) has been or is being used for personal gain of any particular person or a group of persons;
- (b) has been propagating the view of a particular political party or a religious sect;

⁵⁷ Rule 213 of the Income Tax Rules, 2002 specifying the documents required to be specified along with the application for approval under section 2(36) of the Income Tax Ordinance, 2001

- (a) "for the audit of the annual accounts of the organization every year by a qualified accountant as specified in clause (f) of sub-rule (2) of rule 211;
- (b) where the organization is registered under the Societies Registration Act, 1860 (XXI of 1860), the Voluntary Social Welfare (Registration Control) Ordinance, 1961 (XLVI of 1961), or any other law in substitution thereof relating to the registration of welfare organization, for the quorum of a meeting of the members of the body in which the control of the affairs of the organization vests, being not less than four or one-third of the total number of the members of such body, whichever is greater;
- (c) where the organization is a Trust as defined in the Trust Act, 1882 (II of 1882), for the quorum of a meeting of the members of the body in which the control of the affairs of the trust vests, being not less than three or one-third of the total number of the members of such a body, whichever is greater;
- (d) for the transfer of its assets, in the event of its dissolution, after meeting all liabilities, if any, to another organization which is an approved non-profit organization, within three months of the dissolution under intimation to the Commissioner;
- (e) for the utilisation of its money, property or income or any part thereof solely for promoting its objects;
- (f) for prohibiting any portion of its money, property or income being paid or transferred directly by way of dividend, bonus or profit to any of its members or the relative or relatives of a member or members;
- (g) for the maintenance of accounts of the organization being kept in a scheduled bank or in a post office or national savings organization, National Bank of Pakistan or nationalised commercial banks;
- (h) for prohibiting the making of any changes in the constitution, memorandum and articles of association, trust deed, rules and regulations or bye-laws, as the case may be, without the prior approval of the Commissioner:
Provided this clause will have effect only in cases where the approval is granted; and
- (i) for restricting the surpluses or monies validly set apart, excluding restricted funds, upto twenty-five per cent of the total income of the year:
Provided that such surpluses or monies set apart are invested in Government securities, NIT units, a collective investment scheme authorized or registered under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003, mutual fund, a real estate investment trust approved and authorized under the Real Estate Investment Trust Rules, 2006, or scheduled banks:
Explanation: For the purpose of this rule, "restricted funds" mean any fund received by the organization but could not be spent and treated as revenue during year due to any obligation placed by the donor."⁵⁷ Published by Facilitation and Taxpayers Education Wing, Edition September 2008 at 146

- (c) has been or is being managed in a manner calculated to personally benefit its members or their families; or
- (d) has not been or will not be able to achieve its declared aims and objects in view of its set up, administration or otherwise as evaluated and certified by an independent certification agency.”⁵⁸

The tax department not only has the approving authority but is also empowered under the Income Tax Rules to withdraw the approval already granted under section 2(36) of the Income Tax Ordinance, 2001. Income Tax Rules 217 provide the reasons on which the Commissioner may proceed for the withdrawal proceedings of approval under section 2(36) of the Income Tax Rules, 2002. The reason of withdrawal of approval may be any or more of the following:

- “(a) the constitution, memorandum and articles of association, trust deed, rules and regulations or bye-laws, as the case may be, specifying the aims and objects of the organization do(es) not provide for prohibiting the making of any changes in the constitution, memorandum and articles of association, trust deed, rules, regulations and bye-laws without prior approval of the Commissioner;
- (b) the organization has-
 - (i) been or is being used for personal gain of any particular person or a group of persons as specified in clause (a) of sub-rule (2) of rule 213;
 - (ii) been propagating the view of a particular political party or a religious sect as specified in clause (b) of sub-rule (2) of rule 213;
 - (iii) been or is being managed in a manner calculated to personally benefit its members or their families as specified in clause (c) of sub-rule (2) of rule 213; or
 - (iv) not been or will not be able to achieve its declared aims and objects in view of its set up, administration or otherwise as evaluated and certified by an independent certification agency as specified in clause (d) of sub-rule (2) of rule 213;

⁵⁸ Sub Rule (2) of Rule 213 of the Income Tax Rules, 2002, Published by Facilitation and Taxpayers Education Wing, Edition September 2008 at 148

- (v) failed to give valid reasons for setting apart, or not utilizing, or accumulating surpluses, excluding restricted funds, in excess of twenty five percent of the income for the year.
- (vi) failed to file the return of income supported with following documents;
 - (a) the statement of audited balance sheet and statement of accounts as mentioned in clause (d) of sub-rule (2) of rule 211;
 - (b) statement showing names and addresses of the persons from whom donations, contributions, subscriptions etc exceeding Rs. 5,000/- have been received during the tax year;
 - (c) statement showing the names and addresses of donees and beneficiaries etc to whom payments, services etc exceeding Rs. 5,000/- have been made during the tax year; and
 - (d) statement showing the money set apart or kept un-utilized with reasons thereof;
- (vii) failed to provide a detailed performance evaluation report in terms of clause (g) of sub-rule (2) of rule 211, after every three years;”⁵⁹

The approval under section 2(36) of the Income Tax Ordinance, 2001 is not the only declaration of NGO as nonprofit organization under this ordinance. The NGOs struggling for the approval are not only to attract the donors for their entitlement of tax credit under section 61 of the Income Tax Ordinance, 2001, but also for the benefits of zero import duty, zero sales tax and zero income tax at import stage on donation made to NPO. “Chapter 99 of Custom Tariff”⁶⁰ deals with the exemption of import duty to the NGOs approved under section 2(36) of the Income Tax Ordinance, 2001.

There is no regulatory role of the tax department over the NGOs, it rather encourages the NGO by providing exemption from income tax on their income from donation / voluntary contributions. These are exempt from tax under clause (60) of the Second Schedule to the Income Tax

⁵⁹ Sub Rule (1) of Rule 217 of the Income Tax Rules, 2002, Published by Facilitation and Taxpayers Education Wing, Edition September 2008 at 151

⁶⁰ Chapter 99 of the Custom Tariff

Ordinance, 2001. The Second Schedule is the list of exemption available under Income Tax Ordinance, 2001, a special clause (60) related to income of the NGO is as under:

"(60) Any income of a religious or charitable institution derived from voluntary contributions applicable solely to religious or charitable purposes of the institution"⁶¹

Not only the income from donation and voluntary contribution is exempt from tax on the hand of NGO under clause 60 of the Second Schedule to the Income Tax Ordinance, 2001 but the income from business, investments in securities and income from property are also exempt from tax under clause (58) of the Second Schedule to the Income Tax Ordinance, 2001. The approval under clause (60) is a matter of right for every NGO but the specific exemption under clause (58) of the Second Schedule has to be applied to the Commissioner Inland Revenue under specified format/procedure specified in Rule 220A of the Income Tax Rules, 2002. The exemption clause (58) of the Second Schedules states:

"(58) (1) Any income of a trust or welfare institution or non-profit organization specified in sub-clauses (2) and (3) from donations, voluntary contributions, subscriptions, house property, investments in the securities of the Federal Government and so much of the income chargeable under the head "Income from business" as is expended in Pakistan for the purposes of carrying out welfare activities:

Provided that in the case of income under the head "Income from business", the exemption in respect of income under the said head shall not exceed an amount which bears to the income under the said head the same proportion as the said amount bears to the aggregate of the incomes from the aforesaid sources of income."⁶²

For the purpose of this exemption the NGO has to apply to the Commissioner under Rule 220A of the Income Tax Rules 2002. The application for the exemption shall be accompanied with the documents / information as required in Rule 220 A of the Income Tax Rules, 2002.⁶³

⁶¹ Clause (60) of Second Schedule to the Income Tax Ordinance, 2001, Published by Facilitation and Taxpayers Education Wing, Edition June 2011 at 333

⁶² Clause (58) of Second Schedule to the Income Tax Ordinance, 2001, Published by Facilitation and Taxpayers Education Wing, Edition June 2011 at 331

⁶³ Rule 220 A of the Income Tax Rules 2002 for the list of documents and information required to be accompanied with the application for the purpose of approval under (58) of the Second Schedule to the Income Tax Ordinance, 2001:

- i. a duly attested copy of the constitution, memorandum and articles of association, rules and regulations or bye-laws, as the case may be, of the organization specifying the aims and objects for which organization is established;
- ii. a certified copy of the registered trust deed, in case of a Trust;

The approval under clause (58) of the Second Schedule to the Income Tax Ordinance, 2001 shall not be granted if the Commissioner of Income Tax is satisfied that he has reasons to believe that any of the conditions of Sub Rule (3) of 220 A has been occurred.⁶⁴

The difference in the requirements of both the approval as nonprofit organization under 2(36) of the Income Tax Ordinance and the exemption of business income of the NGO under clause (58) of the Second Schedule to the Income Tax Ordinance, 2001 is only the condition maintaining books of accounts and keeping them open for public inspection at any reasonable time, without any hindrance, at all reasonable times; As under this clause the NGO is being granted approval of business exemption therefore, legislator intends to save guard the government contribution in the NGO has inserted this clause to compel more transparency and responsibility on the NGO granted exemptions from business income.

As the authority of Commissioner to withdraw approval under section 2(36) of the Income Tax Ordinance, 2001 the Commissioner is also authorize to withdraw the approval granted under rule

- iii. a certified copy of the certificate of registration in the case of an organization registered under the Societies Registration Act, 1860 (XXI of 1860), or the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (XLVI of 1961), or under any other law in substitution thereof relating to the registration of welfare organizations as applicable;
- iv. duly attested copies of balance sheets and of revenue accounts of organization as audited by a "qualified accountant" for the three years immediately preceding the tax year in which the application is made;
- v. the names and addresses of the promoters,
- vi. directors, trustees, president, secretary, treasurer, manager and other office bearers, as the case may be, of the organization and indicating clearly their family relationships, if any, with each other; and

a detailed report with regard to the performance of the organization, for achieving its aims and objects during the three financial years immediately preceding the date of the application duly evaluated and certified by an independent certification agency approved and appointed by the Federal Board of Revenue."

⁶⁴ Sub Rule (3) of Rule 220 A of the Income Tax Rules, 2002 specifying the conditions on which the exemption under clause (58) of the Second Schedule to the Income Tax Ordinance, 2001 may be refused by the Commissioner:

- "(a) any of the requirements or conditions specified in sub-rules (1) and (2) has not been fulfilled; or
- (b) the organization has been or is being used or is likely to be used for personal gains of any particular person or a group of persons; or
- (c) the organization has been or is likely to be used for propagating the views of a particular political party or a religious sect; or
- (d) the organization has not been or will not be able to achieve its declared aims and objects in view of its set up, administration or otherwise as evaluated and certified by an independent certification agency; or
- (e) the constitution, memorandum and articles of association, trust deed, rules and regulations or bye-laws, as the case may be, specifying the aims and objects of the organization do(es) not provide-
 - (i) for audit of the annual accounts of the organization, every year by a "qualified accountant";
 - (ii) for the transfer of its assets, in the event of its dissolution, after meeting all liabilities, if any, to an organization approved under this rule or rule 212 within three months of the dissolution under intimation to the Commissioner Inland Revenue.
 - (iii) for the regular maintenance of books of accounts in accordance with the generally accepted accounting principles and for their inspection by the interested members of the public, without any hindrance, at all reasonable times;
 - (iv) for the utilization of its money, property or income or any part thereof solely for promoting the objects specified in sub-clause (i) of clause (a) of sub-rule (2);
 - (v) for the maintenance of accounts of the organization being kept in a scheduled bank or in a post office or national savings organization, National Bank of Pakistan or nationalised commercial banks;
 - (vi) for prohibiting the making of any changes in the constitution, memorandum and articles of association, trust deed, rules and regulations or bye-laws, as the case may be, without the prior approval of the Federal Board of Revenue; and
 - (vii) for restricting the surpluses or monies validly set apart, excluding restricted funds, up-to twenty-five per cent of the total income of the year.

Provided that such surpluses or monies validly set apart are invested in Government securities, NIT units, a collective investment scheme authorized or registered under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003, mutual fund, a real estate investment trust approved and authorized under the Real Estate Investment Trust Rules, 2006, or scheduled banks." Published by Facilitation and Taxpayers Education Wing, Edition September 2008 at 154

220A(2) for the exemption under clause (58) of the Second Schedule to the Income Tax Ordinance, 2001, if he is satisfied that:

- (a) "the constitution, memorandum and articles of association, trust deed, rules and regulations or bye-laws, as the case may be, specifying the aims and objects of the organization do not provide for prohibiting the making of any changes in the constitution, memorandum and articles of association, trust deed, rules, regulations and bye-laws without prior approval of the Regional Commissioner;
- (b) the organization has-
 - (i) been or is being used for personal gain of any particular person or a group of persons';
 - (ii) been propagating the view of a particular political party or a religious sect;
 - (iii) been or is being managed in a manner calculated to personally benefit its members or their families; or
 - (iv) has not been, or will not be, able to achieve its declared aims and objects in view of its set up, administration or otherwise as evaluated and certified by an independent certification agency;
 - (v) failed to give valid reasons for setting apart, or not utilizing, or accumulating surpluses, excluding restricted funds, in excess of twenty five per cent of the income for the year;
 - (vi) failed to file the return of income supported with the following documents namely:-
 - (a) the statement of audited balance sheet and statement of accounts;
 - (b) statement showing names and addresses of the persons from whom donations, contributions, subscriptions etc exceeding five thousand rupees have been received during the tax year;

- (c) statement showing the names and addresses of donees and beneficiaries etc to whom payments, services etc exceeding five thousand have been made during the tax year; and
- (d) statement showing the money set apart or kept un-utilized with reasons thereof; and
- (e) a detailed performance evaluation report in terms of sub-clause (vi) of clause (b) of sub-rule (1) of rule 220(A), after every three years.”⁶⁵

Tax laws in order to promote the philanthropic activities in the country not only provide direct exemptions and benefits to the NGO but it also encourage the corporate and businessmen to donate such NGOs who are having approval under section 2 (36) of the Income Tax Ordinance, 2001. The person who makes charitable donations to such NGOs shall be entitled for Tax Credit under section 61 of the Income Tax Ordinance, 2001.

Section 61 states:

“61. Charitable donations.— (1) A person shall be entitled to a tax credit in respect of any sum paid, or any property given by the person in the tax year as a donation to -

- (a) any board of education or any university in Pakistan established by, or under, a Federal or a Provincial law;
- (b) any educational institution, hospital or relief fund established or run in Pakistan by Federal Government or a Provincial Government or a Local Government; or
- (c) any non-profit organization.

(2) The amount of a person's tax credit allowed under sub-section (1) for a tax year shall be computed according to the following formula, namely:—

$$(A/B) \times C$$

⁶⁵ Sub clause(b)Clause (1) of Sub Rule (7) of Rule 220A of the Income Tax Rules, 2002, Published by Facilitation and Taxpayers Education Wing, Edition September 2008 at 159

where –

- A is the amount of tax assessed to the person for the tax year before allowance of any tax credit under this Part;
- B is the person's taxable income for the tax year; and
- C is the lesser of –
 - (a) the total amount of the person's donations referred to in subsection (1) in the year, including the fair market value of any property given; or
 - (b) where the person is –
 - i. an individual or association of persons, thirty per cent of the taxable income of the person for the year; or
 - ii. a company, twenty per cent of the taxable income of the person for the year.”⁶⁶

Minimum tax⁶⁷ @ 1% has to be paid in all cases of exemption, losses etc. under section 113 of the Income Tax Ordinance, 2001, whereas tax law under sub clause (ix) of (11A) of the Second Schedule to the Income Tax Ordinance exempt the chargeability of minimum tax under section 113 on the non-profit organizations.

Relevant clause of exemption which immune NGO for the payment of minimum tax under section 113 of the Income Tax Ordinance, 2001 is as under:

- “(ix) non-profit organizations approved under clause (36) of section 2 or clause (58) or included in clause (61) of Part-I of this Schedule;”⁶⁸

As the NGO under section 80 of the Income Tax Ordinance, 2001 has been declared as company and every company under Income Tax Ordinance, 2001 is obliged to file its Annual Return of its Income. Therefore, the NGOs are by virtue of definition of section 80 bound to file annual income tax return, however, a special clause has also been inserted in section 114 of the Income Tax

⁶⁶ Section 61 of the Income Tax Ordinance, 2001, Published by Facilitation and Taxpayers Education Wing, Edition June 2011 at 88

⁶⁷ Section 113 of the Income Tax Ordinance, 2001, Published by Facilitation and Taxpayers Education Wing, Edition June 2011 at 143

⁶⁸ Sub clause (ix) of (11A), Part IV of the Second Schedule to the Income Tax Ordinance, 2001, Published by Facilitation and Taxpayers Education Wing, Edition June 2011 at 382

Ordinance, 2001, to ensure the compliance of this requirement by the NGO. As per section 114 (1) (ac) of the Income Tax Ordinance 2001 every non-profit organization is required to furnish a return of income for a tax year. Section 114 specifies who are required to furnish its return of income under Income Tax Ordinance, 2001 annually. The relevant excerpt of the section is as follows:

“114. Return of income. — (1) Subject to this Ordinance, the following persons are required to furnish a return of income for a tax year, namely:—

- (a) every company;
- (ab) every person (other than a company) whose taxable income for the year exceeds the maximum amount that is not chargeable to tax under this Ordinance for the year; or
- (ac) any non-profit organization as defined in clause (36) of section 2
- (ad) any welfare institution approved under clause (58) of Part I of the Second Schedule;”⁶⁹

Although Income Tax Ordinance, 2001 primarily promulgated with the view of self assessment scheme, however, this law also empower the tax department to select any return of income for audit and detail scrutiny of the financial affairs of the taxpayer. Therefore, the NGO may be selected for audit by the tax department for the detail scrutiny of the accounts of the NGO under section 177 of the Income Tax Ordinance, 2001.

Being responsible person of the society the law has given the authority to the organization to perform the function of tax collection agent on behalf of Federal Board of Revenue. The NGO has been declared as withholding agent, therefore, the NGO has to deduct the amount of tax on the payments made by it to the vendors for the goods, services and contracts.

Section 153 of the Income Tax Ordinance, 2001 deals with the deduction of tax at source on the payments of goods, services and contract.⁷⁰ For the purpose of inclusion of NGO in the word

⁶⁹ Sub Section (1) of Section 114 of the Income Tax Ordinance, 2001, Published by Facilitation and Taxpayers Education Wing, Edition June 2011 at 147

⁷⁰ “153. Payments for goods, services and contracts — (1) Every prescribed person making a payment in full or part including a payment by way of advance to a resident person or permanent establishment in Pakistan of a nonresident person—

(a) for the sale of goods;
(b) for the rendering of or providing of services; and

person in this section a specific clause has been inserted to include non-profit organization responsible under this section. Section 153 (7) describes persons obliged to withhold income tax on the payments made for goods, services and contracts. The sub clause (d) of Section 153(7) notify "a non-profit organization"⁷¹ as a prescribed person liable under this section for the withholding of Income tax on payments for acquiring of goods, services and contracts.

After deducting and depositing the withholding tax under section 153 and other relevant sections related to payments the NGO has to file electronic monthly withholding statements under section 165 of the Income Tax Ordinance, 2001. The electronic submission of statements of withholding tax can be made through "FBR e- portal"⁷². Updated Income Tax Laws are also available in the "official website of the FBR"⁷³.

4.5 Role of Auditors

The auditor has to be appointed by the NGO for every year. The auditor must be a chartered accountant, if the annual revenue of the NGO exceeds Rs.3 million. If it is less than this limit then the accounts of the NGO may be audited by Cost and Management Accountant. If there is a change of auditor, the incoming auditor has to take NOC from the outgoing auditor who is obliged to inform the NGO, of his withdrawal. Auditing is to be conducted in accordance with sound public auditing practice. Financial audit has to be conducted according to recognized international auditing standards. The auditor has to check whether the accounts present a fair and true view, the financial statements are in agreement with the grants allocated, contracts executed with the donor, as well as in accordance with the laws of the country. During audit the auditor has to check:

1. whether the accounts present a fair and true view, i.e. if they are without any significant errors and omissions,
2. if the conditions for the grant have been fulfilled, including the provisions in the agreement,
3. if the grant has been used in accordance with the objective and the conditions on which the grant was made,

(c) on the execution of a contract, other than a contract for the sale of goods or the rendering of or providing services, shall, at the time of making the payment, deduct tax from the gross amount payable (including sales tax, if any) at the rate specified in Division III of Part III of the First Schedule.", Published by Facilitation and Taxpayers Education Wing, Edition June 2011 at 209

⁷¹ clause (d) Sub Section (7) of Section 153 of the Income Tax Ordinance, 2001, Published by Facilitation and Taxpayers Education Wing, Edition June 2011 at 213

⁷²Form electronic submission of withholding tax statements www.e.fbr.gov.pk (Accessed in June...2010)

⁷³ www.fbr.gov.pk (Accessed in June...2010)

4. if the recipient of the grant has practiced economy,
5. if the NGO has provided the correct and full information about the fulfillment of the outcome requirements,
6. if the NGO's management has provided reliable data about productivity and efficiency,
7. the auditor must check that the grants are deposited in a designated bank account and that the movements in the account are reconciled with the payment orders.
8. there should also be a check of whether the funds sent by the NGO to partners or departments abroad are deposited in a designated account.
9. the auditor must thus satisfy himself that there is no merging of the other funds and the NGO's own funds.
10. the auditor must have to specify the future contingencies which might affect the continuation of operations due to any financial reasons.

The audit has to be conducted by means of spot checks, among other things on the basis of an assessment of importance and risk. The NGO's management must provide the auditor with any information that must be regarded as important for assessing the accounts and for the auditor's evaluation of the administration, including objectives and results achieved. The NGO's management must give the auditor access to conduct any examination the auditor finds necessary and ensure that the auditor receives any information and assistance that must be regarded as necessary for conducting the audit. The auditor endorses the audited accounts stating that the accounts have been audited in accordance with the rules laid down. Qualifications must be stated in the endorsement. The auditor must report his assessment and conclusion regarding the audit conducted.⁷⁴

4.6 Certification body

At present only one organization i.e. Pakistan Centre for Philanthropy (PCP) has been notified by the Federal Board of Revenue as approved agency for the certification of NGOs for the purpose of

⁷⁴ Role of Auditor <http://amg.um.dk/nr/rdonlyres/e67629c8-a568-4ee0-a767-76e20060de05/0/annex9auditinstructionprojects.pdf> (Accessed Feb 2011)

eligibility for tax exemption under Income Tax Ordinance, 2001. According to PCP the purpose of the certification is for the development of transparency and good governance in the NGO sector.

"The Certification Programme seeks to bring transparency, accountability and good governance in the nonprofit sector in Pakistan. The first initiative of its kind in South Asia; it involves the evaluation of a nonprofit organization on standardised parameters of internal governance, financial management and programme delivery.

This voluntary assessment aims to enhance a CSOs' credibility and resultantly its access to funding. Through the allied activities of this programme, PCP promotes certified CSOs in an annual directory and on its website and also builds capacities of civil society organizations for greater effectiveness.⁷⁵

NGO apply for the certification from the PCP to gets its name in the directory of PCP of approved certified agencies to raise its acceptance by the donor agencies, and by this certification the standards operating procedures for the operation of the NGO shall improve. The most important purpose for the certification is to acquire the approval under section 2(36) or to apply for exemption under clause (58) of Income Tax Ordinance 2001.

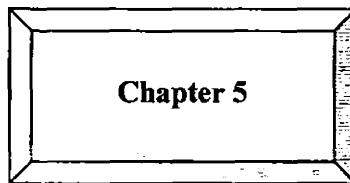
International Federation of Red Cross and Red Crescent Societies has developed Evaluation Standards of member societies, these evaluation standards are good enough to be made as standard at the time of evaluation of NGO performance. These standards are as under:

1. Utility: Evaluations must be useful and used.
2. Feasibility: Evaluations must be realistic, diplomatic, and managed in a sensible, cost effective manner.
3. Ethics & Legality: Evaluations must be conducted in an ethical and legal manner, with particular regard for the welfare of those involved in and affected by the evaluation.
4. Impartiality & Independence; Evaluations should be impartial, providing a comprehensive and unbiased assessment that takes into account the views of all stakeholders.
5. Transparency: Evaluation activities should reflect an attitude of openness and transparency.

⁷⁵ Certification purpose of NPO <http://pcp.org.pk/content.php?cid=7> (Accessed in Feb 2011)

6. Accuracy: Evaluations should be technically, accurate, providing sufficient information about the data collection, analysis, and interpretation methods so that its worth or merit can be determined.
7. Participation: Stakeholders should be consulted and meaningfully involved in the evaluation process when feasible and appropriate.
8. Collaboration: Collaboration between key operating partners in the evaluation process improves the legitimacy and utility of the evaluation.⁷⁶

⁷⁶ International Federation of Red Cross and Red Crescent Societies <http://www.ifrc.org/Global/Publications/monitoring/IFRC-Framework-for-Evaluation.pdf>
(Accessed in January 2012)



FINANCIAL ADMINISTRATION

Almost every law relating to NGO demands clear financial administration in the shape of audited accounts of the NGO, but the tax laws really play a vital role in the financial administration of the NGOs. Tax laws demand that NGO must keep complete record of books and accounts and these should be open for inspection by any person in the official timing. Further tax department has the right to select the case of NGO for audit under section 177 of the Income Tax Ordinance, 2001.

The Financial Executive is responsible for ensuring that financial controls are in place specifically the accounts are presenting the true and fair position of the state of the NGO. The expenditures remain within the budget, the expenditures are only for the purposes set out in the budget, financial documentation, including quotations, invoices and receipts are collected and filed in an orderly manner.

Financial administration is the administration of all NGO's financial transaction and with the vision to ensure whether these transactions are made for the achievement of the declared aims and objectives of the NGO, the procedure of approval has been followed, all tax laws regarding the payment through cross cheque after deduction of tax thereon wherever applicable, the vendor has been selected with due care of the administration ensuring the quality and cost effectiveness of the supply or service, the transactions are made within approved budget, it means the budget of the NGO should be made and approved by the Governing body, whether the books of accounts are being maintained by the NGO in accordance with the accounting standards and the record is placed in safe custody, whether the compliance of other laws applicable to the NGO for reporting to the authorities have been fulfilled, whether the donor has been updated about the financial results and budget consumption reports, and most importantly whether the accounts of the NGOs are audited by the reputable Chartered Accountant Firm and the evaluation of the NGO by the approved certified evaluation agency has been made which also covers the evaluation of all financial matters of the NGO and also probe the remuneration, benefits and services being utilized by the members of the governing body, and the structure of the governing body, how many are

relatives with each other, whether the meetings of the NGOs are being convened properly and minutes are being maintained and served properly, whether the resolutions of the Governing body are being materialized in to reality etc., the sources of income, investment of property of NGO and administration of property.

Pakistan NGO Forum (PNF) disagreeing with the draconian and confusing laws of the country relating to NGOs has developed an agreed code for NGOs. As all the NGOs agree on this code hence the legislators should at least consider this code rather to impose others which will again create the problem of acceptance by these NGOs. The codes established by Pakistan NGO Forum (PNF) are regarding the codes of financial, community and organizational level.

5.1 Source of funding and its right of appeal for fund raising

The Charitable Funds (Regulation of Collections) Act, 1953 is an "Act to provide for the regulation, administration and accounting of collections of charitable donations and for the prevention of frauds"⁷⁷. Under Section 5 of this act no person is entitled to collect the funds unless duly authorized by the Government.

Although it is not mandatory requirement to mention in the constitution of the NPO regarding the funding restriction placed by the Charitable Funds (Regulation of Collections) Act, 1953, however, under this law "no person shall make any collection for any private fund unless before the commencement of the collection a declaration in respect of the private fund has been duly made in the prescribed form and been duly delivered by hand or by registered post, acknowledgment due, to the sanctioning authority, and his name and address is duly shown as a promoter or collector of the fund in the declaration."⁷⁸

The Deputy Commissioner of the District from whom the permission has to be sought in practice has considerable discretion in either granting or rejecting the application without specifying any reason. The relevant excerpt authorizing them to refuse the collection of fund or to allow the collection of fund with some conditions is as under:

Section 5 of the Charitable Funds (Regulation of Collections) Act, 1953 states:

⁷⁷ Preamble heading of the Charitable Funds (Regulation of Collections) Act, 1953, Compendium of Social Welfare Laws by Mehboob Pervez Awan, Federal Law House, Edition 2007 at 169

⁷⁸ Section 4 of the Charitable Funds (Regulation of Collections) Act, 1953, Compendium of Social Welfare Laws by Mehboob Pervez Awan, Federal Law House, Edition 2007 at 173

"The sanctioning authority may refuse to sanction the collection if the object of the collection appears to it to be immoral or contrary to public policy, or if the authority is not satisfied with regard to the bona fides of the persons proposing to make the collection, or if the authority is not satisfied with regard to the proper custody of the fund or the due administration of the fund for the purposes for which it is to be collected.

The sanctioning authority may sanction the collection on such conditions as it may consider it necessary to impose for ensuring the proper custody of the fund and its due administration and utilization for the objects and purposes of the fund."⁷⁹

The Charitable Funds (Regulation of Collections) Act, 1953 also placed restriction on the funds collected under the authority of this act that these funds shall not be used for the purpose other than mentioned at the time of declaration. And these funds cannot be transferred to any other person without the approval of the authority. Furthermore, the sanctioning authority shall have the right to punish the custodians of the funds collected with due permission that the same was used in contravention to the provision, unless, the members proves themselves innocent in the case of misapplication of funds.

Section 7 of the Charitable Funds (Regulation of Collections) Act, 1953 deals with the misapplication of funds states as under:

"Misapplication of funds.— (1) No part of any donations collected for any private or charitable fund shall be used for any purpose or object other than the purpose or object for which it was collected, except under the order of a competent court, or in the case of a charitable fund, of the Treasurer of Charitable Endowments.

- (2) No charitable fund in the custody of any persons authorised to hold it shall be transferred to any other persons except with the permission in writing of the sanctioning authority or under the order of a court.
- (3) If any part of any donations collected for any private or charitable fund is used for any purpose or object other than that for which it was collected, or is otherwise

⁷⁹ Sub Section (2) and (3) of Section 5 of the Charitable Funds (Regulation of Collections) Act, 1953, Compendium of Social Welfare Laws by Mehboob Pervez Awan, Federal Law House, Edition 2007 at 174

misapplied or misappropriated in any manner, every person concerned with the collection or administration of the fund, whether as a promoter, collector or a recipient, shall unless he proves that the misuse, misapplication or misappropriation occurred without his knowledge and that he had used all due diligence to prevent such misuse, misapplication or misappropriation, shall be deemed to have acted in contravention of this section and be punishable accordingly.”⁸⁰

According to the study of Dr. Aisha Ghaus-Pasha, Haroon Jamal and Muhammad Asif Iqbal for project of “The Johns Hopkins Comparative Nonprofit Sector in Pakistan” it has been notified that following are the sources of cash and in-kind revenues of NGOs in Pakistan:

- “Fees and Charges, which include membership charges, service charges paid directly by the client in exchange for services; investment income; and income from business activities (e.g., sale of goods and services) that are not directly related to the primary activity of the organization.
- Public Sector Payments, which refer to revenues coming from all levels of the government (federal, provincial, district) as well as quasi-governmental entities such as Pakistan Poverty Alleviation Fund, Trust of Voluntary Organizations etc. Public sector revenues also include grants and contracts in support of specific organizational activities or services; and third part payment, i.e. indirect government payments for reimbursement to another organizations for services rendered to clients.
- Philanthropy, or Private Giving, which includes revenues received from, individual contributions; private foundation grants, and corporate donations including those from corporate foundations. This source is further disaggregated into indigenous and foreign classifications.”⁸¹

⁸⁰ Section 7 of the Charitable Funds (Regulation of Collections) Act, 1953, Compendium of Social Welfare Laws by Mehboob Pervez Awan, Federal Law House, Edition 2007 at 176

⁸¹ Sources of Revenue of NGO, <http://www.pcp.org.pk/pdf/John%20Hopkins%20-Nature%20and%20dimensions%20of%20the%20nonprofit%20sector%20in%20Pakistan.pdf> (Accessed in Mar.....2011)

5.2 Administration of property

The Board of Trustees / Governing Members have the complete control over the administration of the Property of the NGO. They are not the owner of the property of the NGO but the control of the property for the purpose of achievement of declared aims and objectives of the NGO is under the control and supervision of the Governing Members. The Members have to ensure its utilization only for the purpose of NGOs and not for the purpose of benefit of any member. The members are responsible to keep the property of the NGO with due care as a man with ordinary prudence in such case is required to do the same. The members have to protect the title of the property and for this purpose member is bound to maintain and defend all such suits for preventing the NGO from any loss to the property.

The NGO has to ensure that all receipts of the NGO whether donation of cash or kind or income from other sources have properly been entered and been immediately deposited in the relevant bank account of the NGO upon their receipt. As well as the disbursement of the resources should be made in accordance with the NGO approved rules and regulations and the practices adopted by the NGO. That fixed assets of the NGO have been acquired and disposed in accordance with the NGOs approved procedure with its complete record. The NGO has to follow the procurement policy which should be based on the principle of assuring the most cost efficient and rational use of resources for goods or services that will best serve the organization. Organization should follow a multi quote system procurement policy for the supply of both products and services.

The NGO should have complete records and proof of each activity. The program manager should write a narrative report of each activity of the NGO and must support them with some documentary evidence. On the basis of these activity / project reports the organization will be in a position to prepare its annual report regularly, which is not only demanded by the regulatory authorities but also required by the donors and for publication purposes. The report should also cover the summarized form of financial cost incurred on this activity along with the position of budget approved for the same with the clear presentation of any over run and saving of budget out of this activity.

It shall be ensured by the Treasurer of the NGO that the accounts are maintained and kept by the NGO according to international accounting standards and as per the requirements of laws and requirement of the donors.

5.3 Investment of property

The Board of Trustees / Governing Members have the authority to invest the property of the NGO in any business or venture for the purpose of generating revenue for the accomplishment of the objects of the NGO. However, the members should take all possible steps for evaluating the safety and security of not only the principal amount / property of the NGO but also the interests / profits receivable to NGO against such investment. The members have to follow the procedure of investment of property as mentioned in their law under which they are registered and under the powers and procedure given to them in the constitution of the NGO. As the exemption from tax is available to the NGO under clause (58) of the Second Schedule to the Income Tax Ordinance, 2001, therefore, before acquiring the profits of the investment of the NGO property the members should proceed the case of exemption of the NGO under Rule 220A of the Income Tax Rules, 2002 for the grant of exemption under clause (58) of the Second Schedule to the Income Tax Ordinance, 2001 so that the tax benefit available under the law to the approved NGOs may be acquired.

5.4 Audit of Accounts

Almost every law requires the maintenance of financial record but only the Voluntary Social Welfare Agency and the Association under Companies Ordinance, 1984 requires the audit of these accounts. The Company law requires the association to keep the accounts in accordance with the International Accounting Standards which are verified by the Chartered Accountants at the time of Audit of Accounts.

The statement of Receipts by donor is required to be filed under the Voluntary Social Welfare Agencies Ordinance, and Audited Accounts of the Association are required to be filed to the Registrar on annual basis.

Under the Charitable Funds (Regulation of Collections) Act, 1953 the NGO is required to maintain the complete record of accounts and the same should be audited by the NGO. The NGOs are required to submit the audited report to the sanctioning authority at prescribed time. Section 6 of the Act, states as follows:

- “(1) Every promoter, collector and recipient of every fund or donation to which this Act applies shall maintain or cause to be maintained a true and proper account in the prescribed manner of the fund or donation collected.

- (2) The accounts of all charitable funds shall be audited and submitted to the sanctioning authority in the prescribed manner and at prescribed times or intervals.
- (3) The sanctioning authority may at any time for reasons to be stated in writing require by order any accounts of any charitable fund to be audited or re-audited by a specified auditor at the cost of any particular individual or individuals.
- (4) The sanctioning authority may at any time inspect or cause to be inspected any accounts maintained under this section.
- (5) Any person who dishonestly or fraudulently tampers with, conceals or destroys any records pertaining to the collection of any fund to which this Act applies shall be deemed to have contravened this Act and be punishable accordingly.”⁸²

Normally in the audits of NGOs the auditor has to report that how much money the NGO has received and spent in the financial year, whether the NGO has used its resources for the accomplishment of its declared aims and objects and whether the expenditures made were properly authorized and in authority with the donor commitments, whether the accounts are presenting the fair view of the state of the organization and to confirm organizations assets and about the financial record kept by the NGO and how it can be improved.

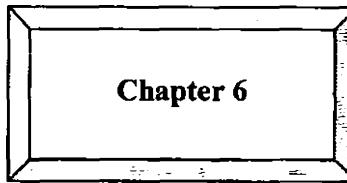
A good auditor will not only give its observations over the financial system of the organization but also provide its recommendation to improve their capability and compliance.. This is a very useful document that should be reviewed by the board members. Management letter is always to improve the financial control and accountability practices of the organization. The Financial head should ensure that the recommendations of the auditor are being followed up.

5.5 Tax exemption

FBR is granting tax exemptions to those NGOs which are following the financial matters according to laws of the country. As for the purpose of granting exemption, tax officials require the audited accounts of the NGOs, Performance Report certified by an independent agency, proof of annual tax returns, withholding tax statement which shows that the payments of expenses have been made through cross cheques and the tax has duly been deducted and deposited thereon. The tax exemption hence granted after due inspection of the financial transactions of the NGO,

⁸² Section 6 of the Charitable Funds (Regulation of Collections) Act, 1953, Compendium of Social Welfare Laws by Mehboob Pervez Awan, Federal Law House, Edition 2007 at 175

therefore, tax exemptions is convincing factor for the federal administration of the NGOs. Tax exemptions and benefits available to NGO are discussed in detail in Chapter 4 in the regulatory role of tax department.



LAWS FOR INTERNATIONAL NGO IN PAKISTAN

6.1 Regulatory bodies for international NGO

At present the INGO in order to work in Pakistan has to apply to the Economic Affairs Division of Pakistan for signing of Memorandum of Understanding. The Economic Affairs Division forwards the application to Ministry of Interior, Ministry of Foreign Affairs and to other agencies of Pakistan for their clearance / recommendation. After these clearances Economic Affairs Division forward the application to the Cabinet Division for Cabinet approval for signing of this MOU with the organization / NGO allow working in Pakistan. Once the approval is granted the MOU is signed between the Government of Pakistan and the NGO. After the signing of MOU, the NGO has to get them registered with Securities and Exchange Commission of Pakistan, as Foreign NGO. The INGO has to apply the EAD with the following:

Application for seeking registration to work in Pakistan should be addressed to Secretary, Economic affairs Division, giving introduction of the Organization, experience, reasons/justification to work in Pakistan. The following information is required to be attached with application for permission to work in Pakistan:

The application should be supported by copies of the following documents duly verified and attested by the respective embassy:-

"Application for signing of an agreement with GoP/EAD should be addressed to Secretary, EAD, giving introduction of the Organization, experience in the relevant field, reasons/justification to work in Pakistan, specific fields of prospective interventions/geographical focus, in the country. The application should invariably be supported by copies of the following documents duly verified and attested by the respective embassy:-"

S #	REQUISITE DOCUMENTS
1	Complete/detailed organization profiles with potential and working staff strength (local and foreign) in Pakistan along with Administrative/operational hierarchy, etc
2	Proof of registration/incorporation in the country of origin
3	Memo/Article of Association or constitution, if any
4	Audit reports for last three years
5	Annual Reports for the last three years
6	Financial statements for last three years
7	Proof of local residence (Lease agreement, etc) with complete address/telephone numbers and list of local contracts in Pakistan
8	Programme / profile of proposed projects with specific location in Pakistan, explaining/substantiating the requisite in-hand human/financial resources/capacity for the same
9	Source of funding/donations; project wise & donor wise
10	A letter of recommendation/endorsement by a competent officer of the respective embassy in Islamabad.
11	Draft MOU

INGO should have at least five (5) years of consistent track record of service in the given areas of activities, in other parts of the world;

15 sets of all documents (1 original + 14 copies) *properly flagged* are required to be submitted along with the application.⁸³

The documents required to be submitted with the application in EAD also requires the attestation of these documents from the Pakistan High Commission in the native country of the INGO. For the purpose of attestation from the Pakistan High Commission these documents are first required to be notarized in their country before submission to Pakistan High Commission for attestation. After obtaining the attestation of Pakistan High Commission in these documents these are to be forwarded to Pakistan for its submission to EAD. EAD also requires a letter of recommendation/endorsement by a competent officer of the respective embassy in Islamabad which should be directly addressed to Secretary Economic Affairs Division, Government of

⁸³ Check list of documents to be filed to EAD for signing for signing of MOU with Government of Pakistan - <http://202.83.164.27/wps/wcm/connect/0d676b8047716d8d8d87fd83b210b5c7/CHECKLIST-OF-DOCUMENTS.doc?MOD=AJPERES> (Accessed in Aug 2009)

Pakistan. Furthermore, the foreign office of the native country shall be approached by the INGOs to forward one set of these documents to the relevant officer of the embassy in Pakistan to give a recommendation / introduction letter of the INGO to EAD. In practice it has been observed that as the representatives of these NGO whether local or foreigners are not having direct access in these embassies, therefore, sometimes it may take even months to trace the request already sent to the embassy and finally the introduction letter to EAD. As Embassies are not intimating the submission of the introduction letter if filed to EAD therefore, it again becomes a question to trace the letter in the EAD whether it has been received by them or not.

However, the Government of Pakistan is revisiting its policies towards foreign relations, therefore, the Government is also considering its present policy for the regulation of INGOs in Pakistan. It is proposed in the new policy that no Ministry/Organization of the Federal Government or Department/Organization of a Provincial Government or Administered Areas shall register or grant interim permission or issue NOC to an INGO except Economic Affairs Division, Government of Pakistan.

The time period for finalization of application for signing of MOU is not specified, therefore, sometimes, it takes many years to finalize the application. Normally the EAD is not rejecting the application but keeps on pending it without assigning any reason.

It is therefore, proposed in the new policy that INGO which intends to carrying out any development activity or voluntary service in the country shall submit an application to the Economic Affairs Division together with required documents. EAD after receiving the application for signing of MOU may call some other information / documents if EAD consider it necessary, and the applicant shall furnish the information called for within thirty days. EAD may forward the application received to Ministries/Organizations/Provincial Governments, as it may deem necessary, for the purpose of verification of information and these authorities shall furnish recommending certificate or otherwise within one month from the date of receipt. EAD, after making such enquiries as it may consider necessary, to ascertain the correctness of the information as contained in the application and the information supplied, register or otherwise the person or organization to be an INGO for the purpose of undertaking or carrying out any development activity within a period of six months from the date of receipt of application, and such registration shall, unless earlier cancelled or suspended or terminated, remain valid for five years.

The interim permission is also being given to some INGOs for a specified period of not more than one year which has applied for signing of MOU, but the clearance / recommendations from the other departments / agencies has not yet been received. However, it has been proposed in the new policy that no interim permission shall be given to INGOs due to this reason; however, the Interim permission shall be granted to INGOS during natural disasters and emergent situation or on occasions so determined by the Government for undertaking voluntary relief. The validity of such permission shall be only for Six months extendable to another 3 months unless cancelled or suspended or terminated earlier.

The INGOs on the expiry of the period of MOU applies to EAD for its extension / renewal, which again requires the whole process to be followed by the INGO as was done at the time of its first registration. The time period for the processing of the renewal application is also not mentioned anywhere, therefore, normally it runs out of time and the INGOs has to work for some time not validated by any agreement as meanwhile MOU expires and renewal is in process. In this scenario a major problem arises from the banks which in practices issue letter to INGOs to provide the renewal of extension of the MOU as their allowed period of existence in the country has expired otherwise banks are going to close their bank accounts. As INGOs are bound to make all transactions through banking channel therefore, practically the time period for the renewal of MOU is very critical for the INGOs and it is also being indicated by the auditors in their report. Therefore, considering the difficulty of the INGOs the government in the new policy has proposed that INGO registered with EAD may, at least nine months prior to the date of expiry of its registration, apply for renewal of its registration; EAD may, on receipt of an application called for any information from the applicant which it may consider necessary and the applicant shall furnish the information call for within thirty days. EAD may, after consulting the Ministry of Interior, Ministry of Foreign Affairs and such other Federal Ministry/Organization and considering the information provided and after assessing the efficacy and effectiveness of the INGO, may renew the registration for a period of another five years. No INGO registered with EAD shall, undertake or carry on any development activity after the date of expiry of its registration or interim permission for undertaking or carrying on such activity and shall take necessary steps to phase out its staff and activities if its registration is not renewed or Interim Permission is not extended; Provided that an INGO may, in exceptional circumstances, be allowed by the EAD to undertake or carry on such activity for a period not exceeding six months from the date of such expiry if its application for renewal of registration is pending with Economic Affairs Division;

6.2 INGO obligations

- "a) After signing MOU with the Government of Pakistan the INGOs, it is required that INGO shall not involve in funds raising locally;
- b) provide funds primarily in foreign exchange for the implementation of the projects undertaken by or on behalf of INGO
- c) shall not use telecommunication equipment or any such equipment without valid license without the permission from the concerned authorities of the Government of Pakistan.
- d) appoint a Country Representative and other staff as required for the management and implementation of the INGO project / programs, and related activities, and to maintain contact with the Government of Pakistan.
- e) employ upto 10% of total posts, its own nationals and not other foreigners in Pakistan. It should, however, give preference to the employment of Pakistanis in key positions.
- f) shall maintain lists of all local and foreign staff and provide to the Government as and when required.
- g) the INGO shall confine its operation to the geographic area permitted to work by the Government of Pakistan.
- h) the INGO will restrict its operations to the thematic area already agreed upon with the Government of Pakistan.
- i) obtain prior written permission from the government for visiting prohibited areas.
- j) not employ/engage or associate nationals of Israel, Taiwan, India or nationals of countries that have not been recognized by Government of Pakistan with its program activities and operations in Pakistan.
- k) to ensure that all expatriate staff shall remain as residents or visitors and respect the laws, regulations, religious and cultural norms of Pakistan,

- l) Tourist, visit and business visa holders will not be employed at any stage by the INGO.
- m) review annually the effectiveness of the programs in collaboration with the representatives of the Government of Pakistan and concerned donor agencies.
- n) not indulge in religious activities i.e. preaching and distribution of religious material / pamphlets which creates heatedness among the people of locality where the INGO is in operation in Pakistan.
- o) not to give any assistance or aid to any Local or INGO without written permission from EAD.
- p) not to transfer the property under organizational's use to any other person or organization or to use such property for purposes other than agreed with EAD.
- q) to provide all its record to Government of Pakistan as and when required by them
- r) inform respective Provincial Government's Social Welfare Department /PDMA and concerned local District authorities regarding its programs/projects in their area. Offer their accounts for local audits.
- s) facilitate the inspection of their activities by the officers of Government of Pakistan –
- t) submit to the Government annually or as and required, all financial, administrative and organizational records related to its work in Pakistan. Submit written reports covering the activities/programs/projects, sources of funding and duration of these programs and expenditure in Pakistan during that period, -to Government of Pakistan for its knowledge and inspection.
- u) submit on yearly basis independent or third party evaluation including quantitative and qualitative assessment of the direct beneficiaries.
- v) implementing Agency, provincial Government and the Divisional Commissioner.
- w) the Government may, by a general or special order, authorize such officers, as it considers appropriate to monitor the physical progress of activities carried out by an INGO in the specific location and during a specified period. And the Government

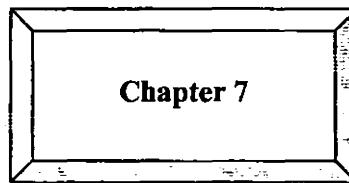
may, if it considers necessary, delegate such powers to the Provincial Government order to be published in the official gazette.”⁸⁴

6.3 Regulatory role of tax department

The foreign NGOs after having signed Memorandum of Understanding with Economic Affairs Division, Government of Pakistan have to register itself as a Foreign NGO with Securities & Exchange Commission of Pakistan and registration with tax department to acquire National Tax Number for the INGO. As mentioned in the regulatory role of tax department over the NGOs the INGOs has to follow the same obligation as of local NGOs. The basic difference is that INGOs are normally not allowed to raise funds from the local sources except bank profits as they receive funds from the head office in their native country and there is no income from the beneficiary country, hence there is no tax on their surplus. But the INGO have to perform its role of withholding agent by deducting withholding income tax on payments made to vendors for the purchase of goods & services, the payment of salaries, commission, rent etc. The INGO not only has to deduct and deposit the withholding tax on such payments but also has to file monthly withholding tax statements electronically.

The INGOs registered with EAD may apply to the Federal Board of Revenue along with requisite documents for exemption of import duties and taxes as specified by the Government, from time to time, as per law. However, if the Government has any ground to suspect that facility of exemption has been, or is being, violated or misused by an INGO, it may withdraw the facility of exemption and in addition may impose penalty as per law.

⁸⁴ Draft Policy Framework for Regulation of International Non-Government Organization <http://www.ead.gov.pk/> (Accessed in June 2011)



INTERNATIONAL SCHEME OF LEGISLATION

The word charity has been defined in the UK Charity Act 2006 that the charity means an institution established for charitable purposes only and charitable purpose means a purpose for the public benefit and the purpose within public benefit are explained in the act as under:

- “(a) the prevention or relief of poverty;
- (b) the advancement of education;
- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services;

- (m) any other purposes that may reasonably be regarded as analogous to mentioned above may also be called as for public benefit.”⁸⁵

7.1 Regulatory body

The Charity Commission, is a regulatory body of charities in UK.

The charity Commission is established with the objective:

- “(a) to increase public trust and confidence in charities.
- (b) to promote awareness and understanding of the operation of the public benefit requirement.
- (c) to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
- (d) to promote the effective use of charitable resources.
- (e) to enhance the accountability of charities to donors, beneficiaries and the general public.”⁸⁶

The functions of the Charity Commission are to determine whether institutions are or are not charities, it means the Charity Commission has to evaluate the purpose and functioning of the charity that whether it was established and is working for the purpose of public benefits as mentioned in the Charity Act or not. The Commission has to promote the efficient operation of charities by identifying the NGOs weak areas of administration and management and to guide or order any specific action which is required to be made at that time in the interest of the NGO and to decide whether permission for public collection may be issued to the NGO or not.

The Commission shall perform its function in accordance with the generally accepted principles of governance. The Commission has power to do anything for the performance of any of its functions or general duties. The charities may file an appeal before the Charity Tribunal against any order of the Commission and against the order of the Charity Tribunal may file second appeal before the High Court.

⁸⁵ Sub section (2) of Section 2 of the Charities Act UK, 2006 <http://www.legislation.gov.uk/ukpga/2006/50/section/2> (Accessed in Jan 2012)

⁸⁶ Sub section (2) of Section 7 of the Charities Act UK, 2006 <http://www.legislation.gov.uk/ukpga/2006/50/section/7> (Accessed in Jan 2012)

7.2 Registration

Every charity must be registered in the register of charities unless exempt or is permanently or temporarily exempted by the Commission or whose gross income does not exceed £100,000. Where the charity is required to be mandatory registered under this act the then the trustees are liable to initiate the process of registration. The documents / information required for the purpose of registration are:

- “ 1) copies of the charity’s trusts or particulars of them (if they are not set out in any document),
- 2) such other documents or information as may be prescribed by regulations made by the Minister, and
- 3) such other documents or information as the Commission may require for the purposes of the application.”⁸⁷

The Commission shall maintain the Charities register and is also authorized to remove the name of any NGO from the Charities register who is not performing according to its declared aims and objects or which has ceased to exist or does not operate.

7.3 Scheme of law

- According to the act the Charity constitution shall state its name, its purposes, place of its principal office and the liability of its members whether to contribute or not at the time of winding up. The constitution must have the eligible criteria of membership and procedure and the clear directions about the application of property on its dissolution.
- Any one or more persons can apply for the registration of the organization as charity to the Commission. The application must be accompanied with the relevant information and documents as required by the Commission for the registration as Charity. The Commission may refuse application if proposed constitution does not comply with or if the proposed name is in the opinion of the Commission looks like the name of other charity. After registration of the charity it becomes a body corporate.

⁸⁷ Sub section 3B(2) of Section 9 of the Charities Act UK, 2006 <http://www.legislation.gov.uk/ukpga/2006/50/section/9> (Accessed in Jan 2012)

- Subject to charity's constitution, a charity has power to do anything which is calculated to further its purposes or is conducive or incidental to doing so. The Charity shall use and apply its property in furtherance of its purposes and in accordance with its constitution.
- Any act of the Member of the Charity, due to any shortcoming in the constitution, shall be questioned.
- The members may be either not liable to contribute to the assets at the time of winding up or liable to contribute a specified amount at that time.
- Charity may by resolution of its members amend its constitution. For the purpose of this amendment in constitution a resolution must be passed by a 75% majority of those voting at a general meeting. The resolution has to be sent to the Commission for approval; therefore, it shall not take effect unless it has duly been approved by the Commission.
- Under this act any person including trustee / member is entitled to receive the remuneration of his services but the amount of services must be declared and decided in writing with him and it does not exceed the reasonable amount of this service under similar circumstances only if the constitution of the charity does not prohibit any specified person from receiving the remuneration of the services.
- The appeal for the collection of funds in a public place is not allowed under charity act unless the charity has been granted certificate of collection by the local authority of area where they want to collect the funds.
- The appeal for the collection of funds from door to door cannot be made unless collection certificate has been acquired before the day and been notified to the local authority in whose area the collection is to be conducted.
- The Commission is fully empowered to allow or to refuse the issuance of collection certificate to any charity or to issue the certificate with any condition attached thereto. The commission is also empowered to withdraw or suspend a public collections certificate already issued to any charity if the commission feels necessary.
- The Minister of the Charities is empowered to give financial assistance to any charity. Financial assistance may be given in any form by way of grants, loans, guarantees etc.,

- According to the act it is the responsibility of the member who hold the property that they must inform the donor if the donation could not be applied for such purpose due to any reason for which the donation was made and enquire whether he still wants to provide the same to the NGO for its other declared aims and objects or he want the return of the property / his donation.
- Under Charity Act the Commission has the power to terminate the membership of any person of the charity, however he can apply for the same after the expiry of five years and Commission must grant him permission except under special circumstances where commission has sound reason for its refusal.
- The Commission is fully empowered to order for any action which is necessary for the betterment of the NGO in relation to the administration of the property. For this purpose the commission may direct any person for the accomplishment of task directed to him by the Commission.
- The Commission is empowered to make direction to apply the property in such manner as is specified by it due to the reason that the person holding the property is not applying it for the purposes as he was bound to do so.
- Where the order of the Commission has not been complied by providing the relevant document / information, asked for by the Commission, and the documents and record if would be removed, tampered with, concealed or destroyed, the Commission is empowered to enter and search the premises specified in it; to take possession of any documents which appear to be necessary for preserving; or to take any other steps which appear to be necessary for preserving.
- The Minister under this act is empowered to make provision about the winding up, insolvency, dissolution, revival and about the transfer of property to the official custodian or any other person or body on the dissolution. And the Commission may require any person in whose name any funds or assets of the Charity are standing in trust for a Charity to transfer them into the name of the official custodian or another person or body.

In UK an organization BOND “British Overseas NGOs for Development” has been established with the mission of networking of social sector for international development.

According to BOND research report in August 2006 the Accountability has been defined as the combination of Transparency, Responsiveness and Compliance. Transparency to stakeholders, Responsiveness is a response to stakeholder concerns; and Compliance is the actions.

Transparency is a major challenge for NGOs. The maintenance and controlling of transparency in programmes delivery, operations, finance accounts, is not an easy task for NGO as they have to perform their activities in emergency situations. Further the stability of the NGOs always remains at stake. Any negative reporting may lead to the closure of the NGO activities. The general public never forgives any mistake of the NGO. Therefore, NGOs cannot rely on them for funds.

It has been witnessed that the NGO which maintains a respectful relation of dialogues with beneficiaries and shape up their operative decisions with their involvements are highly successful. However, it requires a high level of patience and adaptability to listen to the beneficiaries and consider their difficulties in the present systems of the organization and try to evolve them in accordance with the convenience of the beneficiaries but with assurance of compliance of regulations and donors directions to complete the welfare projects.

To achieve this objective of beneficiaries involvement in the decision making of NGO the organizational system has to be developed in the same line and the field staff should be engaged by keeping their attitude of listening and quality of adaptability.

There are other principles and codes that organizations voluntarily hold on for its implementation in the Organization.

In order to manage the quality performance of NGO, they have to follow the statutory regulations and recommendations of the board.

Following recommendations are given by the BOND for its Member NGOs:

- (a) "Do not impose a standard, but encourage quality
- (b) NGO should assess whether their relationships with their beneficiaries are as strong as they could be, potentially surveying beneficiaries' and field managers' opinions of their work, and consider whether existing management practices priorities relationships with beneficiaries.

- (c) Monitor the quality of their relationships with beneficiaries. This may include approaches such as routinely surveying beneficiaries (and their representatives) for their opinions of the NGO's work.
- (d) Consider taking steps to develop organizational cultures and internal systems that (i) encourage field staff to develop appropriate relationships with their beneficiaries and (ii) allow them to monitor the quality of these relationships.
- (e) Consider how to involve beneficiaries more in the development of the organization by ensuring that they or their representatives are involved in decision-making.
- (f) Pilot approaches to internal and external accountability that build on and recognise the central importance of relationships with beneficiaries.
- (g) The government should provide a knowledge resource about existing standards that helps members understand the different options on offer.
- (h) Develop simple tools and guidelines to help members manage and monitor the quality of their relationships with their beneficiaries.
- (i) Organise on-going discussion and peer review learning between members that carry out the organizational reviews mentioned above in recommendation (c) to members.
- (j) Work together with those developing standards to help ensure that they form a coherent framework of approaches to quality and accountability.”⁸⁸

7.4 Taxation

The charities commission is the independent charities regulator in England and Wales. Like Federal Board of Revenue in Pakistan “Her Majesty's Revenue and Customs” (HMRC) is the UK tax department. The Charities are regulated by the Commission under Charities Act 2006 whereas some of them are regulated by principal regulators, they are government departments like Department of Education, Department of culture, media etc. Charities may be registered as companies (Limited by guarantee) under the Companies Act 2006, the charities which are also registered under Companies Act, they in addition to the compliance under the other laws have to update the filing requirements of Companies House.

⁸⁸ BOND research report in August 2006 <http://www.bond.org.uk/data/files/report.pdf> (AccessedJan 2012)

Charities have to apply for a charitable status with HMRC. There is strict definition of a charity for tax purposes.

Organizations have to register itself with Regulator of charity; the Charity must have to register it with a charity regulator before applying to HMRC for declaring as exempt charity for taxes. A written application has to be filed on the specified format by using form ChA1. Once the charitable status is approved by HMRC there is no tax on income generated on funding received by charities as long as it is for the charitable purpose as defined in the Charities Act 2006.

If the organization has been recognized in a place where no regulator charity is present then HMRC can apply directly for declaration as exempt charity for taxes. Applications for such case shall also be filed on the same format by using form ChA1.

The registration as exempt charity may be refused by the regulator if the conditions mentioned in Tax law are not fulfilled.

The tax structure in UK is after deduction of Tax free Personal Allowance £7,475 (2010-11 :£6,475) 20% tax is charged on income on first £35,000 (2010-11 :£37,400) and then 40% on £35,001-£150,000 (2010-11: £37,401-£150,000)

When anyone in UK donates to a registered charity, it is deemed paid net of 20% tax and charity can claim the 25% of the net amount from HMRC. (However once the tax year ends if the person didn't have any taxed income he has to pay that reclaimed tax to HMRC). Additionally the donor also gets extension of the basic rate band the gross amount of the donation by 20%. The extension of basic rate will only help him if he is a Higher Rate Tax payer and his basic rate band is fully used up.

7.5 Audit

Charity acts demand the audit of accounts of the charity whose income exceeds the threshold by independent Chartered Accountant.

"Audit is a systematic examination to determine whether the activities of an organization are implemented according to the standards it has committed to and the regulations it is bound to comply with."⁸⁹

Commendable customs of the UK legislation of NGOs:

A single body regulatory body i.e. Charity Commission for the registration and regulation of the NPOs is established in UK. The Commission has been established with the objective to raise public confidence working of NPOs, to specify the areas where the philanthropic work is required to be targeted, to encourage the best use of resources by the NPOs and to encourage the accountability practices in the structure of NPOs. A single body is lacking in Pakistan in the legal structure of NGOs law to regulate these NGOs, as in the case in UK.

The concept of limited liability of the members, as in NGOs registered in UK, should be adopted in NGO legislation of our country. The NGO after incorporation shall be declared as the status of body corporate, separate from its members.

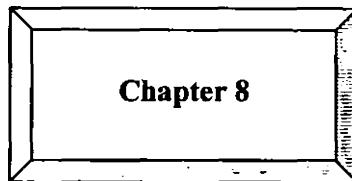
The indemnity as available to the members of NGO in UK should also be given to the members of NGO of Pakistan that Member of the NGO shall not be called into question on the ground that it lacked constitutional capacity.

The concept of amendment in constitution as in UK requiring the prior approval of the regulatory body is recommended for adoption by our authorities.

The entitlement of remuneration to the member of the NGO in providing his services to the NGO in United Kingdom is based on natural justice and this is also recommended practice for adoption in Pakistan subject to proper disclosure to the donors and general public.

The responsibility of the member to inform the donor to the failure of the purposes of the donation due to any reason and hence to enquire whether he wishes to get return of the property / donation, is beautiful principal and in fact based on the principles of Islam.

⁸⁹ A BOND Approach to Quality in Non-Governmental Organizations – August 2006
https://www.civicus.org/hew/media/putting_beneficiaries_first.pdf (Accessed in Jan2012)



CONCLUSION, SUGGESTIONS & IMPORTANT POINTS FOR NEW LEGISLATION

The study clearly covers many legal issues related to NGOs and on each issue the position of each statute has been discussed in comparison with other laws reflecting the point of agreement if any, and point of difference as well. During the study under each legal issue the recommendation has been framed either to harmonize the scheme of law or for the isolation of provisions as compared to others. Therefore, in order to make these laws in comparatively purposeful position these recommendations are needed to be incorporated in the existing legislations or a new bill has to be presented before the Parliament in place of all other existing laws relating to NGOs.

The important points for the creation of new law are as under:

1. A Regulatory body has to be established, not only for the purpose of incorporation of the NGO but also for the regulation of them in accordance with the law. A Regulatory body may be named as "Charity Commission". The structure of the Charity Commission should be alike the structure of Chamber of Commerce and Industry, where the businessmen have more trust / reliance instead of government of the day. In this way the Charity Commission should include the representation of NPOs, with appointments on the basis of election for the specified term. Further the structure should also include the ex-officio representation of following departments but with no voting rights, but should be bound to give their recommendations in writing on every issue present in meeting before the members:

- Ministry of Social Welfare
- Federal Board of Revenue
- Planning Division, and
- Economic Affairs Division

2. Incorporation of NPO

The registration of NPO should be made optional and not mandatory for all NPOs already working in Pakistan. However the NPO should be encouraged to register their organization under this Act.

3. Benefits of Registration

- **Artificial Judicial Person**

In order to give perpetuity to the life of NPO irrespective of their members, the NPOs established under the new law should be given the status of artificial judicial person. This will not affect the life of NPO by the death or resignation of any or all members of the NPO.

- **Members have limited liability**

The members/ Trustees of the NPO should be given the limited responsibility as in the case of company incorporated under Companies Ordinance, 1984. By this limited liability the community can be attracted towards these philanthropic activities for the social development of the country. The members may be given a responsibility of contributing a particular amount as may be specified by them at the time of becoming member in the NPO.

- **Donation from public sector**

According to Charitable Funds (Regulation of Collection) Act, 1953 no person can appeal for donation from public unless the organization gets registered under this act. Therefore, a privilege should be given to the NPOs registered under the new law that they shall be exempt for the registration in the Charitable Funds (Regulation of Collection) Act, 1953 (XXXI of 1953) hence can appeal for donation without any further registration.

- **Approval under 2(36) of the Income Tax Ordinance, 2001**

The NPOs not having approval under section 2(36) of the Income Tax Ordinance, 2001 are not encouraged by the business society for donations. The amount

contributed by them as donation to NPOs not having this approval is not an allowable expense for them rather to achieve additional tax benefits in the other case. The Federal Board of Revenue has already done the outsource of the evaluation of the NGOs for the purpose of exemption under 2(36), therefore, the Charity Commission should be given authority under Income Tax Ordinance, to grant approval under 2(36) of the Income Tax Law along with the registration certificate of the NGO. This will also encourage the NPOs already working in Pakistan to get them registered under this Act.

- **Members are entitled for Salary**

It is a fact that the NPOs cannot be run efficiently on part time basis, it is a full time job, therefore, it does not seem practical that a person working for NPOs for full day is not entitled for salary. This restriction should not be placed. However in order to control the negative impact of this practice it may be made necessary for the NPO to disclose the salaries and benefits of the members of the NPO working full time in their financial statements.

- **Automatic Tax Registration**

Almost all documents and information required for tax registration / National Tax Number are available with Charity Commission at the time of registration, therefore, an arrangement should be made with the tax authorities that on the basis of these information a National Tax Number (NTN) should be issued to the NPO along with registration certificate.

- **Right to vote in the election of Charity Commission**

It is suggested that the structure of the Charity Commission should be based on the NPOs already registered under this Act. Therefore, the right to vote shall be granted to the organizations that have valid registration under this Act. This persuasion will encourage the NPO for registration as this may lead to any NPO qualifying for chairmanship of the Charity Commission or any important position by which they may perform very significantly in encouraging philanthropic activities in Pakistan.

- **Preference by Bank for opening of Account**

As a result of providing registration certificate, NTN Certificate and approval under 2(36) of the Income Tax Law to the NPOs registered under this Act, the banks will prefer these NPOs for opening bank account, rather creating different problems by asking different documents from time to time from the NPOs.

- **NPO may be sued with its own name**

By having artificial judicial personality the NPO shall have the right that NPO shall be sued with its own name independent. And they file any case by its own name. This will also protect the members to participate in philanthropic activities in the country.

- **No donor shall be asked in any manner whatsoever to provide his source of income of the amount / donation made to NPO.**

A very important privilege may be given in our laws that any person contributing or donating anything in cash or in kind to any NPO registered under this law shall in no manner be asked by the tax authorities to provide the source of income of the amount donated to these NPOs.

- **The Government should contribute 25% of administrative salary budget in the NPO under this head.**

As the government has specialized ministry and funds for the social development of the public, therefore, in order to spend them in right place at right time and to support the work of these NGOs, the government may add this privilege to the NPOs registered under this law to contribute 25% of administrative salary budget in the NPO under this head. Because the NPOs are not only directly participating in the role of Government through their own resources but also providing job opportunities to the country, therefore, this contribution of 25% of administrative salary budget in the NPO will encourage the NPOs. This administrative salary budget should include the salary of the project staff and the administrative salary budget should in no case exceed 15% of the total revenue for the year for the purpose of this clause.

- **Judgment against an officer / member**

A judgment against a person or officer named on behalf of an organization should not be enforced against the property, movable or immovable, or against the body of such person or officer but only against the property of the organization.

4. Provisions relating to NPO name

- **Complete data base of registered NPOs should be maintained**

Charity Commission should maintain a complete record of names of the NPOs already registered, in order to avoid the registration of another NPO with the same name. For this purpose it should be made necessary for members to get certificate of name availability for the incorporation of NPO.

- **The word “(Charity) Limited” should be written at the end of the name**

There is no restriction under the present laws of NPO to use a particular suffix or prefix with the name of NPO, therefore, it is not practical to understand by seeing the name of NPO that under which particular law it has been registered / incorporated. In order to create difference and avoid the confusion it is recommended that a word “(Charity) Limited” should be made mandatory to be used with the name of NPO.

5. Sector – Scope – Main Object

As discussed above in the chapter “Scope of Work” that NPO’s scope of work should not be restricted by any means. NPO should be allowed to work in any area as they consider just for them and it requires society’s attention. However for the purpose of public knowledge, the NPOs should be asked to opt for them a single scope under which they will be made known to the public by Charity Commission and for the purpose of their comparison with other organizations already working in these areas.

Following may be the major division of the scope of the NPO:

- Relief
- Service

- Infrastructure
- Philanthropic
- Religious
- Welfare of other living beings

6. Jurisdiction of work

It should be made clear in the law that the NPO registered are allowed to perform their activities and extend their projects / programs throughout the country without taking further permission for other provinces or administration, but it may do so only under intimation to the relevant provincial administration. The question of jurisdiction is not discussed in any statute relating to NPO in Pakistan, which creates confusion in the mind of NPO operators.

7. Documents required for registration

Following documents may be specified in the law to be provided for the registration of NGO:

- Certificate of availability of name
- CNICs of Members
- NOC from the interior ministry (for the foreigners if to be included as members)
- CVs of Members
- National Tax Number of Members
- Head Office Address
- Consent to act as member
- Undertaking to follow the law
- Undertaking to contribute to the asset, a specified amount at the time of dissolution of the NGO.
- Affidavit that member has never been declared insolvent and been convicted by any court of law in criminal proceedings.
- Constitution Performa signed by Members
- Bank Account

8. Time period for registration of NPO

- Time period should be specified in the law that the objections / shortcomings, if any, in the application shall be communicated to members within seven days of receipt of application.
- The Charity Commission should be asked to complete the process of incorporation of an NPO within thirty Days on receipt of complete application.

9. Documents issued by Charity Commission to NPO after registration:

- Incorporation Certificate
- Attested copy of Constitution of NPO
- Attested copy of NPO Profile containing:
 - Address and contacts
 - List of Governing Body Members
 - Main Object
 - Bank Account Number
- National Tax Certificate of NPO
- Certificate of Approval as Non Profit Organization under 2(36) of the Income Tax Ordinance, 2001 for the year ended June 30th, and if June 30th is near than six months, then June 30th following year.

10. Documents for renewal of Certificate of Approval as NPO under section 2(36) of the Income Tax Ordinance, 2001:

- Annual Performance Report along with possible evidence.
- Self Evaluation Report on specified Performance
- Updated list of members along with their CVs and CNICs
- List of NPO Bank Accounts
- Audited Accounts Report on Specified format
- Annual Tax Return
- Withholding Tax Statements

- Detail of Receipts / Donation
- Detail of Salary of Governing Body Members and the employee having any relation with the Members
- Detail of Fixed Assets of the NPO
- Detail of beneficiaries
- Annual Tax Returns of the Members along with Wealth Statement of his family.

11. Process of Renewal of Certificate of Approval as NPO under section 2(36) of the Income Tax Ordinance, 2001

- Renewal certificate should be issued within 15 days from receipt of above specified documents
- If any objection or shortcoming observed in the documents the same should be asked from the NPO along with the renewal certificate, for the year ended June 30th, to provide the same within six months.
- If NPO fails to provide the same within six months the extensions may be granted for another six months subject to the undertaking of the Chairman of the NPO to provide the same within next six months.
- If NPO again fails to provide the same in next six month the renewal of the NPO under 2(36) of the Income Tax Ordinance 2001, may be refused.
- The NPO once refused as NPO under 2(36) of the Income Tax Law, shall not be entitled to apply for its renewal before the expiry of term of three months from the date of the refusal.

12. Obligations of NPO

- Maintain true and complete accounts
- Annually audit the NPO accounts
 - From a chartered accountant, if the yearly gross receipts are in Rupees five million and above.

- From a cost and management accountant, if the yearly gross are in Rupees three million and above but less then Rupees five million only.
- Verified by the treasurer only, where its yearly gross receipts are up to Rupees three million.
- Deposit all moneys received by it into a separate account in the name of the NPO with a bank, post office or national savings centre.
- Make all payments above the amount of Rs.10,000/- through cross cheques
- Withhold income tax wherever required under the tax laws on payments
- Submit its Annual Tax Return and statements duly on time
- Prepare its Annual Performance Report
- Maintain complete record of Receipts / Donation in cash and in bank
- Maintain complete record of Donation in kind
- Record of Beneficiaries
- Complete record of Fixed Assets of the NPO
- File updated list of members in every year.
- Minutes of annual general meeting
- To keep the availability of any financial record of the NPO for any member of the public on payment of specified amount of copying fee as determined by the NPO from time to time.

13. Sources of Income of the NPO

- That the NPO shall be authorized to use its resources only for the achievement of its declared aims and objects of the NPO. The funds of the NPO may be generated by donations, contributions, fee, fee of services, acquiring funds from donors against projects / proposals relating to society objectives, by doing any business, or by any source as decided by the Members of the Board of NPO.
- No part of any donations collected be authorized to use for the purpose which was not declared at the time of its collection, except under the special resolution of Board of Members under intimation to the Charity Commission.

- Any donation received by the NPO from foreign shall be intimated to the Charity Commission with the purpose of donation. The foreign donation means any donation in kind or in cash whether received directly from foreigner from outside Pakistan or through his representative or agency who has any relation with that donor.

14. Suspension and Restoration of Registration

- If the NPO fails to renew its exemption under 2(36) of the Income Tax Ordinance 2011 for consecutive period of two years the Registration of NPO may be suspended.
- The Registration shall be restored on the renewal of approval under section 2(36) of the Income Tax Ordinance 2011.

15. Dissolution

- Members should be allowed to file petition of dissolution of the NPO subject to the approved scheme of dissolution by the Commission.
- Regulatory Authority may also be empowered to file petition before court for dissolution of NPO
 - If the registration of the NPO remains suspended for consecutive two years.
 - Due to any other reason where commission considers it necessary in the public interest.

16. Functions of Regulatory Body.

- (a) to raise public confidence working of NPOs.
- (b) to guide and assist the NPOs in their operations.
- (c) to play the role of bridge between the NPO and government in performing their functions.

- (d) to specify the areas where the philanthropic work is required to be targeted
- (e) to promote compliance by NPOs.
- (f) to encourage the best use of resources by the NPOs.
- (g) to encourage the accountability practices in the structure of NPOs.

17. Fines & Penalties

- a. The NPO not having approval under section 2(36) of the Ordinance should not be entitled for the following benefits:
 - o Entitlement for donation from public sector
 - o Entitlement of Members for getting Salary
 - o Right to vote in the election of Charity Commission
 - o Exemption from registration under the Charitable Funds (Regulation of Collection) Act, 1953 (XXXI of 1953) hence cannot appeal for donation without any further registration.
 - o Government contribution of 20% of administrative salary budget in the NPO under this head.
- b) If the registration of the NPO has been suspended by the Charity Commission,
 - o the Commission may appoint a treasurer in that NPO at the cost of NPO. The main purpose and duty of the treasurer newly appointed by the Commission is to complete the documents and information required for approval under 2(36) of the Income Tax Ordinance, 2001. The treasurer shall complete the process not later than six months in aggregate. However, during completion of documents process if treasurer found anything of serious in nature and has been done with clear intention of contravention with the law the Commission on the information of the member, may file case against the person responsible for the same and become the party in this case.

- c) If the registration of the NPO remain suspended for consecutive two years
 - o the Commission may file the petition to the Court for the dissolution of the NPO.
- d) If a member found in guilty of misconduct and become the cause for the loss of any property of the NPO, then he should be made responsible for his action and be charged for the punishment in the same manner as a person not the member may be made responsible for such actions.

18. Delicate balancing is necessary between the freedom of association of the individuals who form NPOs and the need for protection of the public from any fraud, abuse, infringement of the rights of others. Therefore, the law should insist on adequate internal reporting mechanism within NGOs so that they can police themselves and ensure that their activities are appropriate.

19. Membership in NPO

- Qualification
 - o It should be the prerogative of the members establishing NPO that what should be the basic qualifications and criteria for a person intended to be admitted as member in the organization.
 - o However, the foreigners may be allowed to act as member in the Governing body subject to its clearance wherever required.
- Admission
 - o The admission of the member in the Governing body may require the approval of at least 50% of its existing members of Governing Body

- Expulsion
 - The expulsion of membership shall be allowed only by vote of not less than 50% of its existing members of Governing Body
- Resignation
 - Member should not be allowed to resign from the Governing Body except with the approval of the Governing Body

20. Office Bearers

- Term of Office Bearers shall be for the period of three years
- The Office Bearers shall be entitled for further election or election(s)
- Any one or more member may be declared as Life time office Bearer of the NPO
- Office Bearers may be entitled for salary
- Powers and functions should be specified in the deed / rules and regulations

21. Election

- The election of the Office Bearers shall be made in the meeting specially called for this purpose.
- The term of the office bearer shall be for the period of three years, whereas the person elected in place of other office bearer during his term, due to any reason, shall be elected for the balance term of the previous office bearer.
- The election of any member of Board of Members in place of other Member, due to any reason, or the election of new members in its board shall be made in the meeting specially called for this purpose.

22. Rights of Members

- Entitled for Salary
- Limited Liability up to the amount of guarantee
- Cannot be sued directly in his personal capacity
- Right to re-imbursement of expenses
- Indemnity

23. Obligations of Members

- Members are obliged to execute the aims and objects of the NPO.
- To protect title of the NPO property
- To inform himself about all matters of the NPO
- To perform its duties with due care and intelligence
- To attend the meetings of the NPO
- To inform the Charity Commission about any information related to NPO and its member(s) which is in contravention of the law and its constitution
- To disclose to the NPO his any interest, as and when arise, in the NPO other than being the member

24. Meeting of Members

The Meetings of the NPO shall be held in such places and time as and when announced. The NPO shall hold its Annual General Meeting of the members once in a year on the expiry of the every Financial Year, not later than four months from the close of its accounts. The members may hold any other meeting (s) as and when required from time to time, however, the NPO has to file the minutes of its annual general meeting with the Charity Commission.

25. Amendment in Constitution

- No amendment in the constitution of the NPO shall be presented in the meeting, specially called for this purpose, unless the approval of the same has already been taken in advance from the Charity Commission.
- The Commission shall grant the approval of amendment within fifteen days from the receipt of application, if it is not in contravention to the law. The objection in the proposed amendment if any shall be communicated to the NPO within fifteen days from the receipt of application.

26. The NPO is further authorized:

- a. To make any rules and regulations for the administration of the NPO.
- b. To open, maintain and operate NPO's account(s) with banks and financial institutions in local and / or foreign currency both in Pakistan and / or abroad.
- c. To borrow, raise and arrange money from banks, financial institutions or any lawful sources whether in Pakistan or elsewhere.
- d. To guarantee the performance of contracts, agreements, obligations or discharge of liability of the NPO.
- e. To invest money and property in any business and to carry on any trade, business, industry and all other profit-bearing business or in any other property and dispose off, transfer and otherwise deal with the subject matter and property of the NPO.
- f. To promote, organize, manage, control and establish branches and offices of the NPO wherever considered necessary.
- g. To acquire from any Government, State, or other form of statutory or official authority national or international whatsoever, the approvals, licenses, concessions, exemptions, grants, decrees, rights, powers and privileges which may seem to the NPO to be appropriate on account to hold, use, explore, survey, cultivate, work, manage, improve, develop, and to turn to account the same, and lease, mortgage, sell, abandon, deal with or otherwise dispose off all or any part thereof.
- h. To seek relief from taxes including income tax, withholding tax, sales tax, excise & custom duties and all other exemptions as may be permissible under the existing laws of the country.
- i. To do and perform all such other things or acts as are incidental or conducive to the attainment of any or all of the above mentioned objects of the Society.

27. Provisions related to INGOs.

Registration of INGO

The INGOs after signing Memorandum of Association (MOU) with Government of Pakistan shall furnish the copy of same to the Charity Commission for the purpose of its regulation under this Act for the time period allowed under the MOU. The INGO shall file the following documents along with signed copy of MOU:

- Certificate of Incorporation
- Memorandum and Articles of Registration
- List of Governing Body Members
- Passport of Country Head
- CVs of Country Head
- Pakistan office Address
- Undertaking to follow the law
- Affidavit that member has never been declared insolvent and been convicted by any court of law in criminal proceedings.
- Bank Account

Time period for processing of application of registration of INGO

- Time period should be specified in the law that the objections / shortcomings, if any, in the application shall be communicated to members within seven days of receipt of application.
- The Charity Commission has to complete the process of incorporation of an INGO within thirty days on receipt of complete application.

Documents issued by Charity Commission to INGO after registration:

- Incorporation Certificate
- Attested copy of Constitution of INGO
- Attested copy of INGO Profile containing:
 - Address and contacts

- List of Governing Body Members
- Main Object
- Bank Account Number
- Initial period of MOU
- National Tax Certificate of INGO

Entitlement to INGO after Registration:**Exemption of Import Duty**

The INGOs may apply to the Charity Commission along with requisite documents for processing of documents with FBR for the exemption of import duties and taxes as specified by the Government, from time to time, as per law. However, if the Government has any ground to suspect that facility of exemption has been, or is being, violated or misused by an INGO, it may withdraw the facility of exemption and in addition may impose penalty as per law. Furthermore, the exemption of import duty shall not be available to INGO during the period of suspension of its registration.

Automatic Tax Registration

INGO shall be issued tax registration number at the time of its registration

Preference by Bank for opening of Account

The banks will be allowed to open INGOs bank account after its registration under this law.

The word “(International Charity) Limited” shall be written at the end of the name
INGO shall use the “(International Charity) Limited” at the end of its name.

Appeal

The appeal against any order and direction of the Commission shall lie in the court of civil jurisdiction of the place where the Country head office of the INGO is located.

Scope of Work & Jurisdiction

- INGO shall be allowed to perform its activities within the scope duly signed between the INGO and the Government of Pakistan in MOU.

- INGOs shall be allowed to execute its operations in the country wherever agreed between the parties in MOU.

Suspension, Restoration and De-Registration

- If the INGO fails to fulfill the obligation of INGO the Commission may issue notice for its compliance within forty five days. If INGO fails to complete the compliance mentioned in the notice the time may be granted for another forty five days on the undertaking of Country Head of the INGO for its compliance. If the commission remains unsatisfied after the expiry of time period the registration of INGO may be suspended.
- The Registration shall be restored on the completion of obligation laid down on the order of suspension.
- If the registration of the INGO remains suspended for the period of six months the Charity Commission shall file the petition before the court for the de-registration of the INGO
- The registration of INGO shall also be suspended on the expiry of its time mentioned in MOU unless extended within three months from the date of expiry of time period of MOU.

Sources of Income of INGO

- The source of income for INGOs shall only be the amount received to them from Head Office or any partner INGO or any international donor agency. INGOs are not allowed to generate funds from Pakistan from any source except interest earned on their accounts from schedule banks.

Obligations of INGO

- i. INGO shall file the following record and information annually with the Charity Commission:
 - Annual Performance Report by third party evaluation including quantitative and qualitative assessment of the direct beneficiaries.
 - Updated list of Governing body members and country head
 - List of INGO Bank Accounts

- Annual Audited Accounts Report on Specified format
- Annual Tax Return
- Withholding Tax Statements
- lists of all local and foreign staff
- Detail of amount received from Head Office or any partner INGO or agency
- Detail of Fixed Assets of the INGO
- Detail of beneficiaries
- Updated MOA & AOA
- Latest MOU signed with EAD
- Copy of any other document filed with EAD

ii. INGO shall also ensure the following:

- Deposit all moneys received by it into a separate account in the name of the NPO with bank, post office or national savings centre.
- Make all payments above the amount of Rs.10,000/- through cross cheques.
- Withhold income tax wherever required under the tax laws on payments made.
- To keep the availability of any financial record of the NPO for any member of the public on payment of specified amount of copying fee as determined by the NPO from time to time.
- provide funds primarily in foreign exchange for the implementation of the projects undertaken by or on behalf of INGO.
- shall not use telecommunication equipment or any such equipment without valid license without the permission from the concerned authorities of Government of Pakistan.
- employ upto 10% of total posts, its own nationals and not other foreigners in Pakistan. It should, however, give preference to the employment of Pakistanis in key positions.
- obtain prior written permission from the MOI for visiting prohibited areas.
- not employ/engage or associate nationals of Israel, Taiwan, India or nationals of countries that have not been recognized by Government of Pakistan with its program activities and operations in Pakistan.

- ensure that all expatriate staff is informed that while they are in Pakistan, they shall, as residents or visitors, respect the laws, regulations, religious and cultural norms of Pakistan,
- ensure that every expatriate has got NGO visa prior to his/her entry into Pakistan as required under the existing rules / regulations of Government of Pakistan. Tourist, visit and business visa holders will not be employed at any stage by the INGO.
- not indulge in religious activities i.e. preaching and distribution of religious material / pamphlets causing or likely to cause resentment in the area of operations.
- not provide, directly or indirectly, without approval of the Government, any assistance or outsource (monetary and/or material) to any Local/International Non-Governmental Organization.
- not transfer or rent/lease the organization's possessions or their use for the purposes other than those specified and agreed upon between the two Parties.

28. Appeal

The appeal against any order and direction of the Commission shall lie in the court of civil jurisdiction of the place where the head office of the NPO is located.

29. Categories

The Charity Commission in order to promote the philanthropic work of the NPO and to develop the state competition among the NPO should announce awards for the NPO on the basis of their achievements in each category. It should not be on the basis of resources mobilized by them but it should be on the basis of their performance and law compliance in their prescribed activities.

CONCLUSION:

In order to rationalize the existing NGO legislation, large numbers of amendments are required. Even then the expected results cannot be assured due to different regulatory authorities and their setups. It is, therefore, recommended that a new legislative bill should be presented before the Parliament, covering all those legal issues suggested in the study, in place of all other existing laws relating to NGOs.

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