GOVERNMENT OF THE PEOPLE’S REPUBLIC OF BANGLADESH

THE LAW COMMISSION

- SUBJECT -

REPORT OF THE LAW COMMISSION ON THE BILL TITLED
“বাংলাদেশ স্বেচ্ছাসেবী সমাজকল্যাণ এবং উন্নয়ন সংস্থা (নিবন্ধন
ও নিয়ন্ত্রণ) আইন; ১৯৯৮”

OFFICE OF THE LAW COMMISSION
OLD HIGH COURT BUILDING
DHAKA-1000

DECEMBER 03, 2001
Preface

On a reference from the Ministry of Law, Justice and Parliamentary Affairs, the Law Commission received a Bill titled "বাংলাদেশ সমাজকল্যাণ এবং উন্নয়ন সংস্থা (নিবন্ধন ও নিয়ন্ত্রণ) আইন, ১৯৯৮" for consolidating four Acts, namely:

1. The Societies Registration Act, 1860;
2. The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (Ordinance No XLVI of 1961);
3. The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No XLVI of 1978);
4. The Foreign Contribution (Regulation) Ordinance, 1982 (Ordinance No XXXI of 1982).

After receipt of the Bill Research Officers of the Commission were assigned to examine it under the guidance of the Members of the Commission. During the process of the examination the Commission exchanged views with the persons representing Christian community, namely; Archbishop Michel Rezario, Bishop BD Mondol, Denis Delip Dutta and Susanto Adhikary. Besides the Commission held meetings with Associations of Development Agencies in Bangladesh and Credit and Development Forum. After completion of the process of discussion the Commission came out with the preparation of final report and its recommendations. The report has been prepared keeping in view the protection of interests of all concerned involved in the voluntary social activities. The Commission in its recommendations viewed that the Societies Registration Act, 1860 may not be repealed while the three other Acts may be repealed paving the way for making the proposed Bill into Act of Parliament.

Ikteder Ahmed
Secretary

This is a reference by the Government under section 6 (Ena) of the Law Commission Act, 1996. The relevant portion of the letter of reference addressed to the Commission by the Ministry of Law, Justice and Parliamentary Affairs under letter no.82 Ain Dated 13.2.2000 runs as follows:-

পণ্ডিতরা বাংলাদেশ সরকার
আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়
লেজিলিয়েটিভ ড্রাকটিং উইল

নং ৮২-আইন

বিষয়: বেচাহাজের সংগঠনসংযুক্তজন্য প্রচলিত ৪টি আইন, যথা: (১) সোসাইটিজ রেজিস্ট্রেশন এ্যাক্ট, ১৮৬০, (২) ভাল্টার্টী সোসাইল ওয়েলফেয়ার এজেন্সি (রেজিস্ট্রি এন্ড কন্ট্রোল) অর্ডার্ডি, ১৯৬১, (৩) কাউন্টারবিউটন (রেগেলেশন) অর্ডার্ডি, ১৯৮২, (৪) করেন ডেনেশন (ভাল্টার্টী এক্সিটিজ রেগেলেশন) অর্ডার্ডি, ১৯৭৮, বাতিলকর একটি সম্মিলিত আইন পুনঃ প্রয়োগকরণ আইন কমিশনের সুপারিশ এর বিষয়ে।

সূত্র: আইন কমিশনের পত্র নং- আক/মতামত/২৬, তারিখ ১৬/০৬/১৯৭২।

উপরোক্ত বিষয়ে ও সূত্রগুলি পত্রের প্রেক্ষিতে নির্দেশককে জানানো যাচ্ছে যে, দেশের আর্থিক উন্নয়ন কর্মকাণ্ডে বেচাহাজের সংগঠনসংযুক্ত বর্তমানে ব্যাপকভাবে সম্পৃক্ত। আবার উন্নয়ন কর্মকাণ্ডে নিয়োজিত বেচাহাজের সংগঠনসংযুক্ত এর আধিকারিক প্রতিক্ষা বা পরামর্শকালে বিদেশী সাহায্য নির্ধারণ করলে। তাছাড়া কোন কোন কেন্দ্রে কোন কোন এনজিও এর তুষিকা সমাজে বিতর্কের সৃষ্টি করে। এ প্রেক্ষাপটে সমাজকল্যাণ ও উন্নয়ন কর্মকাণ্ডে বেচাহাজের সংগঠনসংযুক্ত কর্মশালা এবং আন্তর্জাতিক বিষয়ে প্রচলিত উপরোক্ত আইনগুলি সম্মিলিত অকারে এবং যুক্তরাজ্যের পুনঃ গ্রেনের প্রয়োজনীয়তা অনুভূত হচ্ছে। সেন্টারে একটি বিলের প্রাথমিক খসড়াও সমাজকল্যাণ
OUR VIEWS

The terms of reference respecting amalgamation of the 4 existing laws has received our anxious consideration.

The laws sought to be consolidated under the proposed bill are:

1. The Societies Registration Act, 1860;
2. The Voluntary Social Welfare Agencies (Registration And Control) Ordinance, 1961 (Ordinance No. XLVI of 1961);
3. The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978); and
4. The Foreign Contributions (Regulation) Ordinance, 1982 (Ordinance No. XXXI of 1982).

The proposed bill has been aimed at substituting all the aforesaid laws by a new law under the title, "বাংলাদেশ বেসামরিক সমাজকল্যাণ এবং উন্নয়ন সংস্থা (নিবন্ধন ও নিয়ন্ত্রণ) আইন, ১৯৯৮"

The preambles and the provisions of the respective Act and Ordinances and also the definitions therein indicate that the purposes of the said Act and Ordinances are not one and the same. The Societies Registration Act, 1860, was enacted for enabling any seven or more persons for associating themselves for any literary or scientific purpose or for such purposes as are mentioned in section 20 of the Act¹ (see section 1). Such associations were not conceived to be dependent upon any internal or external donations. The purposes to be achieved by such associations have been enumerated under section 20 of the said Act namely, "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". Such societies fulfilling the conditions of the said Act are to be registered by the Registrar of the Joint stock Company without any option to reject registration. The words occurring in section 3 of the said Act namely, "upon such memorandum and certified copy being filed, the registrar shall certify under his hand that the society is registered under this Act", amply clarify this point.

¹ The Societies Registration Act, 1860.
On the other hand the Ordinance of 1961 is about Voluntary Social Welfare Agencies. The Voluntary Social Welfare Agency as defined in section 2(f) of the Ordinance is, “An organization, association or undertaking established by persons of their own free will for the purpose of rendering welfare services in any one or more of the fields mentioned in the Schedule and depending for its resources on public subscriptions, donations or Government aid.” Section 3 of the said Ordinance provides that, “No agency shall be established or continued except in accordance with the provisions of this Ordinance.” Again according to section 4 (2) of the Ordinance, “The Registration Authority may, on receipt of the application, make such enquiries as it considers necessary, and either grant the application, or, for reasons to be recorded in writing, reject it.” This provision appears to have been made obviously for regulating the social welfare organizations getting and depending on public subscriptions/donations/government aid.

It may also be observed that a registered agency under this Ordinance is enjoined to “maintain audited accounts in the manner laid down by the Registration Authority, to submit its Annual Report and audited accounts to the Registration Authority and publish the same for general information, pay all moneys received by it into a separate account kept in its name at such bank or banks as may be approved by the Registration Authority and furnish to the Registration Authority such particulars with regard to accounts and other records as the Registration Authority may from time to time require.”

Sub-section (2) of section 7 authorizes the Registration Authority to inspect the books of account and other records of the agency.
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Sub-section (2) of section 7 authorizes the Registration Authority to inspect the books of account and other records of the agency.
All these show that the purpose of the Ordinance of 1961 is to regulate the use and expenditure of subscriptions and donations received by the agency.

The Schedule of the activities of the Voluntary Social Welfare Agency Ordinance, 1961, is also different from that of the Societies Registration Act, 1860, in character and nature. They are: "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 destitutes, Welfare and rehabilitation of patients, Welfare of the aged and infirm, Training in social work and Co-ordination of social Welfare agencies”.

The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978) was promulgated to regulate the receipts and expenditure of foreign donations for voluntary activities. "Foreign donation” has been defined in this Ordinance as, “a donation, contribution or grant of any kind made for any voluntary activity in Bangladesh by any foreign Government or organisation or a citizen of a foreign State and includes, except in the case of a donation made for such charity as the Government may specify any donation made for any voluntary activity in Bangladesh by a Bangladeshi citizen living or working abroad”. This means that any donation, contribution or grant made by any foreign government, organization or any individual would
be considered as foreign donation for the purpose of the Ordinance. But donations made by Bangladeshi personnel living abroad for purposes specified by the Government would not be considered as foreign donation. These donations are obviously for voluntary activity of the welfare organisations. The voluntary activity according to this Ordinance is, “an activity undertaken or carried on by any person or organisation of his or its own free will to render agricultural, relief, missionary, educational, cultural, vocational, social welfare and developmental services and shall include any such activity as the Government may, from time to time, specify to be a voluntary activity.”

Section 3 of this Ordinance prohibits undertaking of any such voluntary activity as defined under section 2(d) of the Act without prior approval of the Government. In this Ordinance there are elaborate provisions about governmental inspection of documents and audit of accounts etc. There is also a provision for penalty for false declaration and contravention of the provisions of this Ordinance.

The Foreign Contributions (Regulation) Ordinance, 1982, (Ordinance No. XXXI of 1982) has been designed to put restrictions upon a citizen or an organization in Bangladesh from receiving any foreign contribution without prior permission of the government. Receipt of contributions contrary to the provisions of this Ordinance has been made penal offence. Foreign contribution has been defined as, “Any donation, grant or assistance, whether in cash or in kind, including a ticket for journey abroad, made by any Government, organisation or citizen of foreign state.” Thus, there has been an extension of the meaning of donation occurring in the Ordinance of 1978 by way of giving a new definition namely, of contribution.
The above discussion makes it amply clear that the Societies Registration Act, 1860, stands altogether apart, on a different footing and objective from the Ordinances of 1961, 1978 and 1982 which are more or less allied and akin in nature. Therefore, we may leave out the Societies Registration Act, 1860, to operate independently in its own field. This law has stood the test of time and has been in force for over a century.

The Ordinances of 1961, 1978 and 1982 are all designed to regulate receipt of donations and contributions generally for voluntary welfare activities inside the country. The Ordinance of 1961 conceives only of public subscriptions, donations or government aid while the Ordinances of 1978 and 1982 have reference to foreign donations and contributions. It may be desirable to amalgamate these three Ordinances incorporating all the aims and objects of the concerned societies and the vital provisions of the Ordinances in a single Act.

A pertinent question might arise in this connection, namely, whether section 3 of the draft bill would militate against Article 38 of the Constitution. We have considered both Article 38 of the Constitution and section 3 of the draft bill. Article 38 gives every citizen a right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of morality or public order. Section 3 of the proposed bill is to the following effect, "3। নিবন্ধন ব্যতীত সংস্থা প্রতিষ্ঠান কিংবা সংস্থার কর্মকাণ্ড চালাইয়া যাওয়ার উপর বিধি নিষেধঃ - এই আইনের বিধানাবলী অনুসরণ ব্যতীত কোন সেচচাহিদী সমাজকল্যাণ এবং/ অথবা উন্নয়ন কর্মকাণ্ড পরিচলনার নিমিত্ত বিদেশী অথবা সরকারী অনুদান অথবা ঠানা লোনা কোন সংস্থা প্রতিষ্ঠা অথবা পরিচলনা করা যাইবেনা।" The intention of this provision appears to be to regulate receipt of donations, contributions etc. whether local or foreign and to register those associations for the purpose
of governmental supervision. There does not appear to be any bar upon the establishment of social welfare organizations in this provision. The provision only regulates the operation of the societies drawing upon donations and contributions from both local and foreign sources. This section does not seem to offend the provision of Article 38 of the Constitution.

However, the heading of section 3 does not appear to be in consonance with the contents of the section.

**DISCUSSION ON THE PROPOSED BILL**

In section 4 it has been proposed for appointment of three different authorities as registering authorities. This would likely to create avoidable complications and lead to unnecessary cumbersome procedures. Registration and control of the organisations should be made easy, transparent and not create any hassle for them, discouraging submission to the law. We, therefore, suggest that there should be a single registering authority which may be appropriately decided by the Government.

As to proposed section 5 we find no objection to sub-section (1), (2) and (4) but with regard to sub-section (3) we feel that a time-limit should be set for disposal of an application for registration. Thus, sub-section (3) may be amended by way of adding the words, “৩০ দিনের মধ্যে” after the words, “আবেদন পত্র প্রাপ্তির পর”.

We have examined section 6 to section 24 of the proposed bill. These may remain as proposed.
So far as section 25 of the proposed bill is concerned we suggest omission of the words, “সোসাইটিজ রেজিস্ট্রশন এ্যাট, ১৮৬০ (১৮৬০ সনের ৩০ নং আইন)” from sub-section (1) thereof as we have been of the view that this Act should remain in place and operative.

Sub-section (2) of section 25 does not seem to be well conceived because the scope of the Companies Act, 1994, and that of the proposed bill are different.

As to the schedule 1 of the proposed bill, we suggest that the aims and objects pertaining to the Societies Registration Act, 1860, should be left out. The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (Ordinance No. XLVI of 1961), and the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978) have got schedules of their activities, while the Foreign Contributions (Regulation) Ordinance, 1982, has none. So, we would suggest amalgamation and consolidation of the aims and objects of the Ordinances of 1961 and 1978 in the schedule of the proposed bill which, accordingly, may stand as below:-

তফসিল
(ধারা ২৬ দ্রষ্টব্য)

০১. দারিদ্র দূরীকরণ/বিমোচন।

০২. শিক্ষা/যোগ্য সাক্ষরতা/উপ-আনুষ্ঠানিক প্রাথমিক শিক্ষা।

০৩. নারী শিক্ষা/ মহিলাদের কল্যাণ/ নারীর ক্ষমতায়ন।

০৪. স্থায়ীত্বশীল কৃষি/ মৌ-চাষ/ রেশম চাষ/ মৎস পালন/ মাছের চাষ/ পশু পালন/ ইহস পালন/ মুরগী পালন/ ছাগল পালন ইত্যাদি।

০৫. পরিবেশ সংরক্ষণ এবং পুনরুদ্ধার/ সামাজিক বনায়ন/ পুনঃবনস্থান/ বনায়ন।
06. শিশু শিক্ষায় শিশু অধিকারের উন্নয়ন।

07. যুব শিক্ষায় যুব উন্নয়ন।

08. সামাজিক সমাবেশীকরণ/জনসংগঠনের উন্নয়ন।

09. আইনগত শিক্ষা/আইনগত সহায়তা/ গণতন্ত্র সম্পর্কে সচেতনতা/ ভোটারদের শিক্ষা/ নির্বাচন পরিবেশন।

10. বাস্ত্র শিক্ষা।

11. দরিদ্রদের জন্য স্থান খোলার উন্নয়ন।

12. আয়ের সংস্থান ও কর্মসংস্থান।

13. শারীরিক এবং মানসিক প্রতিবন্ধী/ অক্ষম শিক্ষায় উন্নয়ন।

14. পরিবার পরিকল্পনা/ পরিবারের উন্নয়ন এবং শিক্ষায় উন্নয়ন।

15. শারীরিক এবং মানসিক উন্নয়নের জন্য খেলাধুলা এবং অন্যান্য বিনোদনমূলক কর্মকাণ্ড।

16. সামাজিক গবেষণা, অনুশীলন এবং মূল্যায়ন।

17. উন্নয়নশীল এবং উন্নয়ন জ্ঞান এবং তথ্যের প্রচার।

18. সমাজ কল্যাণ/ উন্নয়ন এবং ব্যবস্থাপনা বিষয়ে শিক্ষণ।

19. মাদকসামগ্রীর চিকিৎসা এবং পুনর্বাসন।

20. উন্নয়ন এবং সমাজকল্যাণ সংক্ষেপে বিভিন্ন নীতিগত বিষয়ে এ্যাডভোকেসী।

21. মানব সম্পদ উন্নয়ন।

22. দূর্বল প্রকৃতি এবং ব্যবস্থাপনা।

23. সহবিধান, আইন এবং আন্তর্জাতিকভাবে বীর্যজন মানবাধিকার সম্পর্ক এবং উন্নয়ন।

24. প্রাণধারণ/ অনুসরণ প্রণয়ন সামাজিক অগ্রতা ও উন্নয়ন।

25. পণ্য বিস্তার ব্যবস্থাপনা/ কৃষির জন্য সেচের উন্নয়ন।

26. স্থায়ীত্বশীল বৃহত্তর ব্যবহার, বৃহত্তর ব্যবস্থাপনা এবং কৃষি সংস্কারের উন্নয়ন।
In view of the above discussion, we answer the queries under reference as below:-

ka) Yes. To the extent and manner we have discussed and indicated above.

kha) The bill should be good enough in fulfilling its objectives.

ga) The necessary amendments and additions etc. have been indicated in our discussion of the proposed bill.
Recommendations

In the light of the above discussions our recommendations are as follows:-

1) The Societies Registration Act, 1860 may not be repealed.

2) The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961 (Ordinance No. XLVI of 1961); The Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 (Ordinance No. XLVI of 1978); and The Foreign Contributions (Regulation) Ordinance, 1982 (Ordinance No. XXXI of 1982) may be repealed and the proposed bill may be processed for enactment with the amendments suggested in the body of the report above.

(Justice AKM Sadeque)
Member-2 3-12-2001

(Justice Naimuddin Ahmed)
Member-1 3-12-2001

(Justice ATM Afzal)
Chairman 3-12-2001