



FOREIGN FUNDING OF NON-GOVERNMENTAL ORGANISATIONS (NGOS) - A MATTER OF CONTENTION?

By Payal

From Army Law College, Pune

INTRODUCTION

Charity is a supreme virtue, and the great channel through which the mercy of God is passed onto mankind.

- Conrad Hilton

NGOs are those that exist outside the public government and private market sectors, within what is referred to as the third, voluntary, or non-profit sector¹. Basically, it is formed when a group of people come together and form an institute with the sole purpose of discharging their moral duty towards the community. It is an umbrella that covers all the legal establishments, seeking charitable and philanthropic funds towards the betterment of mankind without the profit motive. What started off as social work has now swerved towards developmental work and community mobilization. The burgeoning of voluntary organizations has been observed across the board, with their specific perspectives, priorities and strategies.

The term is a post-World War II expression which originated from the UN when in the year 1945 the UN Charter was adopted; it was demanded in Article 71² that NGOs could be certified to the UN for consultation purposes. An NGO that's wholly or part funded by the government maintains a non-governmental standing by excluding government representatives from membership within the organisation. In developing countries, NGOs are playing an increasingly important role. They are known for their distinct function in filling the gaps ignored or bypassed by other agencies, both operating in the private and public sector³. In India, the registration of an NGO can be done under various Acts and Laws of different states. Under the Indian Trusts Act, a Charitable Trust can be registered⁴ whereas a society can be registered under Societies Registration Act⁵. Withal, a non-profit company can be registered under Section 8 of Companies Act⁶ with the Registrar of Companies.

What started off as traditionally conservative organisations are now evincing themselves as dynamic and open to new insights and thinking. There has been a proliferation of voluntary organizations, which in near future will prove to be both an outcome and a challenge to what is elucidated as development in today's parlance⁷. Conventionally, NGOs are referred as private

¹ Salamon and Anheier, 1997.

² Article 71 of the UN Charter, 1945- "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned."

³ Barkat Alam "Poverty Alleviation: Welfare, Economic Development and NGOs: Some

Suggestions", Indian Journal of Public Administration, Vol. 45, January-March 1999, pp. 34-50, at p. 34.

⁴ Section 5 of the Indian Trust Act, 1882.

⁵ Section 3 of the Societies Registration Act, 1860.

⁶ Section 8 of the Companies Act, 2013.

⁷ "Voluntary Associations and Development", The Indian Journal of Public Administration, Vol. 50, No. 1, January - March 2004, p. 362.



agencies in more economically developed countries (MEDC) that support international evolution; aboriginal inhabitants grouped regionally or nationally; and member groups in villages. Withal, NGOs include charitable and religious consortiums that mobilize private funds for development, dispense food and family planning services and promote community organization⁸. NGOs can also include independent cooperatives, women's groups, pastoral associations and water-user societies. Citizen groups that raise awareness and influence policy are also considered to be an NGO⁹.

ROLE OF NGOs IN DEMOCRACY

We live in an era of blossoming global interdependence. There have been many economic benefits be it in spreading information and knowledge, or in deeper connection of 'planetary society'. A set of profound global threats are being faced by the human security and prosperity and in addition to this, to the sustainability of our planet- from the diffusion of deadly weapons to the diffusion of deadly disease; from the perseverance of the noxious poverty to the global warming. Ergo, the existence of the NGOs has turn out to be a necessity rather than a luxury in societies throughout the modern world¹⁰.

In his speech bestowed to the US Senate Department, Barry F. Lowenkop, Assistant Secretary for Democracy, Human Rights, and

Labour, speaks to the role of NGOs in the development of democracy, dated 17 January 2007¹¹. He reports the role of NGOs as international actors as well as shapers of national policy as being among the finest trends in international relations. He reemphasises that NGOs working in democracy help to establish and strengthen democracy in three key ways:

1. Democracy NGOs operate to institute awareness of and respect for the right of the public to exercise freedoms of expression, association, and assembly, which is pivotal to participatory democracy.
2. They function to guarantee the level of playing field upon which aspirants for elective office can contest and that the entire election process is free and fair.
3. Withal, democracy NGOs work to establish and strengthen the rule of just laws and responsive and accountable government institutions, to protect the rights of the mankind, heedless of which persons or parties may be in the office at any given time.

Further, he mentioned that it's not surprising anymore today, if someone says, that those in power don't welcome the NGOs or any other agent of peaceful, democratic change. What NGOs and other agents have in common is empowering individuals to reunite to create an autonomous voice discrete from, and at times in disagreement with, the government's

⁸ World Bank. 1990. How the World Bank works with non-governmental organizations (English). Washington, DC: The World Bank. <http://documents.worldbank.org/curated/en/118901468780890205/How-the-World-Bank-works-with-nongovernmental-organizations>.

⁹ Handbook for NGOs: An Encyclopedia for Non-Governmental Organisations and Voluntary Agencies, Nabhi Publications, New Delhi, 2003, p. 3.

¹⁰ "The Role of NGOs in Modern Societies and an increasingly Interdependent World.", Stephen Heintz, President Rockefeller Brothers Fund, Annual Conference of the Institute for Civil Society, Zhongshan University, Guangzhou, China January 14, 2020.

¹¹ <https://2001-2009.state.gov/g/drl/rls/rm/2006/68658.htm>.



perspective¹². States are developing and employ tools to depose, squelch and silence these organizations. They conjure or erect restrictive/confining laws and regulations. They inflict onerous registration and tax requirements. Vague charges, such as "disturbing social order," and execution and compliance are arbitrary, emboldening a climate of self-censorship and fear. Governments play favorites, considering NGOs "good" or "bad", and they deal with them accordingly. NGOs deemed "good" is often the Government Organized NGOs or "GONGOs." He further elaborated on how China sends GONGOs to UN NGO functions to defend China's human rights policies¹³. Moreover, some light was thrown on why should every State support such agencies and stop treating them inhumanly and for this, the case of Egyptian civil society activists Mohammed el-Sharkawi and Karim Shaer who were beaten and arrested for participating in demonstrations in support of the independence of the judiciary was cited. In conclusion, it won't be wrong to say that a society's political and economic growth is limited to the extent the political space of an NGO is restricted. A powerful nation promotes the development of NGOs and

other elements of civil society. Ergo, since the bygone era, it has been observed that a state that attempts at controlling everything from the centre becomes frail¹⁴. A society that allows broad participation by its citizens in national life will flourish the most.

When NGOs are under an atmosphere of fear and beleaguerment, freedom and democracy are undermined.

Compliance to the principles mentioned below enables an economy to function well and will distill the basic commitments to the various rights enshrined in documents as the U.N. Universal Declaration on Human Rights and other international as well as national documents¹⁵.

- An individual should not be restricted to form, join and participate in NGOs of his or her choice in the peaceful exercise of the right to freedom of expression and assembly.
- Restrictions placed on the exercise of the rights must be consistent with international law.

¹² Kilby, P. (2011). NGOs in India: The challenges of women's empowerment and accountability. (Routledge Contemporary South Asia Series). London: Taylor & Francis. <https://nbn-resolving.org/urn:nbn:de:0168-ss0ar-273729>.

¹³ China has its army of GONGO at its disposal in Geneva especially, when its records are at review. Reuters calculation shows that out of 41 NGOs 34 are Government organised NGOs (GONGOs). <https://www.reuters.com/investigates/special-report/china-softpower-rights/>.

¹⁴ For example, in 2006, the president of the Moldovan separatist government in the Transnistria region ordered the prohibition of foreign funding of NGOs registered in the region. Although it was amended just over one year later stating "to apply only to those

organizations, whose statutes stipulate involvement in electoral campaigns," https://www.icnl.org/wp-content/uploads/Moldova_foreign_eng.pdf. The impact was such that it can't be ignored or overlooked. According to the CIA World Factbook, Moldova is one of the poorest countries in Europe, with a GDP per capita of only around \$6,700 (2017 est.) <https://www.cia.gov/library/publications/the-world-factbook/attachments/summaries/MD-summary.pdf>.

¹⁵ Guiding Principles on Non-Governmental Organisations, Bureau of Democracy, Human Rights, and Labor, December 14, 2006: <https://2001-2009.state.gov/g/drl/rls/77771.htm>.



- Governments are prohibited from taking actions that will prevent NGOs from carrying out their peaceful work.
- Laws, administrative measures, regulations, and procedures governing or affecting NGOs should not prevent or delay their operations.
- NGOs should be permitted to receive financial support from domestic, foreign and international entities.
- Whenever NGOs are under siege, it is crucial that democratic nations act to defend their rights.

THE FUNDING ISSUES TO THE NGOS

1. State as the Regulator

In modern society, one in all functions of the government is to regulate the social, political and economic house. All manner of regulative mechanisms is ordained by the State through its agencies furthermore as through laws and legislations. Today, three forms of legislations directly have an effect on the functioning of the NGOs in India¹⁶. The first legislation relates to the laws of registration or incorporation. In some fundamental ways, registration grants a legal individuality to the organizations and, thereby, caps the culpability of its backer and creator¹⁷. Nonetheless, it also means 'playing by the rules the game' as entrenched by the state. Thence, per ensuing reform to the

¹⁶ Formation and registration of Non-governmental Organisations in India as Trust, Society, or a private limited Non-profit Company.

¹⁷ For instance, The National Trust portal states that, "the registration of such organization shall be necessary with the Trust for availing benefits under the schemes of the Trust". <https://thenationaltrust.gov.in/content/innerpage/ngo-registration.php>.

¹⁸ Ian Smillie and John Hailey. *Managing for Change: Leadership, Strategy and Management in Asian*

Society Registration Act has been an effort to slimmer the noose round the neck of the NGOs¹⁸. The amendments gave unilateral and exorbitant power to the officials of the State to intercede, govern and check the destiny of the NGOs registered underneath the Act of the states.

The second set that affects NGOs is said to finance. One is the Income Tax Act of 1961. The second legislation associated to finance is that the Foreign Contribution (Regulation) Act¹⁹. The act was enacted during the 1976 emergency to regulate the flow of foreign grants and contributions to any or all forms of Non-governmental organisations²⁰. Over the last 20 years, it's been ascertained that the state has been tightening its role and acting a lot of typically than not for limiting the space, activities, and work of these organisations that transcend the mere provision of charity, help, and welfare of the poor²¹.

2. State as the Funding Agency

Since the bygone era, the State is playing an increasingly important role as a funder. The Central Social Welfare Board (CSWB) supports welfare activities since 1956 when

NGOs. 1st ed., Routledge: Taylor & Francis. 2001. Page 24.

¹⁹ Foreign Contribution (Regulation) Act, 2010.

²⁰ Section 3 of the Foreign Contribution (Regulation) Act, 2010. https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf.

²¹ *Voluntary Development Organisations in India: A Study of History, Roles and Future Challenges*, Society for Participatory Research in Asia, New Delhi, November 1991.



the grants-in-aid program was launched²². The active promotion of NGOs and also the growth of the state's role as funder began with the sixth five-year plan (1980-1985)²³.

A distinctive set of mechanism were bought up to help those organisations that are engaged in social welfare and a few of those were- Khadi and Village Industries Corporation (KVIC)²⁴ engaged in promoting Khadi and Village Industries, Central Social Welfare Board, and its counterparts in several states providing assistance to those engaged within the welfare of the poor, the weak, destitute, mainly focus on women, and also the Council for Advanced of People's Action and Rural Technology (CAPART) of 1986 was got wind of to finance NGOs underneath varied schemes and programmes.

A large variety of those organisations rely on the state for grants. In such a relationship with reference to the donor the donee has less power, autonomy and control²⁵. Numerous sequels flow from this relationship. Between 1986 and 2007, the CAPART ostracized 511 NGOs. By 2009, the CAPART had ostracized 830 NGOs²⁶.

Mostly funding for specific schemes and programmes are conceptualized and designed

by the State itself. To avail these resources the agencies, have to fit their proposals into them. Over a period of time, these agencies have become mere implementors of the concepts, programmes and conception crafted by the State. On one hand the supply of resources from the state is exclusive and helpful, and on the another, it's been dominant, limiting, and dependence making.

3. The Funding issues

The nature of funding of NGOs additionally considerably affects its overall organization and operating. Traditionally, they have accumulated funding from diverse sources. For small, local, community-based NGOs, native resources are adequate. For bigger projects, funds have hail either from richer members of society or from spiritual establishments or Trusts. Howbeit, the overall percentage of such offerings towards the funding of the NGOs in the post-independence era has been rather limited. Since independence, government funds, and foreign grants and contributions have been the preeminent sources of financing for the NGOs.

Acceptance of foreign funds for the work of the NGOs continues to be a cultural and

²² The Board was established to support welfare activities furthermore, it aimed at promoting voluntarism, providing technical and financial assistance to the organisations for the general welfare of family, child and women. <http://www.cswb.gov.in/about-cswb-0>.

²³ DR. H. RAMAKRISHNA, "THE EMERGING ROLE OF NGOS IN RURAL DEVELOPMENT OF INDIA: AN ASSESSMENT", International Journal of Social Science & Interdisciplinary Research ISSN 2277 3630 IJSSIR, Vol. 2 (4), APRIL (2013).

²⁴ The unique institution established by the Government to create self-reliance amongst the poor

and to build up a strong rural community spirit. <http://www.kvic.gov.in/kvicres/aboutkvic.php>.

²⁵ Islam, Carolyn A., "Non-Governmental Organization Vulnerabilities: Donors and Resource Dependence" (2016). CMC Senior Theses. Paper 1429. NGO and donor relations can be analyzed to include demand-led and supply-led contracts. In the Supply-led contract the NGOs have less say in the activities of their own organisation. https://scholarship.claremont.edu/cmc_theses/1429/.

²⁶ <https://www.tribuneindia.com/2013/20130119/nation.htm#1>.



political blasphemy in several sections of the Indian society. Therefore, it's vital to know that foreign funding of the non-governmental organisations in the Republic of India may be a far more difficult and sensitive issue than perhaps in several alternative countries of the globe. It is, therefore, not just a matter of access to funds, however the implications of exploitation it among the community of NGOs, on one hand, and within the larger sociopolitical context, on the opposite²⁷.

In 2010-2011, offerings were acknowledged from 161 nations, together with Ghana, Ethiopia, Myanmar, Gabon, Niger, Sudan, Congo, Senegal and Burkina Faso where international aid hands these nations to satisfy the requirements of their residents²⁸. Reports reveal that certain NGOs were engaged in anti-national and political activities.²⁹ In another case of those opposing the Kudankulam nuclear project, the government has lodged cases against four NGOs for allegedly transmitting money to fuel protests, acting in violation of Section 7 of the Foreign Contribution (Regulation) Act, 2010. Furthermore, they were accruing funds from foreign nations for social welfare causes like serving to the physically handicapped and obliteration of leprosy however these were used for anti-nuclear protests.³⁰

The two most debated yet dominant reasons for not accepting foreign funding to the NGOs are: -

²⁷ India is the "world's largest democracy". However, in practice there are many restrictions on the freedom of expression. The space is restricted to civil society organizations.
<https://www.boell.de/en/2016/11/07/limited-freedom-speech-monitored-ngos-indias-civil-society-under-pressure>.

1. Several sections of the Indian society claim that the representatives of foreign funding agencies influence the agenda of the non-governmental institutions;
2. Furthermore, they believe that there is an availability of funds more than the amount required at a given point in time in the life of an establishment.

However, the other section of the society while strongly disagreeing claim that foreign funding, is a necessity: -

1. Availability of funds for innovation and experimentation;
2. Government funding is tied to schemes and programmes further limiting the functioning;
3. New ideas, new initiatives, new approaches, new models, new technologies, new designs in a wide range of areas have emerged largely.

Institutions in the Republic of India are currently facing the challenge of ensuring their autonomy, on one hand and securing a viable and sustainable funding base, on the other.

THE MARCH, 2020 SUPREME COURT RULING

²⁸
<https://www.tribuneindia.com/2012/20121202/main1.htm>.

²⁹
<http://www.tribuneindia.com/2012/20121202/main1.htm>.

³⁰
<https://www.tribuneindia.com/2012/20120229/nation.htm>.



The right to dissent, the licitness of protests as a democratic tool, together with the funding of protests have all been matters of clamant discussion over the previous few months. Recently, the Apex Court, in the petition³¹ filed by the *Indian Social Action Forum*, challenging Section 5(1)³² and (4)³³ of the Foreign Contribution (Regulation) Act, 2010 and Rule 3(i), (v), (vi) of the Foreign Contribution (Regulation) Rules, 2011 pronounced a judgement that ought to provide much-needed comfort to democratic protestors just fighting for his or her, or their community's, rights.

The appellant contended that the Foreign Contributions (Regulation) Act, 2010 outlaws the organisations of political nature³⁴ from receiving foreign grants and contributions. This included organisations of farmers, workers, students or youth, which are not directly political, but whose objective is to advance political interests³⁵, or organisations which habitually employ or

engages in common and legitimate methods of political action³⁶, such as 'bandh', 'hartal', 'rasta roko', 'rail roko', or 'jail bharo'. This, it was quarreled, directly in violation of Article 19(1)(c)³⁷, the Court asserted that this does not extend to a right to receive foreign funds.

The Supreme Court effectively read down the provisions to hold that the expression 'political interests' in Rule 3(v) has to be interpreted to be in connection with active politics or party politics. Furthermore, the Court asserted that organisations used for funneling foreign funds cannot elude the Act, provided there is substantial material.

Albeit, even as the NGOs acclaim, there are glaring complications with the half-hearted nature of the judgment. The laws framed by the Parliament are principally subjected to public debate, as a result of that the problematic provisions are weaned out. In the

³¹ Civil Appeal No.1510 of 2020 (Arising out of SLP (C) No.33928 of 2011).

³² Section 5(1) of the Foreign Contribution (Regulation) Act, 2010: "The Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in clause (f) of sub-section (1) of section 3: Provided that the Central Government may, by rules made by it, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature."

³³ Section 5(4) of the Foreign Contribution (Regulation) Act, 2010: "The Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation."

³⁴ Rule 3(i) of the Foreign Contribution (Regulation) Rules, 2011: "organisation having avowed political objectives in its Memorandum of Association or bylaws."

³⁵ Rule 3(v) of the Foreign Contribution (Regulation) Rules, 2011: "organisation of farmers, workers, students, youth based on caste, community, religion, language or otherwise, which is not directly aligned to any political party, but whose objectives, as stated in the Memorandum of Association, or activities gathered through other material evidence, include steps towards advancement of political interests of such groups."

³⁶ Rule 3(vi) of the Foreign Contribution (Regulation) Rules, 2011: "any organisation, by whatever name called, which habitually engages itself in or employs common methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail roko' or 'jail bharo' in support of public causes."

³⁷ Article 19(1)(c) of the Constitution of India, 1949 guarantees the Fundamental Right to form associations or unions.



instant case³⁸, the Act³⁹ grants the government the power to invent rules whereby an establishment will be declared to possess political objectives, while not shaping what a 'political objective' is, the officials primarily bypasses such parliamentary audit by wadding the void. This then has the twin impact of leaving the citizen outguessing what his rights actually are, whilst consistently living under the shadow of vindictive action by the government. Various sections of the Indian society often believe that this gives the government a benefit of the doubt with regards to the misuse of power.

As argued by the appellant not weighing on whether the Fundamental Rights are being violated or not will make the right to form association nugatory as none can exercise a right without the resources to do so.

Concurrently, foreign grants and contributions will proceed to be looked upon with scepticism for masked political motives.) It is suggested and recommended that the government will have to construct clear linkages before sullyng a recipient organisation.

CONCLUSION

The NGO's come into permanence to venture those tasks and activities associated with the social welfare, which the government & the private sector could not do, or could not do adequately. Withal, there's a powerful ought to take steps streamlining grants-in-aid procedures, coaching of cadre to improve

personnel competence, enhancing the organizational structure to bolster Non-governmental organizations. The Voluntary work and the state action are the two sides of the equivalent coin of every aspect of development and governance. Moreover, they should acknowledge their essential interrelatedness. Majority of the issues confronted by the Non-Governmental Organizations can be ascribed to wariness between such agencies and the Government departments. Such organizations often procrastinate to contact the political parties or to the Government fearing that they would lose their sovereignty and reliability.

Howbeit the endeavors of the organizations are praiseworthy, it should be admitted that they will do very little within the space of development that need huge human and money elements. These organizations and also the government ought to come back to the bargaining table and with reciprocal respect and maturity explore on development problems as long because the concentration is upon the poor and their well-rounded development. These organizations and government officials are to be deemed as associates in advancement. Hence, they're the voice of the sidelined, the destitute, the weak, the survivors of the society and the state.⁴⁰ NGOs are to be perceived as vehicles of legitimization of community. By granting statutory realization to the fundamental right of freedom of expression and freedom of association, statutes sanctioning the enterprise and governing the functioning of NGOs originate strong maintenance of

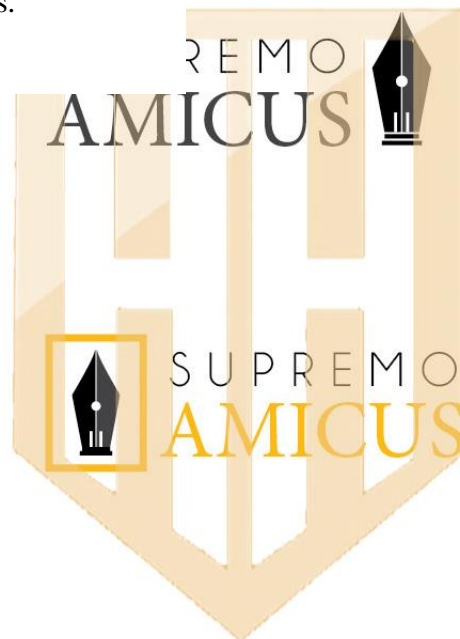
³⁸ Indian Social Action vs Union of India, Civil Appeal No.1510 of 2020.

³⁹ Foreign Contribution (Regulation) Act, 2010.

⁴⁰ Rakesh Kapoor, "Voluntary Action: Survival, Politics and Transformation", Social Action, Vol. 46, January - March 1996, p. 15.



democracy in India.⁴¹ Their work should be distinctive like an Oasis within the desert that has got to be wisely visible, beneficial, sustainable and replicable and not sort of a mirage. To rephrase John Donne, “No voluntary organization is an island, entire in itself.” Organizations born, live and typically die during a complicated surrounding created of alternative establishments, the government, the private sector, and the general public. This surrounding isn’t static however is chop-chop ever-changing and Non-Governmental Organizations home to require under consideration the prevailing social and economic conditions.⁴²



⁴¹ Anita Abraham, Formation and Management of NGOs, Universal Law Publishing Co. Pvt. Ltd, Delhi, 2003.

⁴² Jim Jackson, “Evaluation for Voluntary Organizations”, Comments Development Journal, Vol. 24, 1989, p. 283.