



NANOTECHNOLOGY

Plenty of room for legal community

MD. ERSHADUL KARIM

WITH the passage of time, technology is becoming small but smart, intelligent, more accurate, powerful and precise. One of the reasons here is that the scientists have been using nanoscale technology which enables them to develop smaller, stronger, effective and durable devices and products.

In TATA Nano, i-Pod Nano, and hundreds other products, the word 'nano' is used in the product name due to its huge branding value linking it with its Greek origin, which literary means 'dwarf', i.e. very small. However, in the study of nanotechnology, the word is used as a unit of measurement like metre, kilometre, gram, kilogram, byte, megabyte etc. 'nano' denotes one billionth. Therefore, for example, if we divide one metre in one billion parts, then every single of these parts will be considered as one nanometre or 1 nm. Nanoparticle is the smallest unit in the study of nanotechnology which is used to develop

nanomaterials.

Nanoparticle or nanomaterial is basically nanoscale chemical and experts claim that whatever we see in the world is actually made up of chemicals. The use of nanoparticle or nanomaterials in various products is not new, rather people of ancient civilisations used these to develop products like 'Damascus steel', murals and pottery, ink, glaze, etc. To the people of Indian sub-continent, *Kajal*, traditional eye makeup or *Bhasma*, Ayurvedic medicine were very common. These are known as 'accidental nanomaterials'.

The modern study of nanotechnology is concerned about 'engineered nanomaterials' (ENMs), the idea of which was first shared by the Noble Laureate in Physics Richard Feynman in 1959 in his revolutionary talk 'There's plenty of room at the bottom'. Based on his idea, it can be said in simple words that 'nanotechnology' is the study of manipulating things at the atomic scale,

i.e. between 1-100nm. As there is no consensus on the definition of the word and more than thirty similar definitions are available, the present trend is to define the word 'case-by-case'.

Nanotechnology has the potential to provide innovative solutions to many of the existing problems, e.g. energy, water treatment, disease diagnosis, drug delivery, food processing, health monitoring, etc., the world community has been facing. Already thousands of products ranging from cosmetic, food, sports instruments, automobile, etc. are available in supermarket shelves and all countries, irrespective of size and economy, along with business tycoons have been investing significant amount of money to grab the trillion dollar world market.

It is a matter of serious concern that many studies published in renowned scientific literatures like *Nature*, *Science*, *Journals of American Chemical Society* and *Royal Society of United Kingdom* confirmed that some ENMs like carbon nanotubes, gold, silver, titanium nanoparticles are capable to enter human health through number of ways- inhalation, skin and ingestion. Some of these ENMs have close resemblance with asbestos, though the stakeholders are claiming to conduct more research to ensure the exact behaviour of the ENMs in products, human health and in different components of the environment after their use.

Nanotechnology is no more an issue of scientists only rather it is a multi-disciplinary study where involvement of participants from all disciplines is desirable to exploit it for the common good. Taking into account the cradle-to-grave life-cycle of the ENMs there are, in fact, many issues of legal concern. Initially, the issue of patent, registration of chemicals, occupational health and safety, products safety, consumer protection and environmental law will be crucial. In the long run, other broad areas of laws like criminal law, torts, taxation, trade and business law, healthcare law, trade secret law, privacy and

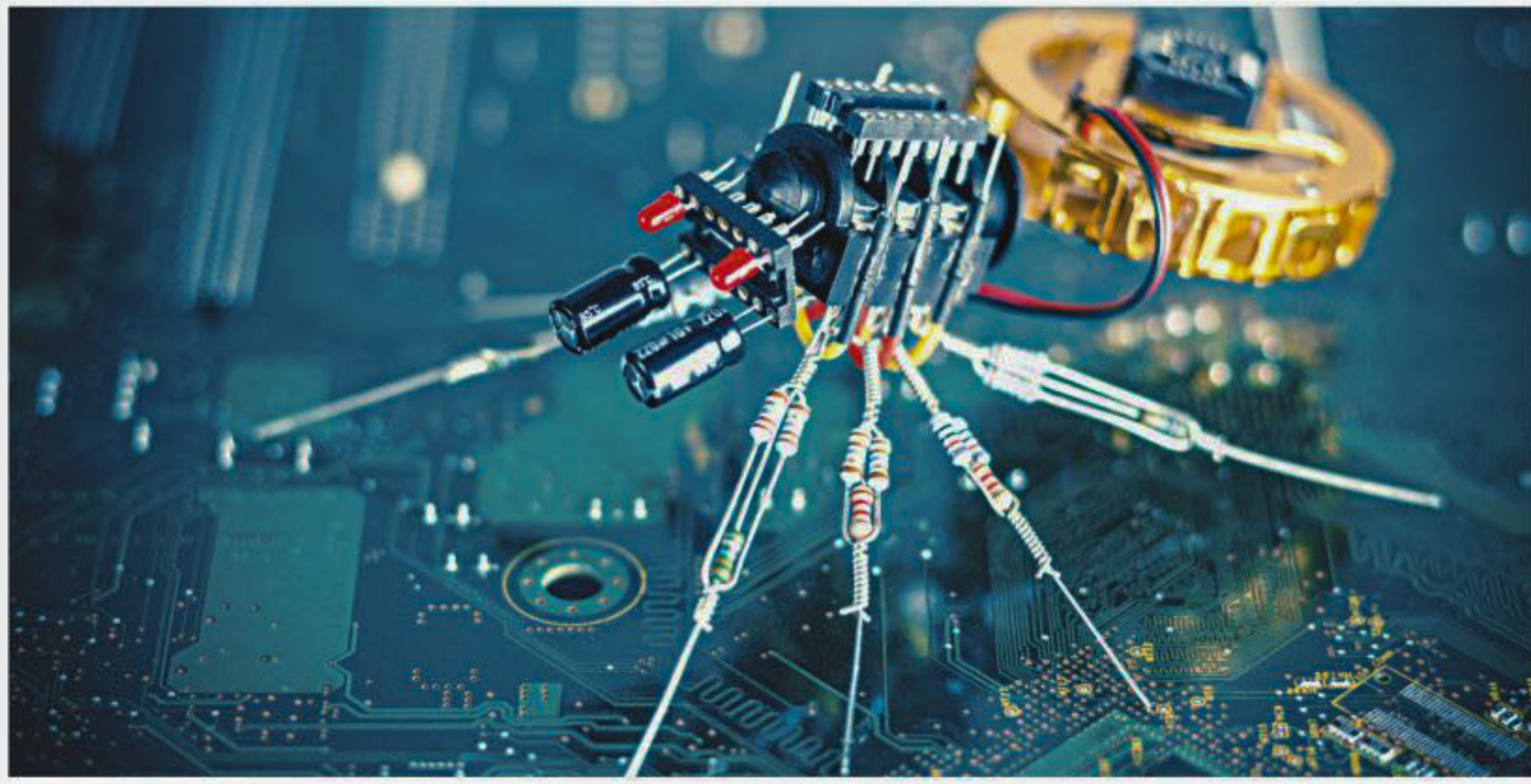
civil liberties, international law, etc. will be added to the list.

Apart from all these, one of the serious concerns will be the handling of nano-enabled products manufactured in the developed country and subsequently exported to developing countries and finally disposed in the environment after the use. Hence, in the absence of technological expertise, the developing countries may be used as 'dumping ground' or 'practical experiment site' for these products.

The world community led by the industrialised nations and international organisations have been working to shift the popular perception i.e. 'nanotechnology is dangerous' to 'nanotechnology can be developed safe'. Different initiatives are already taken. European Union labelling law has made it compulsory to use the word 'nano' in food and cosmetic if ENMs are used as ingredients. Countries like Iran, Thailand and Taiwan introduced certification system known as 'nano marking system'. European countries like France, Belgium and Denmark have already introduced compulsory registration of ENMs, if manufactured or imported in the country beyond the limit set by the regulators.

In 2006, it was claimed that nanotechnology was then in stage, where information and communication technology (ICT) was in 1960s and biotechnology was in 1980s. In last ten years, scientists from all over the world have proved this prediction true. We are now embled with the innovations fueled by ICT and biotechnology. The next big thing is nanotechnology, which should be developed in a safe, sustainable and responsible manner and the members of the legal community have great roles to play to this end.

THE WRITER IS A PHD HOLDER FROM THE UNIVERSITY OF MALAYA, MALAYSIA ON "LEGAL AND REGULATORY ASPECTS OF NANOTECHNOLOGY".



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LAW LETTER

White collar crime

This is a common perception that only lower class people are responsible for anti-social behaviour in our country. But such a perception could be incorrect in many cases. Actually, some profession offers lucrative opportunities for criminal activities which attract the upper class to involve in anti-social behaviour. It sometimes creates difficulties to define these activities in the ambit of traditional criminal law. These anti-social activities committed by the upper class or special group of people are generally known as white collar crimes.

A bulk number of white collar crimes are noticeable in our society. Among them most common crimes are corruption, bribery, tax evasion, fraud against the government, anti-trust violations, bank fraud, bankruptcy fraud, counterfeiting, economic espionage, embezzlement, extortion, forgery, money laundering and many more.

Anti-social behavioural tendency, narcissism, impulsiveness, borderline personality organisation, inability to form a commitment, vindictiveness, paranoia, risk-seeking, etc. are few examples of white collar criminal's behavioural pattern and personalities.

Transparency International, a German based NGO, has identified Bangladesh as the most corrupted country in the world for consecutive five years. People of upper socio-economic class are making huge amount of money by corruption, manipulation and abuse of power which has severe impact on national economy. Their crimes are insufficiently focused and most of the time undetected as well as remained beyond the domain of legal process.

To maintain its economic growth and development,



Bangladesh needs to reduce white collar crimes and minimise the rate of corruption at the local level in different service sectors such as education, health, transport and others. The decreasing of foreign investors and national financial institutions outflow of fund from stock market are clear indications of negative impact of white collar crime in our country. Thus, the government must improve overall governance, take strict action against the offenders and implement some strong provisions of prevention, investigation, detection and prosecution of economic crimes.

A greater understanding of technology, competition, regulation, legislation and globalisation are needed in order to successfully manage the proper balance between economic progress and criminal opportunity. However, some more preventive steps can be suggested by saying zero tolerance against corruption as well as increasing the capacity for fighting against corruption, adopting some code of conduct by every institutions, maximising the use of information technology, establishing the rule of law in both private or public sector, strengthening parliamentary oversight, ensuring independence and effectiveness of the anti-corruption commission, and increasing the roles of civil society as well as mass media. Above all, the prevention of crime should be the first attention of criminal justice system in Bangladesh to minimise the white collar crime and to get rid from the stigma of corrupted country in the eyes of international community.

Barrister Azizun Nahar
Advocate
Supreme Court of Bangladesh

REVIEWING THE VIEWS

KAWSER AHMED

NO doubt, thanks are owed to Md. Rizwanul Islam for his bold observation that there are some misconceptions about the functionality of human rights among common folk and human rights activists alike in Bangladesh [Stretching the Boundaries of HR, *The Daily Star*, 8 December 2015]. Mr. Islam pointed out in particular that in Bangladesh crimes are often treated as human rights violations. While appreciating Mr. Islam's views, I thought I would share a few insights I gained from my work as consultant responsible for drafting the initial State party report of Bangladesh on the International Covenant on Civil and Political Rights (ICCPR), Bangladesh's Second Cycle Universal Periodic Review Report to the UN Human Rights Council and a number of shadow reports to UN human rights treaty bodies, for the Bangladesh National Human Rights Commission (JAMAKON).

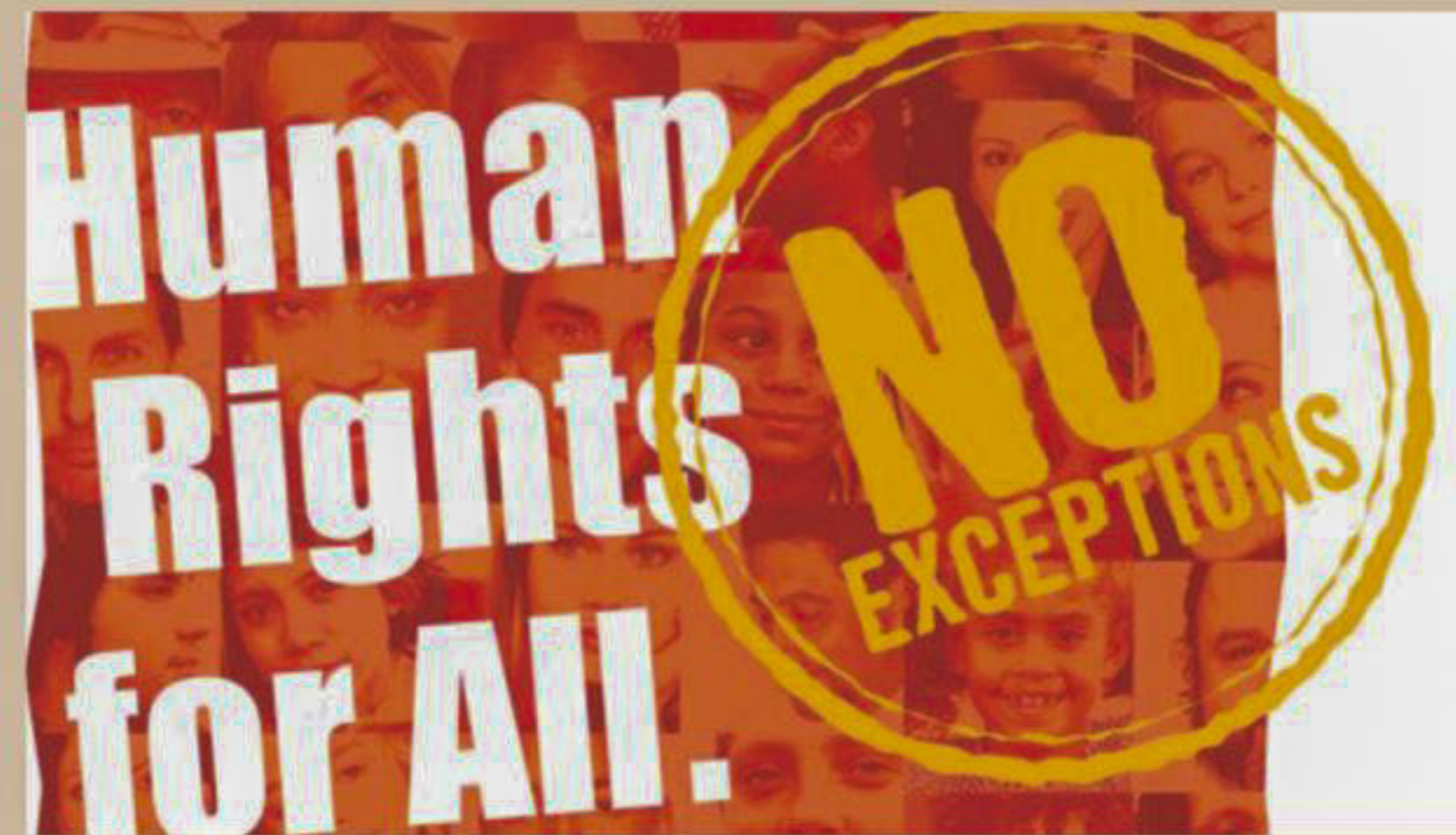
In addition to the widespread misperception in Bangladesh that crimes automatically qualify as human rights violations, many persons seem unaware that international human rights law safeguards the rights of those accused of having committed crimes. Core international human rights treaties, chiefly the ICCPR and Child Rights

Decoding HR perceptions in Bangladesh

Convention, both of which Bangladesh has ratified, guarantee fair trial rights to the accused as well as redress for victims of crimes. In Bangladesh, many people might be surprised to learn that no universal convention addresses the rights of the victims of conventional crimes and that international human rights treaties generally do not define crimes, nor do they expressly oblige a

Commission in 2010. The Survey found that only 50 per cent of the entire participant sample had heard of the term 'human rights'. A follow-up survey in 2014 indicated that the ratio had risen to 68 per cent.

The net outcome of these misconceptions in popular perceptions of human rights is that while the State might get



state party to ensure punishment of any specific crimes with a very few exceptions such as torture or enforced disappearance etc.

Such misconceptions could be more understandable if we consider the results of the Baseline Survey carried out for the National Human Rights

away with its failure to ensure human rights to its citizens without being held accountable, individuals risk becoming stigmatised as human rights violators and that could undermine their right to fair trial. The very behaviour of a lynch mob is perhaps a symptom of this attitude.

Popular perceptions of human rights are important because they signal how ordinary people define their relationship with the State. A State in which human rights culture is weak is bound to suffer from a legitimacy deficit. History shows that without respect for human rights no state can thrive well for very long. The Chair of the National Human Rights Commission, Professor Dr. Mizanur Rahman has rightly observed, "What else could be the reason for having a state other than full realization of human rights?" (JAMAKON Annual Report, 2014).

It must be remembered that human rights are for everyone, no matter who he or she is, friend or foe—that's what makes human rights universal, as values and also as norms. In the words of Dr. Lyal S. Sunga, Head of the Rule of Law Program at The Hague Institute for Global Justice, "It is important to remember that human rights are for everyone, but especially for those that you, or society in general, may not like, because it is those very persons or groups who face the greatest threat from both the State and society at large, in terms of vulnerability and marginalization, as well as a lack of access to justice."

THE WRITER IS AN ADVOCATE, SUPREME COURT OF BANGLADESH.

YOUR ADVOCATE



This week Your Advocate is Barrister Omar Khan Joy, Advocate, Supreme Court of Bangladesh. He is the head of the chambers of a renowned law firm, namely, 'Legal Counsel', which has expertise mainly in commercial law, corporate law, family law, employment and labor law, land law, banking law, constitutional law, criminal law, IPR and in conducting litigations before courts of different hierarchies.

Query

We are a UK-based international charitable organisation planning to open an office in Bangladesh. However, we are receiving contradictory responses from different persons so far as the registration procedure is concerned. Some also informed us that it is not possible to get a registration! If so, how all other international NGOs are operating in Bangladesh?

Response

Thank you for your query. There are now more than 200 International NGOs (INGOs) operating in Bangladesh after duly undergoing the registration process.

There are several organisations willing to assist with the set-up, registration and operation of foreign NGOs in Bangladesh, and the law stipulating such procedures are also kept under regular monitoring by the Government of Bangladesh. There remain other stipulated rules in relation to renewal of registration, monitoring and receipt of donations, etc.

The procedure that dictates the registration of INGOs in Bangladesh is in the Foreign Donations (Voluntary Activities) Regulation Ordinance of 1978 and the Foreign Donations (Voluntary Activities) Regulation Rules of 1978.

For the purposes of conducting operations in Bangladesh, acquiring registra-

tion as an INGO in Bangladesh is of vital importance. An application is to be made to the NGO Affairs Bureau (NGOAB) including all the listed documents, which shall then be considered by both the Ministry and the NGOAB in turn within a stipulated time frame. Once approval is provided by all the relevant authorities, the applicant INGO shall be furnished with a registration letter by the NGOAB and can thereafter ensure unencumbered operation of their NGO operations in Bangladesh. Once registered, the registration shall generally remain valid for a period of 5 years, which shall be thereafter renewed following the separately stipulated procedures for renewal. Although a time frame of 90 days is mentioned, practically the registration process may take up to 6 months.

The requirement for the registration of NGOs/INGOs in Bangladesh is made unambiguously clear by section 3(2) of the 1978 Ordinance, which provides that any organisation which is receiving or operating any foreign donation for the purpose of undertaking or carrying on any voluntary activity, shall register itself with such authority and in such manner as the Government may specify. In relation to this, 'voluntary activity' is defined as 'an activity undertaken or carried on (partially or entirely with external assistance) by any person or organisation of his or its own free will to render agricul-

tural, 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.' In every other case, the scope of work generally undertaken by foreign NGOs fall within the widely-framed definition of 'voluntary activity' as provided in the 1978 Ordinance. Moreover, since such INGOs often receive foreign donations, it becomes imperative for them to be registered accordingly in order to be able to undertake any such voluntary activities.

On an application for registration being made by a particular foreign NGO to the NGOAB, it will thereafter be forwarded to the Ministry for consideration. Within 60 days after receiving a letter from the NGOAB requesting an opinion on the application, the Ministry shall provide such opinion to the NGOAB in light of the following factors: a) whether the applicant organisation is involved in anti-state/anti-social activities, and whether the individuals concerned were convicted for criminal behaviour; b) introduction of the members of the executive committee of the applicant organisation, mutual relationship and social stature; c) prior experience of the applicant organisation in relation to social welfare activities; and d) information on whether the applicant organisation has its own office.

The application has to be made in the prescribed fee along with payment of requisite fee. The following documents shall be submitted with the application:

- (a) FD-1 Form (Signed by Chief Executive in Bangladesh) [9 copies], (b) Certificate of Incorporations in the Country of origin [3 copies], (c) Constitution [4 copies], (d) Activities Report [5 copies], (e) Plan of Operation (Work procedure, Organogram) [4 copies], (f) Decision of the Committee/Board to open office in Bangladesh [4 copies], (g) Letter of appointment of the Country Representative [4 copies], (h) Copy of Treasury Challan in support of depositing US\$ 3000 or Equivalent Bangladeshi Taka [3 copies] (With original copy), (i) Deed of agreement with the landlord in support of opening the office in Bangladesh [3 copies], (j) List of Executive Committee (foreign) [4 copies], (k) List of Executive Committee (local, if any) [4 copies], (l) Local constitution (if any) [4 copies], (m) Letter of Intent [3 copies], and (n) All documents from abroad should be notarised attested by peace of justice [notary public].

I hope that the above shall help you to primarily ascertain the registration formalities.

FOR DETAILED QUERY CONTACT: OMAR@LEGALCOUNSELBD.COM