Liberalization of Business Organisations in Bangladesh meeting the Development Challenges of the Millennium

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Abstract
In competitive free market economy, the ‘business organizations’ play important role for ensuring economic progress and establishing functioning democratic political order. The objective of this study is to analyse the existing rules and regulations of business organizations in Bangladesh in light of the international standard so that suggestions for reformation of the same can be made which are essential to meet effectively the challenges of the global business market of the new millennium and ensure sustainable economic development. To achieve this objective, standard international laws regarding business organizations have been briefly analysed, and next the existing rules and regulations for the business organizations in Bangladesh have been analysed and respective reform suggestions made.

For this study secondary sources of data and information have been used. However, a survey has also been done. For the analysis of the data and information, qualitative methodology has been used. The study is a unique one because it explains the importance of reformation of the business organizations in Bangladesh and makes suggestions for reformation.

Keywords: Business organizations, Federation of Bangladesh Chamber of Commerce and Industry, UNCTAD/GATT, Public Law System, Private Law System, Trade Organizations Ordinance.

Introduction
To match with the global business environment, the Government of Bangladesh is committed to liberalize its trade policy as it has embarked on an export-led development strategy to take advantage of the free trade to achieve faster economic growth. The objectives of the Export Development Strategy of the government are to expand and consolidate the existing export market and develop new export markets for Bangladeshi export products.

The reason of this initiative is that globalisation of trade has created new challenges for developing countries like Bangladesh. In today’s world, the countries that can provide the best can bargain. Under such circumstances, stronger private sector organisations are necessary. So, in interest of the economic development of the country, the business organizations must be supported and integrated in the development policy making process in all respect.

Stronger business organisations have the strength to safeguard the interest of the business, and they have the means to help its member bodies to operate more efficiently. Further, they should have the aptitude to play a more significant role in the economic development of the country. However, the strength of the business organisations comes only when they have stronger organisation structures and legal frameworks.

Since its inception, the business organisations of Bangladesh, the apex private sector organisations of the chambers and associations, have been playing a significant role in the economic development of Bangladesh. Nevertheless, the environment of free market economy demands efficiency of business organizations. Hence, it is essential to find ways and means to strengthen the business organizations.

Accordingly, the memorandum and Articles of Association of the Federation of Bangladesh Chamber of Commerce and Industry (FBCCI) conclude “to reflect the opinion and suggest complementary, remedial or improvement measures with regards to various laws, enactment, and policies framed by the government regarding trade, industrial or economic affairs”.

Representation of FBCCI in different Committees and Task Force constituted by the Government on business and development issues is ensured by Government. FBCCI is vocal especially about tax issues and industry related development policies. FBCCI meets and communicates with its members and provides its inputs for the formulation of Export-Import, Industrial and other development policies of the government (Annual Report, 2016-2017). FBCCI maintains close contact with diplomatic missions, foreign donor agencies and international organisations like UNDP, ILO etc. for the interest of its member bodies.

Objectives and Methodology of the Study
The objective of this study is to find reformation proposal for business organizations in Bangladesh so that Bangladesh can meet the challenges of the global business market of the new millennium effectively. To achieve this objective, first standard literature regarding international business law has been studied and next the existing rules and regulations for the business organizations in Bangladesh have been analysed and suggestions made.
For this study, secondary sources of data and information like government rules and regulations published in the form of laws and gazettes have been used. However, a survey\(^1\) has also been done. The study report is prepared using qualitative analysis of the data and information which is widely used in the research of social entities like trade bodies, social organizations, political organizations, NGOs, service providing public and private bodies etc.

**Systems in International Business Organizations**

International Chamber of Commerce (ICC) aims to promote international trade and investment as vehicles for inclusive growth and prosperity.\(^2\) National business organizations on the other hand aim to serve the interests of the national economy and the business community (UNCTAD/GATT, Geneva, 1998). Business organizations are mainly of two types. One is established under ‘Private Law System’ and the other under ‘Public Law System’. In the UK, USA, Canada, Ireland, Australia, New Zealand, Denmark, Norway, Sweden, Finland, Belgium and Switzerland, Private Law System is applied. In France, Italy, Netherlands, Germany, Austria, Luxembourg, Spain and many other developed and developing countries, the Business organizations are established under the Public Law System. However, all over the world, the Business organizations have same purposes and organizational structure.

The important provisions of the Private Law System of the business organizations are following:\(^13\)

- There could be more than one organization.
- They are non-profit organizations listed in the Register of Associations of Business Organizations.
- They are mainly financed by the subscription of the members.
- Memberships of the Organizations are Voluntary.
- Business from public sector could be members of the Organization.
- State has no undue influence on the organizations and
- Members elect their leader without any fear and intervention of the government.

The business organizations under Private Law System need to emphasise much on services for the members because the membership of the Organization is voluntary. However, during economic crisis, the business organizations under Private Law System suffer from loss of membership and face financial problem. In the case of Private Law System, the government is not obliged to consult the business organizations about the development and other economic policies of the country. However, generally in the developed countries especially in European countries, the government seek views of business organizations regarding the development and other policies UNCTAD and WTO.\(^14\)

The main provisions the Public Law System applied to business organizations are as follows:

- Business organizations are organized by the States.
- Memberships in the business organizations are mandatory.
- All public enterprises are members of the business organizations.
- Business organizations are generally organized sector wise.
- Subscriptions are fixed, but it could be raised with the permission of the government.
- Business organizations can fix the fee annually according to the needs, but it must be acknowledged by the Ministry responsible for business organizations.\(^3\)
- To hinder excessive interference of the State, ‘administrative tribunal’ is introduced to arbitrate internal and external dispute.
- Business organizations are considered as a competent adviser of the Government.\(^13\)

The business organization under Private Law System has following advantages:

- Business organizations are not depended on subsidies, so they need not be concerned about the number of members to increase income.
- They can take decision in the general interest of the members.
- They are free and can recruit competent staff and provide necessary services and supports to its members.
- They can define and re-define their objectives and initiate development projects having sufficient financial resources.
- Private Law System ensures representation of the organizations of all sectors of the economy in Federation.
- Supervision of the government does not restrict the independence of the business organization as they are regulated by set up rules, and
- Auditing is applied to ensure transparency and accountability for business organizations, but in a free market, economy means nothing but to ensure transference.\(^13\)

In developed countries, both the Private and the Public Law System are practiced administering business organizations. To have clear understanding, the usefulness of these systems for developing countries like Bangladesh, it is necessary to analyze and compare the salient features of two systems and their advantages. In the table 1, the salient features of the two systems have been presented.

**Trade Organizations Ordinance in Bangladesh**

Business in Bangladesh is organized to represent trades and industries of specific areas such as divisions, districts, upazilas and municipalities to represent specific trades or industries or both. There are different types of business organizations in Bangladesh.
They are (i) Federation of Chamber of Commerce and Industry, (ii) Chamber of Industry, (iii) Chamber of Commerce and Industry in divisions, districts, upazilas and municipalities, (iv) Association of Trade or Industry or both, (v) Town Associations where there is no Chamber of Commerce and Industry, (v) Business Groups in divisions, districts, upazilas and municipalities. The business organization in Bangladesh are administered by ‘Trade Organizations Ordinance, 1961’, amended by the Trade Organizations Ordinance (amendment), 1984 and the rules made there in 1994. The other relevant ordinance for a business organization is the ‘Companies Act, 1994’.

The Trade Organizations Ordinance promulgated in 1961 was amended in 1984 by the ‘Trade Organizations (amendment) Ordinance, 1984’. According to this Ordinance, trade organization has been defined as an association which is formed or intended to be formed with the object of promoting any trade, commerce or industry or any group or class thereof or for representing for any purpose, in any manner and to any extent any trade, commerce or industry or any group or class thereof. The purpose of the Ordinance is to standardize the functions of Trade Organizations and all matters ancillary thereto.

By the Ordinance, a trade organization is a limited company; however, it is prohibited to pay any dividend to its members. To be registered and function or engage in any activities, trade organizations must hold license granted by the Government. None but a registered trade organization can use in its name or title the words “Federation” or “Chamber” or “Association” [Section 3 and Section 6(1) of the Ordinance]. Sub-section (2) of section 3 of the rule provides that commencing its function the trade organizations must fulfil the following conditions:

- The business organization must be a Federation of Chambers of Commerce and Industry to represent Chambers and Associations.
- It must be organized on Bangladesh basis.
- It must represent trades and industries of specific areas such as divisions, districts, upazilas and municipalities.
- It can be an association of trade or industry or of a Town Association or Groups in specific areas such as divisions, districts, upazilas and municipalities.

According to Bangladesh Trade Ordinance, there is one apex body of all business organizations and it is the Federation of Chambers of Commerce and Industry. The intention is that there is one voice for effective representation. Similarly, there is not more than one Chamber of Industry. At places where there is no Chamber of Commerce and Industry, Town Associations can be organized to represent trades and industries. Such Town Associations are to be affiliated to the Chamber of Commerce and Industry of the District. In specific areas such as divisions, districts, upazilas and municipalities.

Groups can be organized but again there cannot be more than one group to represent specific trade or industry in a specific area and in particular no group is granted a license where there is a registered Town Association. The idea is to ensure

Table 1
Comparative Advantages of the business organizations under Private and Public Law System

<table>
<thead>
<tr>
<th>Features</th>
<th>Chambers under Private Law</th>
<th>Chambers under Public Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Status</td>
<td>• May be registered under any one of the relevant laws of the country, e.g. Company, Society, and Trust law. • Non-profit Organization.</td>
<td>• Established by government as authorized institution representing business, industry, services, etc. • Non-profit Organization.</td>
</tr>
<tr>
<td>Membership</td>
<td>• Voluntary</td>
<td>• Obligatory</td>
</tr>
<tr>
<td>Income</td>
<td>• Membership fees, fees for services etc. are fixed by organizations.</td>
<td>• Fees are fixed by Organizations and approved by the Government.</td>
</tr>
<tr>
<td>Leadership</td>
<td>• Leaders are elected from the members.</td>
<td>• Leaders are elected from the members.</td>
</tr>
<tr>
<td>Administration</td>
<td>• Managing committee supervises the office, the staff, and the services.</td>
<td>• Managing committee supervises the office, the staff, and the services.</td>
</tr>
<tr>
<td>Control</td>
<td>• Auditing is applied to ensure transparency and accountability.</td>
<td>• Subjected to the supervision and directives of the government.</td>
</tr>
<tr>
<td>Consultation</td>
<td>• Entitled to be consulted</td>
<td>• Entitled to be consulted</td>
</tr>
<tr>
<td>with Government</td>
<td>• Government may consult more than one Organization.</td>
<td>• As there is only one Organization representing business and industry, constant consultation is automatic.</td>
</tr>
<tr>
<td>Pluralism</td>
<td>• May be more Organization in any location. • May be more than one business federation.</td>
<td>• Only one organization in any location. • There is only one national business organization, i.e. national federation.</td>
</tr>
</tbody>
</table>
that there is one voice of representation and pluralism in trade organizations is not encouraged. In this case, there is no competition or conflict amongst the business organizations.

However, Government reserves the right to overturn the subsection (3) of section 3. It may give licence to any Trade Organization with such conditions and regulations as the Government may think fit to impose or prescribe (section 3). This means that a trade organization not fulfilling the conditions as enumerated in subsection (3) may also be granted licence for its registration and activities. The period and subject to such exemption are determined by Government.

The sub-section (7) of section 3 provides that in case of a national organization, the organizers have to publish a notice before formation of organization with its aims and objects in at least two national dailies. In the case of any regional trade organization, the notice must be published in a local or regional newspaper. Further, all trade organizations must comply with the following regulations:

- Payment of any dividend to its members is prohibited [Sec. 2(12)(c)].
- Only after obtaining a licence, trade organization are allowed to be engaged in their activities [Sec. 3(8)].
- If licence is cancelled, trade organizations are not allowed to function and maintain office in any form [Sec. 5(3)].
- Only registered trade organizations are permitted to use the words “Federation” or “Chamber” or “Association” in its name or title [Sec. 6(1)].
- Without the prior approval of the government, trade organization cannot rescind, amend or otherwise modify its articles or memorandum [Sec. 8(1)(a)] and
- A person cannot be member of more than one trade organizations as the government may specify by a notification [Sec. 14].

According to sec. 3(3) of trade ordinance, Government can impose conditions and prescribe regulations as it may think fit and such conditions and regulations are binding on a trade organization. Government preserves the right to revoke at any time a license after giving the organization an opportunity [Sec. 4(1)(a)]. It has also the right to cancel any exemption granted under sub-section (6) of section 3 [Sec. 4(1)(c)]. Government has right to recognize any trade organization and give privileges considering the importance of the organization in the national economy of the country [Sec. 7(1)(b) and (c)].

Government can direct any trade organization to rescind, amend or modify its articles, memorandums, rules or bye-law or to make any rule or bye-law if it is considered expedient. Organization failing or neglecting to comply with such direction, government itself can affect the rescission, amendment or modifications [Sec. 8(2)]. Such modifications done by the government are deemed to have been duly done by the trade organization concerned.

The most extreme regulatory interference of the government in trade organization is in section 9(1). It provides that all acts and proceedings of a registered trade organization are subject to the control of the director; the affairs of trade organization will be managed and conducted as the Director may direct from time to time [Sec. 9(1)]. The absolute powers enjoyed by the Director are as follows:

- He can attend any meeting of the general body or the executive committee of a trade organization or of any committee or body [Sec. 9(2)(c)].
- He can cancel, suspend or modify any resolution adopted or any decision taken by the general body or the executive committee [Sec. 9(2)(i)].
- He can remove or cause to be removed any member of the executive committee and can fill up or cause to be filled up the vacant position by his choice. He can suspend in total fifteen member of the executive committee in one calendar year [Sec. 9(2)(f/g)].
- He can suspend an executive committee and thereafter he can appoint an administrator for one year to manage and conduct the affairs of the organization. The administrator manages and conducts the affairs of the registered trade organization under the supervision of the Director. Expenses incurred in connection with the management of a trade organization by an administrator will be borne by the trade organization concerned [Sec 10(2)(c), 10 (3), 11(1) and 11(3)].

The Ordinance provided that if any person or member of a trade organization is aggrieved by any decision or order of the administrator, may appeal against the order or decision of the administrator to the director, however, the decision of the director on such appeal is final but the implementation of the order or decision of the administrator remains suspended until the appeal is disposed of [Sec. 15(1) and (2)]. Contravention of any provision of this ordinance or any rule or order or any direction is punishable with a fine of Taka one thousand (Section 18).

Legal proceedings or suit can be instituted against a registered trade organization or any of its member or any member of the executive committee by any member of such registered trade organization or any member of any other trade organization questioning the validity or propriety of any act or proceeding of the trade organization or the executive committee unless such member or the other trade organization has made an application to the Arbitration Tribunal constituted by the Federation of Chamber of Commerce and Industry and the Tribunal has given its decision (Sec. 12).

Any order made following this Ordinance cannot be questioned in any court [Sec. 22(1)]. Suits, prosecutions or other legal proceedings cannot be proceeded against any
person for anything done or intended to be done in pursuance of this Ordinance or any rule or order or direction, if the same is done or intended to be done in good faith [Sec. 22(2)].

The Trade Organisation Rules 1994, Section 7, provide that individual, partnership firm, company or any other establishment engaged in import or export, or any other business or industry paying income tax or if income tax is payable to them, is compulsorily to be a member of the concerned trade organization.

For all trade organizations, it is mandatory that who have been granted licence must apply within 60 days of receipt of their licence for their affiliation with the Federation or the respective Chamber of Commerce and Industry as the case may be. Otherwise the license of the organization is considered to be cancelled (Rule 8). Incorporated trade organizations get following preferences from Government:

- They have privilege to give opinion to the government in formulating and implementing policies on trade, commerce and industry.
- They receive copies of all notifications and circulars issued by the government relating trade, commerce or industry.
- They have the privilege to issue certificate of origin, quantity and weight of any specific commodity for the purpose of trade, commerce or industry.
- They have the right to send representatives or observers to meetings, seminars and workshops held in foreign countries.
- They have the privilege to get foreign exchange in following cases:
  - Participation in international meetings, seminars, or workshops.
  - Organizing trade fairs or exhibitions in foreign countries.
  - Establishing business centres in foreign countries, and
  - Payment of remuneration of foreign consultants and experts (Rule 8).

**Development Challenges of the New Millennium and Liberalization of Trade Organizations**

The Trade Organization Ordinance promulgated in 1961 was amended after 23 years in 1984. As it was an Ordinance, it means the main law and the amendments did not have the benefit of a debate by the legislators nor of any opinion from the business community at large. The law is conspicuous by the presence of regulatory bottlenecks in the almost all affairs of the trade organizations. However, this is not strange because the main Ordinance was promulgated in a time the government was not honest to allow business organizations to grow and functions beyond its active control with any measure of autonomy.

During this time, the country was under un-democratic rule and the regime intended to control the business organizations with heavy hand. The business community was under-developed and unorganized. They failed to convince the regime that their objective was to serve the economic development of the country and protect their interests.

From discussions before, instances have been enumerated that government can exercise such control over a trade organization that may impede the normal functioning of an organization. Acting through the Director, Government can control every action and function of a trade organization. The Director or the administrator has such power that he can reduce a trade organization to such a servile role that have no other way but to act on his directions. The Director can remove any member of the executive committee any time and he can suspend or remove memberships of members.

The most evident example of extreme regulatory interference is seen in section 8(1) which provides that all proceedings of a registered trade organization are subjected to the control of the Director. The section 9(1) of trade organization demands that the affairs of trade organization have to be managed in such manner as the Director may direct. It means in short he is the final arbiter and can seal the fate of a trade organization.

In free economic order, commerce and industry have important role to play having unprecedented impact on the global economy, world society and world politics at the same time. Democratisation and deregulation of economy and society as a whole are cries of the new millennium. It is imperative therefore that the activities of the trade organizations should be free.

Nevertheless, international experiences show that even in most of the developed countries, business organizations operate under the Public Law System. Developing country like Bangladesh can benefit from the followings advantages of the Public Law System:

- It helps to organize all enterprises on a single platform, so that interests of the weak and underdeveloped business sectors are protected.
- The business organizations become strong to influence development policies and strategies,
- The business organizations become financially sound and can provide all needed supports and services to their members, and
- They can establish working relationship with government, trade unions, intellectual bodies, economists, educational institutes and think tanks and hence can truly serve the development and welfare of the country and the society.

Freedom of association means not only the freedom to associate but freedom to act, voice opinion, demand relief and remedy. However, the types of trade organizations that
are envisioned in Bangladesh cannot be considered free and capable enough to serve the interest of trade industry and economy which is the demand of the new millennium.

Including the investigation of secondary literature, a survey regarding freedom and autonomy, internal democratic, membership and financing of the activities and lobbying of the chamber organization with the Government has been done. In responses to the query about autonomy and freedom of the trade organizations, the leaders of trade organizations expressed that the trade organizations are free and can carry out their activities without interference. The trade organizations are democratic entity and can elect their leadership without direct or indirect interference of the Government.

Trade organizations are stable, and there is transparent democracy in the organizations. However, there are also critical views, and it hinted that the democratic tradition in the country has to be further strengthened. Every incumbent government expects to have laming and friendly leadership of the chambers. In principle, such intention may not be considered as bleak so long it does not hamper the free activities of the chambers. Even in the most developed and traditional democratic countries of the world, sometimes similar intentions and expectations of the Government are also to be noticed.

In Bangladesh, principally the functions of the chambers are financed by the subscriptions of members; however, sometimes the FBCCI and BGMEA (Bangladesh Garments Manufacturer and Exporters Association) are supported project wise by the government. However, it is not regular and does not influence in any way the independent activities of these organizations. The interviewed have the opinions that such irregular assistances do not influence in any way the independence, but it is fruitful for strengthening of the organizations. Except federation, other chambers like DCCI, MCCI (Metropolitan Chamber of Commerce and Industry) do not get such supports from government.

The trade organizations are helpful institutions in democratic state and can provide valuable supports for socio-economic development especially of the developing countries. At present stage of economic and political development of Bangladesh, the trade organizations must be assisted by the State in every respect so that they are sound and strong democratic entity helpful for democratic economic development. In their own interest, the trade organizations are bound ultimately to safeguard democracy, human rights, environment and peace.

In Bangladesh, Government seeks views of the trade organizations in formulating trade, development and other policies. The trade organizations on the other hand lobby with their limited capacity to convince the Government for introducing enabling policies in favour of trade and economic development of the country.

The trade organizations are satisfied with the collaboration and cooperation of the government and expect that with the progress of time and economic development in interest of the country they will be fostered.

However, there are also hints with dissatisfaction that sometime misguided leaderships use their positions in their own economic political and other personal interests. Nevertheless, such behaviours are spontaneous and do not hinder the basic functions of the chambers. It is curious to note that some interviewed were hesitant and careful in expressing their views.

Suggestions
In Bangladesh, like in most of the other developing countries, business organizations and other democratic institutions are not yet fully developed. For business organizations under the present economic and political circumstances in Bangladesh, the “Public Law System” is suitable over the “Private Law System”.

However, the “Public Law System” should be applied in liberal form so that the trade organizations can play their vital role fully for the speedy and uninterrupted development of the economy. Theoretical discussion i.e. literature study and the survey allow to draw following inferences for development and strengthening of trade organizations:

(A) Ensure autonomy for the business organizations:

- The constitution of the country confirms freedom of association, so the business community must get freedom to organize and express their constructive opinions about trade and development policies and strategies.
- The business organization must be permitted to run their affairs without interference or interventions.
- The provision of appointment of an administrator to take over the functions of the executive committee must be annulled.
- The right of the Government to revoke license without providing an opportunity to explain the cause behind the actions is utterly undemocratic and must be cancelled.
- Government may retain the right of licensing to itself, but it must let all other affairs of the trade organizations managed by them.

(B) Support development of strong, sound, efficient and democratic business organizations:

- At least at the present stage economic and political development in Bangladesh, there may be only one National Chamber of Commerce and Industry. This will help the trade organizations to grow and be strong, sound and efficient enough to defend the interests of business and support development of the economy.
- Regional business organizations must be supported by the government to develop so that they can provide
required services to their members which is vital for regional economic development.

- Democratic practices and culture in the business organizations must be promoted by the government so that responsible leadership grows.

(C) Promote financially self-sufficient business organizations:

- Membership in the business organizations must be obligatory so that ultimately, they become financially sound and independent.
- Membership fees must be fixed in such a way that the business organizations have sufficient financial resource.
- At least at the present stage of economic and political development, government should support financially the business organizations to implement pilot projects which would promote economic development of the country.

(D) Co-ordinate activities of the business organizations with government policies and directives:

- A senior government official may co-ordinate government policies and directives with the objectives and activities of the business organizations.
- Interference free activities and functions of the business organizations must be ensured.
- Introduction of formal consultation among business organizations and government on all development and economic policies like industrial, agricultural, fiscal, financial, export promotional and other policies.
- The Director may attend and oversee the meetings and proceedings of the general body or executive committee but shall not be invested with the power to cancel, suspend or modify any resolution adopted or decision taken by those bodies.

Conclusion
Like all other developed and developing countries of the world, Bangladesh is striving utmost to pursuing liberal and business friendly policies so that the private and public sector enterprises can play their role and tune themselves to be competitive both at home and abroad and equip with knowledge, technology and appropriate market approaches. The business organizations being the focal point of the private sector need to be more dynamic and effective to supply the required inputs and services.

In this aspect, the government should promote business organizations, encourage their growth and ensure that they play their role effectively, represent their justified interests and fight for their just cause and demands without fear and hindrance. The interest of the business community may be divergent; however, their demand should be in one voice.

The laws, rules and regulations regarding business organizations should be liberal and support economic and political development of the country. The federation of business organizations must be oriented to have appropriate strategies for making its member bodies striving and thriving in this global competitive millennium. Convincing the Government, the business organizations should lobby accordingly.

However, strong network among federations, chambers and associations has to be established to bring eventually the change and reform and achieve the desired goal in the business arena. Like in the developed countries, it is certain that ultimately the federation and its member bodies together will be able to instigate the reforms and build a strong developed economy through their concerted efforts in near future.

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