

# Seeking to destroy India's civil society

Government is slowly chipping away at the rights of civil society groups using laws such as FCRA, PMLA



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Even though Prime Minister Narendra Modi proclaimed India as the mother of democracy on the eve of the G7 summit on June 26, 2022, the government's attack on civil society has reached its zenith. That the Indian state is deeply suspicious of non-governmental organisations (NGOs) and civil society leaders was evident even from the 73<sup>rd</sup> graduation ceremony of the Indian Police Academy in November 2021. National Security Adviser and the Prime Minister's close aide Ajit Doval had warned budding police officers that civil society was the new frontier of war.

The failure to protect minority rights could have grave consequences in a majoritarian political dispensation. Even though it is well known that neighbouring Pakistan's majoritarianism led to its dismemberment, the Indian state is pursuing a similar course.

The Constitution and law sought to protect minority communities and mandated equal rights and protection from the state to persons of all faiths and identities. According to that idea of India, these rights were deemed essential for the consolidation of the Indian state where citizens needed to feel a sense of belonging. Even though civil society organisations have contributed to the constitutional frame, they undoubtedly need to be regulated for defending those values.

## Setting an example

On June 25, 2022, renowned public interest lawyer and human rights activist Teesta Setalvad was arrested for allegedly misleading the Supreme Court regarding the Gujarat massacre. Not only did the Gujarat government fail to adequately record the Gujarat killings of 2002, the lawyer, who took the case to the Supreme Court, and the two non-compliant senior retired officers, are in prison. According to a First Information Report (FIR) filed by a police inspector following the favourable Su-



Segments of the civil society had worked tirelessly for COVID relief, filling the vacuum left by a largely absent state. ■ FILE PHOTO

preme Court ruling of June 24, 2022 the three persons colluded to help the wife of the slain Congress Member of Parliament (MP) Ehsan Jafri to concoct stories regarding the Muslim massacre. These concocted stories, it was argued by Home Minister Amit Shah to a friendly news agency ANI, had harmed the reputation of many, including Prime Minister Narendra Modi himself.

Civil society is targeted in other systematic ways as well. The Foreign Contributions (Regulation) Act (FCRA), and the Prevention of Money Laundering Act (PMLA), used in conjunction with a range of other measures such as the Unlawful Activities Prevention Act (UAPA), are deployed by the government to browbeat and shepherd civil society in a majoritarian Hindu nationalist direction.

Let us take the case of the FCRA. Indian NGOs need an FCRA clearance for using foreign funds for developmental work. The FCRA amended in 2010 by the Congress-led United Progressive Alliance (UPA), gave substantial discretionary powers to the state to deal with NGOs. NGOs now needed to renew their licences every five years.

The sheer number of FCRA cancellations, however, suggest that the Bharatiya Janata Party (BJP) government has cancelled an unprecedented number of licences using the 2010 law.

Our calculations suggest that of the 20,679 civil society organisations that lost their registration between 2011 and May 2022, 3,987 were denied the same during the period of Congress-UPA rule (2011-2014). The vast majority of 16,692 NGOs, howev-

er, were denied registration between 2015 and 2022.

The large number of FCRA licence cancellations during the BJP rule between 2015 and 2020 is even more puzzling. Of the 16,692 NGOs that lost their licences between 2015 and 2022, 16,679 were denied the right between 2015 and 2019 before the Act was amended in 2020. No licence was withdrawn in 2020. A cursory look at these withdrawals suggests that increased compliance requirements enabled the state to flush out a large number of NGOs.

## FCRA amendment of 2020

Thereafter, the FCRA amendment in 2020 was another blow to the NGO sector. This occurred at the very moment when segments of civil society had worked tirelessly for COVID relief. The amendments were hurriedly passed without much parliamentary deliberation. After the 2020 amendment, NGOs could spend less on administrative costs. Finally, all NGOs were required to operate their foreign accounts through the State Bank of India's branch located at Parliament Street in New Delhi. This would enable the state to track foreign funding organisations even more closely. The Supreme Court's opinion of April 8, 2022, on a writ petition largely upheld the state's intent in the 2020 amendments.

Even Indian NGOs that worked exclusively with domestic funds were not spared. Finance Minister Nirmala Sitharaman announced in her 2020 Budget speech that the tax-free status of domestic donations would be reviewed every five years. This was also the time when domestic funding

organisations had been largely coerced to reduce or halt human rights-related grants. Equally, government grants were largely discontinued.

The period after the 2020 amendment was characterised by the demonstration effect of punishing a few significant players that worked either for the minority rights or the poor.

Oxfam's licence was simply not renewed, a mechanism permissible under the FCRA amendment of 2010. Oxfam was generating widely publicised reports regarding the plight of migrant labourers and conditions of the poor during the pandemic. These reports had received worldwide attention. The group was also working to protect workers' rights.

NGOs working for minority rights have an even tougher time. The Commonwealth Human Rights Initiative's FCRA approval, for example, was suspended for some time, after which its licence was cancelled earlier this year. Other human rights-oriented organisations such as INSAF and People's Watch were also denied FCRA permissions.

Finally, the Prevention of Money Laundering Act (PMLA) has been reimagined as a tool against civil society leaders and politicians. This is a penal law that can lead to imprisonment. Typically, the Enforcement Directorate (ED) of the Department of Revenue has wide-ranging powers to search and arrest citizens under the PMLA. The ED was used to attack NGOs such as Amnesty International and the Centre for Equity Studies that have worked incessantly for minority rights. The CES's founder Harsh Mander is a Richard von Weizsäcker Fellow of the Bosch Academy. The agency has also been deployed almost exclusively against political opponents such as Rahul Gandhi, Sonia Gandhi and Delhi's Health Minister Satyendra Jain, among others.

FCRA and PMLA are potent weapons for subduing the pluralistic nature of Indian society that is at the heart of India's democracy.

Social values can be saved if democratic politics protects those values. The million-dollar question is, when will the political Opposition rise? Or, will it rise at all?

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