

CURRENT LEGAL FRAMEWORK FOR CIVIL SOCIETY IN INDIA

A Summary Analysis by Noshir Dadrawala

Civil society in India is noted for its vibrancy, innovation and research-based advocacy. It plays a powerful role creating a collaborative space based on service and the collective good. Both government and civil society need to work together to build stronger institutional relationships based on mutual trust and a shared vision.

In addition to filling gaps in service delivery, the civil society organization (CSO) sector contributes significantly to India's economy, creating and providing livelihoods for millions. There is a need to measure the magnitude of civil society's work to make stakeholders understand that "voluntary organizations go where market solutions don't go."

THE STATE'S MISTRUST

The government has the right to regulate, but not control, CSOs. In practice, however, government interference is common and includes surveillance, over-bearing registration and reporting requirements, particularly under the Foreign Contribution (Regulation) Act (FCRA). Instead of control and harassment, the state should establish mechanisms to consult, fund and collaborate with CSOs, thereby enabling civil society institutions to promote societal welfare.

ENABLING ENVIRONMENT

While Indian corporate laws have seen significant reform aimed at bringing them into line with global trends, civil society laws have not comparably improved. Business start-ups receive a number of benefits, while new CSOs face obstacles under FCRA and corporate social responsibility laws. Furthermore, laws governing CSOs lack clarity, with discrepancies between state and central laws, leading to a lack of uniformity in non-profit governance in India.

SELF-REGULATION

Initial self-regulation experiments have proven quite fruitful. There are a number of initiatives underway, including the development of codes of conduct, monitoring, rating or validation accountability mechanisms, among others. These need to be improved and supported.

SOME RECOMMENDATIONS

- There is no need to add any new law/s or impose additional compliance or changes to make existing laws more restrictive given that the government has enough existing powers to investigate/audit those it believes are not transparent;
- The Ministry of Home Affairs should consider constituting an appellate authority (similar to the income tax appellate tribunal) to address FCRA-related grievances;
- When granting tax exemption certificates, the Income Tax Authority should specify under which category of charitable purpose it has recognized the CSO;
- Rather than question what public good CSOs do apart from voicing dissent, the government should understand and accept that dissent itself is a public good in a democracy;
- The government's policy of "ease of doing business" should extend to "ease of doing good" for civil society.