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Shrinking Spaces for Civil Society in Pakistan

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Shrinking Spaces for Civil Society in Pakistan

The role of civil society organizations in the establishment of peace and promotion of human dignity and equality is a recognized globally and protected by the United Nations human rights framework. The modern democracies also recognize the right to form associations in furthering the agenda of promotion and protection of human rights. In the Pakistan Constitution this right is protected under Article 17.

Civil society is part and parcel of all development and political processes, be they global, regional or local. It can organize community and political participation, raise awareness of civil, human, women and labour rights, identify practices that lead to exclusion of specific people from mainstream development, uncover corruption, expose human rights abuses and demand accountability of the state actors. Pakistan has a vibrant civil society comprising grass-roots organizations, national-level healthcare and education welfare and charity institutions, human rights organizations, and women, labour and child rights resource centres.

The Challenges

In many countries, governments are taking stringent measures aimed at restraining the work of civil society. Moreover, civil society actors are targets of slander, defamation, surveillance, abductions, harassments, and violence. These extensions, known as “closing space” or “shrinking space”, have become a global bearing. However, in Pakistan they have taken to the further level. In recent decades, civil society in Pakistan has come under threat at multiple fronts, including state repression, reprisal from non-state and pressure groups, unnecessary laws curtailing the human rights work, flawed global financial mechanisms creating opportunities for security agencies to crackdown on civil society organizations, such as Financial Action Task Force, and shrinking support for national and grassroots human rights organizations.

The Economic Affairs Division [EAD], a wing of the Finance Ministry, Government of Pakistan, has overruled hundreds of applications of No-Objection Certificate [NOC] since 2019, now a necessary condition for all not-for-profit organizations registered in Pakistan under any law permitting them to work for promotion and protection of human rights or development work.

A functioning democracy should have democratic norms deeply rooted into the society, including parliament and opposition, democratic institutions and traditions, civil society and media. Out of its 74 years of existence, Pakistan has been under military dictatorship for 32 years. The country is struggling to become a robust democracy following the transition from a military-led government of General Pervez Musharraf nearly 15 years ago. Among other issues, Pakistan is confronted with a specific challenge embedded in its Constitution that has taken elements from both democracy and theocracy. The country’s legal framework is derived from English common law of colonial era and Islamic jurisprudence that covers specific offenses.

Due to these constraints, it has not been easy for civil society organizations, particularly those engaged in advocacy for civil rights, to work efficiently and independently. In recent years, it has become even more challenging as the civil society is faced with ever increasing restrictions. In addition, a narrative is being promoted by a group of media and a certain mind-set that the civil society organisations are agencies of the West and India, receiving foreign funds and operating against ‘national interests.’ This narrative has led to stringent actions, further reducing the civil society space, and making it a challenge to operate autonomously.

Under the 2nd UN Universal Periodic Review (UPR) cycle, in October 2012, the government of Pakistan pledged to “review laws and measures to ensure that restrictions imposed on freedom of expression conform with the International Covenant on Civil and Political Right (ICCPR) to which Pakistan has ratification” and “adopt measures to ensure the protection of religious minorities, including Ahmadis, Christians, Hindus, and Sikhs, prevent the abuse of blasphemy laws, halt forced conversions of minorities girls and women, and take necessary steps to prevent violence against members of religious minority communities.”^{1 2}

Regulatory Framework

In Pakistan, there are around 13 laws dealing with the registration and operation of local not-for-profits (NPOs) which provide guidelines and legal framework for operating in the social sector.³ The international NGOs working in Pakistan are regulated under the INGOs Policy 2015. Recently, the Policy for NGOs/NPOs receiving Foreign Contributions 2021, notified by the government in June this year, has superseded ‘all previous policies, instructions and clarifications by the Economic Affairs Division.’⁴

The NGO Policy 2021, displayed on the NGO Portal, the online platform for NGO’s registration exhibits more stringent provisions in the Memorandum of Understanding (MoU) that each NGO must sign after submission of its application for registration. The suspension or termination clauses of the MoU state: ‘NGO/NPO found engaged in activities having implications for national security or promote religious intolerance and hatred and ethnic violence shall lead to suspension/termination of the MoU.’ This particular section is overly broad and subjective.⁵ According to EAD website list issued in 2021, 478 NGOs registration applications have been in progress, 305 NGOs’ status is

1 <https://www.civicus.org/documents/Pakistan.JointUPRSubmission.2017.pdf>

2 <https://www.civicus.org/index.php/media-resources/news/united-nations/geneva/2798-civicus-un-universal-periodic-review-submissions-on-civil-society-space-28th-upr-session>

3 Pakistan Centre for Philanthropy, Giving to Pakistan: Guidelines for Donors. <https://pcp.org.pk/uploads/Giving-to-Pakistan-24052021.pdf>

4 <https://ngo.ead.gov.pk/ngo-policy>

5 https://ngo.ead.gov.pk/ngo-policy#_ftnref1

awaiting, whereas only 107 NGOs have been approved. Under the 2021 Policy, NGOs/INGOs and organizations, both local and international, are to seek 'foreign contributions and partnerships with development partners, including UN agencies, within the framework of this policy or INGOs policy (2015):⁶

INGO Policy 2015

The INGO Policy 2015 requires the international NGOs (INGOs) receiving foreign funding to register with the Ministry of Interior. An INGO Committee is to monitor the activities of all foreign non-government organizations. The said committee is the sole authority of approving or rejecting their registration applications. Local NGOs cannot secure funds or materialistic support unless approved from the government.⁷

In August 2015, the Securities and Exchange Commission of Pakistan (SECP) had cancelled the registration of 23 INGOs in a countrywide crackdown against NGOs and INGOs.⁸ Meanwhile, the Ministry of Interior ordered Save the Children to shut down its operations. Moreover, the government also turned down the registration requests of 9 INGOs. In 2018, the government refused to renew licenses of 18 INGOs, though given the option to re-apply their security clearance was left to the discretion of intelligence agencies.⁹

A controversial draft legislation, the Foreign Contribution Act 2012, is still under consideration with the stated goal of streamlining foreign funding and functioning of civil society organizations in Pakistan. Clause 4.2 of the MoU, attached with the draft law, institutes an obligation on INGOs to obtain prior approval before obtaining any additional funding or funding from a different source than initially declared.¹⁰ In restricting the ability of international NGOs to raise or receive funds when needed, the draft Act eliminates an important source of funding for these associations. This provision is particularly problematic since there are no rules or procedure laid down to govern the request for and granting of the authorization to raise funds locally.

Post-Peshawar massacre on December 16th, 2016 where over 140 school children and teachers were killed by Tehreek-e-Taliban Pakistan (TTP), the government has been misusing the National Action Plan (NAP) to suppress human rights organizations and aid workers in Pakistan.¹¹ The NAP is a 20 point consensus agenda evolved after an ex-

6 Section 13, **Policy for NGOs/NPOsa receiving Foreign Contributions 2021**, <https://ngo.ead.gov.pk/ngo-policy>

7 https://ingo.interior.gov.pk/INGO_Policy.docx

8 SECP Res Release August 7, 2015, <https://www.secp.gov.pk/wp-content/uploads/2016/05/SECP-taking-action-against-23-INGOs.pdf>

9 Dawn, October 8, 2018, <https://www.dawn.com/news/1437893>

10 https://senate.gov.pk/uploads/documents/1362489012_445.pdf

11 <https://www.britannica.com/event/Peshawar-school-massacre>

tensive political parties deliberations issued as an immediate plan of action after Peshawar incident to combat terrorism in Pakistan. It covers all manifestations and forms of terrorism both offline and online, from recruiting, financial and technical facilitation to execution of an act of terror activity, glorification of terror and terrorists, combating hate speech, etc. Some of the points also sparked criticism from the civil society stakeholders in the context of human dignity and flawed justice system that it provides in the form of military courts – highly inconsistent with the constitutional guarantees ensured under the fair trial provisions.

NGOs Policy 2013

Earlier, in 2013, the Economic Affairs Division (EAD) had introduced arbitrary policy provisions for local not-for-profit organizations under the guise of regulating, monitoring, and making them transparent in their financial matters. Section 2 and 3 of the NGO policy 2013 provide all local NGOs to register with the EAD in order to receive foreign assistance, including money, services and goods. It is mandatory for all the applicants to get through the rigorous process of scrutiny by the Ministry of Interior, the provincial, district governments and other relevant stakeholders.

The civil society organizations have found this re-registration process extra-ordinarily complicated and sluggish. Human rights defender, I. A. Rehman (late), declared these policy orders a bid to push civil society to the wall. Others worry that the government aims to stop or impede the important rights-based work that INGOs/NGOs undertake.¹²

Financial Action Task Force (FATF)

In 2000, Pakistan became a member of Asia Pacific Group (APG) – a FATF style regional inter-governmental framework – that developed Mutual Evaluation Report (MEL), Anti-Money Laundering (AML) and Combatting the Financing of Terrorism (CFT) in 2009. In the wake of all difficult times vis-à-vis terrorism in the South Asian region, especially Afghanistan and Pakistan, the FATF placed Pakistan on grey list, an enhanced monitoring process. Pakistan was handed over a 10-point action plan – calling upon the state to introduce stringent financial mechanisms, procedures and plans to stop money laundering and financing for terrorism. National Counter-Terrorism Authority (NACTA) being the leading implementing authority, without consulting civil society in Pakistan, introduced several measures. These measures include, but are not limited to, re-registration of INGOs with the Ministry of Interior (MoI) under INGO Policy 2015, and for local NGOs signing MoUs with EAD, and re-registration with the Provincial Charity Authorities/Commissions. Moreover, the scrutiny and surveillance of NGOs/INGOs

12 https://ebrary.net/143854/sociology/state_ngosingocivil_society_2013_2018_2018_governments

through law enforcement agencies has been increased resulting in harassment and intimidations.

In February 2019, the Pakistani government rejected the registration applications of 42 NGOs that sought to sign MoUs with the Economic Affairs Division (EAD). The rejections came after Pakistan was placed on the FATF grey list, an indication that the country's financial sector has strategic weaknesses in combatting money laundering and terrorism financing due to inadequate regulations, enforcement, or both.¹³ The prevailing FATF related policies are adversely impacting the NGOs. By November 2020, the Khyber Pakhtunkhwa government had deregistered 3,851 NGOs.¹⁴ Sindh government also deregistered more than 7,100 NGOs in December 2019 for not sharing their financial records with the authorities under FATF regulations.¹⁵

In a compliance report to the Supreme Court's *suo moto* case No. 13/2015, the Law and Justice Commission of Pakistan submitted the compliance report detailing that the Balochistan government de-registered all NGOs. (See Annexure-T).¹⁶ In 2017, Punjab government had de-registered 3,773 out of nearly 9000 active NGOs, registered with different departments in the province. They issued the directives to re-register under the Punjab Charity Act 2018 with Punjab Charity Commission.¹⁷

All these actions have led to cessation of bank accounts of the NGOs/NPOs, whose registration applications are either still in progress or pending for approval with EAD, Provincial Charity Authorities or Ministry of Interior. Additionally, the Federal Board of Revenue (FBR), in collaboration with Pakistan Center for Philanthropy (PCP), has increased its oversight of the NGOs/INGOs for possible involvement in money laundering or terror financing. The National Accountability Bureau (NAB) has also been investigating the sources and use of NGO funds. In 2020, NAB forwarded the inquiries against NGOs, including Sustainable Development Policy Institute (SDPI) and Free and Fair Election Network (FAFEN), for further legal proceedings to the Ministry of Interior. It also sent its inquiry against officials of the Fata Rural Programme Project to the relevant department for action.¹⁸

Provincial Charities Acts

To further complicate the situation, the state, in all four administrative units, has pushed for Provincial Charitable laws. Currently, Balochistan, Khyber Pakhtunkhwa, Punjab and Sindh provincial governments have approved their respective Charities Acts with Authorities or

13 <https://www.icnl.org/resources/civic-freedom-monitor/pakistan>

14 <https://www.dawn.com/news/1593118>

15 <https://www.dawn.com/news/1522443>

16 <http://ljcp.gov.pk/tg/ngo.pdf>

17 <https://www.thenews.com.pk/print/182180-3773-NGOs-deregistered-in-Punjab>

18 <https://www.icnl.org/resources/civic-freedom-monitor/pakistan>

Commissions established. Some of the clauses of these Acts not only criminalize the charities in Pakistan, but also impose heavy fines, such as Section 28 of the KP Charity Act 2019, Section 24 of the Sindh Charity Act 2019, and Section 32 of the Punjab Charity Act 2018. In some instances, these Acts provide lifetime bans from participating in charity work on not-for-profits or individuals associated with them, or to become member of any charity organization in future if found guilty of offense.¹⁹ The civil society organizations from Sindh province, while expressing serious concerns, challenged the legislation in the Sindh High Court, pleading to declare the Sindh Charity Act 2018 as null and void.²⁰

Media

The repercussions of repressive policymaking and arbitrary actions to silent dissent are not limited to NGOs and INGOs. Pakistani media since its liberalization in 2001-02 has consistently come under threat for its criticism on the state's policies, particularly national security, bad governance and systemic issues such as corruption. General Pervez Musharraf in November 2007 imposed emergency and off-aired all private television channels for covering the lawyers' movement. Pakistan consistently has been on the list of top dangerous countries in the world for journalists according to the International Federation of Journalists.

Social media in the meantime have enabled the critical voices to express their opinions on almost all issues, including civil-military imbalance, governance, corruption, human rights violations, the rise of religious extremism. However, the Pakistan Muslim League Nawaz government promulgated the Prevention of Electronic Crimes Act (PECA) in 2016, another law with several black provisions that criminalized the legit criticism on the state institutions as defamation under its Section 20, and legitimized online surveillance.

In April 2021, a panel of legislators approved another controversial bill that demands up to two years' imprisonment and heavy fine of 500,000 for criticizing and defaming Pakistan military. The bill is yet to be approved by the national assembly.

Several journalists under the notorious Section 20 of PECA have been issued notices by the Federal Investigation Agency (FIA) after their criticism on the state institutions, including judiciary and military. Section 37 of the law also provides overbroad powers to an executive body, Pakistan Telecommunication Authority, to block or remove any online content that it deems 'unlawful'. The Pakistan Tehreek-e-Insaaf's government has notified controversial social media rules under Section 37(1) of the PECA in October 2021. Now all the social media companies are bound to register their local offices and follow the commands of the gover-

19 Section 20 (2) & (3) of The Balochistan Charities (Registration, Regulation and Facilitation) Act No. XI of 2019. See the link: [https://bcra.gob.pk/system/files/The%20Balochistan%20Charities%20\(Registration%2C%20Regulation%20and%20Facilitation\)ACT%20No.XI%20OF%202019_0.pdf](https://bcra.gob.pk/system/files/The%20Balochistan%20Charities%20(Registration%2C%20Regulation%20and%20Facilitation)ACT%20No.XI%20OF%202019_0.pdf)

20 <https://www.thenews.com.pk/print/699247-sindh-charities-registration-and-regulation-act-challenged-in-shc>

nment in relation to removing and blocking of objectionable content and sharing of private data of social media users.

The government has also been considering another proposal of the Ministry of Information and Broadcasting to promulgate a new law through Presidential Ordinance bypassing the Parliament in order to control all mass media, including print, electronic and digital, in Pakistan through a single body, named as Pakistan Media Development Authority (PMDA). The government eyes to invest arbitrary powers in this authority to control all forms of media in the name of media regulation and get rid of previous laws regulating media, including Pakistan Electronic Media Regulator Authority (PEMRA) and Pakistan Press Council.

Aim to Retrieve Spaces

In response to state restrictions, major organizations came together to address the issues in Islamabad and launched a stage/platform known as Pakistan Civil Society Forum in 2016. The forum, in its report, termed the NOC requirement for rights-based and humanitarian work as a violation of legal rights of freedom of organisation and expression and promised to fight back such to restrict to tactics civic space.

“Civil Society has every right to question the government when it deviates from constitutional obligations and duties,” Late I. A. Rehman, veteran human rights activist had said. The Forum has reminded the state experts that civil society organizations are contributing positively to the country’s development. “Any restrictions on civil society’s work will badly affect the development targets that government has committed with its people and also under international commitments,” says another senior representative of PCSF referring to the Sustainable Development Goals (SDGs).²¹

Conclusion

Democratic space has shrunken under stress from a blend of state and non-state forces, notably repressive legal frameworks introduced under the realm of FATF and the state’s unwillingness to realize the exercise of civil and political freedoms in Pakistan. Traditional media at the moment is controlled and practicing partisan journalism. Dissenting voices are under threat, while the new regulations vis-à-vis controlling online spaces are being considered. By all indications, this trend is arbitrary and undemocratic, but the possibility of mitigating its impacts in short-term and revisiting repressive legal frameworks in line with the democratic principles and global human rights obligations remains an open question.

21 <https://www.boell.de/en/2016/09/13/shrinking-civic-space-pakistan>

The premier state human rights body, the National Commission for Human Rights (NCHR) which holds the role of an independent and autonomous body to promote and protect human rights in the country, remains dysfunctional since May 2019. Just recently that the President has notified the constitution of a new commission and that too violating the legal procedures enshrined in the parent law, NCHR Act 2012. “The country has been witnessing a bureaucratic capture of national human rights institutions”, said Justice (R) Justice Chowhan, the former chairperson of the commission at a Civil Society Consultation on the Strengthening of NCHR on November 23, 2021.

In a situation of low human development and social indicators, the government action and intention to discourage civil society organizations from independent functioning would deprive citizens from the benefits that many NGOs and charitable organizations bring to the field of education, healthcare, women empowerment and many other fields. The government’s action is also seen as a violation of fundamental rights guaranteed by Pakistan’s Constitutions and the international conventions and the treaties which the country has signed and ratified. All these arbitrary measures aim to curtail the constitutional role of civil society to push the state for transparency and accountability – two important cornerstones of a developed democracy.

It is vital that the government respects and understands civil society’s capacity and supports a culture of assistance and trust rather than of hindrance and hostility. Political improvements globally and nationally want the state to support an open democratic space where people can actively engage in political processes and confidently contribute to the country’s social, economic, and political uplift.

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