

Strict legal restrictions on foreign funding hit India's NGOs

CIVICUS interviews Mathew Jacob on the restrictions on freedom of association and attacks on civil society in India including laws on foreign funding. Jacob is the National Coordinator of Human Rights Defenders Alert – India (HRDA). HRDA is a national platform of human rights defenders for human rights defenders. Mathew is also a PhD scholar at the Tata Institute of Social Sciences, Mumbai.

Q: Tell us more about the refusal of the government to renew the registration of the Centre for the Promotion of Social Concerns?

The Centre for Promotion of Social Concerns (CPSC) is a charitable trust and has been functioning for the past 35 years. The trust runs a program unit called 'People's Watch' which undertakes programs on human rights monitoring, human rights intervention, human rights education, human rights campaigns and rehabilitation in the state of Tamil Nadu. CPSC also anchors national initiatives focusing on different aspects of human rights. The trust has been legitimately receiving funds from abroad to support the activities and abiding by the rules under Foreign Contribution Regulation Act (FCRA) since 1985.

The Ministry of Home Affairs (MHA) of the Government of India refused to renew CPSC's Foreign Contribution Regulation Act (FCRA) account on 29 October 2016. The account was due to expire on 31 October 2016. On the MHA's website, the grounds for denial state that: "On the basis of field agency report, the competent authority has decided to refuse your application for renewal".

It is important to note that in 2012 CPSC's FCRA was suspended by MHA for 540 days. The Delhi High Court was approached by CPSC and the Court issued an order on 9 May 2014, that if no fresh suspension orders were issued, the existing funds from FCRA account could be used. Recently on 2 February 2016, the writ petition filed by CPSC was disposed of as infructuous by the Delhi High Court as the period of suspension of registration had lapsed and thereby allowing CPSC to receive fresh funds from abroad and utilise it for its activities and programs.

As per the FCRA 2010, CPSC originally applied for its re-registration in April 2015. The application was submitted early enough as CPSC was running multi-year projects that needed to continue, especially their work on promoting the teaching of human rights education in schools in over 10 states. In spite of the fact that of the statutory period of 90 days was over, there was no response from MHA. In addition, the Rs. 500 fee paid by CPSC has never been refunded. Meanwhile, a notification was issued by MHA through its FCRA Wing and the Government of India, indicating that all applications for the renewal of FCRA registration were to be made afresh online on their website by 15 March 2016. This date was then extended to 30 June 2016. CPSC applied for FCRA renewal on 14 March 2016. A letter was also sent by CPSC to the MHA requesting it to consider its application dated 14 March 2016, as its registration was to expire on 31 October 2016. CPSC did not receive any response from the MHA.

It is to be noted that since 2 February 2016 — the date on which the writ petition filed by CPSC against the earlier suspension of FCRA account was disposed of as infructuous — no communication has been made by MHA to CPSC regarding FCRA. Now after 9 months, CPSC's FCRA renewal has been denied which is against the principles of natural justice and also against Articles 14 and 19 of the Constitution of India. CPSC has moved the Delhi High Court and the matter was heard on 7 November 2016 and 18 November 2016. The MHA produced the reasons in a sealed envelope (the report of intelligence bureau) and CPSC's lawyer had no access to it. The matter is now posted for 10 January 2017. In the meantime, MHA has been asked to file a counter affidavit with reasons for non-renewal of FCRA. MHA stated in the court that it is not obliged to communicate any reason as per the FCRA and certain reasons can't be communicated since "the same may prejudice public interest and friendly relations of the country with other States".

This is a blatant act of reprisal from the MHA. By misusing the provisions of FCRA, MHA has victimised and intimidated CPSC and denied it its right to receive funding under Article 13 of the UN Declaration on Human Rights Defenders 1998 which reads: "Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration"

Q: Why in your view are the reasons why the state seeks to limit receipt of international funding?

In a bid to project itself as a global player and to discard its image as a poor and developing country, the state tries to portray itself like other developed countries that don't need external funding for development and human rights. Also the state is apprehensive of any individual or group that disagrees with it on issues of security, human rights, model of economic development and actions that seek to compromise institutions and the democratic process. In an effort to maintain its international image and democratic credentials, the state is often wary of groups and individuals that question its record on human rights and democracy in international platforms and forums.

Q: What is the general state of human rights in India?

We can see a combination several factors at play including emergent perceptions of development, nationalism, promulgation of security laws that increase restrictions and reduce the space of operations for civil society and disadvantaged groups. This new climate has created an aggressive and intolerant public sphere which constricts civic space and is akin to what was experienced during the period of emergency in India. A dangerous discourse legitimised by both State and non-State actors has gained credence. This discourse alleges that human rights and those working to ensure justice and the dignity for victims of human rights violations, and those promoting rights for disadvantaged communities constitute a serious threat to the "national interest". A clear manifestation of this is the denial of foreign funding to several groups working on human rights issues. This is happening amid actions by the state to discard laws and practices which were meant to protect excluded communities. Recent attacks on human rights defenders indicate a new pattern of retaliation from State and non-state actors. These actors range from organisations affiliated to ruling dispensations, intolerant religio-political formations, vigilantes

targeting sexual minorities, to outfits justifying institutionalised discrimination and mafias allegedly promoted by corporates indulging in land-grabbing and environmental degradation.

Q: What are the reasons behind violent protests in Jammu and Kashmir?

People of Jammu and Kashmir are constantly feel they are alienated and discriminated against. The dissent and forms of expressions of disagreement and resistance, including violent protests, are often manifestations of anger at the presence of the army and police. The security forces are armed with stringent security laws and the local populace perceive that these laws are aimed at curtailing democratic rights and freedom of expression. It is within such a context that security forces, under the pretext of “maintaining order”, invade houses at midnight, capture, arrest and detain citizens on a regular basis. Citizens in Kashmir are also victims of forced disappearances and indiscriminate killings. The “man in uniform” is a dreaded, all powerful and disliked figure. The Armed Forces Special Powers Act 1958 — one of the most stringent security laws that the Indian Parliament has ever enacted in its legislative history, has fostered a climate in which law enforcement agents use excessive force and set a pattern of apparently unlawful killings of “suspected” civilians. The Armed Forces Special Powers Act gives security forces unlimited powers to carry out operations with impunity once an area is declared “disturbed”. It is also in the context that the non-State actors and terrorist outfits garner sympathy from certain sections of population.

Q: Is civil society coming under attack from violence and extremism?

Many parts of India, particularly Jammu and Kashmir, India’s north east, parts of central and east India are witnessing grave human rights violations from non-state actors and terror outfits. The State uses the military to respond to this situation, hence anyone who is not with the state is at risk of being aligned to extremist groups. In these circumstances, any space for dissent and the middle ground for civil society to function erodes very fast and human rights defenders often come under attack by both state and non-state actors. The human rights defenders are thus profiled, harassed, intimidated, ill-treated and subjected to hateful abuse. Their physical security is threatened in a systematic manner and they are either arbitrarily arrested or detained and prosecuted. Recent experiences indicate that aside from human rights defenders, writers, artists and sections of the media are facing restrictions and are threatened.

Q: What are the three things the international community can do to support civil society in India?

At a time when the Indian government is bolstering its international image and the country is keen to play an increasing role in the international community, it is sad to see the democratic space shrinking. The international community needs to express solidarity and initiate actions that address human rights situation in India. The international community needs to join the voices of Indian civil society and together advocate for restoring democratic space and rule of law in India. Advocacy by the international community needs to be at various levels including advocacy with the Government of India, national human rights institutions in India, the UN Human Rights Council and with the respective governments with whom India has bilateral diplomatic relations.

Human rights concerns constantly expressed regarding a few countries are now also being replicated in the world's largest democracy. It is also time for the international community to stand in solidarity with individual defenders, civil society activists and organisations that face reprisals from the Indian authorities.

Finally, the international community needs to recognise the potential and role of the National Human Rights Commission. Even though the Indian national commission is far from being independent and perfect, in modern democracies these commissions have assumed important positions and it is also their responsibility to protect the democratic space. The international community should engage the national commission and their regional and global official bodies.

Visit the Centre for the Promotion of Social Concerns – website <http://cpsc.org.in/>