



Policies & Perspectives



VIVEKANANDA INTERNATIONAL FOUNDATION

There is a recurring buzz over the role of non-governmental organisations (NGOs) in the country in the backdrop of recent strong observations of the Supreme Court and directives the court has given to the Union Government on the issue. Earlier on, certain actions of the Centre against a few NGOs had invited strong reactions from both those who favoured the move and those that condemned it. Either way, the inescapable fact after the apex court's intervention is that the Government cannot ignore the reality that the NGO sector needs better oversight; that it has to be made more accountable; and that those NGOs which fail to adhere to the laws of the land must be taken to task.

Last week, during a hearing in the matter, the Centre's counsel promised to inform the top court in four weeks' time on whether the Government favoured the formulation of a new law to govern the NGOs. This would cover all aspects including the areas of operation, funding, maintenance of expenditure records etc. The Supreme Court's concern was clear: It wanted clear laws— whether they came by way of a fresh legislation or through amendments to the existing ones or through stricter implementation of existing ones, was a matter for the executive to decide. The apex court's intervention in the context at hand began in January this year when it directed the Union Government to scrutinise the accounts of several lakh NGOs and voluntary organisations and take criminal and civil action against those that had flouted guidelines in the use of funds. The court directive came in response to a private petition and comments of the Central Bureau of Investigation (CBI). The probe agency had informed the Bench hearing the case that, of the nearly 33 lakh NGOs in the country, only three lakh had filed audited accounts with the authorities concerned. Rattled by the admission, the court said, "Government should initiate civil and criminal action against NGOs that have misappropriated public funds."

It is obvious from these concerns that the NGO sector has not been properly administered by successive Governments over decades. Voluntary organisations have been apparently operating since independence in the country without any stringent oversight mechanisms in place — or through official lethargy in ensuring that the mechanisms which are in place are adhered to. There could be several reasons, one of them being that quite a few of these NGOs are managed by influential people with political connections. This is something that the petitioner in the case, ML Sharma, alleged in the court. There are provisions in the Income Tax Act and the Foreign Contribution (Regulation) Act which govern the functioning of NGOs, especially with regard to funding and maintenance of audited accounts. As the court noted last week, the Government had recently acted against some NGOs based on these provisions, and so it stands to reason that the authorities have a legal framework — even if arguably inadequate — to deal with errant NGOs. The flip side is that the processes to comply with the two Acts in particular, are cumbersome and confusing, and have resulted in the organisations resorting to short-cuts and violations. The violators derived strength from three aspects. First, they had 'connections'; second, they were exploiting the grey areas in the laws; and third, they knew that the



legal process to bring them to justice would take ages.

While the rights activists have gone largely silent after the apex court's order, they were fuming in anger when, nearly two years ago, the Modi Government swooped down on more than 1,100 NGOs that had received funds from foreign shores but had not filed their tax returns for three consecutive years. The action had come after the Government's legal notices to them went either unanswered or unsatisfactorily answered. Nearly half the notices were returned by the postal authorities for various reasons, including the shifting of addresses. Clearly, let alone file details of their funds and their use, some of the NGOs had not even bothered to inform the Government authorities concerned about something as elementary as a change in address. Nonetheless, the editor of a website wrote that the "Modi Government's crackdown on NGOs is aimed at constructing democratic space, and neutering critical discourse". There were those, from 'green' NGOs to others working for 'communal harmony' and 'human rights' that cried foul and saw evil designs in the BJP-led regime's action. But none of them had credible defence on the specific grounds when the licenses of these NGOs were cancelled. In any case, after the Supreme Court sent out its orders for strict action against non-compliant NGOs, including criminal proceedings and recovery of public money misappropriated by them, the wailers had nothing to say. They could not possibly accuse the apex court judges of seeking to 'muzzle' dissenting voices or 'crush' free speech.

There has emerged a new and very worrisome angle to the functioning of certain NGOs that have come under the Government's scanner, and which is far more serious than misuse or misappropriation of funds or failure of voluntary organisation to file tax returns or audit their accounts as per law. It is to do with the dubious activities of some NGOs that threaten national security and communal harmony. The case that instantly comes to mind is that of controversial preacher Zakir Naik's organisation, Islamic Research Foundation (IRF). In November last year, after material emerged in the public domain about Naik's and his NGO's dubious activities, the National Investigation Agency launched a full-scale probe into them. Premises have been raided, documents seized, the IRF website blocked and the preacher's staff has been questioned. Needless to add, the IRF has been declared 'illegal'. There have been reports that Zakir Naik's teachings had impressed terrorists who had struck in Bangladesh, and that his hate speeches were resulting in the radicalisation of members of the minority community in India. The terror link is, therefore, too serious a matter to be ignored — and it's not just the National Investigation Agency but also the Enforcement Directorate which is inquiring into the monies the IRF had been receiving for its nefarious activities. And yet, shockingly though not surprisingly, pseudo-seculars have found reasons to defend him and his IRF. The accusation is old and familiar enough: The Modi Government is seeking to punish a religious leader of the minority community which is 'opposed' to the incumbent regime at the Centre. Incidentally, Zakir Naik and his group had flourished especially over the decade during the Congress-led UPA regime. Although authorities had zeroed in on Naik even then, he appeared to have received critical political support from influential members of the then regime and the party in power, which effectively put an end to efforts to make him accountable, and, more seriously, enabled him to further his dangerous cause. Today, Zakir Naik is out of the country and



refuses to return and face the law. It speaks volumes of his 'innocence'.

*Events of the past two years lead us to the larger issue of the NGOs' role in a democracy. In fact, to a broader concept — the role of civil society, and not just NGOs alone. There is no disputing that civil society is an inherent part of democracy; indeed, it is a part without which the whole of democracy would be a farce. The integral relationship has been supported by political thinkers of the past and present. The civil society-democracy linkage has been most effectively presented by the 19th century French diplomat and political scientist, Alexis de Tocqueville, also author of *Democracy in America* and *The Old Regime and the Revolution*. Although his first work concentrated on the nexus between democracy and the role of civil society in America, it has relevance to democracies the world over. The underlying philosophy behind his works is that both have to work together; and while there can be (and should be in deserving cases) friction between the two, the primary goal must be the larger good of a democratic society. We must pause to wonder how the activities of hate preachers (like Zakir Naik) or NGOs who divert funds received for a particular good cause to effect a blockade of developmental activities of a nation (the agitation against the Kudankulam civil nuclear facility to meet the country's energy requirements is an instance), are beneficial to democracy. NGOs of the dubious kind defend their activities under the garb of public good, and at times for the promotion of socialist ideals. Alexis de Tocqueville's observation on this issue is interesting. He said, "Democracy and socialism have nothing in common but one word, equality. But notice the difference: while democracy seeks equality in liberty, socialism seeks equality in restraint and servitude."*

*In similar vein, contemporary sociologist and political thinker Larry Diamond writes in his 1999 book, *Developing Democracy*, that civil society works towards the "development, deepening and consolidation of democracy". Civil society offers a basis for the limitation of state power, supplements meaningful and constructive political activities and educates the masses in the values of democracy. Additionally, it seeks to empower the powerless and helps them to articulate their interests. Given these virtues, by what parameter did the acts of omission and commission of NGOs which failed to file tax returns and audit their accounts for years together, and which channeled money received for one purpose into another (and dubious) purpose, match the high standards that Diamond has proposed?*

Equally important are the conditions that the author lays down for civil society to fulfill its designated role. They are: One, the interest groups (NGOs and other voluntary organisations) must not adopt a maximalist and uncompromising position. Two, civil society must be structured in an organised manner — what he calls as the "level of organisational institutionalisation". Three, civil society groups must have a strong internal democratic character. It should be defined by "decision-making, leadership selection, accountability and transparency". Over here too, quite a many of the NGOs — and most certainly the ones that have been identified for their less than correct dealings — will fail to meet the standards expected. It is only if civil society raises the bar this high, can it take on, morally at least, the state and its apparatus, should the need arise. John Locke and Thomas Hobbes, both early political scientists, saw civil society as a conceptual opposite of the state in the sense that civil society served a check to the state's hegemony. But it



must be remembered here that the definition of the state, or rather the interpretation of the state, was in the 16th and 17th centuries of an entity that sought to dominate over individualism, right to private property and free market.

Civil society in India, as in other democracies, has struggled to make peace with the various political strands of its relationship with the state. Classical political theorists gave primacy to individualism, later-day thinkers brought in state-welfarism in a limited but necessary sense without impinging too much on individualism, Marxist thinking debunked the state as an arm of the elite, and despots projected state power to consolidate their strangle-hold on the people. It goes without saying that civil society is a non-starter in dictatorships. For the Marxists, civil society would be a tool to promote anti-state propaganda and further its obsolete political ideology; for the socialists it would be a means to propagate utopian equality; for the classical liberals it would be an assault on individualism. The democracy-civil society relationship can best, arguably, be served in a neoliberal/libertarian system, where state intervention is limited, where democracy flourishes in a mix of free market and welfarism, and where both the state and civil society understand each other's jurisdictions and limitations and complement each other in strength. In the Indian context, with which we are presently seized, it's interesting that the Marxist thought is prone to throw its weight behind civil society groups — that which confronts the state and also that which is less than overboard in its functioning. Perhaps this has to do with ideological roots — and is thus incurable. Whether it is the theory of Georg Wilhelm Friedrich Hegel or Karl Marx or Antonio Gramsci, each of them is an alternative to the liberal version. One must pause here to ask: If civil society is to assume an illiberal form, what purpose can it serve in a democracy?

This is not to argue that all of civil society in the country has abandoned liberal values. Far from it, perhaps a vast majority of NGOs and other voluntary organisations are doing excellent work in diverse areas — from health to education to the promotion of democratic values to child rights to women's emancipation etc — and both collaborating and constructively confronting the state in the endeavour. The problem comes when NGOs become mouthpieces for donors of funds more than vehicles for the cause they are supposed to promote. This becomes more problematic when those donors are foreign entities who have their own little agendas to spread in an outside nation. It actually begins to impinge on sovereignty when it relates to a Third World nation which is heavily dependent on foreign funding through civil society groups. India, thankfully, no longer faces that threat; it has moved on from an under-developed nation to a fast developing one. And yet, there is no harm in being on guard.

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About VIF

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