

Regulating Civil Society in Pakistan

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ABSTRACT

Since the introduction of the Policy for Regulation of INGOs in Pakistan, 2015 and the draft Regulation of Foreign Contribution Act 2013-15 (RFCA), the state-civil society relationship in Pakistan has been once again in jeopardy. This paper examines the issue of regulating civil society organizations in Pakistan, considering the unique composition of Pakistani civil society, its role, and the existing legal framework while drawing on examples from the region. Based on the analysis, it is recommended that due to the importance of associational life in the development and democratization of Pakistan, civic organizations should be regulated in the light of the constitutional provisions, which consider rights to association as basic human rights.

Key Words: State, Civil Society, Regulation, Relationship, Pakistan.

Introduction

On October 1, 2015, Government of Pakistan announced the “Policy for Regulation of International Non Government Organizations (INGOs) in Pakistan” in the aftermath of the Save the Children’s alleged involvement in activities against the national interests of the country (DAWN, June 12, 2015). The new regulations require all INGOs to register and obtain prior permission from the Ministry of Interior to carry out any activities in the country, and restrict their operations to specific issues and geographical areas. The ministry is broadly empowered to cancel registrations on grounds of ‘involvement in any activity inconsistent with Pakistan’s national interests, or contrary to Government policy’ (Human Rights Watch, 2015). Reminding that the INGOs make significant contributions to Pakistan in safeguarding and promoting health, nutrition, education, sanitation, food security, and the rule of law and human rights, among many other areas, civil society severely criticized the policy. They argued that these regulations ‘allow the authorities to kick out international groups for anything they might do or say’; ‘the regulations are an invitation to arbitrary use of power and will put at risk any international organization whose work exposes government failures’; and ‘a policy that will deprive Pakistanis of valuable, often life-saving services and information’ (Human Rights Watch, 2015).

With the enactment of 2015 Policy for Regulation of INGOs in Pakistan, the state-civil society relationship is once again in jeopardy. It came close to confrontation in late 1990s, when the Government of Pakistan introduced legislation to regulate civil society organizations. The civil society organizations claim that they were raising issues such as women rights, nuclear proliferation, and

governance, which the government considered a threat (Khan, 1999). While the government claimed that these organizations were increasingly involved in financial malpractices, and introduced the Social Welfare Agencies (Registration & Regulation) Act, 1995, known as the NGOs bill. The NGOs agitated, supported by civil society groups such as media and bar associations. Following negotiations between the government and the civil society representatives, both parties agreed to send the draft act to International Center for Not-for-Profit Law for review, which recommended some changes such as 'right of judicial review' (International Center for Not-for-Profit Law (ICNL), 1997). However the proposed bill could not be enacted as the government changed.

The next government introduced Non-profit Organizations (Governance and Support) Ordinance, 2002, which again gave rise to serious differences between civil society groups and the government. A consultation process started between, but without much optimism. However, the government decided to proceed and according to some well reputed national daily newspapers, it is in the final stages of introducing the Non-profit Public Organizations (Governance and Support) Act, 2003 (Dawn, 18 April 2003), on which Joint Action Committee of civil society groups have expressed serious reservations (The News, July 29, 2003).

Yet another bone of contention is the draft of the Foreign Contribution Act (FCA), first drafted in 2014, and revised in 2015, still pending parliamentary review. The draft FCA regulates foreign 'donation or aid, in cash or in kind' from 'any foreign source'. The draft FCA requires domestic NGOs seeking to utilize at least 1 million Pakistani rupees in foreign contributions per year must apply for a certificate from the Securities and Exchange Commission of Pakistan (SECP). According to the draft, international non government organizations (INGOs) seeking to utilize foreign contributions must register with the Economic Affairs Division. The application would be vetted by the Ministry of Interior, provincial and/or local governments, and other relevant stakeholders. Both domestic and international NGOs have been critical of the draft. According to them, it 'provide the state a periodic opportunity to deny or condition permission to NGOs and INGOs to receive foreign funding'; 'empower the government to arbitrarily deny or cancel permission for domestic NGOs and INGOs to receive foreign contributions'; and 'impose a wide range of operational restrictions on domestic NGOs and INGOs through the SECP Certificate' among others (ICNL, 2016). Further, the civil society argues that domestic and international NGOs should not be lumped into one law; the FCA's vague language could be used to restrict advocacy and human rights NGOs; and that civil society should be consulted and included in the debate about the future of NGOs in Pakistan.

Against this background, this paper will examine the issue of regulating civil society organizations in Pakistan, considering the unique composition of Pakistani civil society, its role, and the existing legal framework. Comparing situations in other regional countries, this paper recommends that due to the importance of associational life in the development and democratization of Pakistan, civic

organizations should be regulated in the light of the constitutional provisions, which consider rights to association as basic human rights.

In Pakistan, any discussion of the role of civil society requires considering several realities such as religious, social and economic structure (Ghaus-Pasha & Iqbal, 2003, p. 20). Therefore, analysis in this paper begins with a short description of defining the civil society, its role, and the relationship between the state and civic organizations. The next part deals with the evolution, size, scope, constitutional and legal frameworks, and need for regulation of these organizations, especially in the Pakistani context. Then, the situation in other regional countries such as India and Bangladesh is analyzed. The final part provides some policy options, followed by recommendations.

Analysis

Defining civil society, its role, and relationship with state

The origin of the term 'civil society' can be traced back to Aristotle (Qadeer, 1997, p.743), with varying Lockean, Hegelian, de Tocquevillian and Gramscian interpretations (Van Rooy, 1998, p.1). The interest in the study of civil society revived in the 1990s (Porter & Kilby, 1996, p.73), aimed at reorganizing the state, expanding the scope of market institutions, and promoting non-government initiatives in providing collective goods (World Bank, 1997a, pp. 2,3). Van Rooy, from her six-pronged discussion of the idea of civil society in contemporary literature, that is, civil society as a value, collective noun, space, historical moment, anti-hegemony, and anti-state (1998, p.1), defines civil society as an observable reality (a collective of conflicting, interdependent, inter-influential organizations, primarily outside the state and marketplace, performing particular functions, active in the shaping of democratic and development goals in their country), and a good idea (civil society as an enabling environment necessary for the survival of these organizations) (1998, p.19).

However, Van Rooy does not talk about the very nature of civil society organizations, especially in multicultural societies, which carries implications such as inclusion, exclusion, and representation of various groups. In many developing countries such as India and Pakistan, there is a clear divide in society on the basis of caste, ethnicity, and religion, which in turn affects the political process in the countries. It is hard to assume in such societies that CSOs will be democratic in nature; organizational activity will give the voice to the voiceless, and will promote democratic culture among various groups.

Further, Van Rooy's definition encompasses a wide range of organizations such as NGOs, community based organizations (CBOs), non-profit organizations (NPOs), trade unions, political parties, social and cultural organizations, giving rise to a discussion about the roles of these organizations in promoting development and democratic goals, outside the state, with the marketplace as a third sector. In short, these roles could be summarized into two generally accepted

categories of the service-delivery role and the role as political agent (Van Rooy 1998:35). However, as Porter and Kilby (1996, p.77) have pointed out, there is a tendency to define the role of civil society in relation to the state, which is explicit from the above roles. This relationship has been the focus of attention of all civil society theorists from Hegel, de Tocqueville, to Gramsci (Whaites, 1998, p. 343). The traditional view of state-civil society relationships favors a strong state as a prerequisite for civil society (Jefferies, 1993), which Whaites (1995) found applicable in developing states of the 1990s such as Pakistan. Conversely is the notion of strong civil society in weak states (Migdal, 1988), observed in Bangladesh in late 1990s, where emerging large NGOs gave rise to serious issues such as accountability (Kennedy, 1999).

Various models of civil society-state relationship are available such as Coston's model and typology of government-NGO relationship (1998). However, considering the varied nature of civic organizations, governments, and societies where both exist, it is difficult to find a universally balanced inter-relationship. These variations tend to regulate civic organizations amongst governments (Ahmad, 2001:1), which are paradoxical to the ideology of freedom of association, and expression (ICNL, 1998b). Such a mixed situation is also prevalent in Pakistan.

Evolution of civil society in Pakistan

The term 'civil society' is comparatively new in Pakistan. However, according to Qadeer (1997, p.746), 'precursor' of civil society in the Indian sub-continent (now India and Pakistan) could be traced back hundreds of years to localized institutions of *Beradris* (clans), *Panchayats* (village councils), and *Jirgas* (tribal courts). Along with these traditional components, it also includes modern political institutions of decentralization and democratization (Malik, 1997, p.5), trade unions, media, and business groups (Whaites, 1995, pp.245-47). While Ghaus-Pasha and Iqbal date the origin of Pakistani civil society in terms of voluntary and philanthropic initiatives and activities back to pre-historic periods, from regional folklore, institutionalized in the colonial period and represented modern civil society (2003, pp.1-3). Post-independence history of civil society in Pakistan can be divided into four broad periods.

First, 1947-1960s period, characterized by many voluntary activities, such as All Pakistan Women Association (APWA) to settle refugees (Ghaus-Pasha & Iqbal, 2003, p.4), and civil society of clans, reinforced by military ruler Ayub Khan's basic democracies (Qadeer, 1997, pp.747-48). Second, the conflict years of 1970s in terms of developing a civil society, as Pakistan People's Party (PPP) established a democratic government with the active participation of an energized civil society, but PPP's nationalization policy proved to be a backlash to voluntary civic organizations (Ghaus-Pasha & Iqbal, 2003, p. 5). Also, this environment gave rise to trade unions (NGORC cited in Ghaus-Pasha & Iqbal, 2003, p.6).

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Third, the 1980s' Martial Law period, which further repressed the political character of civic society, and organized it along the ethnic and sectarian lines (Qadeer, 1997, p.752). However, dominated by urban middle class (Whaites, 1995, p. 231), the nonprofit, nongovernmental sector expanded significantly with the flow of foreign funds to Pakistan in the Afghan War (Ghaus-Pasha & Iqbal, 2003, p.6). Fourth, the 1990s period attempted to revive democracy, however, Qadeer observed that then state lost its hold on society and divided into 'partisan government and self-serving communities'. Further state attempts to foster local institutions have resulted in 'politicization and sectionalization' of civic organizations (1997, pp.756-57). Considering government's current scrutiny of civil society organizations in the context of 'war against terrorism', and international pressure on the country in terms of 'human rights', it is too early to predict the future of this relationship.

Size and scope

So far, obviously non-government, nonprofit civic organizations represent now civil society in Pakistan. These organizations can be divided into organized and unorganized categories, and the organized sector can be further divided into registered and unregistered sub-sectors (Ghaus-Pasha & Iqbal, 2003, p.7). The Asian Development Bank (ADB) found it difficult to estimate the number of civic organizations in the country, as they are registered under various laws. Quoting United Nations Development Program's estimate of Pakistani NGOs between 8,000 and 16,000, ADB argues that the number could be anywhere between 25,000 and 35,000, if non-registered NGOs and CBOs are added (1999, p.3-4).

According to a study, by far the most comprehensive of its kind, conducted by the Social Policy and Development Centre (Pakistan) in collaboration with Aga Khan Foundation (Pakistan) and Center for Civil Society, Johns Hopkins University, USA, the number of such organizations is estimated at 45,000 (Pasha, Jamal & Iqbal, 2002). Ghaus-Pasha and Iqbal have further classified these organizations into four broad categories in terms of their scope and size. The first is national level capacity building, research, advocacy, and/or funding organizations such as Social Policy and Development Center, and Human Rights Commission of Pakistan. The second category is implementing and/or supporting organizations such as South Asia Partnership Pakistan. The third category is umbrella organizations such as Family Planning Association of Pakistan and National Rural Support Programs. The fourth type is involved in social services delivery, and may range from small local organizations to mid-level NGOs (2003, p.10). So, the term 'NGO' is commonly used by masses, government, donors, and the NGO community to describe all civic organizations in Pakistan.

Constitutional and legal framework

Constitutional framework

The Constitution of Pakistan (1973) recognizes the right of individuals to associate with others to pursue common goals as an inalienable fundamental right. Relevant constitutional provisions include Article 15 Freedom of movement, Article 16 Freedom of assembly, Article 17 Freedom of association, Article 19 Freedom of speech, Article 20 Freedom of profess religion and to manage religious institutions, and Article 25 Equality of citizens.

Legal framework

While registration is the main interface between the government and civic organizations in Pakistan, the legal framework for CSOs may be divided into several categories. Some laws deal with the registration, internal governance and accountability of organizations. Other laws govern how these organizations are financed and managed. Still other laws govern the reporting relationship between the State and CSOs with respect to their operations (ICNL, 2014). The history of laws governing civil society organizations goes back to 1860s. These laws either explicitly require registration or implicitly confer recognition include:

- The Societies Registration Act 1860
- The Religious Endowments Act 1863
- The Trusts Act (II OF 1882)
- The Charitable Endowments Act (VI Of 1890)
- The MussalmanWakf Validating Act 1913
- The Charitable and Religious Trusts Act 1920
- The MussalmanWakf Act 1923
- The Cooperative Societies Act 1925
- The Mussalman Validation Act 1930
- The Voluntary Social Welfare Agencies (Registration And Control Ordinance 1961)
- The Companies Ordinance 1984
- The Local Government Ordinance 2001
- Income Tax Ordinance 2001 (Pakistan Ministry of Law, 2003a)
- Policy for Regulation of International Non Government Organizations 2015

Taken as a whole, the legal framework can be considered generally enabling for civil society and the activities of CSOs (ICNL, 2014).Ghaus-Pasha and Iqbal found no overlap in these laws, other than for the Voluntary Social Welfare (Registration and Control) Ordinance, 1961, which requires organizations to register under this ordinance to gain access to the provincial government funds, despite being registered under another law (2003, p.12). More recently, 2015 Policy for Regulation of INGOs have similar requirements for the international organizations.

However, with regard to some issues such as tax exemptions for nonprofit organizations, they found ambiguities (Ghaus-pasha & Iqbal, 2003, p.16). Along with these laws, in recent years, the government has proposed various ordinances and laws to regulate civil society such as 1995 NGOs bill, Non-profit Organizations (Governance and Support) Ordinance, 2002 (Pakistan Ministry of Social Welfare, Women Development and Special Education, 2003), Policy Framework for NGOs and INGOs in Pakistan 2013 (The Nation, November 4, 2013) and Regulation of Foreign Contribution Act 2013 (RFCA) (Dawn, March 3, 2014) but faced serious resistance from civil society organizations. As result, a process of consultation is going on among the government and representatives of civil society organizations (ICNL, 2014).

State-Civic organizations relationship

The relationship between Pakistan's civil society and the state has been swinging between 'strong state-weak society' and 'weak state-strong society' periodically, due to civil society's weaker institutional base in traditional institutions, and unstable political process (Qadeer, 1997, p.759). Similarly, Ghaus-Pasha and Iqbal found a strong link between the development of civic organizations (popularly NGO sector) and the overall political and social development of Pakistani society (2003, p.21) the only active segment of civil society at present. So, the following discussion is mainly focused on the relationship between these civic organizations and the state. An analysis of this relationship exhibits some clear patterns of support and hostility.

ADB finds government's policy framework for NGOs supportive, providing financial and technical assistance (1999, p.14), however, Ghaus-Pasha and Iqbal further argue that generally governments support the service delivery role of civic organizations due to policy guiding principles such as 'self-help' and 'people's participation and empowerment', but are hostile of their social and political advocacy role due to the stance of civic organizations on issues such as women's rights, and nuclear disarmament, which the government consider 'politically sensitive' or which carry 'security implications' (2003, pp.22-23). This argument echoed yet again during and after 2015 Policy for Regulation of INGOs in Pakistan (ICNL, 2016). Van Rooy observed that a policy to support civic organizations for equity reasons has become a normative issue, as it does not only involve claiming political and civil rights from the state, but also involve wider economic and social rights from companies, domestic elites, and international lending organizations (1998, p.40). However, it is not that simple in reality.

In reality, rights involve normative as well as legal and constitutional concerns. For example, many Islamic states such as Saudi Arabia and Pakistan long held reservations regarding the age of the child in Child Rights Convention. Even after unconditional ratification following revision of family and juvenile laws, marriages at the age of 14 or 15 years (especially among girls) are common in Pakistan, as Islamic Jurisprudence does not prohibit it. Some sections of the

civil society such as women emancipation groups, objects to that, and if religious organizational activity is considered a part of the civil society (Pakistan being an Islamic state constitutionally), these organizations will rather advocate the practice. As a result, there is a pressure building on state from both sides to review these laws, but in opposite directions.

Furthermore, according to the ADB, NGOs' failure to meet their legal obligations about their resources and funds, and to justify high salaries, perks and overheads is another problem. ADB further points out that the NGOs are 'obsessed with proving the government inefficiency' and 'want to replace, rather than work with, the government' also add to the problem (1999, p.14). However, as Van Rooy has pointed out that in state-civil society relationships, the state is irreplaceable. It is not only that a state cannot exercise control without providing services, or that voluntary provision of services is problematic, but also due to the fact that both have their distinct roles in different spheres of the life of nations such as state's role in foreign affairs, and civil society representing various groups of population inside the country (Van Rooy, 1998). In the contemporary thinking on civil society, there are advocates of both the views that civil society is antidote to state as well as the view that a strong state is necessary to promote associational life as shown in the next section through examples from the region.

State-Civil society relationship in the region

The state-civil society relationship has also sometimes focused in neighboring states such as India and Bangladesh. Pakistan shares certain political, economic, and social realities with each country, which makes their experience more valid for Pakistan compared to other areas such as Eastern Europe, the hub of the civil society debate but with different realities.

For example, in India, the relationship between state and civic organizations gradually moved from cooperation during the late 1950s, to antagonism lately, due to what NGOs perceived as a 'strong statist agenda', which ultimately resulted in strong state control from the mid-1980s onwards (Sen, 1999, p.333). The Indian government introduced several laws to regulate the 'revolutionary politics' of NGOs (Baxi, 1997, p.60), such as Foreign Contributions Regulation Act (FCRA), enacted in 1976 and amended in 1985, which withdrew tax exemptions, required annual audit reports and inspection by the Central Bureau of Intelligence (Chowdry, 1987, pp.488; Sen, 1992, p.186). The other major action was a Presidential Commission, named Kudal Commission, which Kilby (unpublished Ph D thesis 2002) termed a 'campaign of official harassment'. These actions made NGOs confused, distracted, and less inclined to be involved in advocacy work (Chaturvedi, 1987, p.542).

Conversely, Bangladesh exemplifies 'weak state-strong civil society' relationship, where government's failure to assist the poor lead to large NGOs such as Grameen Bank and Bangladesh Rural Advancement Committee (Ahmad, 2001, p.1). Ahmad points out further that these NGOs have 'certainly empowered

themselves', while 'empowerment of the poor has been rather limited' (2001, p. 3). Actually, NGOs have taken positions as 'third sector' alongside the governmental and business sectors (Lewis & Sobhan, 1999, p.1) in Bangladesh. The state has introduced several rules and procedures, which NGOs can evade due to the weakness of the state and the complexity of laws (Ahmad, 2001, p.2). It has given rise to serious issues such as competition with state ministries for donor funding, and lack of accountability to state institutions or to donors (Kennedy, 1999).

Options for regulating civil society in Pakistan

Reasons exist for a well-regulated civic sector as it builds pluralism essential to a civil society, supports democracy, promotes social stability, strengthens the development of economic prosperity, and contributes to social well-being (ICNL, 1998a). While providing a guideline for not-for-profit laws in the 'Handbook on Good Practices for Laws Relating to Nongovernmental Organizations' (World Bank, 1997b), ICNL has also identified major problems of regulations such as lack or excess of regulations, laws permitting excessive governmental control, and lack of financial support for the sector (1998b). Considering these issues and in the light of the discussion above, Pakistan has at least three options in terms of regulating civil society.

First, it can strictly regulate civil society in the country, as Pakistan's sensitive geopolitical position demands internal stability, which may be hampered by the advocacy-based activities of these organizations. The present elected government has full military support, which is a regular feature of government in Pakistan now (Whaites, 1995, p. 229), so it may pass the long pending 1995 NGOs bill, Non-profit Organizations (Governance and Support) Act, 2003, the Regulation of Foreign Contribution Act 2013-15 or whatever legislation it wants without further consultation with the civil society as it has done in the case of 2015 Policy for Regulation of INGOs (not without increasing the resentment among civil society, though). However, the drawbacks of any such action may be, as in Chandhoke (1995, pp.30, 241), two major trends following strict regulations in Indian civil society then, that is, political activist groups have abandoned the formal processes in favor of establishing networks separate from the state, and emergence of fundamentalist movements. This may damage Pakistan's image internationally in terms of its stand on 'war against terrorism', and its human rights record.

Second, the government of Pakistan has always recognized the service delivery role of civil society organizations. The country's largest social development program 'Social Action Program' was implemented with active NGO participation. Considering Pakistan's political instability, poor social development indicators and sectarian divide, the government may let civic organizations play their role in developing and democratizing society, and avoid any further regulation. There are many laws already available, facilitating important aspects of the sector's functioning. However, this may lead to a situation, prevalent in

Bangladesh now, where civil society organizations can exploit these varying laws to their advantage. This may give rise to issues such as non-accountability and competition with state departments in terms of donor funding, which is already being observed in the country.

The third option is interactive, mutually nurturing relationships between the state and the civil society as advocated by Whaites (1998, p.346). Considering the positive role being played by civic organizations in the delivery of social services, the government may create space for their participation at policy level. Taking advantage of the continuous dialogue between the government and civil society representatives, for example on the draft FCA, the government may thoroughly review the existing and proposed legal frameworks. Consequently, it may introduce one comprehensive piece of legislation, including provisions of laws previously dealing with civil society organization, with new aspects not covered in previous laws such as right of judicial review to NGOs in the case of government interference in their affairs. The government may not need to start anew, as it can implement the draft of Social Welfare Agencies (Registration & Regulation) Act, 1995, after making amendments recommended by the ICNL in 1997-98 (ICNL, 1998c), as both parties agreed.

Conclusion and recommended policy decisions

It is clear from the discussion above that instead of a whole range of differing laws, Pakistan needs a simple, clear, and commonly understood and recognized legal framework to ensure independence and autonomy for civic organizations as well as state's capacity to prevent abuse of resources, and ensure stability. This balanced relationship will, in turn, ensure a strong civil society pursuing the goals of development and democracy. Therefore, the third option discussed above is recommended, that is, one piece of legislation, agreed upon by both the government as well as the civil society.

However, the legal structure to be created must protect and regulate civil society in accordance with international norms and the constitution of Pakistan. ICNL (1998a) has identified two general international conventions, which guarantee freedom of association and thus define the parameters to regulate civic organizations. These are the International Covenant on Civil and Political Rights, adopted by the United Nations' General Assembly in 1946, and the Universal Declaration of Human Rights, adopted by the General Assembly in 1948. Pakistan, being signatory to both conventions, is required to ensure the right of its citizens for 'peaceful assembly and association' (United Nations, 1948). Furthermore, the 1973 Constitution of Pakistan provides all citizens with basic rights of assembly (Article 16), and forming association or unions (Article 17). In addition, sub-constitutional laws and their application are important in determining whether these rights are really protected. In short, due to the importance of associational life in the development and democratization of Pakistan, civic organizations

should be regulated in the light of the constitutional provisions, which consider rights to association as basic human rights.

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