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COVID-19, corporatisation and closing space: The triple threat to civil society in India

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**COVID-19, Corporatisation and Closing Space:
The Triple Threat to Civil Society in India**

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COVID-19, Corporatisation and Closing Space: The Triple Threat to Civil Society in India

Ingrid Srinath

Introduction

In the 75th year of its independence from colonial rule, India confronts grave challenges to its economic and social development and to its democracy. Civil society in India has led the achievement of development goals and civil and political rights since the Gandhian movement of the early 20th century. Presently, however, it finds itself confronting a confluence of crises. The marginalisation of civil society actors by a private sector empowered by economic liberalisation, on the one hand, and majoritarian, populist political forces has only been exacerbated by the COVID-19 pandemic of the past 2 years. This working paper builds on a lecture delivered on November 26, 2021, at the London School of Economics Department of International Development as part of the #CuttingEdge series. It traces the origins and growing strengths of the forces ranged against civil society and points toward the actions necessary to confront them.

November 26 is Constitution day in India. It commemorates the day the Constituent Assembly of free, independent India adopted its Constitution in 1949. It's ironic that the week commemorating the anniversary in 2021, the International Institute for Democracy and Electoral Assistance (IDEA) rated India as the backsliding democracy with the most democratic violations during the pandemic, in its 2021 report¹ on the Global State of Democracy.

The violations they reported include

- harassment, arrests and prosecution of human rights defenders, activists, journalists, students, academics, and others critical of the government or its policies
- excessive use of force in the enforcement of COVID-19 regulations
- harassment against Muslim minorities
- Internet obstructions; and lockdowns, particularly in Kashmir.

This decline echoes similar red flags in global indices covering media freedom², freedom of religion³, civil society space⁴ and internet freedom⁵ among others⁶, issues that are well encapsulated by the film Dharti Tumhari, Dharti Hamari⁷, based on the American folk song by Woody Guthrie, *This Land is Your Land*.

That same week, India's National Security Adviser described civil society⁸ to graduates of the National Police Academy as the frontier of fourth generation warfare. "The new frontiers of war — what we call the fourth-generation warfare," he said — "is the civil society. War itself has ceased to become an effective instrument for achieving your political or military objectives. They are too expensive and unaffordable."

A day prior, the highest ranking military official expressed satisfaction⁹ that citizens in Kashmir are now willing to lynch fellow citizens on suspicion of anti-national activity. "How can killing a terrorist be a human rights violation? he asked. "If there is a terrorist operating in your area, why should you not lynch him?"

In other events that week, Muslims were prevented from praying¹⁰ in areas specifically designated for their prayer and 50 Christian churches¹¹ were reported to have been shut down in a state in Central India. That's just one recent week in avowedly democratic, secular India.

Indian democracy and the pillars that support it are being rapidly eroded. Where, one might ask, is the resistance to this apparently inexorable decline?

While the farmers' movement¹² recently scored a victory with the rollback of the new laws¹³ that they had been protesting for a year, other movements, and civil society more generally, appear to have been successfully stifled. This working paper outlines the confluence of forces at play leading up to the current situation.

Evolution of The Threats

It's axiomatic that any aspiring autocrat worth the label must ensure the neutralisation, or at least significant weakening, of key pillars of democracy like the media, judiciary and civil society -- and the co-option of big business. The seeds of that process in India were sown over 4 decades ago in India during its infamous Emergency¹⁴ when then Prime Minister, Indira Gandhi, suspended democracy for 21 months after she lost an election. That is when, for instance, the Foreign Contribution (Regulation) Act (FCRA)¹⁵ was first introduced with the stated intent of preventing foreign influence in politics. 45 years later, political parties have cleverly legislated themselves out of its purview¹⁶ and turned it instead into a powerful weapon against civil society organisations. In his 2016 analysis of the law, United Nations Special rapporteur on Freedom of Assembly and association wrote that the: "restrictions as defined by the Foreign Contribution Regulation Act (2010) and Rules (2011), do not meet the obligations of the Union of India under international law, standards and principles."

In a bitter twist, the government in 2018 created an entirely opaque instrument -- the electoral bond¹⁷ -- that permits unlimited, completely anonymous, political contributions even by foreign entities. Between their introduction in 2018 and July 2021 an estimated Rs 7900 crore¹⁸ or just under USD 1 billion has made its way to political parties. When data were last available, 76% of the value of bonds sold went to the ruling Bharatiya Janata Party (BJP) accounting for over 60%¹⁹ of its total reported fundraising.

The trend of hollowing out democratic institutions, initiated in the mid-1970s, accelerated in the early 1990s with the liberalisation of the economy. A buoyant, triumphalist business sector seized the high ground in public perceptions and policy influence, feeding a neo-liberal narrative of "private sector good, everything else slow, inefficient, ineffective."

The United Progressive Alliance (UPA)²⁰ government that ushered in that phase of economic 'reform', was deeply divided in its views of civil society. The faction led by Sonia Gandhi, then Congress Party President, was extremely receptive to policy input from civil society actors²¹ leading to a wave of legislation that gave Indians the right to education²², right to information²³, right to food²⁴ and right to work²⁵ -- the beginnings of rudimentary systems of social protection. The more technocratic faction, led by then Prime Minister Manmohan Singh, saw NGOs as obstacles²⁶ to their neo-liberal economic model which favoured privatisation and globalisation. Large projects promoting extractive industries²⁷ and nuclear power²⁸, for instance, that adversely affected local communities, became flash points for conflict between state and business on the one hand and civil society groups on the other and the bogey of 'the foreign hand'²⁹ was resurrected, notably by Dr. Singh in 2012.

Escalating Repression

When the Modi government took office in 2014, the trend escalated. First in the crosshairs were activists who had sought justice for the victims of the 2002 pogrom³⁰ in Gujarat that killed over 1000 people, mostly Muslims, when Mr. Modi was Chief Minister of the state. A pattern emerged then that is now standard operating practice. Frontline activists, people like Teesta Setalvad³¹ of the NGO Citizens for Justice and Peace³², who mounted almost 170 successful prosecutions³³ against perpetrators of the riots, including members of Mr. Modi's cabinet, have had the full might of the state deployed against them. Multiple cases are filed, passports are impounded, FCRA permits and tax exemptions are withheld, bank accounts frozen and a campaign of intimidation and vilification is launched against them and their families. When these are unsuccessful, their funders -- in this case the Ford Foundation³⁴, their lawyers³⁵, and anyone supporting them are also subjected to harassment, intimidation and even prosecution. While

the Ford Foundation and other international funders, like the Open Society Foundation, have previously come in for vilification³⁶ from both the left and the right in India, the suspension of Ford's License to operate was a significant escalation. Besides seeking to stymie the activists, these broader actions send a clear chilling message to others, funders in particular, of the possible consequences of such support. When the Centre for Social Impact and Philanthropy at Ashoka University (CSIP) studied³⁷ the impact of the FCRA crackdown in 2017, none of the funders we interviewed wished to be quoted and several did not wish to even have their names listed as respondents.

Much of the media attention on the topic of the FCRA has focused on international organisations like Greenpeace³⁸ and Amnesty³⁹ who have challenged the government's actions in court. Indian organisations who adopt that approach – like INSAF⁴⁰ and People's Watch⁴¹ – suffer far more egregious consequences even when they win their long-drawn-out legal battles. They become pariahs to the funding community and see their organisations reduced to bare bones operations, if not rendered defunct. Scores of other organisations, the faith-centric ones⁴², in particular, just go quietly, leaving hundreds of thousands of Indians bereft of basic services in healthcare, education, livelihoods and the like. The targeting of some European donors, for instance, has decimated NGOs working with LGBTQ communities who get very little support from domestic funders.

Beyond the FCRA, draconian laws on sedition⁴³ and terrorism⁴⁴ are now routinely deployed against all forms of dissent. A prominent recent example involves the Bhima Koregaon 16⁴⁵, most of whom have now been imprisoned without bail for 3 years. One of the 16, the 84-year-old Jesuit priest, Fr. Stan Swamy⁴⁶, died a few months ago, shortly after he was finally granted bail to be hospitalised for COVID.

Laws such as the National Security Act (NSA)⁴⁷, the Unlawful Activities Prevention Act (UAPA)⁴⁸ and Section 124A of the Indian Penal Code, which permit practically indefinite incarceration without even being brought to trial, have now been used against students⁴⁹, journalists⁵⁰, comedians⁵¹, academics⁵² and others for actions such as celebrating the victory of the Pakistani cricket team⁵³ against the Indian team in the 2021 T20 World Cup, sharing jokes and memes on social media⁵⁴, participating in peaceful protests⁵⁵, seeking to investigate violence⁵⁶ against minority communities or questioning the official COVID statistics⁵⁷.

Many of these laws, and the actions taken under their purview, have sought to be justified as part of the 'global war on terror', and, in particular, the recommendations of the Financial Action Task Force (FATF)⁵⁸. Although the FATF has progressively dialled down its concerns regarding the potential use of nonprofits for money laundering or as a conduit to terrorist groups, their early recommendations continue to be used to provide cover and legitimacy to a range of laws aimed at controlling civil society and prosecutions of activists.

Majoritarian Violence

Religious fanatics, or those exploiting religious sentiment for political gain, routinely attack members of minority religions⁵⁹, their places of worship⁶⁰ as well as their businesses⁶¹ with apparent impunity. Calls for economic boycotts⁶² of Muslim businesses have grown in both frequency and stridency. Customers of ride-share⁶³ or food-delivery⁶⁴ services refuse to accept Muslim drivers and delivery persons. 4 states, all with BJP governments, have passed so-called anti love jihad laws⁶⁵. 3 other states have announced their intention to pass similar laws. These laws posit an organised conspiracy of Muslim men luring Hindu women into marriage with the intent to convert them to Islam.

Love jihad is but one example of the weaponisation of language⁶⁶ itself. 'Hindus are in danger', 'Go to Pakistan (if you don't like how things are here)', epithets like 'prostitute' and 'anti-national', the Prime Minister's own '5-star activist', 'urban naxal' referring to a violent, Maoist movement, 'tukde tukde gang' suggesting you are working to break up the country, and 'termites' are used to otherise and vilify minorities, refugees and dissenters of all kinds, legitimising violence against them.

You can be beaten to death⁶⁷ on a public thoroughfare for refusing to chant Hindu slogans. You can be beaten to death anyway after you agree to chant those slogans. Mobs – online and offline - determine what movies can be made⁶⁸, what books published⁶⁹, what food sold⁷⁰ and where⁷¹, and what TV commercials⁷² aired. Indeed even what models who are featured in advertisements may wear⁷³. It is no longer feasible, several philanthropists have advised in private conversations, for grant applications to include words like rights, governance, even accountability.

The revocation of Article 370⁷⁴ - the special status accorded at Independence to the state of Jammu and Kashmir, India's only Muslim majority state, and its break up into 2 centrally administered territories; the Citizenship Amendment Act⁷⁵ – a law⁷⁶ that discriminates among refugees based on religion; the law that seeks to create a new National Register of Citizens⁷⁷ that threatens to strip millions of their citizenship; laws against religious conversion⁷⁸; laws that legislate food consumption⁷⁹; and laws that seek to prevent inter-religious marriage, all feed a resurgent, majoritarian populism that is in complete contrast to India's constitutional values and terrorises minorities into silence and submission.

Compromised Institutions

Enabling these grave miscarriages of justice are a range of deeply compromised judicial and law enforcement institutions. In Mumbai, India's financial capital, for instance, a game of political cat and mouse has played out over several months in which law enforcement agencies are used to settle political scores. The erstwhile Commissioner of Police⁸⁰ was a fugitive from the law. The erstwhile Home Minister⁸¹, whom the Commissioner had accused of corruption and extortion, is in prison. Officers at the Narcotics Control Bureau⁸² are being investigated for alleged extortion based on accusations by another minister. Across the country, tax authorities, intelligence bureaus and criminal investigating agencies⁸³ are routinely pressed into action against journalists, activists, NGOs, and academics whose activities discomfit national or state governments. The erstwhile Chief Justice of the Supreme Court⁸⁴, accused of sexual harassment by a member of his staff, presided over the enquiry into the allegations, an enquiry that, by the by, exonerated him of wrongdoing. This farce tainted and discredited him and the entire judicial establishment especially when his judgements overwhelmingly favour the government, and he is nominated to the upper House of Parliament upon his retirement from the bench. On the other hand, bureaucrats, judges and policepersons who fail to comply with the government's expectations are summarily transferred⁸⁵ to undesirable jobs or locations. Universities⁸⁶ are sought to be bludgeoned into silence, textbooks⁸⁷ are rewritten to magnify the accomplishments of some communities and erase others⁸⁸, and media houses are selectively rewarded or targeted based on their willingness to toe the line. These legal and extra-judicial measures are combined with harassment, intimidation, rape threats and the like by armies of trolls – again online and offline -- resulting, in the worst cases, in the assassination of journalists⁸⁹, rationalists⁹⁰ and allegedly, judges⁹¹.

Under Pandemic Cover

And then came COVID-19.

The images of distress and despair from India evoked shock and sympathy globally. Migrant workers⁹² walked hundreds of kilometres desperately trying to reach their homes, reduced to penury overnight by the world's most draconian⁹³ lockdown, implemented across the vastness of India with 4 hours' notice. Chronically under-resourced public health and social protection systems buckled under the strain of the numbers, with everything from food⁹⁴ and oxygen⁹⁵ to ICU beds⁹⁶, healthcare staff, protective equipment, even crematoria and cemeteries⁹⁷ in dire short supply.

The role India's nonprofit sector and ordinary citizens played in alleviating distress and saving countless lives by providing critically needed healthcare and livelihood support, as well as by shining a light on the plight of the most marginalised groups, has been universally recognised⁹⁸.

This may not have been very different from occurrences in many other countries, where it fell to civil society to compensate for gross inadequacies in public health systems and inadequate social safety nets. What was perhaps unique to India was the total exclusion of the nonprofit sector⁹⁹ from any of the relief packages¹⁰⁰, howsoever meagre, that the government offered to industry, small scale enterprises and other sectors to help them tide over the crisis. At a time when countries from Canada, the USA and the UK to China and Russia extended support¹⁰¹ to NGOs by way of increased tax incentives for philanthropy or job protection schemes for their staff, India's nonprofits found themselves instead competing with the Prime Minister who launched a spanking new fund -- the Prime Minister's Citizen Assistance and Relief in Emergency Situations (PM CARES) Fund¹⁰², which offers a higher tax write off than most NGOs are permitted to offer, allows businesses to meet their compliance requirements under the mandatory corporate philanthropy or CSR Law, provides unlimited access to international funders and dangles the possibility of earning the goodwill of the powers that be. This, despite it not being clear why a new fund was even necessary given the existence of a perfectly functional Prime Minister's National Relief Fund¹⁰³ and Chief Minister's Relief Funds in most states. The characteristics of this fund are also interestingly fuzzy. For purposes of attracting contributions, it has all the trappings of an official government entity. But it somehow morphs into an NGO¹⁰⁴ when it comes to access under the Right to Information¹⁰⁵ law or mandatory audits by the Comptroller and Auditor General¹⁰⁶.

Even when Indians were dying in their hundreds for lack of oxygen, and planeloads of ventilators and oxygen concentrators stood ready to fly in from overseas, the government refused to relax the provisions of the FCRA that prevented these from reaching their intended beneficiaries, a practice that has been commonplace in previous national disasters¹⁰⁷. As if that was insufficient torment, the government chose this time to introduce new amendments¹⁰⁸ to the FCRA. Amendments that further constrain¹⁰⁹ access to international support, limit the uses to which such funds may be put and present a host of other obstacles, including a requirement to route all foreign funds through a particular branch of the State Bank of India. Transfers by way of Foreign Direct Investment (FDI)¹¹⁰ to private sector companies amount to almost 40 times the amount that is sent to NGOs in India from overseas donors. The FDI flows, arguably just as susceptible to misuse, attract no similar hurdles or scrutiny.

In another pattern that has become routine, the FCRA amendments were rushed through Parliament¹¹¹ in 72 hours with neither prior consultation, nor deliberation and scrutiny by Members of Parliament. The amendments were approved by the President 3 days later, and made effective instantly, throwing donors, NGOs and their budgets and plans into complete disarray at a time when all resources -- financial and human -- were already stretched thin. The International Commission of Jurists (ICJ)¹¹² commented on the amendments saying, "The legislation fails to comply with India's international legal obligations and constitutional provisions to respect and protect the rights to freedom of association, expression, and freedom of assembly." The ICJ stressed that "the Bill's provisions would impose arbitrary and extraordinary obstacles on the capacity of human rights defenders and other civil society actors to carry out their important work." It further warned that, "This hasty law-making that clearly undermines human rights and the work of civil society, is yet another attempt by the government to destabilize the functioning of democratic institutions in India." The International Centre for Not-for-Profit Law (ICNL)¹¹³ observed, "The amendments are a disproportionate and unwarranted restriction on Indian civil society, and they have only served to debilitate the global, national, and local response to COVID-19." The United Nations High Commissioner for Human Rights was also strongly critical¹¹⁴.

At the same time, changes to the CSR rules¹¹⁵ and new renewal requirements for charitable tax exemptions¹¹⁶ also went into effect at the height of the pandemic, leaving NGOs across India scrambling to somehow get signatures, affidavits, board resolutions and a plethora of other paperwork completed even as they struggled to keep their staff safe, serve their communities surging needs, and deal with the consequences of donors re-directing resources en masse from regular programmes to COVID relief. More details on the financial impact of the pandemic and some of these measures may be found in the two research studies¹¹⁷ conducted by CSIP on the impact of COVID-19 on India's nonprofits.

It's also worth noting here that the Parliamentary processes followed for the FCRA amendments are far from being the exception. They are part of a growing trend toward bypassing both, consultation with stakeholders and Parliamentary scrutiny in drafting legislation. In 2014, the Pre-Legislative Consultation Policy¹¹⁸ was adopted, mandating a host of rules, including that, whenever the Government makes a law, it must place a draft version of it in the public domain for at least 30 days. Since the inception of the policy, 227 of the 301 bills introduced in Parliament have been presented without any prior consultation. Of the 74 placed in the public domain for comment, at least 40 did not adhere to the 30-day deadline. The two terms of the UPA government that preceded the introduction of this policy saw 60% and 70% of bills being discussed by Parliamentary sub-committees. The two terms of the present government have seen those percentages drop to 25% and 10%¹¹⁹.

Philanthropy Ecosystem Gaps

The pandemic also threw into sharp relief the inadequacies of India's philanthropy and civil society ecosystem. The lack of functional national associations of funders or of NGOs means that the sector has no voice in policy debate, no mechanisms to share information or to co-ordinate action, no means to push back against the new regulations or even to seek clarity about them. Similarly, the dearth of providers of services such as research, recruitment, legal, financial and strategic advice, communications support and skill building of various kinds hampers the sector's capacity to build scale, sustainability, impact and resilience. The new FCRA amendments pose additional hurdles for organisations of this kind. Because they cap what they term 'administrative expenses' to 20% of the value of FCRA grants, and classify expenses like programme design, management, even report production, as administrative costs, they make it extremely difficult for organisations like these to receive international grants. In a context where almost all domestic funding is directed toward direct service delivery, this threatens the very existence of such ecosystem service providers.

It is not helpful that tax incentives for domestic philanthropy¹²⁰ have also been progressively whittled away, leaving India with one of the more parsimonious regimes of tax incentives anywhere. Setting aside countries with generous incentives like Singapore, France and the United Kingdom, even Russia¹²¹ and China¹²² presently offer donors more generous tax incentives for philanthropy¹²³ than India does.

The maze of legal and regulatory restrictions¹²⁴ and the number of different agencies with regulatory authority over nonprofits, means that NGOs of all kinds find themselves mired in complex, onerous and sometimes contradictory compliance requirements.¹²⁵ None of these regulatory authorities is required to explain their arbitrary actions and there is little, if any, redress or appeal possible. Given the severe consequences of any alleged breach of the rules, it is not surprising that most of the sector now chooses to 'paint well within the lines' rather than risk possible retaliation.

For instance, despite the Supreme Court's ruling in 2020¹²⁶ that participation in protests does not qualify an organisation as being 'of a political nature', a characterisation that would violate FCRA provisions, the overwhelming majority of NGOs and funders choose to steer clear of any activity that might have even the remotest possibility of attracting adverse attention. And you don't have to violate an actual law to attract such attention. The police is prone to ignoring judicial orders, continuing to charge citizens with provisions of the law that do not apply¹²⁷. This has been particularly true of social media posts that are alleged to violate Section 66A of the IT Act¹²⁸, attracting random charges of sedition, waging war against the state, causing offence to groups of people and portraying authorities or the country itself in a poor light.

Actions that limit freedoms¹²⁹ of expression, association and assembly online now mirror those that restrict these offline. India holds the world record¹³⁰ for extended internet shutdowns, especially in, but not limited to, Kashmir. There is continuous legal and extra-legal pressure on social media organisations to censor posts¹³¹. And the alleged use of the Pegasus software¹³² for illegal surveillance, or to plant false evidence on activists' devices, or both, is one of the more egregious instances of this phenomenon. Data protection¹³³, intermediary liability¹³⁴ and the ever-growing reach of the biometric identification system,

Aadhaar¹³⁵, continue to be battled in court in a game of legal whack-a-mole with the authorities. In a context where most mass media ownership¹³⁶ is concentrated among a few big business houses, and the airwaves and broadsheets are dominated by stridently loud cheerleaders of the government, the internet provides almost the only somewhat free space, rendering this spate of attempts to regulate and censor it, particularly ominous.

Corporate Encirclement

But corporate media are only one part of the growing encirclement of society by corporate interests. For civil society, this can mean combating powerful businesses¹³⁷, often allied with government¹³⁸, in trying to defend the environment or human rights, while simultaneously navigating a funding landscape in which funding from business is the main source of philanthropic support, as international funding is choked off and their campaigns restricted by corporate media.

Section 135 of the Companies Act, 2013, popularly known as the CSR law¹³⁹, is a policy unique to India. It requires all companies above a certain size to contribute 2% of their profits to social impact causes. Its impact on philanthropy and civil society in India has been interesting. On the one hand it has probably doubled the absolute volume of corporate philanthropy. On the other, the law is designed to prioritise short-term, easy to measure, employee-pleasing programmes over more long-term, more complex, less warm and fuzzy, or photogenic causes. It has also effected an interesting shift in agency between donor and NGO, repositioning the corporate donor as the protagonist and the NGO as a mere 'implementing agency'. Critically, it has created a serious disincentive for NGOs to be perceived as being in any way critical of business. One other effect it has had is to accelerate and amplify a preference for business people on the boards and leadership teams of NGOs. This introduces a 'market-orientation' in all aspects of NGO functioning from choice of intervention e.g. a preference for technology-driven programmes in education as opposed to ensuring the right to free public education, micro-credit and other forms of 'financial inclusion' rather than dealing with entrenched caste and gender discrimination, and focusing on low-cost service delivery programmes rather than the defence and promotion of rights. Fear, or the possibility of favour, also means that CSR funds often follow the Prime Minister's current whims – one year building toilets¹⁴⁰, another year funding the building of the world's tallest statue¹⁴¹ and so on. Finally, prior to the introduction of the law in 2013, India witnessed a groundswell of debate around business responsibility¹⁴² for human rights, better environmental standards, even quotas¹⁴³ for socially marginalised groups in the private sector. These have all fallen silent since the introduction of the CSR law.

All these factors will likely be further exacerbated by the proposed Social Stock Exchange¹⁴⁴ which will define social impact even more narrowly and superficially than the CSR law does. This large scale corporatisation of mindsets incentivises superficial, short-term, apolitical approaches and cleaves the sector in two – good NGOs who are welcome partners in public-private partnerships and 'black sheep' who must be eliminated by any means necessary.

It's interesting that, while laws and policies that govern the private sector have been thoroughly reformed over the past 2 decades with particular focus on increasing India's ranking on the World Bank's Ease of Doing Business Index¹⁴⁵, no similar action has been taken to rationalise or simplify the regulatory frameworks for civil society despite multiple policy documents¹⁴⁶ and task force recommendations¹⁴⁷. The Centre for Asian Philanthropy and Society's 2020 Doing Good Index¹⁴⁸ stated that "Although the national mantra (chant) is ease of doing business, the ease of doing good is not on the radar. In fact, compliance requirements for Social Delivery Organisations (SDOs) seem to be increasing, and laws are being amended to disable rather than enable charitable initiatives."

CSIP was commissioned by the national policy think tank, NITI Aayog¹⁴⁹, to review all policies that affect civil society and to examine the case for self-regulation. The reports¹⁵⁰ were much appreciated but the only changes since then work in the polar opposite direction to those recommended.

Conclusion: What Lies Ahead?

India has gargantuan developmental¹⁵¹, social and ecological challenges to address. It has squandered too many years of rapid economic growth without making the investments in education, healthcare, and social protection¹⁵² that might have helped reduce hunger, illiteracy, discrimination, exploitation, inequality and the impact of the climate crisis. Those investments could also have helped to minimise the impact of COVID-19 and encouraged sustainable growth post pandemic.

The pandemic itself presents new opportunities for a reset - to make those investments, and to effect radical policy change in public health, education, urban development, public housing, labour rights and environmental protection, among a range of other domains. Instead, India is sliding quite rapidly down a slippery slope into majoritarian authoritarianism with the key institutions of democracy hobbled, stifled and co-opted. Each day brings news of more activists detained, more NGOs in distress, more impunity for crimes against minorities, more politicians inciting violence, more victims of violence being prosecuted, more dire prospects for access to justice and equality before the law, and more assaults on rights and freedoms.

Since this lecture was delivered, almost 6000 NGOs registrations under the FCRA have either lapsed or been rejected¹⁵³. This initially included renowned global organisations like Mother Teresa's Missionaries of Charity and Oxfam India, among others. Some of these have since been restored but with almost 12000 more registrations due for renewal by the extended March 31, 2022 deadline, India's nonprofits find themselves paralysed.

Elections are impending in several states and, with desultory economic performance affording little vote winning potential, divisive anti-minority rhetoric has escalated sharply. Speakers at a series of events¹⁵⁴ have exhorted Hindus to violence against minorities, with several calling for genocide¹⁵⁵.

The courage of a few activists, NGOs and grassroots groups, a handful of journalists, and the occasional judge who chooses to uphold the Constitution, plus everyday acts of bravery and compassion by citizens standing up for their neighbours, are all that presently hold India's democracy in some stead. These individuals and organisations need every bit of support that can be provided.

So, is the scenario one of unremitting bleakness? Can the slide be reversed or slowed down? What needs to change? Here are 3 areas that must be addressed urgently.

1. The regulatory frameworks that govern civil society in India need urgent and comprehensive reform in partnership with civil society.
 - Regulations need to be rationalised, simplified and made more coherent.
 - They need to be fully compliant with both India's Constitution¹⁵⁶ and the international treaties¹⁵⁷ to which India is a signatory.
 - They need to clearly recognise the entire range of roles played by the nonprofit sector from delivery of services to watchdog of business, government and media, to incubator of innovation, developer and upholder of norms, advocate, capacity builder, policy analyst, and champion of citizens and citizenship.
 - A system of self-regulation with an independent regulatory body must be put in place. This regulator would register, deregister, build capacity, disseminate information, report on the sector and be charged with strengthening the sector. The model in use in India's micro-finance sector and by charity regulators in other countries offer useful templates.
2. Anachronistic, draconian laws that muzzle free expression, assembly and association must be repealed or read down through judicial action. Further, freedoms that are protected in the physical world must be equally protected in electronic media and on the internet. Courts and the Election Commission must act swiftly whenever there are violations of rights and freedoms.

3. Governments in the states and at the national level must be held accountable for ensuring that participatory governance mechanisms and watchdogs are fully staffed, funded, transparent and independent.

Gaining traction on those three will require a critical mass of Indian civil society organisations to coalesce, despite their many differences, around an agenda of building sector solidarity and reshaping the public narrative and the regulatory context.

Indian philanthropy too has critical choices¹⁵⁸ to make with regard to its priorities. Will it be content to play the role of enabling and legitimising the erosion of core democratic principles or will it make common cause with the defenders of Constitutional values?

Dare one hope for these shifts? Building a coherent coalition of pro-democracy forces will take exceptional leadership of the kind displayed by the farmers' movement¹⁵⁹ and other grassroots campaigns. Their successes raise hope that such solidarity is indeed possible.

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