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Civic Space under Siege:
Experiences from South Asia

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Society for Participatory Research in Asia

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Introduction

South Asia as a region has unique features and many contradictions. It is socially, economically and politically diverse, with a common cultural base but linguistic and religious differences. South Asia is characterised by its large population, growing poverty, weak governance structures and feeble democratic institutions, increasing militarization, and sectarianism. Most countries in the region experienced colonization before becoming independent sovereign states. Governments in South Asia have pursued national security through destructive military apparatuses, rather than seeking security for citizens by actualizing their creative potential. Political systems in the region have produced many forms of government: democratic, socialist, military, and monarchical. Military rule, monarchy, and centralized autocratic political systems are accepted within the framework of democracy in the region.

Presently, all of the countries of South Asia have democratic governments, but in many of them, governance is not truly democratic. It is a disturbing paradox in the region that the more vigorous South Asian democracy is, the more dysfunctional it becomes. Across the region, democracy has been weakened, corruption has increased, and the rights of citizens are denied. Troubled political relations have resulted not only in mutual mistrust, tension, and hostility, but also in the continuation of feudal social practices in South Asian countries. Although the basic right of the people to a life of dignity and social justice has been theoretically accepted by all governments in the region, the current situation has led to indiscriminate violations of human rights. People are gradually becoming desensitized, development is losing its humane face, and democratic institutions are being weakened. The development budgets of the South Asian countries are being diverted to defense activities, and people are being further marginalized as a result.¹

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Freedom of expression, association, and assembly are the essence of democracy. Together, these define the boundaries of the civic space within which civil society can function. Efforts to limit such freedoms must therefore be regarded as a challenge to all democratic governments and to regional and global cooperation – and must be stopped.²

Civil society’s ability to act rests on the realization of three fundamental rights: the right to association, the right to peaceful assembly, and the right to freedom of expression. These three fundamental rights are under renewed and sustained assault. This assault is being driven by a number of motivations, including an increasing focus by states on enforcing national security and counter-terroring terrorism; pushback against the successes that mass protests have achieved in recent years; the capture of many governance systems by wealthy elites pursuing private sector interests; and the reduced influence of aid from the global north in the global south states together with the rise of alternate funding sources who have little interest in supporting democracy and human rights.

It is within this context that this paper seeks to understand the state of civic space in the democratic states of South Asia. In the following section, the paper seeks to draw upon factual evidence to examine the degree of realization of three fundamental rights: the right to association, the right to peaceful assembly, and the right to freedom of expression in the South Asian context.

Freedom of Association

Democratic governments that for decades encouraged or at least tolerated internationally accepted democratic norms and rights have recently either taken or seriously considered measures to restrict these. At the core of the efforts of most government that have sought to limit external support for independent civil society are legal measures to restrict or ban foreign funding of domestic civil society organizations (CSOs). Such measures have multiplied rapidly in recent years. In a 2011 CIVICUS survey of CSOs in 33 countries, 87% identified national or internal factors constraining funding.³ South Asian countries like Bangladesh, India, and Nepal have all taken steps to limit external resources and support for civil society organizations, depicting such aid as foreign political meddling. The fact that a number of democratic governments are part of the pushback phenomenon undercuts the view advanced by some analysts that pushback should simply be understood as one component of a broader authoritarian resurgence in the world.

Case: India

In August 2010, the Indian Parliament passed the Foreign Contribution (Regulation) Act (FCRA), which replaced a similar, already highly restrictive Act dating back to 1976 and aimed at prohibiting foreign contributions and hospitality “for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.” The Act does not define what constitutes such activities, thus leaving room for considerable government discretion. Besides imposing additional administrative burdens on NGOs receiving external assistance, it prohibits foreign funding for any “organizations of

a political nature” as defined by the central government. As a consequence, the foreign funding permission of as many as 4,000 small NGOs has been revoked. While in most cases the government has pointed to procedural violations, critics have argued that human rights organizations opposed to government policies have been disproportionately targeted.

The FCRA wing under the Ministry of Home Affairs (MHA) remains unaccountable for its actions. Enquiries on the suspension of FCRA accounts are lost in timeless delays, while old communication problems persist. Selective leaks to the media, which began during the previous regime, continue unabated. The throttling of Greenpeace India by the suspension of its FCRA registration is a recent case of an attack by the MHA on a dissenting voice. As the Voluntary Action Network India (VANI) indicates, in 2015, almost 10,000 registrations of organizations falling under the FCRA were cancelled, which was a threat to their survival. While the justification given for the cancellation of registrations was largely non-compliance with the FCRA law and the non-filing of annual returns, it was also reported that organizations were not given enough time to respond to the ministry. It was further noted that this was a process to clean up the ministry’s data, which had been pending for a long time. In November 2016, with the cancellation of another 11,000 registrations, the number of not-for-profit organizations permitted to receive foreign funding stood at 20,500, less than half of what it was two years ago when 42,500 were registered under the FCRA 2010.⁴

Along with this, the FCRA requires all non-profit organizations wishing to accept foreign contributions to (a) register with the central government; (b) agree to accept contributions through designated banks; and (c) maintain separate books of accounts with regard to all receipts and disbursements of funds. All of the above requirements burden organizations with onerous reporting requirements for all foreign-funded activities and make the process cumbersome and lengthy.⁵

In Bangladesh, Nepal, and Pakistan, legislation to restrict foreign funding has been proposed or submitted for parliamentary discussion, but remains under review. Pakistani parliamentarians in 2012 submitted legislative proposals that would significantly limit foreign funding for civil society, and the Nepalese Ministry of Foreign Affairs began holding consultations with other government agencies in 2013 about establishing a new mechanism to regulate foreign funding to international NGOs operating in the country.

Many NGOs operate in Bangladesh. While most are able to function without onerous restrictions, the use of foreign funds must be cleared by the NGO Affairs Bureau, which has the power to approve or reject individual projects. Groups that are seen as overly critical of the government, particularly on issues concerning human rights, are regularly denied permission for proposed projects and have been subject to escalating harassment and surveillance. Leading human rights NGO Odhikar continued to experience significant harassment in 2015, including judicial action, blocks on funding, surveillance, and interference in its public activities.

In Nepal, while the new constitution allows non-governmental organizations to form and operate within the country, legal restrictions have made this difficult in practice. The District Administration Office (DAO), which is in charge of registering NGOs and associations, is often understaffed and lacks essential resources. Foreign NGOs must enter into project-specific agreements with the Nepalese government.

In Pakistan, 2015, the space for NGOs to function was significantly reduced when the Federal Interior Ministry announced its intention to adopt new registration procedures for both national and international organizations, restricting them to pre-assigned areas of activity. Some NGOs, including the Norwegian Refugee Council, were ordered to leave, while 20 international NGOs were placed under investigation, moves that ensured that NGOs operated in a climate of suspicion and uncertainty. The interior ministry also announced a ban on the aid agency, Save the Children, though this was later rescinded. The Interior Minister publicly voiced concern that NGOs were involved in anti-state activities, such as espionage, and financing terrorism. International CSOs will now have to agree to a memorandum of understanding with the government, report to the government every six months and submit an annual plan to government, detailing projects, budgets, international funding sources and bank accounts. Registration with the Ministry of Information and agreement to monitoring by this agency will be mandatory. Approval will need to be given by provincial and local authorities for international CSOs to implement projects. International CSOs will be forced to limit administrative spending to no more than 30% of project costs, and be allowed to recruit no more than 10% of their staff internationally. Visas for foreign staff will be limited to one year in length. Prior permission will be needed to give funding to any other CSOs – international or domestic.

In some countries, government restrictions and harassment have become so frequent and severe that organizations decide to pull out voluntarily. In 2013, Friedrich Ebert Stiftung, after five decades in the country, temporarily closed its office in Sri Lanka due to an on-going governmental campaign against its activities as well as the work of other CSOs. In a public statement, the foundation cited the refusal of authorities to extend the office director's visa, the confiscation of the passports of employees, threats of arrest, and harassment of the center's director as reasons for the closure.

Freedom of Expression

This section will examine freedom of expression using two major parameters; freedom of the internet and freedom of the press.

The internet has become a major arena of contestation between civil society and other supporters of freedom of expression and internet privacy and governmental, political and private interests that seek to restrict freedom of expression and gather information on internet activity. Increasingly, countries are penalizing dissenting internet activity with jail sentences. According to a recent Freedom House report, internet freedom around the world has declined for a fifth consec-

utive year as more governments censored information worthy of public interest while expanding surveillance and cracking down on privacy tools. South Asian countries like India, Bangladesh and Sri Lanka qualified as “partly free” in this study, while Pakistan qualified as “not free.”⁶

Governments have implemented repressive media laws that amount to state control of the internet, which they claim is necessary to preserve stability, fight terrorism, or defend national sovereignty from Western interference. The Indian government has resorted to claims that protests are externally controlled in order to discredit local resistance to, say, oil pipelines or coal mines that are supposed to generate profits and growth. In all of these cases, the goal is the same: to preserve political power and/or secure the economic interests of those at the top. According to the Freedom House report cited above, across South Asia **content removals increased and arrests and intimidation escalated** for sharing information concerning politics, religion, or society through digital networks. **Governments undermined encryption and anonymity** as instruments of terrorism, and many tried to ban or limit tools that protect privacy.

Case: Pakistan

Civil society has expressed concern about a new bill on cybercrime, introduced in August 2015, because it contains unclear and broad language and stipulates excessive punishments, which would have a potentially disproportionate impact on the right to privacy and freedom of expression and hinder legitimate online activity. That internet freedoms are compromised was acknowledged by Blackberry, which threatened to pull out from Pakistan in November 2015 over concerns about state surveillance. While the government lifted a three-year ban on YouTube in January 2016, this was on condition that a local version be introduced that gives the government a broad scope to apply censorship. These restrictions are consistent with a broader attack on civic space, which has included the prosecution of peaceful protestors, and the introduction of new laws to constrain CSOs that is discussed further below.

Global press freedom declined to its lowest point in 12 years in 2015 as political, criminal, and terrorist forces sought to co-opt or silence the media in their broader struggle for power. Journalists and commentators across much of South Asia faced threats and deadly violence for raising controversial topics during 2015. Making matters worse, the region’s governments tended to ban and prosecute discussion of such issues rather than protecting those who dared to address them. Extremists in Bangladesh murdered at least four bloggers and a publisher who produced content that was critical of religious fundamentalism. Many other writers, after being threatened or injured in similar attacks, felt compelled to go silent, relocate, or flee the country. Meanwhile, the authorities temporarily blocked social media on security grounds, allegedly forced the suspension of a popular political talk show, and threatened dozens of people with contempt of court charges for signing a letter in support of a British journalist who had been convicted on similar charges in late 2014. The government also reportedly pressured private companies to withdraw

advertising from two critical newspapers; in early 2016 the editors of the paper faced multiple charges of sedition, defamation, and hurting religious sentiment.

In India, among other killings, one journalist was burned to death by police in the state of Uttar Pradesh after he accused a minister of corruption. Journalists have faced a wave of threats and physical attacks in recent months, particularly from right-wing groups, adding to doubts about press freedom under the current government. Separately, Indian officials banned a documentary film on the contentious problem of violence against women in the country, and temporarily suspended broadcasts of Al Jazeera English because the station showed a map that did not match the government's position on Kashmir.

Unlike its neighbours, Sri Lanka experienced a marked improvement in press freedom conditions after a new government took power in early 2015. Journalists faced fewer threats and attacks than in previous years, investigations into past violence made progress, a number of websites were unblocked, and officials moved toward the adoption of a right to information bill.

This year saw a lot of debate in India over increasing intolerance in the country. This was due to the murder of three well-known rationalist thinkers, the mob lynching of a Muslim man over cow slaughter rumours and the killing of dalit children. A number of civil society members, including scientists, historians, writers and filmmakers, returned their top government awards to protest against this communal unrest. Many have questioned the reasons for hyping this debate now, as intolerance has always existed in Indian society, arguing that the country was worse during the emergency period under Congress government rule in the 1980s.

Case: Pakistan

Civil society activists in Pakistan have received death threats. The most notable case of a civil society activist being shot down in cold blood was the murder of Sabeen Mehmud. She was a progressive, a pacifist who ran a café that was no threat to anyone. But while she was returning from a seminar on human rights abuses in Balochistan, she was gunned down at a traffic intersection. At the same time, a vicious campaign was unleashed against her supporters and co-workers. The campaign was mounted online as well as on TV. It claimed that they were traitors to the country and that others had conspired to murder Sabeen in order to get publicity. A month later, the state arrested two young men who were guilty of many crimes of terrorism. In addition to confessing to many other crimes, they also confessed to Sabeen's murder for her campaign against the cleric of Lal Masjid, Abdul Aziz. Pakistan's civil society remains unconvinced and feels that her murder was connected to her work in Balochistan. The whole incident introduced enormous fear within civil society and among human rights activists.

Freedom of Assembly

Governments are also cracking down on popular social movements. In recent years, protests at the local level– opposing everything from poor working conditions to illegal logging, land grabs, and environmentally or socially damaging infrastructure projects– have proliferated.

Case: Bangladesh

Various groups are able to organize rallies to protest against issues including violence against women and attacks on minorities. These are not interfered with and often receive police protection. However, some other politically sensitive protest rallies, such as those against environmental pollution, the unlawful acquisition of land, infrastructure development, and the displacement of people, are often met with police brutality. Recently, a mobilization of local people against the construction of a coal-based power plant in Bashkhali was met with aggression, leaving five people dead. Thousands of unnamed people were also arrested and charged with inciting violence. Garment workers also came under attack from the police when they staged rallies demanding payment of salaries. However, police forces use the most aggressive tactics when dealing with rallies and processions organized by the political opposition. Organizers of these rallies often do not get permission to stage protests in their preferred locations. Even when they get permission, they often face brutal physical attacks by the police using tear gas and baton charges in the name of maintaining law and order.

Civil society finds itself under attack on two fronts, by both the government and religious.

Case: Afghanistan

On June 23rd, a suicide bombing during a protest in Kabul killed 80 people and injured more than 200. The protest was staged by the Hazara community over a new proposed power line that bypasses the provinces where they live. The bombing, which was perpetrated by the terrorist group known as the Islamic State (IS), illustrates the threats experienced by Afghan civil society and activists from violent non-state actors. This attack was the worst bombing in Kabul since 2001, highlighting a worrying decline in respect for civic space, mainly because of the actions of proscribed terrorist organizations. Although citizens are increasingly exercising their right to engage in peaceful protest, in some cases, and particularly in the rural areas of the country, police use excessive force and arrest protestors, or the protest is hijacked by armed groups. In 2015, a suicide bombing killed at least 20 people during an anti-corruption protest in Afghanistan's eastern province of Khost.

Conclusion

Civic space is undoubtedly on a downward trajectory. This is attributed to a number of factors including the consolidation of elite economic power, the exploitation of the security and anti-terrorism agenda, state backlash against popular protests, the rise of extremist forces, and the lessening of pressure by external funders and investors to comply with human rights norms and laws.

Despite the increasing international response, civil society is still losing space in many South Asian countries. Just as restrictive legal environments around the world increased after the Color Revolutions in some former Soviet countries, the Arab Spring of 2011 triggered a new wave of restrictive measures against popular uprisings, public movements, and civic associations. This proliferation of legal restrictions imposed on civil society continues around the world while adding to the more traditional forms of repression, such as imprisonment, harassment, disappearances, and executions.⁷

The internet and the funding of civil society have become new and key areas of contestation, and civil society activists are being targeted on the basis of the challenge their advocacy offers to power, and also on the basis of their identity as members of excluded groups.

The issue of shrinking and closing spaces for civil society must be added to the agenda of national parliaments, multilateral organizations, and international negotiation processes. Freedom of expression, association, and assembly are the essence of democracy. Efforts to limit such freedoms therefore must be regarded as a challenge to all democratic governments and global cooperation – and they must be stopped.

Endnotes

¹ <http://www.idea.int/resources/analysis/loader.cfm?csmodule=security/getfile&pageid=37873>

² <https://th.boell.org/en/2016/05/11/return-repression-closing-and-shrinking-spaces>

³ CIVICUS (2012) State of Civil Society, Published April 2012 by CIVICUS: World Alliance for Citizen Participation, Johannesburg, South Africa. Available at <http://socs.civicus.org/2011/wp-content/uploads/2012/04/State-of-Civil-Society-2011.pdf>

⁴ <http://www.hindustantimes.com/india-news/fcra-registered-ngos-halved-in-two-years-10-000-more-ngos-lose-fcra-licence/story-vkVod2CLyjedTmpuVUoE6J.html>

⁵ http://www.civicus.org/images/documents/SOCS2016/summaries/YIR_Civic-Space.pdf

⁶ <https://freedomhouse.org/report/freedom-net/freedom-net-2015>

⁷ <http://www.movedemocracy.org/sites/default/files/%28English%29%20Defending%20Civil%20Society%20Report%202nd%20Edition.pdf>