

ROLE OF CIVIL SOCIETY IN WHISTLEBLOWING – AN OVERVIEW

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ABSTRACT

Civil society is an indispensable part of any democratic polity. It plays a major role in governance and development of a country. After the advent of Liberalization, Privatization and Globalization, the role played by civil society is also increased. A strong civil society is now one of the cornerstones of the democracy. The Constitution of India under Article 19(1) (c) guarantees to its citizens the Freedom to Form Associations or Unions which include the freedom to form civil societies or any group of persons. Civil society has to play numerous roles including in the field of whistleblowing and whistleblowers protection through pressurizing the government to make necessary legislative reforms and further providing support and help to whistleblowers.

INTRODUCTION

The notion of civil society is a complex concept which defies a precise definition. However, in common parlance, it refers to the networks and relationships of those groups that are not organised or managed by the state in terms of membership and constitutes variety of groups, social network and institutions. For example, academic institutes, community based organisations, labour unions, environmental organisations, human rights groups etc. all fall under the civil society. Thus, the term civil society may be viewed as a particular group of society with a clearly demarcated purpose, functions, structures, organisations and mechanisms in pursuit of its agenda. There are various terms used to describe the civil society organisations such as civic institutions, social movements, non-governmental organisations, voluntary organisations, third party sector and independent advocacy groups. In the present background of Liberalisation, Privatisation and Globalisation (LPG) and state minimalism, the civil society as an integral part of society is emerging to play a leading role in public affairs, political and administrative processes¹.

Civil society consists of open and secular institutions that mediate between the citizen and the state. Thereby state and civil society don't work as antithetical or substitutable but as complementary to each other. Private associations and pressure groups act as a powerful brake on state institutions and also monitor the conduct of public servants. In the absence of civil societies, the state machinery and civil servants becomes the dominant nexus of power. Even the modern idea of self-government requires emergence of civil society which would make people self-reliant rather than remain dependent on state institutions and subject to their control. People acquire more characteristics of a ruler than ruled where they set up associations or NGOs to assert their rights and preferences in the domain of public policies².

Civil society helps at three stages of governance which include: (a) internal systems and procedures, (b) cutting edge systems and procedures and (c) check and balance systems.

At the first stage, civil society can influence policy and project formulation through membership of committees, submission of memorandum directly or through elected

¹ Arunoday Bajpai, "The Civil Society: Meaning and Role, issue 34, April 2009, *available at: emagazine.pdgroup.in/emagarchives/*. (Visited on April 12, 2016).

² *Available at: <http://lawmin.nic.in/ncrwc/finalreport/v2b3-2.htm>* (Visited on March 20, 2016).

representatives and interactive rulemaking in the implementation of policies, projects and schemes affecting citizens.

At the second stage, the maximum day to day interaction between the government and citizens take place and the popular image of governance is formed.

At the third stage, irregularities are exposed rather than steps for improvement in the quality of governance³.

Civil society is an indispensable part of any democratic polity. It plays a vital role in governance and development of a country. It helps the government in decision making, policy formulations and implementation. A strong civil society is now one of the cornerstones of the democracy, good governance, achievement of important social and economic goals. It has become a prominent tool that can correct state and market failures. In a democracy, individuals should be able to understand and protect their interests and values, have potential capacities to participate in collective decision and policy making and voting. Moreover, democracy is inherently public. According to the quoted definition by Lincoln, "*Democracy is the government of the people, of the people and by the people*". So, civil society is a factor that directly influences the building and well-functioning of democracy. Also, civil society associations serve institutional functions that are necessary for the realization of democracy⁴.

BRIEF HISTORY OF CIVIL SOCIETY ACTIVITY IN INDIA

Civil society in India is a growing trend that is catching momentum due to growing number of civil society organisations, activists, non-profit organisations etc. but the roots of voluntary action for the common good that forms the essence of civil society virtues can be traced all the way back to Indian history. The Hindu concept of Dharma as well as all other major religions in India such as Buddhism, Islam, Sikhism, Jainism and Christianity all lay stress on a moral code of conduct and behaviour that ultimately serves for the common good of the society⁵.

³ Available at: <http://www.thehindu.com/todays-paper/tp-features/tp-openpage/the-role-of-civil-society-in-good-governance/article2276002.ece> (Visited on April 2, 2016).

⁴ Available at: <http://oval.az/how-important-is-an-active-civil-society-for-a-well-functioning-democracy/> (Visited on April 23, 2016).

⁵ Available at: https://ccsinternship.files.wordpress.com/2013/05/303_civil-society-in-india-making-good-governance-reality_chandar-prabha-sharma.pdf (Visited on March 23, 2016).

India has a long history of civil society based on concept of *daana* (giving) and *seva* (service). Voluntary organisations (organisations that are voluntary in spirit and without profit making objectives) were active in cultural promotion, education, health and natural disaster relief as early as the medieval India.

Mishra, Kailash K., explores the roots of civil society in ancient India and concluded that India is a wonderful country where the people of thousands of castes, all major religions and more than 427 odd tribal communities have been living maintaining an exemplary communal harmony. It is rooted in its traditions. The thousands of years of Indian history confirms that we have civil society right from the Vedic period. Vedic hymns describe about egalitarian and democratic norms of their society. In this context some people's assemblies like Vidath, Sabha and Samiti have been mentioned. Vidath was a general meeting of the jana which had redistributive functions. Vedic seers also describe about *kilvis samprat* that means general consensus. In all the Vedic assemblies' decisions were taken on the basis of consensus only. Sabha was a body of village elders and it assisted the *janasya gopah*. The etymological meaning of *janasya gopah* is the protector of the people or fellowmen as well as their cattle wealth. But in practice it was used for the *rajanya* i.e., ruler. Samiti was a general assembly in which all the members of the community participated. Its main function was to elect the ruler. The most remarkable fact about all these assemblies was that women also participated in it. *Sabha* and *samiti* had been depicted as the two daughters of Prajapati and especially *samiti* has been termed as *narista* that means a place where intellectual discourses or discussions can be made. *Sardh*, *vrata* and *gana* are the three other assemblies about them also we have a number of references. Mention can be made of *gosthi* that was like a modern days *Chaupal* in which discussions regarding day today socio-economic problems of village life were discussed. The Vedic seers used a fascinating term, *madhyamsiriv* i.e., in case of indecision or altercation in the assembly the elders should opt the middle path to maintain the harmony and solve the problems. So Vedic period assures a balanced and ordered civil society. Later also all rulers, political thinkers and seers tried hard to honor the individual as well as the group liberty⁶.

⁶ Kailash Kr. Mishra, "Chaupal as Multidimensional Public Space for Civil Society in India", available at: <http://ignca.nic.in/kmsh0004.htm> (Visited on April 30, 2016).

Numerous religious reform movements were formed throughout the 19th century were perhaps the first organised forms of voluntary action. This was the period when the caste rigidities were strong, untouchability was in practice, and other social evils like child marriage, curse status of widow's were prevalent in the Indian society against which voluntary organisations or civil societies came forward and launched reform movements e.g. the Brahmo Samaj, the Ramakrishana Mission, the Prathana Samaj, the Satya Shodhan Samaj and the Arya Samaj were some reform movements which emphasized on unity of Hindus, played an important role in the freedom movement and further strengthened Indian civil society. The national resistance movement spearheaded by Indian National Congress (INC), became the main source of civil society activity in early 20th century British India⁷.

After the passing of the Constitution of India, there are some Fundamental Rights which are given to people of India under Part III (Articles 12-36). One such important right is – Right to Freedom under Article 19. Article 19 (1) (c) guarantees to its citizens the freedom to form associations or unions. However, under Clause (4) of Article 19, reasonable restrictions can be imposed on this freedom by the state. An association means “a collection of persons who have joined together for a certain object, which may be for the benefit of the members or the improvement, welfare or advantage of the public or some scientific, charitable or similar purpose”⁸. It is a term of widest connotation. Therefore, the associations formed will include political parties, civil societies, clubs, companies, organisations, trade unions and indeed any group of persons. In *Damyanti v. Union of India*⁹, the Supreme Court observed that the right guaranteed under Article 19 (1) (c) is not merely the right to form associations but also implies the freedom to form or not to form, to join or not to join an association or union.

After the independence, the Government of India increased its presence in social welfare and development but recognised the potential for civil society to supplement and complement its efforts. The first Five Year Plan stated, “Any plan for social and economic regeneration should take into account the services rendered by these agencies and the state should give them maximum cooperation in strengthening their efforts”. The Central Social Welfare Board was

⁷ Vijender Singh, “An Analysis of Concept and Role of Civil Society in Contemporary India”, available at: https://globaljournals.org/GJHSS_Volume12/10-An-Analysis-of-Concept-and-Role.pdf (Visited on May 3, 2016).

⁸ Ballentine, Law Dictionary, 1948, 118, quoted in Basu's Commentary, C, 238.

⁹ AIR 1971 SC 966.

established in 1953 to promote social welfare activities and support people's participation programs through NGOs. This additional funding and recognition led to a growing body of professional NGOs. The Government of India decentralised development activities throughout the 1950s. The establishment of the National Community Development Program and the National Extension Service were early steps in this direction. Further decentralisation was achieved with the introduction of the three-tier Panchayati Raj system in 1958. During 1980s, NGO's began to be formally recognised as development partners of the state.¹⁰ Thus after the independence India is witnessing a steady rise of civil society. From 'Chipko Movement' and Narmada Bachao Andolan and the Right to Information movement India has come a long way. Environment movement in India is strong now and has led to cancellation of multiple projects in India after civil society agitation. The most recent movement by India against corruption led by activist Mr. Anna Hazare for passing 'the Jan Lokpal Bill' is also a sincere effort of civil societies for the betterment of people¹¹.

ROLE OF CIVIL SOCIETY IN WHISTLEBLOWING

The role played by civil societies and their importance to society have now been increasingly been recognised. Civil society is now expected to play important numerous roles. Civil society organisations are important players in national political life, with the potential to improve governance and transform state-society relations. Civil societies or NGOs are active to promote education, particularly among the un-benefited or less benefited sections of the society and for the empowerment of women and fighting against human right violations. They are also doing commendable work in the protection of environment¹². Even in the field of whistleblowing or exposing corruption, the role played by civil society groups and NGOs are very crucial and important.

The Secretary General of United Nation, Ban Ki-Moon, once highlighting the importance of civil society in democracy held that "Civil society is the oxygen of the democracy. Civil society acts as a catalyst for social progress and economic growth. It plays a critical role in keeping

¹⁰ Available at: <http://www.adb.org/sites/default/files/publication/28966/csb-ind.pdf> (Visited on May 3, 2016).

¹¹ Lokanath Suar, "Our Civil Society as an Instrument of Social Change", available at: <http://odisha.gov.in/e-magazine/Orissareview/2011/Dec/engpdf/62-67.pdf> (Visited on May 6, 2016).

¹² Puja Mondal, "NGOs and Development: History and Role in India", available at: <http://www.yourarticlelibrary.com/sociology/sociology-of-development/ngos-and-development-history-and-role-in-india/30699/> (Visited on May 4, 2016).

government accountable and helps represent the diverse interests of the population, including its most vulnerable groups”. He further said that the hallmark of successful and stable democracies is the presence of a strong and freely operating civil society – in which government and civil society work together for common goals for a better future, and at the same time, civil society helps keep government accountable¹³.

The UN Convention against Corruption (UNCAC)¹⁴ expressly identifies the important role that civil society plays in tackling corruption at all levels and in holding the governments accountable. Article 13 of the Convention provides in this regard as:

“Each State Party shall take appropriate measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community based organisations, in the prevention of and fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption”.

The Whistle Blowers Protection Act, 2011 also recognizes importance of civil society in reducing the corruption and to check the misuse of powers of public officials. This Act is a specific legislation to provide adequate protection to the persons reporting corruption or wilful misuse of power or discretion which causes loss to the government or who disclose the commission of a criminal offence by a public servant. Under this Act, any individual or NGO can be a whistleblower. As provided in Section 4 of the Act, any public servant or any other person including any non-governmental organisation may make a public interest disclosure before the Competent Authority.

Civil society plays an important role in supporting whistleblowing. It pressurises the government to make necessary reforms. Around the world, civil societies are active in trying to improve people’s lives and helping the society to save countless public money. Civil societies or NGO’s are often the first to take seriously the information a whistleblower has provided and make efforts for its proper redressal. These groups have also rallied to support

¹³ Available at: <https://tivnews.wordpress.com/2015/09/17/international-day-of-democracy/> (Visited on April 2, 2016).

¹⁴ Available at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf (Visited on March 12, 2016).

those whistleblowers who suffer unfairly for having spoken up in the interests of others.¹⁵ While in India, Right to Information Act has given new meaning to the concept of whistleblowing, it does not provide any safeguards to protect those who seek the information under the Act. Active efforts of various RTI activists, Civil Society groups and NGO have resulted in enactment of the Whistleblowers Protection Act, 2011 (WBPA). This new law provides adequate safeguards against victimisation of the person making complaint relating to disclosure of any allegation of corruption or wilful misuse of power or discretion. There are different ways that civil societies and NGO's can and do support whistleblowers.

The role played by civil society in whistleblowing and whistleblowers protection can be summarised as follows:-

- (a) Civil societies and NGO's can help to keep the identity of whistleblower secret and also ensures that the complaint is properly heeded.
- (b) The civil society associations generate awakening among the people about their rights and entitlements. The civil society groups generate political consciousness among people by discussing various political and social issues.
- (c) Civil society groups can provide legal advice to employees on whether and how to blow the whistle and accompany them throughout the process.
- (d) They can help the people to have awareness about various laws that can be used to blow the whistle and further help them in taking protection.
- (e) Civil societies can influence policy and project formulation through membership of committees, submission of memorandum etc.
- (f) They can play a supportive role in promoting effective implementation of whistleblowing laws.
- (g) Civil society can also help in promoting code of ethics in society by making general awareness.
- (h) Civil society plays an important role in strengthening democracy and promoting good governance. The civil society organisations work as watch-dogs of public interest. They not only facilitate the people's participation in administrative process but also make the administrative machinery more responsive to people's need.

¹⁵ Available at: <https://whistlenetwork.files.wordpress.com/2014/01/myers-article-website-version-jan14.pdf> (Visited on January 29, 2016).

- (i) It also serves as a check on wrongdoers because they feel more uncomfortable while committing any wrongdoing as civil societies generally opt to take action against those activities which are against the interest of society.
- (j) The civil society was initially viewed as a check on arbitrariness of state authority but in the contemporary context, it has been viewed as positive tool to supplement the efforts of the government in the deepening of democracy and promoting participatory development.
- (k) Civil society organisations are doing commendable service in the promotion of values of freedom, democracy, social justice, whistleblowing and sustainable development.
- (l) Civil society can help to challenge the impunity of attackers and to build an international coalition to protect whistleblowers.
- (m) The passage of many laws in India is the result of intensive efforts made by various civil society groups e.g., The Right to Information Act, 2005, The Whistle Blowers Protection Act, 2011 and The Lokpal and Lokayuktas Act, 2013.

CONCLUSION

Around the world, civil society groups or NGOs are active in trying to improve people's lives and their environment in which they live. Civil society or NGO's are often the first to take seriously the message a whistleblower has delivered or is trying to deliver. Civil society deters the government and corporate transgressions to some extent. There are different ways that civil society and NGOs can and do whistleblowing and support whistleblowers. From providing early confidential advice, legal advocacy, counselling, public education and general awareness and further keeping the identity of whistleblower secret and to ensure that the message is properly heeded. Thus, civil society groups and NGOs play a vital role in whistleblowing and further protecting the whistleblowers.