



Foreign NGOs in China: Emerging from the Shadows

Speaker: Santosh Pai

Chair: Ravi Bhoothalingam

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The seminar commenced with opening remarks from the Chair, Mr Ravi Bhoothalingam, Honorary Fellow, Institute of Chinese Studies (ICS). The relevance of the topic at hand was noted by highlighting the similarities between China and India with respect to foreign NGOs. While huge populations and commensurate social maladies in both countries generate opportunities for foreign NGOs, governments in both are wary of activities considered to be detrimental to national interests. The floor was subsequently handed to the speaker.

The speaker's focus was a law enacted in 2017 entitled 'Law of the People's Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China.' The law alters and formalises registration procedures for foreign NGOs in China. Around 7000 NGOs have been affected by the legislation and only 415 have successfully registered since the law's enactment. Importantly however, the law should be observed within the context of a broader contemplation in China regarding the rule of law and is the product of a balancing act between security considerations and the development of civil society. The speaker maintained that it is an innovative piece of legislation insofar as it aligns NGO entry with national objectives.

This claim was qualified by drawing attention to Article 3 of the law which lists the domains in which intervention by foreign NGOs is considered 'proper' by China. The law lists areas wherein intervention by NGOs would be welcome. These are in line with China's national objectives and include economics, education and science. Human rights and LGBTQ issues are unsurprisingly left out of the list. The State is expected to employ a combination of hard

and soft touches in regulating foreign NGOs. The Ministry of Public Security has been instructed to regulate NGOs only in case they cross red lines and step into domains such as national security, reunification and ethnic unity. Under ordinary circumstances, the day to day monitoring of foreign NGOs has been delegated to local government bodies whose mandate is to encourage intervention in key areas.

Thereafter, the speaker provided a granular picture of the implementation procedures under the new law which illustrates the intrusiveness of the State. Two modes of operation are available to foreign NGOs. In the first, the NGO can establish a Representative Office in China for which it must secure sponsorship from a Professional Supervisory Unit (PSU) which is a government agency that oversees the NGOs domain in China. For example, commerce related NGOs will need to secure sponsorship from the Commerce Bureau. This needs to be done even before the application for registration is made. The speaker described this as a “daunting requirement” since the ministry effectively becomes responsible for the NGOs activities in China; individual officials are even criminally liable under the new law if NGOs sanctioned by them are subsequently found to be undesirable. Nevertheless, no applicant NGO has been rejected in subsequent steps of the registration process once sponsorship was obtained. The presence of the NGO is considered permanent and it is free to operate anywhere in China. Even so, the tediousness of this procedure is a major deterrent.

The second method is less tedious and, therefore, preferred by foreign NGOs. They apply for registration to conduct a temporary activity. For this, an NGO must partner up with a “Chinese Partner Unit” (CPU) which includes a wide range of entities from universities and Party units to Chinese NGOs. This is a simpler task than securing sponsorship since the political capital of a particular ministry is no longer at stake. However, continuity of the NGOs operations is less certain without a patron in a ministry. Moreover, the CPU is required to be sponsored by a PSU, effectively involving the State in the process, albeit derivatively. The requirement of approval from Chinese entities to operate is, according to the speaker, the biggest hurdle NGOs face and would be completely unimaginable in a polity such as India.

State scrutiny notwithstanding, the broader attempt has been to facilitate registration of foreign NGOs using an enabling clause which is enshrined in Article 33 of the law. The NGOs, in turn, view the strict regulations as the natural cost of operating in China. In response to a comment from the member of the audience, the speaker clarified that while

China is hardly “open” to foreign NGOs, regulations enshrined in the law do not constitute a clamp down. Compliance requirements for NGOs which include annual inspections and reporting requirements are fairly clear and free of “teething problems” that generally accompany new legislation. Supervision of the NGOs activities which is jointly carried out by the State Council, Public Security Bureau and PSUs has not resulted in any instances of penalties or punishments since the law was enacted. The speaker noted that the legislation has proven capable of handling most matters due to the stringent first step in the registration process.

The speaker contended that China has devised a significantly innovative legal framework in order to align foreign NGO regulations with national objectives and suggested that India could take certain cues from it without sacrificing its legal spirit of openness. Statistics of NGO registrations by domain ostensibly mirror China’s priority areas such as trade, international outreach and education. Article 8 of the law even declares a reward for “NGOs making outstanding contributions to the development of public welfare in China,” a rare carrot not common in most NGO laws in the world. Reports by foreign NGOs have also been utilised to further the reform agenda such as was observed in the case of the Shaanxi coal plant closures. Regarding the replication of similar legislation in India, the speaker noted that regulation which focused attention on certain thrust areas could help. On a final note, the speaker observed the need to develop a study comparing the legal regimes governing foreign NGOs in China and India as well as the underlying sentiments behind them.

About the Speaker

Santosh Pai has been offering legal services to clients in the India-China corridor since 2010. His areas of interest include Chinese investments in India, India-China comparative law and policy, cross-cultural negotiations and board governance. He holds a B.A., LL.B. (Hons.) degree from NLSIU, Bangalore, LL.M. (Chinese law) from Tsinghua University, Beijing and an MBA from Vlerick University, Belgium (Peking University campus). His manuscript “Practical Guide on Investing in India for Chinese investors” has been translated into Chinese and published by China Law Press. Santosh is currently a partner at Link Legal, an Indian law firm. He teaches a India-China business course at IIM Shillong and volunteers at NGOs in his free time. He chairs the East Asia board of an international environmental NGO which oversees operations in Mainland China, Hong Kong, Taiwan and South Korea.

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