

Foreign Contribution (Regulation) Act and Foreign Funding of NGOs in India

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Introduction

There was a time when crimes were committed by any recognised terrorist organisations or fraudulent enterprises, but no one would have predicted that an NGO could be used to support terror and commit other heinous crimes. For years, India had noticed a large inflow of funds from various foreign sources via NGOs and other organisations. To address the claimed negative impacts of foreign donations, the Ministry of Home Affairs has developed a Prior Approval Route. Now Organizations seeking foreign contributions for cultural, social, economic, educational, or religious activities may get FCRA Registration or receive foreign contributions under the "Prior Approval Route".

Close to 19000 NGOs have been barred from receiving foreign funds and several non-governmental organisations (NGOs) have had their Foreign Contribution (Regulation) Act (FCRA) registration or license, which allows them to receive foreign contributions, either not renewed or terminated. Foreign donations bring approximately ₹16,000 crore to Indian NGOs every year and according to the government, many NGOs are not functioning in the national interest since they are funded by foreign governments and serve foreign agendas. As a result of this logic, their presence in India must be reduced, and the easiest way to do so is to cut off their finance. Given the intricacies of the regulations, it is simple to conclude that these organizations violated a number of FCRA standards. The Act introduced a screening system to ensure that Organizations or their executives do not divert foreign donations to activities that are detrimental to national interests. The idea of a "permanent" registration has been eliminated by the FCRA, in 2010. All previously registered Associations have a five-year validity period. The Act also requires

the proactive publication of information regarding foreign contributions exceeding Rs. 1(one) crore received by any NGO in a calendar year.

Historical Background

The Act was first passed in 1976 with the intention of controlling the acceptance and use of foreign donations by individuals and organisations. The overarching goal was to prohibit foreign entities from having undue influence on the operations of governmental or non-governmental organisations in the country via contributions.

The 1976 Foreign Contribution Control Act was repealed by the UPA administration in 2010, which replaced it with a new FCRA. Its principal purpose was to consolidate the rules on foreign funding and "prohibit acceptance and utilisation of foreign gift or foreign hospitality for any conduct injurious to the national interest".

Since 2010, the FCRA applies to all associations, groups, and non-governmental organisations (NGOs) who wish to receive foreign donations. It seeks to guarantee that such donations do not jeopardize internal security.

All non-governmental organisations (NGOs) seeking foreign money must register with the Ministry of Home Affairs under FCRA and file annual returns similar to income tax filings. Foreign donations can be made to registered non-governmental organisations (NGOs) for social, educational, religious, economic, and cultural reasons.

Since 2015, NGOs have been obliged to make an undertaking that accepting foreign funding would not jeopardise India's sovereignty and integrity, or impair amicable ties with any foreign state, and will not undermine communal harmony.

The regulation was strengthened even more in 2020, requiring all NGOs to incorporate the following:

1. Deposit funds in a gateway account with the State Bank of India (SBI) in Delhi.
2. lessen the foreign contribution available for administrative costs.
3. No longer re-allocate FCRA contributions to other organisations, regardless of whether they have FCRA clearance.

Who can receive Foreign Donations under FCRA?

Members of the legislature and political parties, government officials, judges, and members of the media were initially barred from accepting foreign contributions. Nevertheless, in 2017, the Ministry of Home Affairs enacted a Finance bill revising the FCRA law that had been abolished in 1976, allowing political parties to collect contributions from an Indian subsidiary of a foreign corporation or a foreign company in which an Indian owns more than 50% of the stock.

Other Ways of receiving Foreign Funding

Any organization seeking foreign funding can apply through “prior permission”

- a. It is granted for a receipt of a specific amount from a specific donor for carrying out specific activities or projects.
- b. The association should be registered under statutes such as the Societies Registration Act 1860, Indian Trusts Act, 1882, or Section 25 of the Companies Act, 1956, or incorporated as a section 8 Company as per the Companies Act, 2013.
- c. A letter of commitment from the foreign donor specifying the amount and purpose is also required.

Need for FCRA

The necessity for FCRA was initially recognised in the late 1960s when multinational organizations such as the CIA were required to have relationships with trade unions, student bodies, youth organisations, political organisations, and so on. Consequently, it was first authorised in 1976 enabling groups and individuals active in considerably important sectors of national life to receive and use foreign funds.

The administration emphasised that foreign contributions might be detrimental to national interests and that their use must be closely regulated. Notwithstanding the tight regulations, foreign contributions have steadily increased over the years. Shifting cash to other charities makes auditing their allocation harder. Also, it raised the share of funds spent on administrative operations of transferees rather than on people's well-being. According to the government, there was widespread noncompliance, with over 19,000 charities losing their licenses owing to defaults.

To ease the changeover, the SBI had made enough preparations for customers to create accounts from afar, and most had been successful.

The government also argued that certain organizations were simply involved in the channeling of funds, resulting in a principal-client relationship with other NGOs. Similarly, there were certain NGOs that came under the lens for having Naxalite connections. Ultimately, the government said that no one, whether an individual or an organization, had the basic right to receive foreign contributions and that the legislature had the authority to prohibit it altogether or authorize it partially under supervision.

The court's decision supported the government's stance. Court determined that the SBI had made enough provisions to assist consumers in setting up gateway accounts and that the requirement itself was fair. It also noted that there was a need to defend India's sovereignty from undue foreign interference and that the legislature's decision to control foreign contributions could not be criticized. Furthermore, it rejected the allegation that the alteration infringed on the basic rights to association, expression, and livelihood, as well as that the criteria were arbitrary. The only tiny exception granted by the court was that a trustee might now use their passport as an identity for FCRA registration rather than their Aadhaar number.

Problematic Donations and Consequences

There are several donors who have been apprehended for malpractices and have also been placed on a 'watch list' or in the 'prior permission' category. These include donors like U.S.-based Compassion International, Ford Foundation, World Movement for Democracy, Open Society Foundations, and National Endowment for Democracy have been placed on a 'watch list' or in the 'prior permission' category.

Why the NGOs have been under the lens

- Significant Changes were made in the FCRA in 2010 due to illegitimately funded protests near nuclear powerplants. 3 US non-governmental organisations were found to be fuelling protests at the Kudankulam Nuclear Project Site after strained Indo-US relations. Hence, the government amended the FCRA in 2010.
- NGOs have been involved in various illicit activities such as conducting unauthorized biotech research, which is against the law. These activities have not only tarnished India's image in the international community but have also disrupted important development projects. In addition to this, NGOs have also been funding radicalization and conversions,

propagating misinformation, and engaging in planned propaganda to destabilize internal peace.

- Furthermore, these organizations have also been found guilty of funding disruptions to stall operations at strategic locations like power plants and other key government-owned installations.
- Shockingly, several NGOs that received crowdfunding money for COVID relief diverted the funds for other purposes. Even more concerning is the discovery that foreign funds, which were received by many NGOs, have been traced back to entities linked to Al Qaeda and LeT. Such actions have far-reaching implications and pose a serious threat to India's security and stability.
- Solicitor General Tushar Mehta, representing the Union (in the 2020 amendment hearing), referred to confidential information from the Intelligence Bureau—which indicated that foreign donations were being used for 'Naxalite and other activities', without elaborating on what these activities were. This threatened 'national security and integrity'
- NGOs like Missionaries of Christ (associated with Mother Teresa) was found involved in child molesting, sexual harrasment, human trafficking, terror funding, forced conversions
- Similarly there are certain NGOs like Rajiv Gandhi Foundation/charitable trust that have found to be sharing sensitive information to nations like China under the garb of development and trade agreements.

Cases when the registration of the organization can be suspended

1. Whenever the Ministry of Home Affairs receives any negative feedback about the operation of an association, it inspects it and can suspend the FCRA registration for up to 180 days.
2. Until the final decision is made, the association cannot accept new donations and cannot spend more than 25% of the funds in the designated bank account without the consent of the Ministry of Home Affairs.
3. The Ministry of Home Affairs has the authority to terminate an organization's registration if it is no longer eligible for registration or prior approval within three years of the date of termination.

Foreign Contribution (Regulation) Amendment Act, 2020 - Key Takeaways

Acceptance of foreign donations: The Act prohibits public officials from accepting foreign contributions. Any individual in the service or pay of the government, or remunerated by the government for the performance of any public function, is considered a public servant.

Transfer of foreign donations: The Act makes it illegal to transfer foreign contributions to anybody who is not registered to take them.

Aadhaar for registration: The Act requires an Aadhaar number as an identifying document for all office bearers, directors, or key functionaries of a person receiving foreign donation.

FCRA account: According to the Act, foreign contributions shall be received exclusively in an account designated by the bank as an FCRA account at such branches of the State Bank of India, New Delhi.

Reducing the use of foreign contributions for administrative reasons: The Act suggests that no more than 20% of the total foreign money received be used for administrative purposes. The FCRA 2010 restriction was 50%.

Surrender of certificate: The Act permits the union government to allow a person to relinquish their registration certificate.

Consequences of Amendments of the ACT

Several non-governmental organisations (NGOs) contested these Amendments in both High Courts and the Supreme Court in 2021, claiming that they imposed arbitrary and unlawful restrictions on their operations. The Supreme Court ruled that the 2020 Amendment was necessary to check any abuse of money to risk national security while stating that NGOs do not have a right to receive foreign donations.

It is unclear if the 2020 Amendment will help these security aims. 'The Amendment makes it hard to sub-grant [to smaller NGOs, create consortiums of NGOs, or collaborate,' says Advocate-On-Record Abhishek Jebaraj, a counsel for the NGOs that challenged the Amendment in the High Courts and Supreme Court.

Depending solely on domestic finance, however, risks undermining the work of smaller, grassroots organisations, which are already underrepresented in India's enormous, inequitably supported development sector. Furthermore, despite upholding the Act, the Court advised NGOs to depend on domestic funders instead, a defense advanced by the Union throughout the hearings. According to the judgement, India's goals must be met "through the robust and uncompromising approach of its own population to attain a goal [of social upliftment] by the sheer effort of their hard labour and industry."

The Government claimed during the FCRA proceedings at the Supreme Court that with the influx of foreign donations increasing between 2010 and 2019, the potential of foreign forces intervening in India's domestic policy issues has significantly grown. Solicitor General Tushar Mehta, defending the Union, pointed to classified Intelligence Bureau material indicating that overseas donations were being utilised for 'Naxalite and other operations,' without elaborating. This put "national security and integrity" at risk.

The Union also stated that the pre-Amendment FCRA restrictions were insufficient to avoid this exploitation and ensure the 'appropriate utilisation of foreign monies'. Many NGOs are now essentially facilitators, passing foreign funds on to smaller organisations, making it impossible to track the flow of foreign money from the source NGO to the beneficiary NGOs.

According to the Union, the problem of abuse was widespread—19,000 NGOs had their FCRA licenses revoked between 2010 and 2019. The Commonwealth Human Rights Initiative, Apne Aap Women Worldwide India, Peoples' Association for Tribal Empowerment, and Divine Grace Ministries have all lost their FCRA licenses due to suspected mismanagement. Major foreign NGOs such as Oxfam India were also denied periodic renewal of their expired FCRA licenses.

Prior to the 2020 Amendment, however, FCRA-registered NGOs may only transfer international funds to other FCRA-registered organisations. All FCRA-registered organisations were required to declare all foreign financial transfers to the authorities. This resulted in the establishment of a mechanism for tracing foreign funds from the initial receiving NGO to the ultimate beneficiary NGO.

Recommendations

Registration and regulation:

In 2015, India has 31 lakh NGOs, which is more than double the number of schools. The current number of NGOs in India is greater than necessary, thus registration, regulation, and operation of the NGOs are given special attention. Many phoney NGOs should be scrapped in order to ensure that money are received by legitimate organisations and not utilised for fraudulent operations. Governments can require non-governmental organisations (NGOs) to register and publish complete information through annual returns about their funding sources, including foreign funds. This can aid in promoting transparency and accountability in the use of foreign money.

Monitoring, Auditing, and Reporting:

Enforcing the NGOs to report on their funding sources and how the raised funds are being put to use by the organization on a regular basis. There should be compulsory annual auditing of every department of the NGOs. This not only involves financial auditing but also the staff, operations, and auditing of every department. This can assist in guaranteeing that foreign funds are not utilised for unlawful or immoral objectives, further maintaining transparency.

Setting structured norms and taxation

Although the Ministry of Home Affairs has established a separate division to oversee the NGOs registered under the FCRA, it is important to note that there are approximately 35 lakh NGOs that are not registered under the FCRA. These organizations are governed by a variety of different laws, including the Society Registration Act, the Companies Act, the Public Trust Act, and many others, totaling up to about 40 different laws.

There is a need to form a statutory body to govern 'deviations', illegal funds to NGOs but this needs to be a body that can look into FCRA and Non-FCRA NGOs both

Similar to the foreign direct investment regulations, the government must establish a well-defined policy that clearly outlines the permissible actions and the prohibited actions for NGOs. Additionally, the policy should identify the specific sectors that will be eligible to receive foreign funding and specify the terms under which such funding will be accepted. The government should also implement stringent measures for annual returns filing and taxation of NGOs to ensure accountability and transparency.

Improved accountability and public awareness:

To raise public awareness and promote transparency, NGOs might be urged to reveal their funding sources and give more information about their operations.

Consequences for noncompliance:

Governments can impose heavy penalties, such as fines or registration revocation, on NGOs that fail to comply with foreign financing restrictions. FCRA states certain consequences for non-compliances, however, there is a need for ground-level implementation of them. Further, narrowing down the number of NGOs through compulsory registration, auditing and other necessary requirements for the operation of NGOs shall make NGOs more efficient and reliable.

Identification of the foreign bodies providing funding for criminal activities:

When a country receives funding for criminal activities or promoting terrorism, it calls into significant questioning of the country and its people's national security. The fundamental

consequence of such identification should be the identification of such organisations and their blacklisting in the nation. This not only safeguards black money but also fosters peace and unity in the country.

Introducing Compulsory Online Transactions for NGOs

NGOs receive financing of many kinds from all around the world. Yet, limiting NGOs' support to online payment methods will aid in transaction tracking and will help to prevent the flow of black money through cash transactions.

Conclusion

The Foreign Contribution (Regulation) Act (FCRA) was introduced in 1976 to regulate foreign contributions received by NGOs and other organisations. Over time, the regulations have been tightened due to concerns of foreign interference and noncompliance by certain organisations. The 2020 amendments focus on preventing foreign interference and ensuring transparency as foreign donations have been used for illicit activities, posing a threat to India's security and stability. Moreover, with the improved and efficient amalgamation of anti-national agents within the Indian socio-economic landscape, there is a dire need for well-structured norms to regulate foreign funding to the NGOs. While the FCRA aims to ensure that foreign contributions are used for the intended purposes and do not harm national interests, there is scope for improvement in the amended FCRA and the non-FCRA registered NGOs also need to be kept in check for any malafide contribution.

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