

**Foreign Contributions (Regulation)  
Amendment Act, 2020 – What does it  
mean for NGOs?**

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## Introduction

It is in the interest of nations to regulate and monitor funds coming from outside to individuals and organisations for social sector activities in the recipient country. Until 1976, India did not have such a law to regulate funds coming from foreign sources to private individuals and organisations for aid and developmental work, though there were already a number of transnational and local organisations receiving foreign funds for cultural and social activities.<sup>1</sup> In 1976, during the Emergency, the parliament passed the Foreign Contribution (Regulation) Act, 1976 (hereinafter, FCRA 1976) to “regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations”.<sup>2</sup>

At the dawn of the new millennium, the changed global order and the rise in transnational terrorist activities necessitated bringing in a much more stringent law to control and prohibit foreign money from being used against the security, territorial integrity, and sovereignty of India. Therefore, the FCRA 1976 was repealed, and a new law, the Foreign Contribution (Regulation) Act, 2010 (hereinafter, FCRA 2010) was brought in its place. The long title of the FCRA 2010 carried yet another purpose: “prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest”. The FCRA 2010 was amended a couple of times, the most recent one being the Foreign Contributions Regulations (Amendment) Act, 2020. The amendments that were carried out this time are substantial and particularly impact the working of voluntary organisations or non-governmental organisations (NGOs) involved in social sector activities.

The statement of Objects and Reasons accompanying the Bill to amend the FCRA 2010 stated that many NGOs were mis-utilizing or misappropriating the funds received from foreign sources and are not complying with the statutory requirements. This necessitated bringing in this amendment, the object of the same being to prevent these violations.<sup>3</sup>

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<sup>1</sup>P Ishwara Bhat, *Balancing Transnational Charity with Democratic Order, Security, Social Harmony and Accountability: A Critical Appraisal of the Foreign Contribution (Regulation) Act, 2010*, 4 (2) JOURNAL OF INDIAN LAW AND SOCIETY 155 (2013).

<sup>2</sup>A1976-49.pdf, , <https://legislative.gov.in/sites/default/files/A1976-49.pdf> (last visited Jul 10, 2021)..

<sup>3</sup>The Foreign Contribution (Regulation) Amendment Bill, 2020, Bill No. 123 of 2020 (September 20, 2020) (India).

The aim of this paper is to study the changes brought in by the Foreign Contribution Regulation (Amendment) Act, 2020, the rationale provided by the government for the amendment, the impact the amendments have on NGOs in particular, and the justification, if any, for the amendments.

### **Law Regulating Foreign Contribution**

The only law that regulated foreign remittances in India was the Foreign Exchange Regulation Act 1973.<sup>4</sup> There was no specific law to control and regulate foreign money inflow to individuals and organisations working in the areas of advocacy, influencing policy decisions of the government, providing aid, protecting civil rights, etc<sup>5</sup>. The proliferation of voluntary organisations in these areas necessitated the government to bring in a law to control and regulate foreign capital flowing to individuals and organisations that do not export services or goods but receive foreign funds for cultural and social activities in India. Also, the country's internal and external situation in the early 1970s necessitated the central government to bring in a law to prohibit external influences on individuals having an interest in the democratic process and governance of the country. The FCRA 1976 was enacted to "insulate the sensitive areas of national life like - journalism, judiciary and politics from extraneous influences stemming from beyond our borders."<sup>6</sup>

Then at the turn of the millennium, the threat of terrorism loomed large over governments everywhere. There were also evidences to show that foreign contributions for charity purposes are being used to fund terrorist activities, and many countries enacted laws to counter this threat.<sup>7</sup> In India too, FCRA 1976 was felt to be inadequate to meet these new challenges. There were also concerns about foreign hands in sabotaging developmental projects in the name of environmentalism, human rights etc. Therefore, FCRA 1976 was repealed and FCRA 2010 was enacted in its place. The new law, in addition to retaining the objective of the earlier law, included yet another objective: "prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest" by all classes of persons.

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<sup>4</sup>Bhat, *supra* note 1. at 160.

<sup>5</sup>*Id.*

<sup>6</sup>Association For Democratic Reforms & Onr. v. Union of India & Others, 2014 SCC OnLine Del 1321 20.

<sup>7</sup>GaliaChimiak, *The Rise and Stall of Non-Governmental Organizations in Development*, POL. SOCIAL. REV. 25-44 (2014).

The FCRA 2010 put in place a more elaborate regulation and compliance mechanism than FCRA 1976. It prohibits more classes of persons from receiving foreign funds or hospitality, widens the scope of foreign source, and provides for registration, regulation, suspension and cancellation of organisations receiving foreign funds. It also requires that foreign funds be received in a single bank account, and it put in place mechanisms to monitor the utilization of the funds for the intended purpose for which the contribution was received. Administrative expenses are limited to fifty percent of the foreign contribution received. Registration is not permanent, rather the certificate needs to be renewed periodically.

In September 2020, the Parliament amended the FCRA 2010 to bring in even more stringent provisions. The government, while introducing the amendment Bill in the Parliament, stated in the Statement of Objects and Reasons, “the need to further amend the FCRA 2010 arose because (1) many recipients of foreign contribution have not utilised the foreign fund for the intended purpose; (2) many of them had not complied with statutory compliances such as submission of annual returns and maintenance of proper accounts.; (3) criminal investigations revealed dozens of such non-Governmental organisations indulged in outright misappropriation or misutilisation of foreign contribution.”<sup>8</sup>

### **Salient features of the amendments**

The important amendments that were made to FCRA 2010 by The Foreign Contribution (Regulation) Act, 2020 are as follows:

- In Sec 3, “Public Servant” is added to the list of persons prohibited to receive foreign contributions. The definition of public servant is the same as the definition provided in section 21 of the Indian Penal Code
- Section 7 has been amended to restrict the transfer of funds to other persons, whether registered or unregistered. Earlier funds could be transferred to a registered person.
- The administrative expense has been limited from fifty percent to twenty percent of funds received from foreign sources (Sec.8 read with Rule 5)

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<sup>8</sup>The Foreign Contribution (Regulation) Amendment Bill, 2020, Bill No. 123 of 2020, Statement of Objects and Reasons (September 20, 2020) (India).

- Now, if the government, after a preliminary enquiry, opines that the person who had been granted permission has contravened any provisions of the act, it can direct the person not to utilize the foreign contribution or receive a further contribution. Before this amendment, only when the person has been found guilty after an enquiry the accounts were frozen (Sec.11)
- All office-bearers must provide identification documents like Aadhaar, copy of the passport, etc. for seeking prior permission, registration, or renewal of registration (Sec.12A)
- The government can now suspend the certificate for a total period of 360 days till it considers the question of cancellation (Sec.13)
- Provision for the voluntary surrendering of the certificate has been introduced (Sec 14A)
- There is no automatic renewal now. Before every renewal, the government will conduct an enquiry to satisfy itself that the person has fulfilled the prescribed conditions (Sec.16)
- All persons who have been granted a certificate to receive foreign contribution should receive the contribution only in the FCRA account maintained at State Bank of India, New Delhi Branch (Sec.17)

Before we understand the impact of these amendments on NGOs, it is necessary to know about NGOs and the state of NGOs in India in particular.

### **Non- Governmental Organisations**

Non-governmental organizations (NGOs) are a “voluntary group of individuals or organizations, usually not affiliated with any government, that is formed to provide services or to advocate a public policy”.<sup>9</sup> They are generally not-for-profit organisations. Though they depend on donations from donors for their activities, many NGOs do take government funds. Most of these organisations generally limit themselves to one specific issue, like animal welfare, environmental activism, poverty alleviation, health services, protection of human rights, etc. NGOs can be classified by their area of work, size, and geographical reach.

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<sup>9</sup>Nongovernmental organization, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/nongovernmental-organization> (last visited Feb 25, 2021).

Post Second World War, there has been a proliferation of NGOs. One particular reason for the NGO boom pointed out by Michael Schechter is “globalisation has simultaneously contributed to the weakening of states’ and inter-governmental organisations’ abilities to govern especially in the economic sphere while strengthening civil society in many countries in the world and planting the seeds for an evolving global civil society”.<sup>10</sup>

At least three generations or three phases of International NGO activities are identified. “The first-generation of post- World War II International NGOs represented large charity relief organisations like Oxfam and the Red Cross which focused on delivering welfare services to the poor or dispossessed; the second generation of International NGOs from the 1960s tried to promote local self-reliance by supporting the intermediate International NGOs, whereas since the 1980s the third generation of International NGOs concentrated on mobilising public opinion on a global basis on issues neglected by national governments.”<sup>11</sup>

India had NGOs even before independence if Christian missionaries that were involved in aid work can be characterised as one. One interviewee says that the NGOs originally involved themselves in aid activities, like, food, medical supplies, etc. Then they moved to developmental activities such as setting up schools, vocational training centres, hospitals etc. Later they moved to advocacy and rights-based programmes in the late 70s and 80s.<sup>12</sup> There has been a tremendous increase in NGO activities in the last 50 years. India has all types of NGOs, from large transnational NGOs to small grassroots NGOs. They can be either individuals, trusts, societies, or companies. Their funding is a mix of domestic and foreign sources, the foreign sources seeing a steep decline in recent years.

As of 2015, India had 31 lakh NGOs, that is one NGO per 400 people.<sup>13</sup> Out of these 31 Lakh NGOs, only 49878 FCRA registered Associations.<sup>14</sup> As of date, 22474 associations are active, and registration of 20673 association have been cancelled for violation of the provisions of the Act.<sup>15</sup>

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<sup>10</sup>Cited in Chimiak, *supra* note 7., at 26.

<sup>11</sup>*Id.*, at 28.

<sup>12</sup>Dr. V.A. Ramesh Nathan, General Secretary, National Dalit Movement for Justice, (5PM, Jan 7, 2021, Tindivanam).

<sup>13</sup>Utkarsh Anand, India has 31 lakh NGOs, more than double the number of schools, , THE INDIAN EXPRESS (2015), <https://indianexpress.com/article/india/india-others/india-has-31-lakh-ngos-twice-the-number-of-schools-almost-twice-number-of-policemen/> (last visited Feb 25, 2021).

<sup>14</sup>FCRA ONLINE, [fcraonline.nic.in](http://fcraonline.nic.in), 86.

<sup>15</sup>*Id.*

### Impact of the amendments on NGOs

The statement of Objects and Reasons in the amendment Bill stated, among other things, that the amendment was necessary as “non-Governmental organisations indulged in outright misappropriation or mis-utilisation of foreign contribution”. Understandably, therefore, the most vocal opposition to the amendment has come from NGOs. Their criticism on each provision of the amendment can be tabulated as follows<sup>16</sup>:

Amendment	Criticism
Restriction on transfer of funds to other persons, whether registered or unregistered (Sec. 7)	<ul style="list-style-type: none"><li>• Prevents co-ordination and collaboration between NGOs</li><li>• Funding will not reach grassroots NGOs, most of which do the real work</li><li>• Will increase the administrative costs of large NGOs</li></ul>
Allowed administrative expenses reduced from 50% to 20% (Sec.8)	<ul style="list-style-type: none"><li>• Too many activities are covered by “administrative costs”. Impossible to maintain the administrative costs within 20%</li><li>• This is usually defined by the donor, the government is interfering in contractual terms between the NGO and the donor.</li></ul>
Freezing account based on preliminary enquiry pending full-fledged further enquiry (Sec.11)	<ul style="list-style-type: none"><li>• No time limit to complete the further enquiry. Accounts will be frozen till then.</li><li>• There is no requirement to prove wrongdoing to freeze the accounts</li></ul>

<sup>16</sup>Suvojit Chattopadhyay, The Proposed FCRA Amendment Will Deal Another Blow to India’s Non-Profit Sector, , THE WIRE , <https://thewire.in/government/foreign-contribution-regulation-amendment-bill-2020> (last visited Feb 25, 2021). See also , Anoop Chintaman Jaipurkar, *Passage of FCRA (Amendment) Bill targets civil society as a whole*, THE FEDERAL (2020), <https://thefederal.com/opinion/modi-fcra-bill/> (last visited Feb 25, 2021).

	indefinitely
Suspension of certificate for an additional period of 180 days till the government considers the question of cancellation. (Sec.13)	<ul style="list-style-type: none"> <li>• No time limit to complete the enquiry, therefore, effectively shutting down an NGO for 360 days.</li> <li>• cancels the certificate in effect without officially cancelling the certificate, thereby putting on-going projects into trouble.</li> </ul>
Enquiry and review before every renewal (Sec.16)	<ul style="list-style-type: none"> <li>• Scope for harassment by the government every year, even when there is an obligation to disclose receipts and expenses continuously.</li> </ul>
FCRA account to be maintained at State Bank of India, New Delhi Branch (Sec.17)	<ul style="list-style-type: none"> <li>• Will increase the transaction costs of NGOs working in remote areas.</li> </ul>

On the other hand, the government says its objective is to bring in transparency in the working of NGOs. Minister of State for Home, during the discussion on the Bill in the Rajya Sabha, said, "(T)his is certainly a bill to bring transparency. It is not against NGOs in any case. But only those NGOs which do not adhere to transparency may feel bad. This bill is in the interest of NGOs and transparency."<sup>17</sup>

There is a view that the government brought in these amendments as it felt that many NGOs are involved in religious conversion. They point out the actions taken by the government preceding the amendment like, the cancellation of FCRA certificate of many NGOs, and the requirement in the Foreign Contribution Regulation (Second Amendment) Rules, 2019 which required each office-bearer of an organisation seeking registration or renewal to file an affidavit declaring that the individual has not been involved in any act of religious conversion or prosecuted for communal disharmony.<sup>18</sup>

<sup>17</sup>Parliament passes FCRA Amendment Bill; govt says bill not against any NGO - The Economic Times, , <https://economictimes.indiatimes.com/news/economy/policy/parliament-passes-bill-to-amend-foreign-contribution-regulation-act/articleshow/78269576.cms?from=mdr>.

<sup>18</sup>Prof. C. Lakshmanan, Madras Institute of Development Studies, Chennai (5PM, Feb 21, 2021, telephone).

There are arguments in support of these amendments as well. It is believed these amendments will put an end to the proliferation of NGOs, and prevent foreign influences which undermine sovereignty and act as a threat to India's security.<sup>19</sup>

Whether the amendments meet the three purposes mentioned in the Statement of Objects and Reasons for which the amendments were brought in? The three violations the amendment intends to address are: 1) mis-utilisation/non-utilisation of foreign contribution; (2) non-compliance with statutory requirements as to reporting of accounts.; (3) misappropriation or mis-utilisation of foreign contribution.

There is no record to show that there has been large-scale mis-utilisation or misappropriation of funds. Out of the total Rs. 70,000 Crores received in FY2018 from private sources for social sector activities, less than Rs. 13,000 crores were from foreign sources.<sup>20</sup> Fund contributions from foreign sources are seeing a dramatic decline, pursuant to the government crackdown on violating NGOs. There has been a 40% reduction in fund contributions from foreign sources in the last few years.<sup>21</sup> The violations have been mostly technical, like, not filing annual returns on time, or responding to notices. Fear of freezing of accounts pending inquiry may force certificate holders to file returns on time. It is claimed that 97.6% of certificate holders are filing returns on time<sup>22</sup>, independent confirmation is beyond the scope of this research. The amount of money transferred to other FCRA-registered NGOs is also around 15%,<sup>23</sup> which seems to be less to warrant a restriction on the transfer of funds to other certificate holders. Two people interviewed<sup>24</sup> say that a part of the transfer amount is received by smaller NGOs working with marginalized communities. It is also true that International NGOs do have their own interest in mind and transfer money to those NGOs who are supportive of their agenda and interest. Limiting administrative expenses to 20% seems to be reasonable considering the international standards on administrative expenses are around 20-

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<sup>19</sup>Arihant Pawariya, *Foreign Funding Of NGOs: Why Home Minister Amit Shah's Proposed Amendments To FCRA Matter*, SWARAJYAMAG, <https://swarajyamag.com/politics/foreign-funding-of-ngos-why-amit-shahs-proposed-amendments-to-fcra-matter> (last visited Feb 24, 2021).

<sup>20</sup>bain\_brief\_india\_philanthropy\_report\_2019.pdf, [https://www.bain.com/contentassets/069bf9cf144e4b8bbdda8a85386a5611/bain\\_brief\\_india\\_philanthropy\\_report\\_2019.pdf](https://www.bain.com/contentassets/069bf9cf144e4b8bbdda8a85386a5611/bain_brief_india_philanthropy_report_2019.pdf) (last visited Jan 8, 2021).

<sup>21</sup>*Id.*

<sup>22</sup>CHATTOPADHYAY, *supra* note 15.

<sup>23</sup>Pawariya, *supra* note 19.

<sup>24</sup>Dr. V.A. Ramesh Nathan, General Secretary, National Dalit Movement for Justice, *supra* note 12. Also, interview with Mr. Devaneyan, Director, Thozhamai, (6PM, Feb 21, 2021, telephonic).

25%,<sup>25</sup> though such a narrow limit may preclude many NGOs working on matters that require good legal or other professional help from taking up these projects.

To study the effect of amendments even further, two NGOs, one working with Dalits, the other working on Child Rights, were identified to study their working and understand how the amendments will impact their working. These NGOs were selected as one works with entirely a local issue, peculiar to India, and the other works on issues that are both local and trans-national.

### **1. Dalit Rights and Activism**

Dalits are formerly untouchable classes in India and still one of the most marginalised communities in the country. Though Dalits have constitutional and statutory protection against discrimination, they continue to face discrimination of many kinds and are victims of physical violence. According to National Crime Records Bureau, in 2019, 45,935 cases of crime or atrocities against Dalits were registered, an increase of 7.5% over the year before.<sup>26</sup> Many of these Dalits who are victims of violence and atrocities are extremely poor and lack the means to bring their perpetrators to justice. Many NGOs working among Dalits play that role. They help the victims file a police complaint, register a first information report, work with the government for speedy disposal of statutory compensation, see if desired special counsels are appointed under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, and assist the counsel during the trial. This requires a lot of resources.<sup>27</sup>

Social Awareness Society for Youths (SASY) is one such organisation that works among Dalits. It is located in a small town called Tindivanam in Tamil Nadu. SASY is involved in access to justice, strengthening local government, child rights initiatives, enabling Dalit women leadership, Livelihood Promotions & Social Inclusion in Disaster Responses. etc.

When asked about the amendments to the FCRA 2010, Mr. Murugappan, Project Coordinator says that there is not much of local contribution for NGOs working on Dalit rights and activism, unlike other areas of NGO activities like environmental or animal welfare activism.

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<sup>25</sup>Dr Frederick Swarts, *Code of Ethics and Conduct for NGOs* 55.

<sup>26</sup>PrudhvirajRupavath, NCRB Data Says Atrocities Against SCs, STs Increased by 7.3% and 26.5% in 2019, NEWSCLICK (2020), <https://www.newsclick.in/NCRB-Data-Atrocities-SC-ST-Increased-7.3%25-26.5%25-2019> (last visited Feb 25, 2021).

<sup>27</sup>Interview with Mr. Murugappan, Project Coordinator, SASY, (7PM, Jan 7, 2021, Tindivanam).

Many of these NGOs are also extremely small and cannot afford to recruit highly qualified people to represent their cause before large international donors. And therefore, most of these NGOs depend mostly on support from large NGOs. However, now the amendment has made it impossible to approach large NGOs for funds. He also says that Dalit NGOs that work on atrocities and violence against Dalits have huge legal and professional expenses. With the conviction rate extremely low for crimes against Dalits (less than 25%), he says without the help of NGOs even this conviction rate is not possible. The reduction in limit to 20% will affect NGOs as a major part of their administrative costs goes to providing legal support. Their entire contribution is from foreign sources. In 2019-20, they received about Rs 97 Lakhs from foreign sources (unaudited) which is almost 50% lesser than what they had received in the previous year. The crackdown on foreign donor agencies is forcing them to seek local assistance, which is difficult to obtain for Dalit issues.

## **2. Child Rights**

Protection of child rights is one area where there is a large number of big national, international, and grassroots NGOs in India. International Organisations like UNICEF, UNESCO, and European Union play an important role in supporting programmes designed to address child safety and rights. The UN Convention on the Rights of the Child requires co-operation between international agencies and non-governmental organisations for the protection of child rights. Some of the areas the NGOs specialising in child rights issues work in are protection of child rights, education, prevention of abuse, juvenile justice, etc.

Thozhamai is one organisation that works with women and children from marginalised localities. They are involved in the education of poor children, protection of their rights, prevention of abuse, and creation of livelihood opportunities for women. They also work with other network organisations in cases involving The Protection of Children from Sexual Offences (POCSO) Act, 2012. They have been around since 2006 and received their FCRA registration in 2010. 15% of their funds is from foreign sources. They also get funds from UNICEF. Another source of funds is from large India-based donor agencies. With many of the donors shutting shops in India, they found it difficult during the Covid pandemic to pay salaries and do social work in a time of desperate need. They are dependent on local sources to conduct POCSO cases as foreign donors cannot fund litigation, even though few NGOs do that. The Director of Thozhamai, Mr. Devaneyan, says, the new amendment spells a death knell for small NGOs like his. He feels big NGOs now are manned by highly qualified

personnel, and are able to attract foreign funds and CSR funds from Indian companies, which is why there has been an increased dependence on other FCRA certificate holders, which will stop now.<sup>28</sup>

## **Conclusion**

This paper analysed the amendments and saw if the amendments are indeed to address these violations. The government cited violations by NGOs as the necessary reason for bringing in the amendments. The recent amendments intend to increase the surveillance mechanism on NGOs, but the way it seeks to achieve it will only lead to arbitrariness from the enforcement officers. Some of the provisions like freezing the account based on preliminary enquiry do not satisfy the test of “legitimate expectations”. Around 19,000 FCRA certificates were cancelled in the last 5 years for technical violations. It was alleged that certain Christian organisations were behind the Koodankulam Anti-Nuclear protests and their certificates were cancelled, but it has not been established yet. It is beyond the means of most NGOs to litigate for years. The requirement to maintain an FCRA account in the State Bank of India, New Delhi is also not justified. When it is possible to track money inflow through RBI, there is no justification to have this account only in New Delhi. The ceiling of 20% on administrative expenses is in accordance with standards set by many donor agencies. Though this will affect NGOs involved in advocacy. On the whole, when it is possible to cancel 22,000 FCRA certificates with just a preliminary enquiry, or no enquiry, the new changes look disproportionate and might stifle civil society participation in the development of the country in the long run.

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<sup>28</sup>Mr. Devaneyan, Director, Thozhamai, *supra* note 24.