
Review of FCRA, 2010



VOICE OF THE VOLUNTARY SECTOR

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PREFACE

In the recent years civil society worldwide have raised concerns due to shrinking space and resources for the sector. The sector is facing restrictions in operation, funding and resistance from their respective governments. One of the main factors responsible for this resistance is the recommendations made by Financial Action Task Force (FATF) to the national governments to regulate non-profit organisations as they can be easy target for terror financing activities. This recommendation by FATF has had various unintended consequences as the governments tightened the rules for the sector, making the foreign contribution law more regressive. In India, this resulted in amendment to the Foreign Contribution Regulation Act in 2010 and the earlier Act of 1976 was repealed. Using law and order situation and following FATF recommendations, this law has been made more regressive over a period of time which has been a direct threat on the resources of the sector and led to its shrinking space. The sector known for its innovations in community mobilisation, service delivery, social research and advocacy has faced a situation that most of its energies are today concentrated on resource generation and mobilisation. This has had a huge impact on the genuine organisations. The need for having an Act like FCRA is in itself questioned by many as it is very regressive for rights based organisations and restricts their free speech and assembly, the basic constitutional rights guaranteed to all the citizens of this nation.

Another factor for shrinking space in India was the Intelligence Bureau report to Prime Minister Office (PMO) in the year 2014 which stated that a significant number of Indian NGOs (funded by some donors based in US, UK, Germany, Netherlands and Scandinavian countries) have been noticed to be using people centric issues to create an environment which lends itself to stalling development projects. It assessed that the negative impact on GDP growth is around 2-3 percent per annum. This followed various media bloated reports and collective targeting of the sector by both government and media. While various intelligence bureau and media reports have conveniently targeted the sector, what these reports lack are the well-researched facts and figures. Mostly the issues have been blown out of proportion by such reports and media and it has not only tarnished the image of the sector but also made it lose the public trust.

In light of existing situation, there was a demand from the sector in various VANI meetings to conduct a study on the FCRA, 2010 and review its clauses which has been in force since 2011. Many members and associates of VANI have often raised their concerns in complying with the Act. VANI has organised numerous capacity building trainings and FCRA clinics for the sector to enhance compliance with the Act and its rules but often the question on need for such regressive Act is raised by the sector. Also, as the new Act requires renewal of FCRA registration after every five years, the organisations are already in process of applying for the renewal. Thus, an urgency was

felt to review the Act and highlight various gaps and suggestions from the civil society perspective for appropriate government actions. While undertaking this study, the amendments to Foreign Contribution (Regulation) Rules, 2011 was also announced by the Ministry of Home Affairs on 14th December, 2015. VANI organised a number of meetings to assess implications of the changes on sector and get the civil society perspective. The new amendments and the concerns raised by civil society have been addressed in this report and will be of interest to readers.

It will be highly beneficial for the whole sector if you can take some time to read this report and give your valuable inputs which will shape our advocacy and action plans. I would also like to thank Ms. Nishu Kaul for writing this report. This study will not have been possible without the support of Action Aid and we are grateful to them. A number of people and organisations have been approached during the course of this study, who have offered immense help and we would like to acknowledge their support.

We hope that this report will be able to generate progressive discussion around the Act and the civil society perspectives generated through this report will be considered while amending the FCRA rules which the Ministry of Home Affairs already proposes to do. This report also necessitates the need for a joint consultation between the government and civil society to work out progressive measures to amend the Act for nation development, which is the ultimate goal for both the sectors.

Harsh Jaitli
Chief Executive Officer

LIST OF ABBREVIATIONS

CIVICUS	World Alliance for Citizen Participation
CrPC	Criminal Procedure Code
CSO	Civil Society Organisation
FATF	Financial Action Task Force
FC	Foreign Contribution
FCRA, 2010	Foreign Contribution Regulation Act, 2010
FCRR, 2011	Foreign Contribution Regulation Rules, 2011
FDI	Foreign Direct Investment
FERA	Foreign Exchange Regulation Act
GDP	Gross Domestic Product
HUF	Hindu Undivided Family
IB	Intelligence Bureau
ICCO	Inter Church Cooperative for development Cooperation
INSAF	Indian Social Action Forum
MHA	Ministry of Home Affairs
NGO	Non Governmental Organisation
PMO	Prime Minister Office
UPA	United Progressive Alliance
VANI	Voluntary Action Network India
VO	Voluntary organisation

INTRODUCTION

Foreign Contribution can be accessed by non-profit organisations through an Act called Foreign Contribution Regulation Act, 2010 (FCRA, 2010). As defined in section 2(1) (h) of FCRA 2010, foreign contribution means the donation, delivery or transfer made by any foreign source of any article, currency (whether it is Indian Rupee or any foreign currency) or any security. The Government adopted new FCRA Act, 2010, rules of which were notified in May 2011. Ministry of Home Affairs, Government of India is assigned the responsibility of implementing FCRA. The amendment to rules were notified by Ministry of Home Affairs on 14th December, 2015. The new rules are now called Foreign Contribution (Regulation) Amendment Rules, 2015. The primary purpose of the enactment was to ensure that foreign contributions are utilised for bonafide activities without any compromise to the national security. FCRA 2010 repealed the 30 year old Foreign Contribution (Regulation) Act of 1976. It gives more authority to enforcement agencies to regulate donations from abroad. The Act's preamble prohibits acceptance and utilisation of foreign contributions or foreign hospitality for any activities detrimental to national interest. It also bars several organisations, including those of a political nature from receiving foreign funding. Using the 'law and order' situation in the country and the need to control 'foreign hand', FCRA 2010 was passed without much space for debate in parliament.

As we know cross country development aid is considered as a major indicator of development diplomacy and cooperation. In India, it has been traditional source of growth for the voluntary sector. It is a major source of innovations, development models, and flexible support for the sector. Many institutions of national importance are result of such cross country aid. The FCRA was first enacted during the emergency era in 1976. The official rationale was to prohibit the flow of foreign funds to political parties, candidates contesting elections, journalists, judges, cartoonists, editors etc. It was made mandatory for such organisations of 'political nature' to accept foreign contribution only upon prior permission from the ministry. However, a system was laid down for other organisations to receive foreign contribution upon registration with the government. This registration was one time only and valid until government suspended or cancelled the registration certificate as per the rules laid down in the law. Acceptance of foreign contribution or hospitality by violating any provision of the FCRA law was made a punishable offence with an imprisonment of upto 5 years.

However, the Act in its present form has been severely criticised by the voluntary sector as it is felt that it is a big blow to the National Policy for Voluntary Sector (2007)¹

¹ National Policy on the Voluntary Sector was framed by the Planning Commission in 2007 to create an enabling environment for the voluntary sector.

formulated by the government and the recommendations of the Second Administrative Reforms commission, both of which aimed to encourage, enable and empower an independent, creative and effective voluntary sector, with diversity in form and function, so that it can contribute to the social, cultural and economic advancement of the people of India. **But FCRA 2010 indicates a shift in intention of the government from reforming and enabling the sector to controlling and commanding it. The provisions are extremely stringent and are reminiscent of the Foreign Exchange Regulation Act (FERA) days where a foreign exchange offence was considered as destroying the economic fiber of the country and hence was to be dealt with as ruthlessly and strictly as a criminal offence. It is clear that the above prohibition is in order to protect 'national interest', which can be a very ubiquitous term. No institution in this country is allowed to work against the national interest whether with or without foreign money and various laws like Unlawful Activities (Prevention) Act, 1976; Terrorist and Disruptive Activities (Prevention) Act, 1987 and Prevention of Terrorism Act, 2002, Prevention of Money laundering Act, 2002 etc. deal with such anti-national elements. However, whatever the intention, it is quite evident that FCRA 2010 has failed to keep pace with the liberalized exchange control regulations. For example, Foreign Direct Investment (FDI) is permitted to the extent of 26% in news and current affairs TV channels. However, under FCRA 2010, companies engaged in production of such TV programs or their key employees cannot accept foreign contribution. Mercifully, amounts received in the ordinary course of business or in the course of international trade are exempt.**

Adverse actions taken by the Ministry of Home Affairs to suspend/cancel FCRA registrations of numerous organisations and media reports tarnishing the image of the sector have resulted in a general scare among the sector that this law is being used to throttle the rights and advocacy based organisations. While the enforcement has been strict on NGOs, but not so convincing on the legislators and politicians who can access foreign funds only upon prior permission. The process thus lacks transparency.

WHAT CONSTITUTES FOREIGN CONTRIBUTION?

To understand the meaning of the term foreign contribution, one has to understand the term foreign source. This is an inclusive definition, again with a very wide coverage. It covers a foreign government or its agency, any international agencies (other than certain specified agencies such as United Nations, World Bank, etc.), foreign citizen, foreign company, any other foreign entity such as trade unions, trusts, societies, clubs, etc. formed or registered outside India. It also covers multi-national corporations and any company where more than 50% of the share capital is held by foreign government, entity or citizen.

Receipts from foreign citizen are considered as foreign source and hence by implication one could argue that amounts received from Indian citizen would not be treated as foreign source. As such, even foreign currency would be treated as received from Indian source, if it is received from an Indian citizen. The basic principle is to determine the source from which the currency or asset is being received. If the source is Indian, then it does not matter whether the currency is Indian or not. Conversely, if the source is foreign, then even if the receipt is in Indian Rupees, the same would be considered as foreign contribution.

Multi-national company has been defined to mean a corporation incorporated in a foreign country if it has a subsidiary or branch or place of business in two or more countries, or otherwise carries on business or operations in two or more countries. Thus a foreign company having operations in any one or more country besides India would fit into this definition. For example several foreign banks operating in India would fall under this category.

What is most damaging is that even Indian companies where foreign shareholding is more than 50% would be treated as foreign source. With liberalised FDI norms and also liberalisation of permissible foreign investment limits in listed Indian companies, there are several Indian companies where the foreign holding is more than 51%. Any donations received from such companies (for example, Hindustan Unilever, HDFC, ICICI Bank, etc.) or even from branches of foreign companies (for example, Citibank, Standard Chartered Bank, etc.) would be treated as foreign contribution. Such companies cannot give donations to Indian trusts or even place advertisements in souvenirs brought out by such trusts, unless the trusts are either duly registered with the Central Government or have taken prior permission for receiving such donation. It was hoped that this situation would be remedied in FCRA 2010, but unfortunately the position has remained practically unaltered or has been made even more stringent.

RATIONALE FOR THIS STUDY

The FCRA was first enacted during the Emergency era (1976). It was felt that the earlier Act of 1976 required a complete makeover as it had failed to keep pace with the changing face of India's economic growth and realities of the development sector. Visual and audio media had risen to a huge level, media had become privatized and the sole control of government seemed to be an old school theory, globalization and privatization had come into existence with full force since 1990 which had a huge impact on the economy. Voluntary organisation sector which was close to non-existent then has become an integral part of the society and economy. In fact there was a lobby that felt that the law had outlived its utility and needed to be scrapped. Thus, the new Act was put into force in 2010 to replace the earlier Act. The basic purpose of FCRA 2010 as mentioned in the preamble to the Act was *"to consolidate the law to regulate the acceptance and*

utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.”

The need for a new Act was also felt by the civil society but after the enactment of FCRA, 2010 many felt that the Act was passed without much space for debate and dialogue with the sector. It was felt that the Act in its new form could be used as a tool to gag any criticism against the governmental policies. The concerns were envisaged soon when in march 2012; the NGOs involved in the anti-nuclear protests (Tuticorin Multipurpose Social Service Society, Tuticorin Diocese Association, Good Vision Charitable Tryst and People's Education for Action and Community Empowerment) in Kudankulam had to face suspension of FCRA registration and freezing of bank accounts. Thereafter, there have been many incidences of throttling the sector voice and its right to dissent on issues affecting the national security. In recent cases, the FCRA was used as a tool to stop the dissenting voices of Greenpeace and Teesta Setalvad's organisation which are known for their contributions and national development in the field of environment and bringing justice to victims of 2002 communal riots in Gujarat respectively. This led to much tension in the sector on whether the Act can be used as a tool against them as well. It was followed by the recent cancellation of the FCRA certificate of 9000 NGOs all over India and freezing of their bank accounts subsequently for 180 days. The MHA order stated that the cancelled NGOs did not file their annual returns from the years of 2009-2012 to the ministry which is mandatory. However, the NGOs have cited huge inconsistencies in the FCRA. They say that the provisions of the act are unclear and give wide powers to the government. It has been raised that the annual returns are not acknowledged by the government and the only proof of submission that they have is the copy of speed post receipt. However MHA has cited the control over the sector necessary as it can be vulnerable to the risks of money laundering and terrorist financing. This has also been cited by the Financial Action Task Force (FATF) in its recommendations to the national governments. FATF is an inter-governmental body comprised of 34 members jurisdictions and 2 regional organisations² representing major financial centers in all parts of the globe. India is also a member of FATF. It was formed in 1989 to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity

² Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, European Commission, Finland, France, Germany, Greece, Gulf Cooperation Council, Hong Kong, Iceland, India, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Mexico, Netherland, New Zealand, Norway, Portugal, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States

of the international financial system³. Implications of the recommendations made by FATF have been discussed in detail in the third chapter below.

It is this environment that has compelled VANI to undertake this study for review of the FCRA. This study is also aiming to review the various clauses of the FCRA, 2010 since the first renewal date for all the FCRA holding organizations is approaching soon in 2016. During various meetings of VANI, the sector representatives have shared their grievances related to the compliance with the Act. Many a times the need, validity and applicability of the FCRA 2010 have been questioned. There have been serious concerns in the sector with the need to amend or replace the Act. There is also a curiosity among the sector representatives to understand the various clauses and provisions of the Act as there is growing lack of clarity on the same which leads to non-compliance. VANI has continuously engaged with the sector to address their grievances as also to increase compliance with the Act in its current form. This study is thus aimed to highlight the features of the FCRA 2010, review the consequence of various clauses on the sector and have a broad set of recommendations for both the sector and the government.

RESEARCH OBJECTIVES

The main objective of this study is to:

1. Draw a comparison between the FCRA, 1976 and the FCRA, 2010.
2. Reviewing the FCRA, 2010 and its various clauses for the need and significance of the Act.
3. Compiling the Civil Society perspective on the recent amendments to Foreign Contribution (Regulation) Rules, 2011.
4. Provide a set of recommendations to the government as well as the voluntary sector for necessary amendments in the Act as also to increase compliance and internal governance mechanisms.

METHODOLOGY OF THE STUDY

The research methodology involves an extensive desk research and literature review. VANI has actively engaged with the government and the voluntary sector on the issues related to FCRA, many a times acting as a bridge between the two. The study has also been drawn largely based on the regular meetings conducted by VANI with the sector representatives on the FCRA related issues.

³ Source: <http://www.fatf-gafi.org/>

FCRA 2010: SALIENT FEATURES

This chapter unfolds the differences between the FCRA 1976 and the FCRA 2010. This review is significant as it will help to state the purpose of the necessary amendments and also in understanding the grievances of the sector vis-à-vis the new Act. A note prepared in May 2015 by Mr. Venkatesh Nayak from Commonwealth Human Rights Initiative, an organisation based in New Delhi provides an evolution of the new FCR Act. According to the Statement of Objects and Reasons attached to the FCR Bill when it was first introduced in Parliament by the UPA Government in 2006 (and enacted in September 2010), the new law which repealed the 1976 law was intended to bring about large scale changes because:

- a) Internal security scenario had changed (what had changed was not specified);
- b) Influence of voluntary organisations had increased;
- c) Use of communication and information technology had spread;
- d) there was a quantum leap in the amount of foreign contribution received; and
- e) there was large scale growth in the number of registered organisations (under FCRA 1976).

So Parliament was informed that the new law was being brought to – **regulate the acceptance, utilization and accounting of foreign contribution and acceptance of foreign hospitality by a person or association.** The main objectives of the law are said to be (quoted from the Bill itself):

- a) consolidate the law to regulate, acceptance and utilisation of foreign contribution or foreign hospitality and prohibit the same for any activities detrimental to the national interests;
- b) prohibit organisations of political nature, not being political parties from receiving foreign contribution;
- c) bring associations engaged in production or broadcast of audio news or audio visual news or current affairs through any electronic mode under the purview of the Bill;
- d) prohibit the use of foreign contribution for any speculative business (no such restriction in FCRA 1976);
- e) cap administrative expenses at fifty per cent of the receipt of foreign contribution (no such limit in FCRA 1976);
- f) exclude foreign funds received from relatives living abroad;
- g) make provision for intimating grounds for refusal of registration or prior permission under the Bill;
- h) provide arrangement for sharing of information on receipt of foreign remittances by the concerned agencies to strengthen monitoring;

- i) make registration to be valid for five years with a provision for renewal thereof (as opposed to permanent registration under the FCRA 1976), and also to provide for cancellation or suspension of registration;
- j) make provision for compounding of certain offences.

However the long title of the Bill (and now the Act) indicated that the law was aimed to **“prohibit acceptance of foreign contribution or foreign hospitality for activities that are detrimental to the national interest.”** Significantly, neither the Bill nor the Act define ‘national interest’. It has been left to the discretion of the government to decide what amounts to violation of the national interest.

Following are the broad differences between the previous and the new FCR Act -

- 1) As per the new FCRA, 2010 any person having definite cultural, economic, educational, religious or social program can accept foreign contribution only after obtaining
 - a) Certificate of registration from Central Government; or
 - b) Prior permission from Central Government

While granting registration or permission, Central Government will inter alia consider various factors including -

- a) Whether applicant is fictitious or benami,
- b) Whether applicant has been prosecuted / convicted for creating communal tension or disharmony has been found guilty of diversion / mis- utilization of its funds etc.

Many civil society representatives raised that debarring a person from receiving foreign contribution for being prosecuted should be removed as there are many false cases of prosecution. While the clause for convicted NGOs is valid and needed to maintain a peaceful environment, but the word “prosecuted” implies that even if there is a Court proceeding pending, then also FCRA registration could be denied which is incorrect as just the fact that an NGO is under a trial does not prove its guilt and should not be liable to cancellation of registration.

- c) acceptance of FC should not be likely to affect sovereignty and integrity of India, public interest, freedom or fairness of election to any Legislature, friendly relation with any foreign State, harmony between religious, racial, social, linguistic, regional groups, castes or communities etc.⁴

⁴ Section 9 of FCRA 2010

- d) Acceptance of foreign contribution shall not lead to incitement of an offence or endanger the life or physical safety of any person etc.
 - e) In the event that the person being an individual, such individual has been sentenced under any law or indictment for any offense is pending against him.
 - f) in the event that the person other than an individual, any of its chiefs or office bearers has been indicted under any law or indictment for any offense is pending against him
- 2) The new FCRA, 2010 has a much broader applicability and a wider scope. In FCRA 1976, word “organisation” and “person” was used interchangeably but in FCRA 2010 only the word “person” is used. The new Act is applicable to individual, Hindu Undivided Family (HUF), Association and a section 8 company⁵. In the old Act, the term person was not defined and generally the Act referred to the term ‘Association’. However, now it is very clear that FCRA applies to the above category of persons including individuals.
- 3) Foreign Contribution includes all kind of transfers from foreign sources. The new act retains the older definition which includes any kind of transfer, delivery or donation of currency, article or securities. The notable change in the new act is that Foreign Contribution does not include commercial receipts. **In other words, an NGO can receive consultancy or other commercial receipt from foreign sources even without having FC registrations.** FC registered NGOs should receive such receipt in their domestic account and the commercial receipt are not required to be reported to the FCRA department.

For example, a firm in India sells its goods from India to a buyer in Australia. The payment received in lieu of this transaction need not be considered as a foreign contribution and is exempted from FCRA. At the end of the day, organisations can get consultancy or other business receipt from outside sources even without having FC enrollment. FC enrolled organisations ought to get such receipt in their domestic account and the business receipts are not needed to be accounted for to the FCRA office.

- 4) As an addition to the earlier existing act, the following persons/organisations have been prohibited from accepting FC:
- a) Association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programs through any electronic mode or form or any other mode of mass communication⁶

⁵A company that fulfills the requirements laid down under companies Act 2013, section 8.

⁶Section 3(g) of the FCRA 2010

- b) Correspondent or columnist, cartoonist, editor, owner of the association or company referred in point (a) above.⁷
 - c) Organization of political nature not being a political party, which may be specified by the Central Government, would be banned from accepting FC as against earlier provision of obtaining prior approval of Central Government for accepting foreign contribution. This is an extremely vague and regressive provision. Central government has been rendered with entire powers of selection of the organizations that should be put under “political nature”. In the view of this, no organization will be left with the basic right to speech provided in the constitution under article 19(1) (a).
- 5) FCRA 2010 will not apply to foreign contribution accepted -
- a) From a relative⁸ (below or equal to the amount of Rs 1,00,000⁹)
 - b) By way of any scholarship, stipend or any payment of like nature¹⁰

This provides a relaxation over the old Act.

- 6) Under the new FCRA, 2010 the foreign contribution received by an FCRA holding organisation is prohibited to be transferred to other person/organisation who
- a) Have not been granted certificate of registration or have not obtained prior permission under FCRA 2010.¹¹
 - b) A part of foreign contribution can be transferred to any other person/organisation not holding FCRA certificate only after prior approval of Central Government. This is a welcome step as the new Act also considers transfer of FC funds to unregistered organisations after taking prior approval. The earlier Act of 1976 prohibited transfer of funds to any other organisation unless the recipient organisation also possesses FC registration.
- 7) FCRA 2010 restricts utilization of –
- a) Foreign contribution and any income arising from it for speculative businesses. Rule 4 of the FCRR, 2011 specifies the circumstances in which the investment can be rendered to be speculative in nature.

⁷ Section 3(h) of the FCRA 2010

⁸ Section 4(e) of the FCRA 2010

under FCRA 1976 prior approval of Central Government was needed for receipt of FC in excess of 8000 p.a. but this change was made due to the high inflation and fall in the value of rupee

⁹ in case of a receipt higher than that, the Ministry of Home Affairs needs to be informed within 30 days and rule 6 provides that any gift from relatives above ` 1,00,000/- in one year shall be intimated to the FCRA department in Form FC-1.

¹⁰ section 4 except 4(e) of the FCRA 2010

¹¹ Section 7 of FCRA 2010

- b) Foreign contribution for payment in excess of 50% of it towards administrative purpose in one financial year ¹²
- 8) Renewal of registration every five years - Certificate of registration in the new Act is valid only for 5 years now from the date of receipt of the registration certificate while under FCRA 1976 no end date of validity of registration was specified. Prior permission would be valid for the specific purpose or specific amount of foreign contribution proposed to be received. Any registration/permission granted under FCRA 1976 would be valid for 5 years from the effective date. i.e. 1st May 2011.

In the new Act, it mentions that the Central Government shall within 90 days of receiving application grant the certificate of registration/permission or communicate reasons for not granting such registration / permission (while considering the FCRA 1976. In the earlier Act of 1976, no time limit was mentioned for disposal of application by the government which is thus considered a positive shift and determines accountability of the government as well in the process.

- 9) Central government can on various grounds suspend or cancel the registration certificate for a period upto 180 days which include:
 - a) If the information in the application / renewal thereof is incorrect or false;
 - b) If the holder of certificate has violated any terms of the certificate;
 - c) For public interest;
 - d) If the holder of certificate has violated any provisions of FCRA 2010;
 - e) If the holder of certificate has not been engaged in any reasonable activity in its specified field for the benefit of the society for 2 consecutive years or has become dysfunctional due to any reason.
- 10) In the earlier Act, foreign contribution could be received only in a single bank account, which used to create trouble for the organisations located in multiple locations. The new Act has considered this issue and provides for opening of project utilization accounts. However the foreign contribution can still be received only in one main bank account but can be utilized through other accounts as have been declared at the time of opening of bank account.
- 11) In the FCRA, 2010 Central Government has been empowered to issue notification with regard to:
 - a) person or class of persons who shall obtain prior permission of Central Government before accepting foreign contribution;

¹² Section 8(b) of FCRA 2010

- b) area in which foreign contribution shall be accepted and utilized with prior permission of Central Government;
- c) purpose for which foreign contribution shall be utilized with prior permission of central government;
- d) source from which foreign contribution shall be accepted with prior permission of Central Government.

Key Sections of FCRA, 2010 relating to Voluntary organisations

Section 3 – Prohibition to accept foreign contribution.

1. No foreign contribution shall be accepted by any—*candidate for election; correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government; member of any Legislature; political party or office-bearer thereof; organisation of a political nature as may be specified under sub-section (1) of section 5 by the Central Government; association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000 or any other mode of mass communication; correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).*

Section 7 - Prohibition to transfer foreign contribution to other person.

No person who –

- a. is registered and granted a certificate or has obtained prior permission under this Act; and
- b. receives any foreign contribution, shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act.

Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government.

Section 8 - Restriction to utilize foreign contribution for administrative purpose.

1. Every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution,--

- a. shall utilize such contribution for the purposes for which the contribution has been received:

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business:

Provided further that the Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section;

- b. shall not defray as far as possible such sum, not exceeding fifty per cent. of such contribution, received in a financial year, to meet administrative expenses:

Provided that administrative expenses exceeding fifty per cent. of such contribution may be defrayed with prior approval of the Central Government.

2. The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

Section 12 - Grant of certificate of registration.

1. An application by a person for grant of certificate or giving prior permission shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

2. On receipt of an application, the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application.

3. If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within ninety days from the date of receipt of application under sub-section (1), register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed:

Provided that in case the Central Government does not grant, within the said period of ninety days, a certificate or give prior permission, it shall communicate the reasons therefor to the applicant:

Provided further that a person shall not be eligible for grant of certificate or giving prior permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.

4. The following shall be the conditions for the purposes of sub-section (3), namely:--
- a. the person making an application for registration or grant of prior permission under sub-section (1),--
 - i. is not fititious or benami;
 - ii. has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
 - iii. has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
 - iv. has not been found guilty of diversion or mis-utilization of its funds;
 - v. is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
 - vi. is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
 - vii. has not contravened any of the provisions of this Act;
 - viii. has not been prohibited from accepting foreign contribution;
 - b. the person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilized;

- c. the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilized;
- d. in case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;
- e. in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;
- f. the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially—
 - i. the sovereignty and integrity of India; or
 - ii. the security, strategic, scientific or economic interest of the State; or
 - iii. the public interest; or
 - iv. freedom or fairness of election to any Legislature; or
 - v. friendly relation with any foreign State; or
 - vi. harmony between religious, racial, social, linguistic, regional groups, castes or communities;
- g. the acceptance of foreign contribution referred to in sub-section (1),--
 - i. shall not lead to incitement of an offence;
 - ii. shall not endanger the life or physical safety of any person.

5. Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefor and furnish a copy thereof to the applicant

Provided that the Central Government may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the applicant under this section in cases where is no obligation to give any information or documents or records or papers under the Right to Information Act, 2005.

6. The certificate granted under sub-section (3) shall be valid for a period of five years and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received, as the case may be.

Section 16 – Renewal of Certificate.

- 1. Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.
- 2. The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.
- 3. The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such

terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years.

Provided that in case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant.

Provided further that the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder.

Section 17. Foreign contribution through scheduled bank.

1. Every person who has been granted a certificate or given prior permission under section 12 shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate:

Provided that such person may open one or more accounts in one or more banks for utilizing the foreign contribution received by him:

Provided further that no funds other than foreign contribution shall be received or deposited in such account or accounts.

2. Every bank or authorized person in foreign exchange shall report to such authority as may be specified—
 - a. prescribed amount of foreign remittance;
 - b. the source and manner in which the foreign remittance was received; and
 - c. other particulars, in such form and manner as may be prescribed.

Section 23. Inspection of accounts or records.

If the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been or is being, contravened by—

- a. any political party; or
- b. any person; or
- c. any organisation; or
- d. any association,

it may, by general or special order, authorize such gazetted officer, holding a Group A post under the Central Government or such other officer or authority or organisation, as it may think fit (hereinafter referred to as the inspecting officer), to inspect any account or record maintained by such political party, person, organisation or association, as the case may be, and thereupon every such inspecting officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record.

FOREIGN CONTRIBUTIONS RECEIVED BY NGO'S:

The data pertaining to receipt and utilisation of foreign contribution from 2001 – 2012 has been compiled by FCRA wing of Ministry of Home Affairs in its annual report. The latest data available on the website is of the year 2011-12. Below given data shows the trends pertaining to the number of registered and reporting associations, top donor organisations and countries, top recipient organisations and the purpose for which it was received. Following are some of the key highlights from the data and the emerging trends

Foreign Contribution Collection Trends: Number of Registered and Reporting Associations (2001-2012)				
Year	No. of Registered Associations (As on 31st March Financial Year)	No. of Reporting associations	Amount of Foreign Contribution received (Rs. in Crore)	% increase over previous years
2001-2002	24,563	15,598	4870.52	7.42
2002-2003	26,404	16,590	5046.51	3.58
2003-2004	28,351	17,145	5105.46	1.17
2004-2005	30,321	18,540	6256.68	22.55
2005-2006	32,144	18,570	7877.57	25.91
2006-2007	33,937	18,996	11007.43	39.73
2007-2008	34,803	18,796	9,663.46	(-)14.76
2008-2009	36,414	20,088	10,802.67	11.79
2009-2010	38,436	21508	10337.59	(-) 4.30
2010-2011	40,575	22,735	10,334.12	(-)0.03
2011-2012	43,527	22,702	11,546.29	11.73

- The above trend shows that a total of 43527 associations were registered under the Foreign Contribution (Regulation) Act upto 31.03.2012. 22,702 associations reported a total receipt of Rs 11,546.29crore as foreign contribution. This includes associations which received nil amount. There has been a steady increase in the number of registered associations since 2001, as also has been the increase in reporting. The foreign contribution received has seen some ups and downs. The negative trends can be seen in the years 2007 – 08, 2009 -10 and 2010 – 11.

Top Fifteen Donor Agencies: Foreign Contribution (Rs. in crores)			
2011-12		2010-2011	
Donor's Name & Country	Amount	Donor's Name & Country	Amount
Compassion International, USA	183.83	Compassion International, USA	99.20
The Church of Jesus Christ of Latter day Saints, USA	130.77	HCL Holdings Private Ltd., Mauritius	69.98
Kinder Not Hilfe e. V (KNH), Germany	51.76	Action Aid, UK	62.66
SOS Kinderdorf International, Austria	43.25	Population Service International , USA	61.34
General Conference of Seventh Day Adventists, USA	41.65	Bill & Melinda Gates Foundation, USA	48.91
Population Service International, USA	38.76	Kinder Not Hilfe e. V (KNH) Germany	48.37
WORT & TAT Allgemeiner Missions Gesellschaft, Germany	37.56	EED-Evangelischer Entwicklungsdienst e.v., Germany	40.00
Action Aid, UK	37.33	SOS Kinderdorf International, Austria	36.14
Bill & Melinda Gates Foundation, USA	34.44	Wort & Tat Allgemeiner Mission Gesellschaft, Germany	31.78
Christian Foundation for Children and Aging, USA	33.71	Save The Children, UK	29.21
EED - Evangelischer Entwicklungsdienst e.v., Germany	32.95	Leprosy Mission International, UK	28.78
Give 2 Asia, USA	32.02	General Conference of Seventh Day Adventists, USA	26.29
Direct Relief International, USA	31.22	International Development Enterprises (IDE). USA	26.28
Road To Peace, USA	28.85	Christian Foundation for Children and Aging, USA	23.90
AHMADIYYA MUSLIM ASSOCIATION, UK	33.75	Oxfam, UK	22.90

- In the year 2010 – 11, the list of foreign donors was topped by the Compassion International, USA (99.20crore) followed by the HCL Holdings Pvt. Ltd., Mauritius (Rs. 69.98 crore) and the Action Aid, UK (Rs. 62.66 crore) in the year 2010 – 11; and in the year 2011 – 12, Compassion International, USA (183.83cr) followed by The

Church of Jesus Christ of Latter day Saints, USA (130.77cr) and Kinder Not Hilfe e. V (KNH), Germany (51.76cr) topped the list.

Top Fifteen Recipient Associations Foreign Contribution (Rs. in crores)			
2011-12		2010-2011	
Associations	Amount	Associations	Amount
World Vision Of India, Tamil Nadu	233.38	World Vision of India, Tamil Nadu	233.74
Believers Church India, Kerala	190.05	Believers Church India, Kerala	160.72
Rural Development Trust, Andhra Pradesh	144.39	Rural Development Trust, A.P.	135.38
Indian Society Of Church Of Jesus Christ Of Latter Day Saints, Delhi	130.77	Caruna Bal Vikas, Tamil Nadu	96.44
PUBLIC HEALTH FOUNDATION OF INDIA, Delhi	130.31	Womens Development Trust, Andhra Pradesh	72.75
Aga Khan Foundation, Delhi	110.26	Oxfam Trust, Delhi	71.00
Caruna Bal Vikas, Tamil Nadu	109.50	Shivnadar Foundation, Delhi	69.98
Mata Amritanandmayi Math, Kerala	98.64	Bal Raksha Bharat, Delhi	67.57
Plan International (India Chapter), Delhi	91.33	Action Aid, Karnataka	66.96
Bal Raksha Bharat, Delhi	81.31	Missionaries of Charity, West Bengal	62.29
Gospel For Asia, Kerala	81.22	Mata Amritanandmayi Math, Kerala	61.40
Compassion East India, West Bengal	71.09	Christian Children Fund Inc, Karnataka	61.36
SOS Childrens Village of India, Delhi	67.93	Population Services International, Delhi	60.27
Missionaries of Charity, West Bengal	62.77	Compassion East India, West Bengal	59.96
Action Aid Karnataka	62.69	SOS Childrens Village of India, Delhi	55.43

- The highest amount of foreign contribution was received by associations namely World Vision of India, Tamil Nadu (Rs. 233.74 crore), followed by the Believers

Church India, Kerala (Rs. 160.72 crore) and Rural Development Trust, Andhra Pradesh (Rs 135.38 crore) in the year 2010 – 11. In the year 2011- 12, these organisations continued to be the highest recipient organisations.

Receipt Of Foreign Contribution Towards Major Fifteen Purposes (In Crores)			
2008-09		2011-12	
PURPOSE	Amount	PURPOSE	Amount
Rural Development	2834.66	Rural Development	945.77
Construction and maintenance of school/ college	2303.60	Construction and maintenance of school/ college	929.22
Welfare of Children	2031.08	Welfare of Children	824.11
Awareness about AIDS/ Treatment and rehabilitation of persons affected by AIDS	1344.95	Awareness about AIDS/ Treatment and rehabilitation of persons affected by AIDS	231.21
Construction/Running of hospital/dispensary/clinic	1178.81	Construction/Running of hospital/dispensary/clinic	336.60
Welfare of the orphans	1049.39	Welfare of the orphans	304.48
Relief/Rehabilitation of victims of natural calamities	1014.53	Relief/Rehabilitation of victims of natural calamities	127.27
Grant of stipend/scholarship/assistance in cash and kind to poor/ deserving children	938.72	Grant of stipend/scholarship/assistance in cash and kind to poor/ deserving children	412.92
Construction/ Repair/ Maintenance of Place of Worship	909.45	Construction/ Repair/ Maintenance of Place of Worship	270.83
Construction and running of hostel for poor students	836.91	Construction and running of hostel for poor students	236.19
Holding of free medical/Health/Family Welfare/ Immunization Camps	736.95	Holding of free medical/Health/Family Welfare/ Immunization Camps	204.18
Religious schools / education of priests and preachers.	693.11	Religious schools / education of priests and preachers.	208.71
Research	680.87	Research	539.14
Treatment / Rehabilitation of persons suffering from leprosy	640.88	Treatment / Rehabilitation of persons suffering from leprosy	128.75

- The highest amount of foreign contribution was received and utilized for rural development, construction and maintenance of schools/colleges, welfare of children etc. However, what is noticeable is that there has been steep drop in the expenditure on the listed purposes, if compared with the data from the 2008 – 09. While in 2008-09, the expenditure on rural development was around 2834.66 crore, the expenditure for the same purpose dropped in the year 2011 – 12 to 945.77 crore. Similarly the table above indicates the drop in expenditure on other purposes also.

RECENT AMENDMENTS TO THE FOREIGN CONTRIBUTION (REGULATION) RULES, 2011:

The amendments to Foreign Contribution Regulation Rules, 2011 were announced by the Ministry of Home Affairs through its circular dated 14th December, 2015 in its notice F.No.II.21022/23 (76)/2015-FCRA-III. These amendments were brought into force following the draft rules that were circulated by the ministry on 17th June, 2015 for seeking recommendations from the sector. The new rules mostly pertain to complete online system for reporting and monitoring of the FCRA registered organisations by the ministry. The new website <https://fcraonline.nic.in/home/index.aspx> has been launched by FCRA department of Ministry of Home Affairs for all communication. As mentioned on the website of FCRA department, it is a good governance initiative by the MHA to provide a smart, citizen centric, transparent, efficient and time-bound mechanism for citizens and organisations to avail various services related to FCRA and Foreign Hospitality.

Following table shows the amendments to FCRR, 2011 –

S. No.	Original FCRA rules or summary thereof	Amendments to FCRR, 2011
1.	<p>In rule (9) sub rule (1) - Clause (a) - An application under sub-section (1) of section 11 for registration of a person for acceptance of foreign contribution shall be made electronically on-line in Form FC-3, and shall be followed by forwarding the hard copy of the on-line application duly signed by the Chief Functionary of the association together with the required documents.</p> <p>Clause (b) – The hard copy of the on-line application referred in clause (a) shall reach the Central Government within 30 days of the submission of the on-line application, failing which the request of the person shall be deemed to have been ceased</p>	<p>In the principal rules, in rule 9, sub rule (1) clause (a) the following shall be substituted-</p> <p>Clause (A) - An application for registration or an application for obtaining prior permission by a person under section 11, for acceptance of foreign contribution, shall be made electronically on-line in Form FC-3.</p> <p>Clauses b and c shall be substituted, namely-</p> <p>Clause (B) - The applicant shall upload the signed or digitally signed application along with scanned documents as specified by the Central Government from time to time.</p>

	Clause (c) – Any person whose request has ceased under clause (b) of sub-rule (1) may prefer a fresh on-line application with the Central Government only after 6 months from the date of cessation of the previous application	
2.	Submission of hard copies of the application for registration or prior approval and ceasing of application if not submitted within 6 months;	In the principal Rules, in rule 9, clause (e) of sub-rule (1) and clauses (a), (b) and (c) of sub-rule (2) shall be omitted and words “electronically online” shall be substituted by plain paper.
3.	Rule 9(4) (d) relates to payment of application fee for registration or prior permission.	In the principal rules, in rule 9 clause (d) in sub-rule (4) the following shall be added after the words ‘New Delhi’ “through online electronic payment gateway as specified by the Central Government”.
4.	In rule 12, sub-rule (2) Form FC-5 was prescribed in the 2011 Rules for applying for the renewal of FCRA registration certificate	The existing FC-5 form has been replaced with the new FC-3 form.
5.	The rule 12, sub rule (3) mentioned that a person implementing an ongoing multi-year project shall apply for renewal twelve months before the date of expiry of the certificate of registration.	Sub rule (3) has been omitted
6.	Rule 12(5) relates to payment of application fee for renewal of registration.	In the amended rule 12 in sub-rule (5) the following shall be added in the end: “through online electronic payment gateway as specified by the Central Government”.
7.	Rule 13 of the FCRR, 2011 says: In case a person who has been granted a certificate of registration or prior permission receives foreign contribution in excess of one crore rupees, or equivalent thereto, in a financial year, he/it shall place the summary data on receipts and utilization of the foreign contribution pertaining to the year of receipt as well as for one year thereafter in the public domain. Besides, the Central Government shall also display or upload the summary data of such persons on its	In the amended rules, for rule 13 the following shall be substituted: 13(a): A person who has been granted a certificate of registration or prior permission shall place the audited statement of accounts on receipts and utilization of the foreign contribution, including income and expenditure statement, receipt and payment account and balance sheet for every financial year beginning on the first day of April within 9 months of the closure of the financial year on its official website or on the website as

	website for information of the general public.	specified by the Central Government. 13(b): A person receiving foreign contribution in a quarter of the financial year shall place details of foreign contribution received on its official website or on the website as specified by the Central Government within 15 days following the last day of the quarter in which it has been received clearly indicating the details of the donor, amount received and date of receipt.
8.	Rule 16(1) Every bank shall send a report to the Central Government within thirty days of any transaction in respect of receipt of foreign contribution by any person who is required to obtain a certificate of registration or prior permission under the Act, but who was not granted such certificate or prior permission as on the date of receipt of such remittance.	In the amended rules for rule 16, the following shall be substituted, namely:- 16(1): The bank shall report to the Central Government within 48 hours any transaction in respect of receipt or utilisation of any foreign contribution by any person whether or not such person is registered or granted prior permission under the Act.
9.	In rule 17 (1) Every person who receives foreign contribution under the Act shall submit a report in Form FC-6, accompanied by an income and expenditure statement, receipt and payment account, and balance sheet for every financial year beginning on the 1st day of April within nine months of the closure of the financial year, to the Secretary to the Government of India, Ministry of Home Affairs, New Delhi.	In the amended rules, for sub-rule (1) of rule 17, the following shall be substituted: Rule 17(1): Every person who receives foreign contribution under the Act, shall submit a signed or digitally signed report electronically online in Form FC-4 with scanned copies of income and expenditure statement, receipt and payment account, and balance sheet for every financial year beginning on the 1 st day of April within nine months of the closure of the financial year.
10.	Rule 17	Sub rule 2,3,4,6 of Rule 17 mention change of forms wherein form FC-6 has been replaced by FC-4; FC-7 and FC-8 have been replaced by FC-1. Draft Rules 10-16
11.	Rule 17 (8) mentioned that a 'nil report' shall be furnished even if no foreign contribution is received during a financial year.	In the amended rules, the rule 17 (8) following provision will be inserted – provided that where foreign contribution has not been received or utilized during a financial year, it shall not be required to enclose Certificate from Chartered Accountant or income and expenditure

		statement or receipt and payment account or balance sheet with form FC-4.
12.		<p>After rule 17, the following rule 17 (A) shall be inserted –</p> <p>17 (A) Change of designated bank account, name, address, aims, objectives or key members of the association – A person who has been granted certificate of registration or prior permission under section 11 of the Act shall intimate electronically online in form FC-6 within 15 days of any change in the following –</p> <ol style="list-style-type: none"> i. Name of association or its address within the state for which registration/prior permission was granted under the Act ii. Its nature, aims, objects and registration with local/relevant authorities iii. Bank or branch of the bank or designated foreign contribution account number iv. Key members of the association if at any point of time such change causes replacement of fifty percent or more of the original key members as reported in the application for grant of registration, prior permission, renewal of registration under the Act.
13.	Rule 18 relates to foreign contribution received by a candidate for election	Form FC-9 has been replaced by Form FC-1
14.	Rule 24 informs about the procedure for transferring foreign contribution to other registered or unregistered persons	In the amended rules, in rule 24, sub rule (1) FC-10 has been replaced by FC-5 and in sub rule (4) form FC-6 by FC-4.
15.	<p>Forms FC – 1 to Forms FC – 10</p> <ul style="list-style-type: none"> • FC – 1 Intimation regarding receipt of FC by way of gift from relative • FC- 2 Application for seeking prior permission to accept foreign hospitality • FC-3 Application for obtaining ‘registration’ under FCRA, 2010 for acceptance of FC. • FC-4 Application for obtaining ‘prior permission’ under FCRA 2010 for 	<p>The number of forms as per the amended rules have been reduced to 6. The new forms are as follows -</p> <ul style="list-style-type: none"> • FC-1 Application for Intimation to the Central Government of receipt of foreign contribution • FC-2 Application for FCRA hospitality • FC-3 Application for FCRA registration/prior approval/renewal • FC-4 Intimation of Annual Returns • FC-5 Application seeking transfer of

<p>acceptance of FC</p> <ul style="list-style-type: none">• FC-5 Application for seeking renewal of registration certificate under FCRA 2010• FC-6 Annual return for receipt and utilisation of FC.• FC-7 Annual return for receipt and utilisation of FC related to Articles• FC-8 Annual return for receipt and utilisation of FC related to Securities• FC-9 Intimation regarding receipt of FC by a candidate for election• FC-10 Application for seeking permission to transfer FC to Unregistered persons.	<p>foreign contribution to unregistered persons</p> <ul style="list-style-type: none">• FC-6 Intimation for change of address/FC recipient bank/ Utilization Bank Accounts/Key Members
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GAPS AND DRAWBACKS IN THE FCRA 2010: A CIVIL SOCIETY PERSPECTIVE

The nature of the FCRA, 2010 represents a shift in the mindset of government from regulation to control over the sector. Various sections of the Act, as explained in the earlier chapter, indicate that the public expression of dissent through mobilization of people for any public cause will result in being labelled as an organization of ‘political nature’ and that the Government will monitor such political activities closely. Such moves by the Government are a threat to the basic constitutional right of expression and peaceful assembly by the organisations. It is thus recognised as a threat by the voluntary sector and has led to discomfort within the sector. The strict regulations are also being enforced at the time when Financial Action Task Force (FATF) gave its recommendation that the NGO sector needs to be regulated to avoid terror financing. The current global crackdown on the NGO sector is thus seen as the result of recommendation given by the FATF on the regulation of non-profit sector to prevent abuse by terrorists. **See the box below**

RECOMMENDATION BY THE FINANCIAL ACTION TASK FORCE AND ITS IMPLICATIONS ON THE NON – PROFIT SECTOR

FATF, a policy making body on combating money laundering and countering the financing of terrorism, has adopted 40 recommendations (one of them on non-profit organisations (NPOs) called Recommendation 8) and it evaluates country compliance with these recommendations. FATF has grown to be a particularly relevant and strong body as it gives ratings to countries based on these recommendations and with this it determines whether a country is a credible/good place for doing business. Governments want to score well in these evaluations since reputational risk is at stake. Over 180 countries have committed themselves to implementing its recommendations. (Media and Resources: CIVICUS, 2015)

In India, following the detailed review of the non-profit sector from the perspective of terrorist financing in 2010, FATF had mentioned following gaps in its evaluation report:

- a. no review was undertaken by the Government of India on the adequacy of domestic laws for the non-profit sector;
- b. no periodic assessments were undertaken on the sector’s potential vulnerabilities to the terrorist activities;
- c. only limited information available on the governing members of the organisations who own, control and direct the activities;
- d. only organisations registered under Income Tax Act and FCRA can be monitored. While 2 million foreign and domestic non-profit organisations exist in India, number

of non-profit organisations registered with Ministry of Home Affairs under FCRA are 38,591 while number of non-profits that filed tax returns in the year 2006-07 are 71,009. There are no records for the rest organisations.

As, a result it came up with following recommendations:

- a. Review the non-profit sector capturing all relevant data necessary, including the adequacy of domestic laws in the sector.
- b. Risk analysis of the sector for terrorist financing and outreach to the sector for protection from possible abuse of terrorist financing and promoting its governance and accountability.
- c. Maintenance of information on identity of persons who own, control and direct the activities of the non-profit organisations
- d. Ensuring that all non-profit organisations are registered

The recommendations by the FATF have had numerous unintended consequences as government has tightened the rules for the sector beyond the recommendations. Recent measures, ostensibly aimed at countering money laundering and the financing of terrorism, have impeded efforts by the organisations to secure funding. Cases of overregulation include difficulties faced in accessing and distributing financial resources, cumbersome FCRA law and proposed amendments to the FCR rules not in line with the reality of the sector, cancellation of more than 10,000 FCRA registrations, increased state surveillance and control over the sector without any targeted and/or risk based approach. It has also given rise to fears of government introducing surveillance/privacy-invasive measures to suit their agendas under the guise of implementing FATF standards and infringements on humanitarian aid, basic human rights, namely the right to freedom of expression and association, and the right to privacy have been reported.

Another concern raised by the sector is related to its financial sustainability. It has been critiqued that even if there is no intention of the development organisation to make a profit, it might realize some surplus, as it would price its product or service based on certain costing assumptions. It would be impossible to arrange the affairs in such a manner that sale proceeds exactly match the cost. If the nonprofit development organisations have recovered even one rupee above the cost, would they lose the benefit of the explanation? Clearly, restricting the explanation only to the cost will be practically unworkable and self-defeating.

VANI has conducted numerous discussions around FCRA with the sector to assess the challenges faced in compliance with the Act. The following issues are identified as crucial and a matter of concern:

- 1) Limited registration period and arbitrary powers: Under the FCRA 2010 an NGO is required to apply for renewal of its registration after every five years.¹³ In the previous Act of 1976, the registration was required to be done for one time only. This change was introduced so as to regulate the NGOs who were allegedly misusing the foreign aid, however the sector feels that instead of an action taken against them and suspending their registration, this amendment was reinforced which has posed a hurdle for the entire voluntary organization sector. The law mentions no grounds on which registration and renewal may be denied. The law mentions that the government will give reasons in writing but leaves an ambiguity as to what reasons are acceptable as valid and what evidences will be a base to them. This will eventually create an atmosphere of continuous intimidation and provide enhanced opportunities for rent seeking and leaving such great decisions completely at the discretion of the government will hinder the independent working of the VOs to a certain extent as well.
- 2) No FCRA registration for organizations declared as being political in nature: The government has given blanket powers to define what kinds of organizations will be labelled as being 'political in nature'. This imprecise phrase can be utilized against anybody whom the officials want to target without reasons directly connected to 'internal security'¹⁴. The FCRA leaves it to the utmost discretion of the government to decide as to which organization is of a "political nature".¹⁵ Yet again, the authorities have been handed with extreme powers which can easily be used to chock the foreign resources of any organization.
- 3) Arbitrary search and seizure powers: As with the 1976 FCR Act officers have the power to conduct search and seizure operations. However, the 1976 FCR Act specifically required search and seizure to be conducted according to the procedure laid down in the Criminal Procedure Code (CrPC)¹⁶. However FCRA 2010 states that the CrPC will not be followed if its procedures are inconsistent with the provisions of the Act. This is extraordinary. The CrPC provisions provide due procedure to be followed by officers doing search and seizure. This poses as an essential protection for ensuring that nothing is done in an arbitrary or unfair manner and the CrPC forms part of the fundamental protections available under the ordinary Indian law. Removal of this provision with the new act has rendered the main pillars of justice useless. CrPC was designed to ensure that every procedure undertaken by officials has a certain code of conduct so as to provide a sense of uniformity .There is no reason

¹³ Section 16(3) of the FCRA 2010

¹⁴ Section 9(e) mentions the reasons for which the foreign contribution should not be utilized.

¹⁵ Section 5(l) of the FCRA 2010

¹⁶ Section 102 of CrPC describes way of seizure and further proceedings. Section 91(1) describes way of search on a prescribed manner

whatsoever to bypass these or to single out CSOs receiving foreign funds in this manner. This dilution of due process is unconstitutional and signals the thin end of the wedge whereby future laws can more easily dilute constitutional protections act by act.

- 4) The FCRA 2010 goes against the National Policy on Voluntary Organizations: The National Policy on Voluntary Organizations adopted through the Planning Commission in 2007 has as one of its primary objectives the following: “To enable VOs to legitimately mobilize necessary financial resources from India and abroad.”. In this policy finalized after the first draft of the FCR Bill was prepared in 2006, the Planning Commission encourages governments to liberalize and rationalize the existing rules and procedures. The FCR Act 2010 does not simplify anything. Instead it complicates the legal and administrative environment much more than before by placing enormous discretion in the hands of officers to determine whether a CSO will be allowed to function or not. While the legal regime for foreign investors is being increasingly liberalized, the environment for CSOs is being restricted to discourage any contributions. There is no reasonable justification for such measures
- 5) The donors are also not spared: What happens to the donor who gives funds and the NGO gets suspended? The government takes the money and the donor loses out. This is a disincentive to donors, whose number has decreased anyway after the economic meltdown in the West, and the very slow recovery.
- 6) Cancellation of Registration Certificate/ No provision to surrender FCRA Registration Certificate: Under section 14, the Central Government may cancel the registration certificate for various reasons. However, no certificate shall be cancelled unless reasonable opportunity of being heard is provided. The reasons for cancelling the certificate are:
 - i. Providing false information
 - ii. Violating the terms and conditions like filing of return, etc.
 - iii. Violating the Act or the Rules
 - iv. Acting against public interest
 - v. No reasonable activity for 2 years.

Once a registration certificate is cancelled, such person shall not be eligible for registration or prior permission for the next 3 years from the date of cancellation. However, many organisations have raised the concern that the term “reasonable activity” has not been defined. It may so happen that an NGO may have activity from local sources. Therefore, it is not clear whether reasonable activity from FC or local sources should be

there for retaining FC registration? There is also no provision to surrender the FCRA registration certificate, in case an organisation wants to.

It has also been noted by many organisations that “acting against public interest” is a very vague term and hence can easily be used at the mercy of the authorities.

Case Studies:

Case Study I: Case of Greenpeace

Taking up the much talked about case, the case of **Greenpeace NGO** and the issue of cancellation of its registration is a classic example of how this law can be completely confusing and somewhat misleading. In the mentioned case, the registration of the NGO was cancelled by the central government, and the reason the government stated was "prejudicially affected the economic interest of the state". But Greenpeace has dubbed this as a 'smear campaign'.

1). One of the reasons given by the Union Home Ministry (MHA) why Greenpeace's FCRA registration was suspended is: “not taking prior approval of MHA before replacing 50% of the members of its Executive Committee (EC)”. Nothing in the FCR Rules empowers the Central Government to take such action. Instead, Clause (ii) has been put in the Declaration and Undertaking appended to Form FC-3 which is used by an organization to apply for registration that it will obtain prior approval of MHA before replacing 50% of its EC members. This clause is excessive as the purpose of FCRA 2010, is not to regulate the internal affairs of a registered organization. The purpose is only to regulate the receipt and use of foreign contribution. So clearly Form FC-3 is ultra vires of the provisions of the principal Act.

2). Another reason given for suspending Greenpeace's FCRA registration is: “shifting office from Chennai to Bengaluru without prior approval”. Nothing in the FCR Rules empower the Central Government to take such action. Instead Clause (i) has been put in the Declaration and Undertaking appended to Form FC-3 merely requiring an organization registered under this law to merely inform within 30 days if any change takes place to the name, address, registration (under other laws), its nature, aims and objects. There is simply no requirement for taking prior approval of the MHA in this form or anywhere in the Rules. This also amounts to unreasonable interference in the internal affairs of an organization which is not the objective of the principal Act.

Case Study II: Case of INSAF

In another landmark case of **INSAF**, it was witnessed how the unquestioned power given to the home ministry is being misused largely. In the case, in August 2012, the home ministry shockingly suspended FCRA license of about 4000 NGOs rendering foreign aid unavailable to them. According to the government, these NGOs had an “anti-national agenda” even though no reasons could be cited as to the way such a conclusion was approached. Since then, the FCRA 2010 was under constant questioning.

Keeping in mind all the above, a judgment was passed by the Delhi High Court on 19 September and holds a landmark position. In response to a writ petition, the court dismissed the home ministry order responsible for dismissal of FCRA license of Indian Social Action Forum (INSAF)- a network of around 700 grassroots organizations and people’s movement. The MHA had stated that INSAF’s activities were “prejudicial to public interest” and without any clarification it froze the bank account and the license was suspended on April 30. Scrapping off the MHA’s order, Justice V.K. Jain ruled that “if the government decides to suspend an organization’s certificate, it can only do so for reasons recorded in writing, which need to be incorporated in the suspension order itself”. The judgment came in as a ray of hope to the NGOs that have been protesting against the arbitrary cancellation of FCRA license.

Case Study III: Case of Good Vision, Kanyakumari

A lot of similar cases have been brought forward. For example in 2011, as a part of the “physical inspection”, 2 Hindi speaking clerks came to Good Vision, Kanyakumari where barely anyone knew the language. Months later, in February 2012, Good Vision was accused of “misappropriating funds” and its license under FCRA was suspended for 180 days by the MHA. Subsequently, its bank accounts were frozen without notice. In August 2013, a list of NGOs that had been banned from receiving foreign funds was submitted to the Lok Sabha in response to a question. Good Vision was on that list. Just above it was another Kanyakumari-based non-profit, the Rural Uplift Centre (RUC). The 31 questions landed at RUC’s doorstep in October 2011. Subsequently, its bank accounts were frozen for over a year, bringing its projects to a complete standstill. Staffers found work elsewhere and the organisation shrank overnight. Both Good Vision and RUC, in response to the initial questionnaire from the MHA, had furnished piles of documents on income tax returns, vouchers and bank accounts. Representatives had even travelled nearly 2,800km to Delhi to seek out MHA officials and hand over specific documents that could not be submitted earlier due to extensive power outages in Kanyakumari.

RESPONSE OF CIVIL SOCIETY ON THE AMENDMENTS TO FCRR, 2011:

The civil society response to the recent amendments has been gathered by VANI through organised meetings and interact with the sector. It seems, so far, that the sector is skeptical about the changes. One of the key reason being that they will require time for transitioning to new system which has been put in place. However, some organisations have also shown concern over the need for complete electronic method for reporting as it secludes the genuine grassroot organisations who either do not have access to internet or are faced by poor connectivity in their regions. While most of the issues raised by organisations pertained to technical glitches faced in the new system, following concerns were shared by the majority –

1. **Technical Snags:** Various organisations reported facing technical snags in operating and accessing different sections of the new website. One of the immediate consequence of this technical snag was the inability to file FC-6 and now FC-4 return for the year 2014-15. VANI and various other organisations had sent a request to ministry to extend the date for filing the returns, which was granted and has been extended upto 15th March, 2016. Some of the specific challenges faced by organisations include –
 - a. Several organizations are facing difficulty in logging, filling of the FC-4 form or even uploading and saving the data once the online form is filled.
 - b. Forgotten or wrong username and password even after updating the ministry. Many organisations reported that even after receiving updated password from MHA, there have been problems in logging in.
 - c. Concern over online payment of fees due to poor internet connectivity in some regions.
 - d. The security risk of sharing the username and password over phone with the ministry was also raised by many organisations as due to technical snags, FCRA department officials had asked for these details. However, upon contacting the FCRA department, they informed that as their could be problems with the systems which need to be looked into, the department will require to know the user ID and password to check and resolve the problem. In such a case, the user ID and password could be given only on the following user ID which can be accessed only by their technical team support-fcra@gov.in
2. **Lack of clarity over certain provisions of the Amended Rules:** Organisations reported various issues, mentioned below, which need further clarity –
 - a. Clarity over reporting about the key persons – Does this include the Governing board or will also include persons in senior positions with years of experience in the organisation?
 - b. Intimation of aims, objects and nature of organisation in Form FC-6 – As the new rules suggest that organisations can now intimate changes in their aims, objects, bank details within 15 days of that change. However, organisations had a concern that whether the change must be within the confines of the form of organisation

for which it was registered. For instance – an organisation registered under social nature can not change its aims/objects as per the religious nature or whether that flexibility is also there?

Some organisations reported that their records of change in name or objects had not been updated by the department even after written request to them. Such organisations had a concern that whether they should first intimate the change again in the new form FC-6 and then file for renewal of application?

- c. Intimation of change in designated bank account is also allowed by the ministry. Various organisations felt that whether this change will be at prerogative of bank or FCRA department of MHA is not yet clear.
 - d. Whether intimation of change of address of association from one state to another will also be allowed as per the new rules? Earlier a fresh registration for this change used to be filed.
3. **Acknowledgement from the FCRA department:** There was a concern that usually the department does not acknowledge the receipt of applications or on reporting of any change, it becomes difficult for organisations to track the reporting. A common consensus was shared that there should be a return acknowledgement from FCRA department for accountability purposes.
 4. **Filing of Nil report:** The amended rules provide that where foreign contribution has not been received or utilized during a financial year, it shall not be required to enclose Certificate from Chartered Accountant or income and expenditure statement or receipt and payment account or balance sheet with form FC-4. However, for the organisations who have not received but utilized the foreign money, the documents will need to be uploaded. A number of queries on this were raised. There was also a concern that how recurrent should filing of nil return be as if the organisation does not show reasonable activity for 2 years, it may lose its registration as per the Act.
 5. **Donation from Anonymous source:** Since the new rules and form require detailed profile and contact details of donors, the organisations shared a concern that many-a-times the organisations receive donation from anonymous sources as the sector encourages philanthropy and donation for good cause. It is however, recommended that any such donation from foreign source should be immediately reported to the FCRA department and bank as the organisations can also face money-laundering charges if no due justification is given as per the Act.

CONCLUSION

With the change in the times and types of businesses, the FCRA law needed a change which was brought about by the FCRA 2010 (implemented in 2011). A lot of issues such as transfers and gifts from relatives, possibility for dual account etc. have been successfully addressed by the new act and has helped the organizations largely by decreasing the rigidity in these matters. But on other issues such as definition of “political nature”, regular registration etc. have become more stringent and rigid posing a wider limit issue for the organizations, specially the NGOs. A lot of voices have risen to bring about changes in the act but most of it are in vain. Assuming the high level importance of voluntary organizations in the civil society, they have become an easy prey to the MHA and have been totally rendered to the discretion of the government. It is a very urgent issue and immediate actions are needed in amending of a number of provisions of the FCRA to make it more realistic and acceptable to all. With the report provided by IB, the current government has decided to further tighten the laws under FCRA since there are a number of loopholes both visible and invisible. The Government has already proposed amendments to the Foreign Contribution and Regulation Rules, 2011. The civil societies are not satisfied with this law. So it is an urgent need that both the VOs and government jointly review the law so that no loopholes are left and the law regulates the organizations instead of controlling them. Some of the possible changes are as follows:

1. A check and decrease on the power that the MHA holds in lieu of the issue and cancellation of the FCRA certificates of the organizations. There should be a specific and elaborated list of the reasons as to which the organizations are subject to cancellation of FCRA certificate to safeguard them
2. CrPC should be made applicable to the ways of confiscation
3. The definition of organizations of “political nature” should be made less wide and more specific as the current definition is in violation of the fundamental right of speech guaranteed by the Indian constitution to every person.
4. The re-registration policy after every 5 years should be re-assessed as it poses a threat to every NGO from being cut off the resources and is hugely time consuming. The process of renewal needs to be made more clear.
5. Regular capacity building of organisations on the new orders and amendments, financial concerns etc. should be done by the MHA. VANI can coordinate such meetings to support the ministry in mobilizing genuine organisations.

6. The communication system between government and organisations must be strong and effective as it will ensure timely delivery of services and ultimately help in nation building and development. Both the sectors have been shying away from directly talking to each other and in recent times media has been more active source of communication channel between the two, which has only led to misunderstanding and confusion.

OPEN LETTER TO THE PRIME MINISTER BY CIVIL SOCIETY ON REGULATIONS OF AND NOT CONTROL OVER THE SECTOR¹⁷

Dear Mr Prime Minister,

We write to you today as members and representatives of Indian civil society organisations and, most importantly as Indian citizens, to express our deep concern at how civil society organisations in general and their support systems, including donors, are being labelled and targeted.

Funds are being frozen, intelligence reports are being selectively released to paint NGOs in poor light, disbursement of funds are being subjected to case-by-case clearance, and their activities are reportedly being placed on "watch lists". As a result, several NGO projects have shut down, donors are unable to support work, and there is an overall atmosphere of state coercion and intimidation in India's civil society space.

Today, standing in solidarity with India's most marginalised communities, with the NGO sector and donors who support us, affirmed by the guiding principles of our Constitution – justice, equality and liberty - we address you through an open letter.

As you are aware, NGOs work both in the welfare sector and in empowering people to be aware of and enforce their rights as enshrined in our Constitution. Such action may include questioning and protesting decisions taken by the government in many areas. This work is both our right and our responsibility as civil society actors in a democratic nation. Indeed, the Indian government acknowledged this. At the Universal Periodic Review of India at the United Nations Human Rights Council in 2012, the government spoke of its "... active association with civil society and the increasing and important role that civil society and human rights defenders are playing in the area of human rights". The government of India further said that, "The media, civil society and other activists have helped the government to be vigilant against transgressions".

¹⁷ <http://www.dailyo.in/politics/modi-greenpeace-ngo-civil-society-united-nations-human-rights-indian-government-constitution-fcra/story/1/3617.html>

Many of us receive both Indian and foreign donations in compliance with laws and carry out activities intended to help those marginalised in India's development. Many of us have partnered with the government, both at the state and central levels, towards many goals - achieving universal education, access to health care, women's empowerment, and providing humanitarian relief in times of tragedy such as the recent earthquake. We have also worked in pilot projects - some over the years have been scaled up, and others have richly contributed to the policy framework of the government of India. It should be a matter of pride for any government and a sign of robust people-centric engagement that NGOs and citizens have impacted state policy.

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On other issues, your government and indeed previous governments may or may not agree with some of our views. These may include the issue of nuclear power plants, acquiring tribal and other lands, upholding Dalit rights, protecting rights of minorities against the scourge of communalism, protecting rights of sexual minorities, or campaigning for the universal right to food. Yet, we expect that government protect our right to work and express our views. It does not behove the government to label any and every conflicting voice on these issues as "anti-national", "against national security" or "donor driven" and seek to create a public atmosphere that justifies "a crack down on NGOs". These very words shame any society. "Watch lists" and "crackdowns" belong in another age and have no place in a modern democracy.

Your government has raised the issue that some NGOs may not have complied with the Foreign Contribution Regulation Act (FCRA), the law governing receipt of foreign donations in India. We state categorically that we stand fully for transparency and accountability in both government and NGO practice, and it is in fact civil society actors who have fought hard for these principles to be enshrined in all areas of public life. So let us constructively ensure transparency and legal compliance across the vast NGO sector, including societies, trusts and a range of public and private institutions. However, such efforts cannot be capricious, selective or based on flimsy grounds. At the moment, it seems that "compliance" is serving as a garb to actually target those organisations and individuals whose views the government disagrees with, and indeed to monitor and stifle disagreement itself.

There is irrefutable documentary evidence that state action against select organisations has been arbitrary, non-transparent, and without any course of administrative redress. The effect has been to harm important work being done by NGOs at the grassroot and send a signal of threat to the civil society. Our concern includes the manner in which many Indian NGOs and international partners have been targeted for different reasons. Thus, civil society organisations in India today find themselves in a situation where the only

avenue of redress appears to be through the judiciary. Mr Prime Minister, this kind of coercive domestic environment being created under your watch does not augur well for the world's largest democracy that professes aspirations to being a global leader in promoting freedoms and democratic values.

Further, in an increasingly globalised world, where even business interests freely collaborate across national boundaries, to label any individual or NGO that engages with international forums or any donor who supports such NGOs, as "anti-national" is illogical. India is a signatory to international conventions and treaties and seeks to adhere to the highest international standards of democracy, liberty, justice and human rights. The government of India regularly reports at these forums. It is accepted practice that NGOs and civil society actors also present their views at these forums, often disagreeing with the views of their respective governments. Many of us, signatories to this letter, engage in active advocacy at international forums. This upholds the best traditions of global democratic debate, and the right to seek a more just nation and more just world. It is not anti-national to do so. We do not believe that any government can claim that it alone has the prerogative to define what is "national interest". The citizens of this country, who elect the government into power, are the ultimate stakeholders, and must be allowed to define, articulate and work towards their idea of "national interest" too, whether or not it concurs with the views of the government.

Mr Prime Minister, it does your government no credit to use its power to stifle the rights of individuals or NGOs to legally and freely associate, to work with communities, to receive donations to do such work, and to express their views on a range of issues that directly affect our country and its people. An atmosphere of hostility against civil society actors in a democracy, and the uncertainty and insecurity created among communities across the country, can only be to the detriment of our society and the government.

We therefore ask the government to:

1. Put an end to coercive actions against NGOs and donors, without reasonable cause or due process, or seek to cripple the ability of these organisations to carry on their legitimate and sanctioned work.
2. Urgently review all orders placing restraints on organisations, and revoke such orders where due process has not been followed by the government, no redress mechanism is clearly stated, and grounds are vague, subjective or flimsy. Those we are currently aware of include, among others, INSAF, Peoples Watch, Sabrang Trust, Greenpeace India, Ford Foundation, HIVOS and ICCO.
3. Initiate an immediate dialogue between the NGO sector and the government to address our concerns, going forward. Amend the presently opaque FCRA rules and regulations; ensure complete clarity and transparency on provisions and processes, as

well as fora and mechanisms of redress; remove all provisions that are amenable to subjective interpretation; ensure their uniform application to all NGOs, trusts, foundations, and societies.

We look forward to your response and action on these vital issues of national interest.

Yours sincerely,
Civil Society Organisations

The letter was in response to Intelligence Bureau (IB) report which submitted a classified document identifying several foreign-funded non-governmental organisations (NGOs) that are “negatively impacting economic development”. “A significant number of Indian NGOs (funded by some donors based in US, UK, Germany, Netherlands and Scandinavian countries) have been noticed to be using people centric issues to create an environment which lends itself to stalling development projects,” said the IB report marked to the Prime Minister’s Office (PMO). “The negative impact on GDP growth is assessed to be 2-3 per cent per annum,” says the June 3 report, identifying seven sectors/projects that got stalled because of NGO-created agitations against nuclear power plants, uranium mines, coal-fired power plants, farm biotechnology, mega industrial projects, hydroelectric plants and extractive industries.

The civil society sector feels that it is their responsibility to empower people to be aware and enforce their rights as enshrined in the Constitution of India. Such actions include questioning and protesting decisions taken by the government in many areas.

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