

Foreign Contributions: Myth, Realities and Challenges



Image source: Economics times

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Backgrounder

As poverty anywhere is a threat to prosperity everywhere, the international community, especially the affluent nations, fully aware of the implications of poverty and interrelated socioeconomic issues in many parts of the world, have incorporated the theme of global fight against poverty and underdevelopment in their domestic and foreign policy formulations. Donations and charities—both by the governments and philanthropic organisations—for the poor and underprivileged sections of developing countries have become an agenda of many governments.

Over the years, humanitarian assistance has developed into a major factor of international relations. But the ‘Cold-War era’ had witnessed a sea-change in the concept and practice of humanitarian assistance when the US sponsored-Western bloc and the Soviet Union-led Warsaw Pact countries tried to use such assistance or aid for lobbying or influence building in many developing ‘third-world’ countries particularly in Asia, Africa and Latin America. That is why John D Montgomery had rightly commented; “both foreign contributions and foreign aid can have different effects in diplomacy. It has the potential of procuring international favour and even influence or improve political ideology.”¹

Moreover, superpowers utilised such contributions for covert operations with a view to destabilising governments or institutions not favourably inclined to them. In many instances, they channelised the contributions through Research Foundations, pseudo-religious organisations or voluntary associations or other bodies. Authors like John Prados, on the basis of authentic documents from the National Security Archives, USA, had curated Central Intelligence Agency’s (CIA) such clandestine operations during the Cold War era.² Similarly, ‘Mitrokhin Papers’ revealed how much money the Soviet KGB had spent for such covert operations in different countries during the Cold War and the immediate post-Cold War era as part of lobbying for Soviet Union.³

¹Montgomery, D. John . 1967. *Foreign aid in International Politics*. 1st ed. London: Prentice Hall.

²Prados, John. 2017. *The Ghosts of Langley: Into the CIA’s Heart of Darkness*. New York: The New Press.

³Andrew, Christopher. 2014. *The Mitrokhin Archive II: The KGB in the World*. 2nd ed. Penguin .

India: Legislations to Regulate Foreign Contributions

The countries in the path of development, which were in dire need of foreign aid and considerably depending on civil society and voluntarism for development and collectivism in non-conventional areas, enacted various legislations or mechanisms to streamline the receipt and utilisation of foreign contributions. The pioneering effort in India in this direction was the Foreign Contribution Regulation Bill, introduced in Parliament in 1973. Ironically, almost all major political parties endorsed the Bill highlighting the internal security challenges facing the country. However, it took almost 3 years for the enactment of the Foreign Contribution Regulation Act (FCRA), 1976. The prime objective of the Act was the regulation of the acceptance and utilisation of foreign contribution and foreign hospitality by persons and associations working in the important areas of national life.⁴ The Act consisted of 32 sections of which the core ones were Section 5 (restrictions on organisations of political nature to accept foreign contributions) and Section 10 (power of the Central Government to prohibit receipt of foreign contributions, in certain cases).

From the very beginning, there were serious doubts on the effectiveness of the Act in successfully regulating the receipt and utilisation of foreign contributions by Non-Governmental Organisations (NGOs), Associations, religious bodies and other outfits. Such issues had come to the fore during 1976-77, when the Central Government imposed restrictions on the receipt of foreign contributions by the Association of Voluntary Agencies for Rural Development (AVARD) and Gandhi Peace Foundations by attracting provisions under sub section 1 of Section 5 of the FCRA, 1976 which restricts the receipt of foreign contributions by organisations of political nature. One main criticism was that the above section was misinterpreted and used against these bodies which were in the forefront of various campaigns and propaganda against the imposition of National Emergency in 1975. Moreover, AVARD played a pivotal role in rallying various Gandhian organisations as part of mobilisation for the 'total revolution' under the leadership of Jayaprakash Narayan.

However, it took more than three decades to introduce major amendments in the 1976 Act. The Foreign Contribution Regulation Act, 2010,⁵ broadened the scope of the initial Act. The new Act was aimed at consolidating the law to regulate the acceptance and utilisation of foreign contributions and foreign hospitality by certain individuals, associations or companies and to prohibit acceptance and utilisation of foreign contributions or foreign hospitality for any activities detrimental to the national interest. Naturally, the number of sections has increased from 32 (of 1976 Act) to 55 (of 2010 Act). As the nodal Ministry (Ministry of Home Affairs) felt that there are many grey areas uncovered in the 2010 Act, the Ministry in 2015 notified special Rules which stipulated that organisations which receive foreign contributions should give an undertaking to the effect that the acceptance of foreign funds is not likely to prejudicially affect the sovereignty and integrity of India or adversely affect the friendly relations with any foreign state and does not disrupt communal harmony or peace. Parliament has enacted the Foreign Contribution Regulation (Amendment) Act, 2020 in September, making certain changes in the 2010 Act. A major amendment is in Section 3 (1) which clearly underlines that a public servant, Judge, government servant or an employee of any corporation or any other body controlled or owned by the government is prohibited from accepting foreign contributions.

⁴Preamble of the Foreign Contribution Regulation Act, 1976.

⁵The Foreign Contribution Regulation Act, 2010. <http://legislative.gov.in/sites/default/files/A2010-42.pdf>.

One major issue was how the political parties or leaders circumvent the provisions of the Act and receive funds or foreign contributions especially during the time of elections. In 2013, the Association for Democratic Rights (ADR),⁶ a public advocacy group working for free and fair elections filed a Public Interest Litigation (PIL) in Delhi High Court against the Indian National Congress (INC) and the Bharatiya Janata Party (BJP) on the ground that these parties had been receiving contributions from foreign-based companies like Vedanta group, Sterlite and Sesa Goa in contravention of the provisions of the FCRA. The High Court in 2014 found the contributions illegal, against which the concerned parties challenged it in the Supreme Court. Subsequently, both the INC and the BJP withdrew the appeal in the Supreme Court in the wake of further amendment in the FCRA act in 2017. The above amendment through the Financial Bill route was to the effect that the recognised political parties can receive contributions or donations from the Indian Subsidiary of a foreign company or a foreign company in which an Indian holds 50 per cent or more share.

The FCRA Act of 1976 or of 2010 inter-alia contains provisions on a) category of persons prohibited from receiving foreign contributions; b) exclusion of fees or cost from foreign sources or their agents in India in lieu of goods of services rendered by persons or institutions in the ordinary course of its business, trade or commerce; c) registration of persons or Associations under FCRA norms; d) grounds of suspension or cancellation of FCRA registration/certificate; e) need of 'prior permission' of the Central Government for receiving foreign funds for specific purposes; f) procedures or formalities such as periodical returns to be followed by recipient organisations; h) auditing of accounts, inspection and offenses punishable for the violation of provisions ; i) the powers of the Central Government to authorise agencies to investigate cases under the Act, etc.

Procedures or Formalities

As per the provisions of the Act, an Association or Trust seeking registration under FCRA should be initially registered under statues such as the Societies Registration Act, 1860, Indian Trusts Act, 1882, the Companies Act or regional/state level statutes governing Charitable, Religious or Cultural societies. In fact, Societies or Trusts can be easily registered by a group of individuals after constituting an Executive body and adopting a Memorandum of Association (MOA) incorporating the aims and objectives of the Association or body. Such easy provisions have led to the proliferation of NGOs, Societies, Foundations, Associations, Trusts and Clubs. Once these bodies attain some credibility, they naturally explore the foreign donor agencies for financial support in line with their declared aims and objectives.

There are two ways to receive foreign contributions. The first one is the formal registration or certificate under FCRA. The second way is by seeking 'prior permission'. The genuine NGOs or Associations which comply with the provisions of the FCRA have no difficulties to receive contributions by adopting any one of these methods. The main issue pertains to 'Benami' associations/NGOs or those with dubious background which try to out-beat the regulations or mechanisms enshrined in FCRA. Many such bodies operate with the tacit support of political parties, religious outfits or community/caste leaders, targeting rural or tribal population.

⁶Association for Democratic Rights (ADR) vs Union of India & others. W (PC)31/2013 of Delhi HC.

Ironically, the so-called beneficiaries or clientele of such NGOs seldom come to know the actual designs or intentions of the key-functionaries.

The same is the case with the 'prior permission' way. The NGOs seeking prior permission to receive contributions should furnish details such as the specific project, specific amount and the particular donor agency granting the contribution. Only bodies with formal FCRA registration/certificate can avail this channel. What matters more is the role of the Regional/ Country Representative of the particular donor agency who has a crucial role in clearing various project-proposals submitted by the NGOs. In many instances, such representatives influenced by extraneous and other factors clear proposals not in tune with the aims and objectives or priority areas of the NGOs. Reputed donor agencies have effective mechanisms to check such undesirable tendencies. For example, some of these donors in their annual plan specify the priority/core areas or the target groups or sectors that would be covered under foreign aid in that particular year. No project proposal outside the specified areas/sectors would be considered for financial aid.

Enforcement Mechanisms: Challenges

As there are organised efforts to browbeat the provisions of FCRA and to receive foreign contributions for undesirable activities, the challenges before the enforcement agencies are arduous. However, the existing mechanisms are found to be lacking in many respects to plug the loopholes. First, the issue of giving clearance to a particular organisation for FCRA registration. As 'Benami' organisations are aplenty, the real challenge is how to identify them and deny registration. The designated agencies for undertaking the required enquiries very often confront this challenge, especially in view of dearth of manpower and adequate resources.

Two key areas of such enquiry are the profile or background of the key functionaries of the organisation and its aims and objectives as incorporated in the MoA vis-a-vis the ground level activities/projects. Section 12 of the Act lists out around two dozen grounds like sedition, conviction in conversion-related offenses, creating communal tension, etc, for disqualifying a person or organisation from receiving foreign contributions. Similarly, instead of blindly endorsing the declared aims and objectives of the organisation, it needs to be ascertained whether its ground level activities are prejudicial to national interests. In the case of those NGOs run by dubious or vested interests from behind the curtain, unearthing of such details through routine enquiries is a more tedious process.

Similar thorough probe is needed to substantiate the suspension or cancellation of the FCRA registration of an organisation or to deny prior permission to receive funds. While suspension on technical or procedural grounds such as non-submission of periodical returns, etc are comparatively easier, cancellation of registration needs specific grounds like diversion of foreign contributions for purposes other than for which they are received. In many instances, such clandestine transactions go unnoticed or are difficult to be substantiated. Despite such bottlenecks, the registration of around 21,000 associations was cancelled for violations such as misutilisation of foreign contributions, non-submission of mandatory annual returns and diversion of foreign funds for other purposes, etc, since the enactment of the Act in 2011. As per the statistics of the Ministry of Home Affairs (MHA), there are 49,843 FCRA-registered associations as of September, 2020.

A major bottleneck is the existing mechanisms for the Inspection of Records and Accounts of the Associations receiving foreign contributions as enshrined in Section 23 of the FCRA. Though a separate wing in the MHA deals with foreign contributions including inspection of records etc, only random inspection takes place in the case of NGOs or Associations which receive huge foreign contributions. Such inspections, in many cases are routine and seldom help to unearth diversion of foreign funds or their improper utilisation by the concerned organisations. Instead, in some instances, such exercises facilitate the key players of these Associations to open a direct channel with the concerned, enabling them to overcome future issues connected with the receipt and utilisation of foreign contributions.

Another discernible trend is the political interference in matters of the FCRA registration, cancellation/suspension of registration, freezing of accounts/assets of organisations receiving contributions or 'prior permission issue'. Many times, the affected NGOs or their key players seek the help of political functionaries to overcome the illegalities. At a particular phase when the process of the FCRA registration was kept pending and the registration of many organisations was suspended, a powerful lobby tirelessly worked to overcome such hurdles. Ironically, many organisations whose registration was recommended for cancellation on specific grounds of violations of the Act, managed to renew their registration with the help of this lobby. Similarly, another criticism is that political ideology or interests influence the decision making process on 'prior permission' matters or the inclusion of donor agencies in watch-list or blacklist category, thereby prohibiting them from sending contributions to organisations without clearance. A couple of US-based organisations like the Ford Foundation, Compassion International, etc, figure in that list.

In the fast changing world order, in which concepts like global village transcend beyond the contours of countries and continents, humanitarian assistance for the needy and underprivileged sections is the need of the hour. More than the institutionalised mechanisms, the civil society and the voluntary bodies have a decisive role in the success of such programmes. No doubt, foreign contributions or foreign aid constitute a crucial component of these endeavours. However, there should be effective safeguards or regulations so that such contributions should not reach in the hands of individuals or organisations whose activities are prejudicial to national interests. This is all the more significant in the present century when global terrorism and "terror-financing" have been creating big bangs world over. We are not an exception. The main aim of legislations like FCRA is to meet such serious challenges knocking at our doors. But, what is more important is the effective enforcement of such legislations in letter and spirit.

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