



FCRA and Dissent

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This article is based on **“A government that chooses its critics”** which was published in The Hindu on 15/01/2020. It talks about the impact of the prohibition of foreign funding to NGOs (under FCRA) on freedom of speech and expression.

Recently, the Central Bureau of Investigation raided Amnesty International’s offices on allegations that the **Non-Governmental Organisation (NGO)** had violated provisions of the Foreign Contribution (Regulation) Act, 2010. Amnesty has been vocal about human rights abuses, notably in Jammu and Kashmir and Assam.

The government sought to restrict foreign funding of NGOs on account of maintenance of public interest, whereas sometimes this regulation results in the chilling effect of freedom of speech and expression.

Non-Governmental Organisations in India

- Worldwide, **the term ‘NGO’** is used to describe a body that is neither part of a government nor a conventional for-profit business organisation.
- NGOs are groups of ordinary citizens that are involved in a wide range of activities that may have **charitable, social, political, religious or other interests**.
- NGOs are helpful in implementing **government schemes at the grassroots**.
- In India, NGOs can be registered under a plethora of Acts such as the Indian Societies Registration Act, 1860, Religious Endowments Act, 1863, Indian Trusts Act, etc.
- India has possibly the **largest number of active NGOs** in the world, a study commissioned by the government put the number of NGOs in 2009 at 33 lakh.
That was **one NGO for less than 400 Indians**, and many times the number of primary schools and primary health centres.
- Ministries such as Health and Family Welfare, Human Resource Department, etc provide funding to NGOs, but only a handful of NGOs get hefty government funds.

- NGOs also receive funds from abroad, if they are registered with the Home Ministry under the **Foreign Contribution (Regulation) Act (FCRA)**.
Without this, no NGO can receive cash or anything of value higher than **Rs 25,000**.

Foreign Contribution (Regulation) Act (FCRA), 2010

- **Foreign funding of voluntary organizations in India is regulated under FCRA act and is implemented by the Ministry of Home Affairs.**
- **The Act ensures that the recipients of foreign contributions adhere to the stated purpose for which such contribution has been obtained.**
- **Under the Act, organisations require to register themselves every five years.**

Why have NGOs been controversial recently?

- An **Intelligence Bureau (IB)** report, submitted to the PMO and National Security Adviser in June 2019, alleged that several foreign-funded NGOs were stalling India's economic growth by their **obstructionist activism**.
- The report accused Greenpeace of attempting to destabilise India's energy mix in collusion with a US-based anti-coal lobbying group.
The IB subsequently advised the government to cancel Greenpeace's FCRA registration.
- Earlier, in 2015, the Home Ministry had cancelled the FCRA licences of 10,000 organisations, including prominent international funding agency Ford Foundation, the environmentalist Constitutional & Administrative group Greenpeace, and human rights advocacy group Lawyers Collective, etc.

How prohibiting International funding of NGOs lead to chilling effect?

- The contribution of NGOs to human rights and public awareness is significant in India. For example, the recognition of the rights of homosexuals and transgender people, developments in the public provision of health and education are unlikely to come about without pressure by NGOs.
- However, most NGOs are neither politically powerful nor have great financial capacity. That's why International funding is crucial for NGOs to function.
 - For example, small environmental or tribal rights groups protesting against environmental violations by multinational companies cannot fight back against companies that use their resources.
 - Thus, there is a power imbalance in this struggle, exacerbated by financial restraints on organisations.

- The FCRA regulates the receipt of funding from sources outside of India to NGOs working in India. **It prohibits the receipt of foreign contribution “for any activities detrimental to the national interest”.**
- The Act held that the government can refuse permission if it believes that the donation to the NGO will adversely affect **“public interest”** or the **“economic interest of the state”**.

However, there is no clear guidance on what constitutes “public interest”.

- The FCRA restrictions have serious consequences on both the **rights to free speech** and **freedom of association** under Articles 19(1)(a) and 19(1)(c) of the Constitution.
- The right to free speech is affected in **two ways**:
 - By allowing only some political groups to receive foreign donations and disallowing some others, can induce biases in favour of the government.
 - NGOs need to tread carefully when they criticise the regime, knowing that too much criticism could cost their survival.
 - FCRA norms can reduce critical voices by declaring them to be against the public interest. This chilling effect on free speech can lead to self-censorship.
 - Similar to this on unclear guidelines on public interest, in **Shreya Singhal v. Union of India (2015)**, the Supreme Court (SC) struck down Section 66A of the Information Technology Act. The SC held that the Act could be used in a manner that has a chilling effect on free speech.
- Besides, given that the right to freedom of association is part of the **Universal Declaration of Human Rights** (article 20), a violation of this right also constitutes a human rights violation.

Conclusion

- In April 2016 the **UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association** undertook a legal analysis of the FCRA, 2010.
 - It stated that restrictions in the name of **“public interest”** and **“economic interest”** as invoked under the FCRA failed the test of “legitimate restrictions”.
 - The terms were too vague and gave the state excessive discretionary powers to apply the provision in an arbitrary manner.
- In this context, though it is necessary to regulate corrupt NGOs, there needs to be clarity on terms like public interest.

Drishti Mains Question

Invoking the FCRA to regulate NGOs is deeply troubling as a thriving democracy requires critics and civil society. Analyse.