Regulations on FCRA Contributions

Why in News

Recently, the **Ministry of Home Affairs (MHA)** issued **new regulating guidelines to banks under Foreign Contribution (Regulation) Act, 2010**. It states that the **donations received in Indian rupees by non-governmental organisations (NGOs)** and associations **from any foreign source** (even if that source is located in India at the time of such donation) should be treated as **foreign contribution**.

Key Points

- **About the New Guidelines:**
  - **Widening the Scope of Foreign Contribution:** Under the issued regulations, donations given in Indian rupees (INR) by any foreigner/foreign source including foreigners of Indian origin like **Overseas Citizen of India (OCI) or Person of India Origin (PIO)** cardholders should also be treated as foreign contribution.
  - **Meeting the Standards of FATF:** The guidelines mandate that good practices should be followed by NGOs in accordance with standards of global financial watchdog- **Financial Action Task Force (FATF)**.
    - It asked NGOs to inform the Ministry about "suspicious activities" of any donor or recipient and "take due diligence of its employees at the time of recruitment."

- **Existing Rules:**
  - **Mandatory Reporting by Banks:**
    All banks have to report the receipt or utilisation of any **foreign contribution by any NGO,** association or person to the Central government **within 48 hours,** whether or not they are registered or granted prior permission under the **Foreign Contribution Regulation Act (FCRA) 2010**.
  - **Prescribed Banking Channels:**
    - In September 2020, the **Foreign Contribution (Regulation) Amendment Act (FCRA), 2020** was passed by the Parliament.
    - A new provision that **makes it mandatory for all NGOs to receive foreign funds in a designated bank account at the State Bank of India's New Delhi branch** was inserted.
    - All NGOs seeking foreign donations have to open a designated FCRA account at the SBI branch or link their existing account to it.
- **Reasons for FCRA Regulations:**
  - The annual inflow of foreign contribution has almost doubled between the years 2010 and 2019, but many recipients of foreign contribution **are being not utilised the same for the purpose for which they were registered or granted prior permission** under amended provisions of the FCRA 2010.
    Recently, the Union Home Ministry has **suspended licenses of the six (NGOs)** who were alleged to have used foreign contributions for religious conversion.
  - To ensure that such contributions **do not adversely affect the internal security** of the country.
    Recently the **National Investigation Agency (NIA)** registered a case against a foreign based group that provides funds for secessionist and pro-Khalistani activities in India.
  - These regulations **could enhance transparency and accountability** in the receipt and utilisation of foreign contributions.
- **Controversies Related to FCRA:**
  - **Scope not defined:** It prohibits the receipt of foreign contributions "for any activities detrimental to the national interest" or the "economic interest of the state".
    However, there is no clear guidance on what constitutes "public interest".
  - **Limits Fundamental Rights:** 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.

Foreign Contribution (Regulation) Act (FCRA), 2010

- Foreign funding of persons in India is regulated under FCRA Act and is implemented by **the Ministry of Home Affairs**.
    - Individuals are permitted to accept foreign contributions without permission of MHA. However, the monetary limit for acceptance of such **foreign contributions shall be less than Rs. 25,000**.
- 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 are required to register themselves **every five years**.

Foreign Contribution (Regulation) Amendment Act, 2020

- **Prohibition to accept foreign contribution:** The Act bars public servants from receiving foreign contributions. Public servant includes any person who is in service or pay of the government, or remunerated by the government for the performance of any public duty.
- **Transfer of foreign contribution:** The Act prohibits the transfer of foreign contribution to any other person not registered to accept foreign contributions.
- **Aadhaar for registration:** The Act makes Aadhaar number mandatory for all office bearers, directors or key functionaries of a person receiving foreign contribution, as an identification document.
- **FCRA account:** The Act states that foreign contribution must be received only in an account designated by the bank as FCRA account in such branches of the State Bank of India, New Delhi.
- **Reduction in use of foreign contribution for administrative purposes:** The Act proposes that not more than 20% of the total foreign funds received could be defrayed for administrative expenses. In FCRA 2010 the limit was 50%.
- **Surrender of certificate:** The Act allows the central government to permit a person to surrender their registration certificate.

Way Forward

- **Excessive regulation on foreign contribution may affect working of the NGOs** which are helpful in implementing government schemes at the grassroots. They fill the gaps, where the government fails to do their jobs.
- The regulation **should not hamper sharing of resources across national boundaries** essential to the functioning of a global community, and should not be discouraged unless there is reason to believe the funds are being used to aid illegal activities.

Source: TH