

## FOREIGN FUNDS & NGOS

Relevant for: Developmental Issues | Topic: Role of NGOs, SHGs, Donors & Charities, and Institutional & other Stakeholders in Development Process

**The story so far:** The licences of 13 non-governmental organisations (NGOs) have been suspended under the Foreign Contribution (Regulation) Act (FCRA), 2010, this year. Their FCRA certificates were suspended and bank accounts frozen. The Ministry of Home Affairs (MHA) said it had received “serious adverse inputs” regarding the working of several NGOs which come under the ambit of the FCRA in tribal areas. The licences of at least two NGOs working in Jharkhand have been suspended.

### What is the FCRA?

The FCRA regulates foreign donations and ensures that such contributions do not adversely affect internal security. First enacted in 1976, it was amended in 2010 when a slew of new measures were adopted to regulate foreign donations. The FCRA is applicable to all associations, groups and NGOs which intend to receive foreign donations. It is mandatory for all such NGOs to register themselves under the FCRA. The registration is initially valid for five years and it can be renewed subsequently if they comply with all norms. Registered associations can receive foreign contribution for social, educational, religious, economic and cultural purposes. Filing of annual returns, on the lines of Income Tax, is compulsory. In 2015, the MHA notified new rules, which required NGOs to give an undertaking that the acceptance of foreign funds is not likely to prejudicially affect the sovereignty and integrity of India or impact friendly relations with any foreign state and does not disrupt communal harmony. It also said all such NGOs would have to operate accounts in either nationalised or private banks which have core banking facilities to allow security agencies access on a real time basis.

### Who cannot receive foreign donations?

Members of the legislature and political parties, government officials, judges and media persons are prohibited from receiving any foreign contribution. However, in 2017 the MHA, through the Finance Bill route, amended the 1976-repealed FCRA law paving the way for political parties to receive funds from the Indian subsidiary of a foreign company or a foreign company in which an Indian holds 50% or more shares.

The amendment, according to legal experts, followed accusations that the Bharatiya Janata Party and the Congress had been receiving foreign funds for political activities from the U.K.-based Vedanta Group from 2004 to 2012. The Association for Democratic Reforms (ADR), a public advocacy group, had filed a public interest litigation petition at the Delhi High Court in 2013 against both parties for violating FCRA norms by accepting foreign funds. Both parties challenged a High Court order, which had termed the donations illegal in 2014, and moved the Supreme Court. They withdrew the petitions after the FCRA was amended retrospectively.

### How else can one receive foreign funding?

The other way to receive foreign contributions is by applying for prior permission. It is granted for receipt of a specific amount from a specific donor for carrying out specific activities or projects. But the association should be registered under statutes such as the Societies Registration Act, 1860, the Indian Trusts Act, 1882, or Section 25 of the Companies Act, 1956. A letter of commitment from the foreign donor specifying the amount and purpose is also required. In 2017, the MHA suspended the FCRA of the Public Health Foundation of India (PHFI), one of India's

largest public health advocacy groups, on grounds of using “foreign funds” to lobby with parliamentarians on tobacco control activities. After several representations by the PHFI to the government, it was placed in the ‘prior permission’ category.

### **When is a registration suspended or cancelled?**

The MHA on inspection of accounts and on receiving any adverse input against the functioning of an association can suspend the FCRA registration initially for 180 days. Until a decision is taken, the association cannot receive any fresh donation and cannot utilise more than 25% of the amount available in the designated bank account without permission of the MHA. The MHA can cancel the registration of an organisation which will not be eligible for registration or grant of ‘prior permission’ for three years from the date of cancellation.

### **Have there been suspensions in the past?**

According to MHA data, since 2011, the registration of 20,664 associations was cancelled for violations such as misutilisation of foreign contribution, non-submission of mandatory annual returns and diversion of foreign funds for other purposes. As on September 11, there are 49,843 FCRA-registered associations.

### **What about international donors?**

The government has also cracked down on foreign donors such as the U.S.-based Compassion International, Ford Foundation, World Movement for Democracy, Open Society Foundations and the National Endowment for Democracy. The donors have been placed on a ‘watch list’ or in the ‘prior permission’ category, barring them from sending money to associations without the MHA’s clearance.

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