



## Foreign Contribution (Regulation) Act, and how does it control donations



### Context:

- 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.

### What is the FCRA?

- First enacted in 1976 FCRA regulates foreign donations and ensures that such contributions do not adversely affect internal security.
- 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.

16.09.2020

Wednesday



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- 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.
- New rules by Ministry of Home Affairs 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 FCRA law retrospectively 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.

### **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.

### **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 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”.



- 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.

### What are the Criticism of FCRA?

- 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.
- NGOs perform vital role of interest aggregation and interest articulation in Democratic process. Disproportionately restricting their functioning will hamper Democracy in long run.
- The Act gave the government the power to frame rules whereby an organisation can be declared to have political objectives — without defining what a 'political objective' is.

### Conclusion:

- Regulation of NGOs is very much required but it should be 'light' and consistent with the fundamental rights, so as to give effect to the objects for which voluntarism is being promoted.