FCRA & Charter for Banks

February 8, 2021

With a view to streamlining the procedures and ensuring effective enforcement and compliance, the Foreign Contribution (Regulation) Act, 2010 has been further amended on 28th September, 2020. FCRA is a national & internal security law to ensure that foreign funds don't affect national interests. The recent charters issued by the Ministry of Home Affairs open up the debate on regulation of foreign funding of civil society organisations.

In news: The Ministry of Home Affairs (MHA) has laid down a charter for banks
Placing it in syllabus: Governance
Dimensions

- Main Provisions of the charter
- Impact of the charter (Positives and Negatives)

Content:

Main Provisions of the Charter:

- Banks have been given a very crucial role in ensuring that the provisions of the **Foreign Contribution (Regulation) Act, 2010 (FCRA, 2010) and the Foreign Contribution (Regulation) Rules, 2011 (FCRR, 2011)**
- The **Ministry of Home Affairs** has laid out a series of guidelines and charter to make the NGOs and the banks comply with the new provisions.

Changes to definition of Foreign Contributions (FC)

- 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”

- Donations given in Indian rupees (INR) by any foreigner/foreign source including foreigners of Indian origin like OCI or PIO cardholders should also be treated as foreign contribution.

Utilisation of Foreign Funds

- All **foreign contributions received from any ‘foreign source’ must be necessarily received only in a bank account** and must be routed and spent only through bank accounts.
- All **NGOs seeking foreign donations have to open a designated FCRA account at the SBI** branch by March 31.
- The NGOs can retain their existing FCRA account in any other bank but it will have to be mandatorily linked to the **SBI branch in New Delhi.**
- The **Charter prohibits banks from crediting any foreign contribution to the account of an association unless it produces documentary evidence** of having obtained registration/prior permission from the Central Government
- If any foreign contribution is credited to the account of an Association directly, the bank should not allow utilization of such fund
- The bank should ask the association concerned to obtain permission from the government to utilise these funds
- The **bank should inform the Director/ Deputy Secretary (FCRA), Ministry of Home Affairs, Govt. of India, New Delhi about direct receipt of foreign funds.**
- Any asset created with Foreign Contribution remains as FC asset. Upon disposal of the asset, the sale proceeds should be deposited in the designated FC account.

Penal Provisions

- Any violation by the NGO or by the bank may invite penal provisions of The FCRA, 2010.

- RBI is empowered to take appropriate action for non-compliance of the charter by any bank

What is FCRA (Foreign Contribution Regulation Act)?

- It is an act of Parliament enacted in 1976 and amended in 2010 to regulate foreign donations and to ensure that such contributions do not adversely affect internal security.
- Coverage: It is applicable to all associations, groups, and NGOs which intend to 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 FCRA was amended through the Finance Bill to allow 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.
- 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 contributions for social, educational, religious, economic, and cultural purposes. The 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.

Key provisions of FCR (Amendment), Act 2020:

Prohibition on accepting foreign contribution:

- 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.
- Certain public servants in the prohibited category for accepting foreign contribution.They include election candidates, editor or publisher of a newspaper, judges, government servants, members of any legislature, and political parties.

Transfer of foreign contribution and its use:

- Under the Act, foreign contribution cannot be transferred to any other person unless such person is also registered to accept foreign contribution.
- The Bill 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.
- No funds other than the foreign contribution should be received or deposited in this account.
- The Bill gives government powers to stop utilisation of foreign funds by an organization through a “summary enquiry”.

Reduction in use of foreign contribution for administrative purposes:

- The bill decreases administrative expenses through foreign funds by an organisation to 20% from 50% earlier.

Impact of the Charter:

Benefits of the Charter

- **Prevention of Misuse of funds:** The government can monitor the use of foreign money is not used for activities that affect India’s internal security. An official report quantifying the GDP losses allegedly caused by environmental NGOs was prepared during the UPA period, indicating a foreign conspiracy against India.

- **Enhancing transparency and accountability of NGOs:** The annual inflow of foreign contribution has almost doubled between the years 2010 and 2019. At the same time, much of these funds were not utilised for the purpose for which they were registered or granted prior permission under FCRA.
- **Regulating activities of NGOs**: Many NGOs and associations did not adhere to statutory compliances such as submission of annual returns and maintenance of proper accounts. Through these changes the government has oversight of all funds.

Negative impacts

- **Over-regulation:** New regulations put excessive conditions on NGOs, civil society organizations, and educational and research institutions that have partnerships with foreign entities.
- **Hinders social work:** Many NGOs serve extremely disadvantaged sections. New rules restrict their scope of voluntary actions only on presumption of guilt against them.
- **Impinge on Constitutional rights**: According to the International Commission of Jurists, the new amendments to FCRA are incompatible with international obligations and India's own constitutional provisions on rights. The United Nations Human Rights Council resolution on protecting human rights defenders says that no law should criminalize or delegitimize activities in defense of human rights on account of the origin of funding.
- **Restricts flow of investments & technology:** As a growing economy, India has been proactive in seeking global capital and technology. Strict rules governing FCRA will impact investments.
- **Selective barriers:** The over-regulation appears to be

towards selected categories of global ideas and ideals such as environmentalism, human rights, and civil liberties.

- **Costly compliance on cash strapped NGOs:** Every FCRA-registered NGO will have to open an FCRA-marked bank account with a designated branch of State Bank of India in New Delhi. Around 93% of FCRA NGOs are registered outside Delhi, and will now have to open a bank account in the capital.
- **Difficulty in paying salaries:** The term Administrative Expenses in FCRA rules is defined to include all salaries. Limiting administrative expenses to 20% of total foreign donations received, will be a major blow to organisations in terms of payment of salaries, professional fees, utility bills, travel and other such expenditure.

Mould your thought: Discuss the impacts of the Charter for Banks on FCRA by the Ministry of Home Affairs.

Approach to the answer:

- Introduction
- Discuss the objective of FCRA
- Mention the changes made in the Charter
- Discuss the impacts of this move
- Conclusion