Foreign contribution regulation Act, 2010 (FCRA)

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Manifest pedagogy VisualTe

Development industry which is part of Polity is usually neglected by students. Issues related to pressure groups, NGOs are related to this topic. The issue of NGOs has been a lot in news due to amendments proposed to FCRA. The present issue has to be analyzed under the changes made to the act

In news

- CBI has charged Lawyers Collective of FCRA violation

Placing it in syllabus

- Indian Polity : Development industry
- Internal Security : Role of non state actors

Static dimensions

- FCRA act and its provisions
- FCRA 1976 act and the issue of party funding

Current dimensions

- **Issue with Lawyers collective NGO**
- **Controversies of FCRA act**

Content

The Central Bureau of Investigation (CBI) has registered a case against NGO Lawyers Collective and senior lawyer Anand Grover on charges of violating rules under the FCRA Act, 2010. The FIR has been registered based on a complaint by Ministry of Home Affairs (MHA) against the NGO, whose founding members are senior lawyers Indira Jaising and Anand Grover. The ministry has alleged that foreign contributions were used for lobbying with MPs on the HIV/AIDS bill and to organise "paid dharnas" in violation of the law. Section 3 of the FCRA prohibits the use of foreign contributions in a way to influence any parliamentary institutions.

The complaint further states that the NGO "received foreign contribution amounting to Rs 32.39 crore" during the period 2006-07 to 2014-15. The investigative agency said that senior lawyer Indira Jaising had received Rs 96.6 lakh remuneration from foreign contributions made to the NGO during her term as Additional Solicitor General (ASG) (2009-14) and the expenses of her foreign trips as ASG were borne by the NGO without the Home Ministry's prior approval.

However, The Lawyers Collective has pointed out that "*there was no basis in the allegation*"

The MHA had cancelled the registration of Lawyers Collective under the FCRA,2010 in November 2016, stopping the organisation from accepting funding from abroad. In May,2019, the Supreme Court had issued a notice to Lawyers Collective and the two senior lawyers for the alleged violation of rules after another organisation, Lawyers Voice, filed a petition seeking their criminal prosecution. The NGO's foreign funding licence had been suspended. Jaising and Grover had then alleged that they were being victimised and penalised for speaking up against the procedure followed by the Supreme Court's in-house committee that cleared Chief Justice Ranjan Gogoi of sexual harassment charges.

FCRA Act and it's provisions

The FCRA Act, 2010 is an act of the Parliament of India, whose scope is to **regulate the acceptance and utilisation of foreign contribution** or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

Provisions

- Any organisation of a political nature and any association or company engaged in the production and broadcast of audio or audio visual news or current affairs programme have been placed in the category prohibited to accept foreign contribution.
- No person who receives foreign contribution as per provisions of this Act, shall transfer to other person unless that person is also authorised to receive foreign contribution as per rules made by the Central Government.
- The foreign contribution shall be utilized for the purpose for which it has been received and such contribution can be used for administrative expenses up to 50% of such contribution received in a financial year.
- However, administrative expenses exceeding fifty per cent of the contribution to be defrayed with the prior approval of the Central Government.
- New provisions have been made for suspension as well as cancellation of registration granted for violation of the provisions of the Act. Such provisions did not exist in the repealed Act. (FCRA 1976)
- New provision has also been made for management of foreign contribution and assets created out of such contribution of persons whose certificates have been cancelled.
- FCRA, 2010 provides that the registration certificate granted shall be valid for a period of five years and
- every person who has been granted a certificate shall renew it within six months before the expiry of the period of certificate.

- Every person who has been granted registration or prior permission shall maintain a separate set of accounts and records, exclusively, for the foreign contribution received and utilised.
- No funds other than foreign contribution shall be deposited in the FC account to be separately maintained by the associations.
- Inspection of accounts if the registered person or person to whom prior permission has been granted fails to furnish or the intimation given is not in accordance with law.
- Any person, who knowingly gives false intimation and seeks prior permission or registration by means of fraud, false representation or concealment of material fact, shall, on conviction by Court, would be liable to imprisonment for a term which may extend to six months or fine or with both.
- Any person contravening the provisions of the Act shall be punishable with imprisonment for a term which may extend to five years or with fine or with both.
- The bank shall send a report containing the above details to the Central Government within thirty days from the date of such last transaction in respect of receipt of any foreign contribution in excess of one crore rupees or equivalent thereto in a single transaction or in transactions within a duration of thirty days, by any person, whether registered or not under the Act.

FCRA 1976 act and issue of party funding

The scourge of private company donations to political parties had been a subject of serious debate in the country. The political parties need to raise funds to fuel massive election rallies to be able to seize political power. Powerful MNCs are known to fund elections indirectly in many developing countries and dictate terms to the elected governments. The relationship between the political parties and the business houses have progressively become symbiotic, one supporting the other, at the cost of the public at large.

To prevent this, the Indian government enacted the Foreign Contributions Regulation Act (FCRA) in 1976 to prohibit political parties and their members from accepting donations from foreign sources. Later a Group of Ministers (GoM) was constituted to look into the formulation of a new act to replace the FCRA act of 1976, as it had failed to check the overseas funding of anti-national organisations. The new law was being formulated amidst concerns from various security agencies about massive diversion of foreign funds by NGOs as FCRA had failed in providing any prosecution of accused organisation.

FCRA of 1976 was replaced later by FCRA of 2010 with more or less similar provisions to prohibit political donations from foreign sources. Meanwhile, the Representation of the People Act of 1951 was also amended to incorporate provisions similar to those in FCRA.

In 1985, Section 293 of the Companies Act was amended to permit political parties to accept donations from private companies, provided the latter were in existence for more than three years, subject to a ceiling of 5% of the profits of a given company, averaged over three years. In the Companies Act, 2013, the ceiling was relaxed from 5% to 7.5% in Section 182 of the new Act. As a further step towards liberalising company donations to political parties, the Finance Act of 2009 introduced the concept of electoral trusts through which companies could channel funds to political parties. Both political parties and the donor companies became eligible for the benefit of tax exemption.

Controversies with FCRA,2010

A number of NGOs receiving foreign funding are seen by the

India’s central government as involved in anti-development activism and hence posing a negative impact on the economic growth by two to three per cent. An **Intelligence Bureau report titled ‘Impact of NGOs on Development,**’ claims the NGOs and their international donors are also planning to target many fresh economic development projects.

- It was alleged that “US based NGOs are financing the protests against Kundankulam Nuclear Power Plant. India’s Home ministry froze bank accounts of some NGOs after it was found that they were diverting money received from their donors abroad into funding protests at the Kudankulam plant.
- Home ministry had cancelled some more registrations including top 8 national educational institutions such as –Jawaharlal Nehru University, IIT-Kanpur and Jamia Milia Islamia saying that these institutes are not maintaining proper FCRA account. Later the FCRA status of Jamia Milia Islamia was restored in September 2012 following the submission of it’s report to the government.
- The Union Home Ministry cancelled renewal of FCRA licences of Greenpeace India and two NGOs run by activist Teesta Setalvad who is the secretary of Citizens for Justice and Peace (CJP), an organisation formed for fighting for justice for the victims of communal violence in the state of Gujarat in 2002.
- In September 2015, MHA cancelled the FCRA registration of Greenpeace India, making impossible any foreign donation to Greenpeace India on the grounds of “prejudicially affecting the public interest and economic interest of the state”.
- Recently, another NGO Compassion International had to shut down India operations after the government refused permission to accept foreign funding as earlier it was put on the “watch list” by the Home Ministry amid reports by security agencies that it was funding

unregistered Indian NGOs which were accused of encouraging religious conversions.

At the 2017 “peer review” by the UN Human Rights Council held at Geneva, the attack on the FCRA act came from nearly a dozen countries, mostly from Europe. The charge was led by the U.S. and Germany, who called the Act and the government’s actions “arbitrary”.

However, the laws a sovereign country like India can be arbitrary to protect the national interest as long as it is constitutional.