

Foreign Contribution (Regulation) Amendment Act, 2020

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In news—Recently, the **Supreme Court has upheld the 2020 amendments made to the Foreign Contribution (Regulation) Act 2010**, which introduced restrictions in the handling of foreign contributions by organizations in India.

Key updates-

- A bench comprising Justices AM Khanwilkar, Dinesh Maheshwari and CT Ravikumar pronounced the judgment in PILs challenging the FCRA Amendment Act 2020 (***Noel Harper and others versus Union of India and connected cases***).
- However, the **Bench read down the condition that Aadhaar numbers should be given for FCRA clearance** and said that applicants should be allowed to produce Passports.

The challenge was primarily to the following amendments:

- **Amendment to Section 7**, which **forbids a recipient of foreign contribution** from transferring the same to any other entity.
- **Amendment to Section 8(1)(b)**, which **reduces the limit of usage of foreign contribution** for administrative expenses from 50% to 20% (not much pressed during arguments).
- Amendment to provision to **Section 11(2)**, which states that the **Center can direct an organization to not utilize foreign contributions** pending an inquiry on suspected violations.
- Newly added **Section 12 & 17** which state that the **foreign contributions must be deposited in the FCRA account**

created in the specified branch of the scheduled bank, which was later notified as the New Delhi Branch of the State Bank of India.

- Newly added **Section 12A** which **empowers Centre to obtain Aadhaar numbers of the key functionaries of organization for approval.**

Provisions of Foreign Contribution (Regulation) Amendment Act, 2020-

- Passed in both houses of Parliament in September 2020, it seeks to regulate the process involving acceptance and utilization of foreign contributions by individuals, associations and companies.
- The 2010 Act regulates the acceptance and utilization of foreign contributions by individuals, associations and companies.
- Foreign contribution is the donation or transfer of any currency, security or article (of beyond a specified value) by a foreign source.
- **Prohibition to accept foreign contribution:**
 - Under the Act, certain persons are prohibited to accept any foreign contribution. **These include: election candidates, editor or publisher of a newspaper, judges, government servants,** members of any legislature, and political parties, among others.
 - **The Bill adds public servants (as defined under the Indian Penal Code) to this list.** Public servant includes any person who is in service or paid by the government, or remunerated by the government for the performance of any public duty
- **Transfer of foreign contribution:**
 - **Under the Act, foreign contribution cannot be transferred to any other person unless** such person

is also **registered** to accept foreign contribution (or has obtained prior permission under the Act to obtain foreign contribution).

- **The Bill amends this to prohibit the transfer of foreign contribution to any other person** (an individual), an association, or a registered company

- **Aadhaar for registration:**

- **The Act states that a person may accept foreign contribution if they have obtained a certificate of registration from the central government**, or not registered, but obtained prior permission from the government to accept foreign contribution.
- Any person seeking registration (or renewal of such registration) or prior permission for receiving foreign contribution must make an application to the central government in the prescribed manner.
- The Bill adds that **any person seeking prior permission, registration or renewal of registration must provide the Aadhaar number** of all its office bearers, directors or key functionaries, as an identification document.
- **In case of a foreigner, they must provide a copy of the passport or the Overseas Citizen of India card for identification.**

- **FCRA account:**

- Under the Act, **a registered person must accept foreign contributions only in a single branch of a scheduled bank** specified by them. However, they may open more accounts in other banks for utilization of the contribution.
- The **Bill** amends this to state that **foreign contribution must be received only in an account**

designated by the bank as “FCRA account” in such a branch of the State Bank of India, New Delhi, as notified by the central government.

- **No funds other than the foreign contribution should be received or deposited in this account.**
- The person may open another FCRA account in any scheduled bank of their choice for keeping or utilizing the received contribution.
- **Restriction in utilization of foreign contribution:**
 - Under the Act, if a person accepting foreign contribution is found guilty of violating any provisions of the Act or the Foreign Contribution (Regulation) Act, 1976, the **unutilised or unreceived foreign contribution may be utilized or received**, only with the prior approval of the central government.
 - **The Bill** adds that the **government may also restrict usage of unutilised foreign contribution** for persons who have been granted prior permission to receive such contribution.
- **Renewal of license:**
 - Under the Act, **every person** who has been given a certificate of registration **must renew the certificate within six months of expiration.**
 - **The Bill** provides that the **government may conduct an inquiry before renewing the certificate to ensure that the person making the application:** (i) is not fictitious or benami, (ii) has not been prosecuted or convicted for creating communal tension or indulging in activities aimed at religious conversion, and (iii) has not been found guilty of diversion or misutilisation of funds, among others conditions.
- **Reduction in use of foreign contribution for**

administrative purposes:

- Under the Act, a person who receives foreign contribution must use it only for the purpose for which the contribution is received.
- Further, they **must not use more than 50% of the contribution for meeting administrative expenses.**
- **The Bill reduces this limit to 20%.**