Foreign Contribution Regulation Amendment Bill, 2020

October 1, 2020

The FCRA is a piece of legislation which regulates foreign funding. It has both pros and cons, but one needs to analyse as to how to interpret the provisions so that national security should be maintained.

In news: Parliament passed Foreign Contribution Regulation Amendment Bill, 2020
Placing it in syllabus: Governance
Static dimensions

1. History of the Act and its provisions
2. Importance and Criticisms of the act

Current dimensions

1. Provisions of the Amendment bill

Content:

Provisions of the Amendment Bill:

1. Under the Act, persons like election candidates, editor or publisher of a newspaper, judges, government servants, members of any legislature, and political parties are prohibited to accept any foreign contribution.

   - The Bill adds public servants (as defined under the Indian Penal Code) to this list.

2. The 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).

3. A person may accept foreign contribution if they have: (i) obtained a certificate of registration from the central government, or (ii) not registered, but obtained prior permission from the government to accept foreign contribution.

- 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. In case of a foreigner, they must provide a copy of the passport or the OCI card for identification.

4. A registered person must accept foreign contributions only in a single branch of a scheduled bank specified by them, but may open more accounts in other banks for utilisation of the contribution.

- The Bill states that foreign contributions must be received only in a “FCRA account” in such branches of the State Bank of India, New Delhi. The person may open another FCRA account in any scheduled bank of their choice for keeping or utilising the received contribution.

5. If a person accepting foreign contribution is found guilty of violating any provisions of the Act, the unutilised or unreceived foreign contribution may be utilised 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.

6. 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.

7. A person who receives foreign contributions must use it only for the purpose for which the contribution is received. More than 50% of the contribution must not be used for meeting administrative expenses.

- The Bill reduces this limit to 20%.

8. The government may suspend the registration of a person for a period not exceeding 180 days.

- The Bill adds that such suspension may be extended up to an additional 180 days.
- Bill adds a provision allowing the central government to permit a person to surrender their registration certificate if it is satisfied that such person has not contravene any provisions of the Act.

Importance of the Bill:

- The term “public servant” has been included in the bill to prevent decision-making of those discharging public duty from being influenced through foreign funding.
- It enables the Government to prevent illegal receipt and utilisation of foreign contributions when the Government finds prima-facie that the recipient is already contravening FCRA.
- The provision of opening FCRA account only in SBI branch of New Delhi helps in centralising the inflow of foreign contribution into one bank making it easier for the Government to monitor and track the funds received under FCRA.

- The provision of giving Aadhar number helps the Government to have a database of who are the persons in control of organizations receiving foreign contributions.

Criticisms of the Bill:

- Given that the transfer of foreign contributions was already restricted, the rationale for providing a complete prohibition on transfer of foreign contributions is unclear.
- Many smaller NGOs and social workers who have a FCRA registration or prior permission, find it easier to receive such foreign contributions through the larger NGOs who have a better network, reach and infrastructure. The amendment will affect this collaboration and push NGOs to work in isolation from each other.
- As the cap on administrative expenses has been decreased from 50% to 20%, the livelihood of many grassroot level social workers, activists and researchers in the social sector who are already underpaid would be adversely affected.
- The need of opening FCRA accounts only in SBI branches in New Delhi could create logistical difficulties and hurdles and increase costs for NGOs based in remote areas.
- The power to suspend the registration certificate of a person for up to 360 days, provides a tool to the Government to keep the FCRA registration certificate under suspension/ in abeyance for almost a year when it may not have grounds to finally cancel the registration.

History of the Act:

- The FCRA was **enacted in 1976** in order to maintain strict control over voluntary organisations and political associations that received foreign fundings.

- It prohibits **electoral candidates, political parties, judges, MPs and even cartoonists** from accepting foreign contributions.
- In the year **1984, an amendment was made** to the act requiring all the **NGOs to register themselves with the Home** Ministry.
- In 2010, the act was repealed and a new act with strict provisions was enacted.
- Since the Act is internal security legislation, it **falls into the purview of the Home Ministry.**

It is a consolidating act passed by the Government of India which seeks to regulate the foreign contributions or donations and hospitality to Indian organizations and individuals. **It aims to stop such contributions which might damage the national interest.**

Provisions made in 2010:

- Cancellation of registrations of NGOs if the Home Ministry believes that the organisation is political and not neutral.
- The **registration certificate granted to the NGOs** has a **five year validity.**
- The assets of the person who has become defunct needs to be disposed of in a manner stated by the government.
- Every bank would be obligated to report to the prescribed authority, the amount of foreign remittances received and other related details such as the source, manner of receipt etc.

Who can accept Foreign Contribution?

- Organizations working for definite cultural, social, economic, educational or religious programs, if and only if they are registered with the Home Ministry.
- Maintaining a seperate account listing the donations

received from foreigners, getting it audited by a Chartered Accountant and submitting it to the Home Ministry, every year.

Amendments made in 2016:

- In 2016, the government amended the FCRA through the Finance Bill route, and **changed the definition of "foreign companies".**
- It allowed foreign-origin companies to finance NGOs and cleared the way for donations to political parties.
- The amendment, though done retrospectively, only **made valid the foreign donations received after 2010**, the year when the 1976 Act was amended.
- The retrospective amendment did not apply to donations prior to 2010.

Importance and Criticisms of the act:

- Economic Security is the one of the bases for the enactment of the Act.
- It is needed for the accountability, transparency in the financial issues attached to the NGOs and their projects. E.g. Cancellation of the registration of Greenpeace India by the Ministry of Home Affairs.
- The act aims at keeping a check on foreigners influencing the Indian electoral politics, journalists, public servants etc. for wrong purposes or activities detrimental to the public interest.
- Those violating the provisions of FCRA can be jailed up to a term of 5 years.
- Helps in maintaining friendly relations with any foreign State.

Criticisms:

- The term 'National Interest' has not been defined anywhere in the provision, which gives the broad discretionary power to the Government to interpret it.

- Political parties made of elected representatives are the one who need close monitoring under the provisions of the Act.

Mould your thought:

1. Highlight the provisions of Foreign Contribution Regulation Amendment Bill, 2020. What are the criticisms?

Approach to the answer:

- 2-3 lines introduction
- Write the provisions
- Mention the criticisms
- Conclude the answer using importance of the bill