
THE FOREIGN CONTRIBUTION REGULATION (AMENDMENT) ACT, 2020: BALANCING TRANSPARENCY AND ACCOUNTABILITY

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ABSTRACT

The Foreign Contribution Regulation Act (FCRA) was enacted to regulate the acceptance and use of foreign donations in India, to protect national security, promote transparency, and hold individuals accountable. The Foreign Contribution (Regulation) Amendment Act, 2020, was passed because some non-governmental organizations were believed to be misusing foreign funds. The Amendment made major changes, including making it illegal to move foreign contributions, lowering restrictions on administrative costs, requiring important officials to have Aadhaar identification, and giving the government greater ability to suspend and cancel. This research study looks at whether the 2020 Amendment strikes a good balance between civil society organizations' freedom and accountability, and openness on the other side. The research employs a doctrinal and analytical technique, utilizing statutes, judicial rulings, governmental records, and academic literature. It looks at what the changes mean for the Constitution, especially in terms of Article 19(1)(c) of the Constitution of India, which guarantees the right to free association. The paper states that the Amendment's goal is to improve regulatory monitoring and stop the misuse of foreign contributions. However, some parts of the Amendment may make it too hard for real non-governmental organizations to do their jobs. The study finds that a balanced regulatory approach, with procedural safeguards and proportionality, is necessary to ensure that openness does not undermine democratic participation or the growth of civil society.

INTRODUCTION

Non-governmental organizations (NGOs) and civil society groups have played a big part in India's economic and social growth. Foreign donations are often what these groups need to support education, health, human rights, disaster assistance, and social welfare. But the flood of foreign money has also sparked concerns about national security, political power, and its use. The Indian government enacted the Foreign Contribution Regulation Act (FCRA) to control such outflows. The Foreign Contribution Regulation Act was first passed in 1976. It was then updated by the Foreign Contribution Regulation Act, 2010. The goal of these laws is to ensure that foreign contributions do not undermine India's sovereignty and integrity. The Act sets out a detailed set of rules for registering, using, monitoring, and holding organizations that get money from other countries accountable. Even with these rules in place, reports of foreign contributions being misused and diverted kept coming out. This led the government to strengthen the law.

The Foreign Contribution (Regulation) Amendment Act, 2020, was passed in this context. The Amendment added a number of strict rules, including a complete ban on the transfer of foreign contributions, a lower limit on administrative expenses, mandatory Aadhaar identification of office bearers, and stronger powers to suspend and cancel registrations. The goal of these changes is to make foreign funding more open, accountable, and easy to track. Many people, however, have criticized the 2020 Amendment for imposing too many restrictions on NGOs, especially those working at the local level. Some people say that the changes infringe on the right to free association granted by the Indian Constitution and make the rules too strict. Supporters, on the other hand, say the changes are needed to defend the country's interests and prevent foreign funding from being used for nefarious purposes.

This research paper examines the Foreign Contribution (Regulation) Amendment Act, 2020, focusing on its ability to achieve an equitable balance among openness, accountability, and the operational independence of civil society organizations. The report analyses the legal, constitutional, and practical ramifications of the modifications and assesses their effects on NGOs functioning in India.

THE EVOLUTION AND STRUCTURE OF THE FCRA IN INDIA

The restriction of foreign contributions in India has changed over time because people were

worried about foreign influence on Indian politics and the need to protect India's independence. After independence, foreign donors increasingly funded voluntary organizations to support their philanthropic and developmental work. Even as these kinds of donations helped society, people worried they might be misused because there was no government oversight. The Foreign Contribution Regulation Act of 1976 was the first law to regulate foreign contributions. The main goal of this Act was to stop political parties, election candidates, judges, government workers, and media organizations from accepting foreign funds. It also set rules for how others and groups might use these contributions. The Act established a framework for pre-registration and advance approval, and gave the central government the right to monitor and limit the use of foreign funds. People didn't like the 1976 Act because it had imprecise rules, weak enforcement mechanisms, and wasn't clear about how it would be carried out. To fix these problems, Congress repealed the 1976 Act and passed the Foreign Contribution Regulation Act of 2010. The 2010 Act aimed to make the regulatory framework more complete and organized. It made the meanings of key terminology, such as "foreign contribution" and "foreign source," explicit and set out in full the procedures for registering, renewing, and obtaining advance approval. The Act also made compliance more difficult by requiring separate accounts, annual returns, and limits on the use of funds for purposes not in the national interest. The FCRA grants significant power to the central government, especially the Ministry of Home Affairs. The government has the right to register or cancel registrations, check businesses, audit their accounts, and suspend registrations if it thinks there have been violations. These capabilities show that the law is meant to be preventive and regulatory, ensuring that foreign donations aren't utilized for activities that harm India's sovereignty and integrity. Before the 2020 Amendment, the FCRA framework sought to strike a balance between allowing genuine non-governmental engagement and monitoring it. The 2010 Act strengthened monitoring and accountability systems, but concerns about misuse of funds and ineffective enforcement persisted. These perceived gaps in the rules led to the Foreign Contribution (Regulation) Amendment Act, 2020, which introduced stricter safeguards.

THE FOREIGN CONTRIBUTION REGULATION (AMENDMENT) ACT 2020

The Foreign Contribution (Regulation) Amendment Act, 2020, is a major change in how India regulates non-governmental organizations that receive funds from other countries. The Amendment was enacted to address claims that foreign contributions were being misused and diverted, as well as the government's stated goal of making foreign funds more transparent,

accountable, and easier to track. The purpose of the law is to move toward stricter control instead of easier regulation. One of the most talked-about changes made by the Amendment is the ban on giving foreign contributions to anyone else or any other group. Under the old rules, registered groups could send money to other registered groups to help them carry out initiatives. The total ban on transfers is meant to ensure that funds can be traced and that the organization that receives them is directly responsible. This rule, on the other hand, has made it hard for grassroots and collaborative groups that depend on intermediaries to work.

The Amendment also reduces the permissible limit on administrative expenses from 50% to 20% of the foreign contribution received in a financial year. The goal is to ensure that foreign funds are primarily used for programmatic activities. However, the strict limit doesn't account for the operational realities of organizations that conduct research, advocacy, and capacity-building, where administrative costs are a necessary part of doing business.

Another important change is that those who want to register or get authorization must now have an Aadhaar ID. This applies to office bearers and key functionaries of organizations. This clause is meant to hold individuals accountable and to prevent the use of proxy entities. However, concerns have been raised regarding privacy, data protection, and the proportionality of making Aadhaar mandatory for regulatory compliance. Additionally, the Amendment says that all foreign donations must be sent to a specific bank account at the State Bank of India, New Delhi Main Branch. The goal of centralizing foreign inflows is to make them easier to monitor. In real life, however, this rule has led to delays in procedures and a heavier compliance burden, especially for businesses operating in rural areas.

The Amendment also gives the central government greater control by extending the period during which registration can be suspended and making the suspension criteria tougher. These powers are reasonable for preventing harm, but the executive's broad discretion raises concerns about arbitrariness and a lack of proper procedural protections.

In general, the Foreign Contribution (Regulation) Amendment Act, 2020, indicates that the government wants greater control over activities supported by foreign sources. The goals of openness and responsibility are good, but the revisions are too rigid, raising serious concerns about how they may affect the independence and work of civil society organizations in India.

THE 2020 AMENDMENT'S EFFECT ON NGOS AND CIVIL SOCIETY

The Foreign Contribution (Regulation) Amendment Act, 2020, has had a significant impact on how non-governmental organizations and the civil society sector as a whole operate in India. The Amendment's declared goal is to increase transparency and accountability, but its real-world effects show that organizations that rely on foreign contributions will face enormous operational, financial, and institutional problems.

The Amendment has an immediate effect on small groups and grassroots organizations. The ban on transferring foreign funds has disrupted long-standing ways of working together, where larger, registered groups helped local partners carry out projects in their communities. Many grassroots groups have had to cut back or stop their welfare work since they don't have the resources to get FCRA registration on their own. This has made it harder for them to provide services at the local level.

The cap on administrative costs has been lowered to 20%, making it much harder for the organization to run. Administrative costs are necessary to ensure that rules are followed, that records are maintained, and that there are enough qualified workers. The strict limit doesn't account for the differences in civil society work, especially in areas like research, advocacy, and legal aid, where people and administrative support are the main parts of an organization's work. Because of this, businesses have to change how they operate, cut back on staff, or limit the scope of their operations. It has also been hard to get international contributions through a specific bank account at the State Bank of India in New Delhi. Organizations outside big cities have to wait longer to access their funds and pay more for compliance. These procedural problems, even though they don't seem biased, hit smaller groups with fewer administrative resources the hardest.

The new powers to suspend and cancel registrations have also made the regulatory environment less clear. The risk of a lengthy suspension without a final decision undermines initiative continuity and makes long-term planning more difficult. The lack of clear procedural protections makes concerns about arbitrariness and the absence of effective remedies even worse.

In the broader sense, these actions have shrunk civic space. Civil society organizations are very important for improving state welfare, holding people accountable, and giving a voice to those

who are often left out. Too many rules could make these functions less effective and reduce people's willingness to participate in social development projects. In short, the 2020 Amendment's strict rules have placed an excessive burden on legitimate organizations while attempting to curb the misuse of foreign funds. The effect on NGOs and civil society shows that we need rules that clearly distinguish between non-compliance and genuine social work. This will hold people accountable without hurting the health of civil society in a democratic system.

A CRITICAL LOOK AT TRANSPARENCY VS. ACCOUNTABILITY

The rules governing foreign donations in India are based on two main principles: openness and responsibility. Transparency is being open about how foreign donations are received, used, and reported. Accountability means that organizations are responsible for complying with the law and for explaining how they utilize those funds. The Foreign Contribution (Regulation) Amendment Act, 2020 says it will strengthen these two ideas, but a deeper look shows a complex relationship between regulatory scrutiny and organizational autonomy.

The Amendment adds a number of measures to improve openness, including requiring banks to disclose information, centralizing financial systems, and making it harder for key employees to be identified. These tools let the government monitor the flow of foreign donations and reduce the risk that they are used for improper purposes. From a regulatory perspective, these steps align with the goal of protecting the national interest and ensuring that organizations that receive funding comply with the rules.

But within the FCRA structure, accountability mostly works through executive authority rather than independent or democratic oversight. The executive has significant influence because they can suspend, cancel, or limit the use of funds. While accountability mechanisms are necessary, excessive reliance on punitive controls may undermine procedural fairness and chill legitimate civil society activities.

A key concern arising from the 2020 Amendment is the absence of proportionality in regulatory measures. All organizations, no matter how big or small, or what they do, must follow the same rules, such as not being able to transfer funds and having stringent limits on administrative costs. This kind of legislation doesn't distinguish between businesses that have a history of following the rules and those that don't, which makes people wonder whether the rules are fair.

Moreover, the focus on control-based accountability could blur the distinction between transparency and monitoring. Transparency necessitates information and openness; yet, it must not lead to undue disruption of organizational operations. In a democracy, civil society organizations are particularly important for advocating for policies, providing services, and addressing rights-related issues. Too many rules may make these functions less effective and, in turn, affect how people participate in democracy.

So, while the 2020 Amendment makes formal ways of being open more effective, it favors administrative control when it comes to being accountable. A balanced framework would need protections against arbitrary action, a system of graded compliance, and a way to encourage responsibility without hindering legitimate civil society participation.

LEGAL AND CONSTITUTIONAL PROBLEMS

The Foreign Contribution (Regulation) Amendment Act, 2020, has raised significant concerns about its constitutionality and legislative validity, especially regarding its alignment with basic rights and the principles of administrative law. The main problem is the extent to which the Amendment limits the rights of non-governmental organizations and civil society actors to associate and speak out.

Article 19(1)(c) of the Constitution of India protects the right to form associations, which is a major constitutional concern. This provision includes NGOs and voluntary organizations as associations, and any limits on their ability to work directly violate this basic right. Article 19(4) of the Constitution allows the State to impose reasonable limits on freedom of speech in the name of sovereignty, integrity, and public order. However, these limits must pass the test of reasonableness and proportionality. The Amendment's blanket ban on transferring foreign contributions and severe limits on administrative costs raise questions about whether the restrictions are reasonable given the goals they are meant to achieve.

More worries arise from the executive's increased discretionary powers. The long-term suspension of registration and strict rules during suspension work with little procedural protections. The lack of clear rules on how these powers can be used makes it more likely they will be used arbitrarily. This violates Article 14 of the Constitution, which provides that everyone is to be treated equally under the law and that the government must not act arbitrarily.

Privacy issues have also come up in connection with the obligation for office holders in organizations to have Aadhaar. For regulatory compliance, requiring biometric identification raises concerns about privacy and data protection, especially given the lack of a comprehensive set of laws governing the use and storage of this type of data.

From a global perspective, limits on foreign funding for civil society groups must be in line with international human rights standards on freedom of association. Too many or overly restrictive financing sources could make it harder for civil society to work independently and effectively, hindering democratic participation. So far, judges have been careful in their responses to the 2020 Amendment. They have recognized the State's power to regulate but also stressed the importance of protecting basic rights. There is still significant controversy over the constitutional validity of several sections, which highlights the conflict between national interests and civil liberties.

In short, the constitutional and legal challenges to the 2020 Amendment show how important it is to have a balanced regulatory system that protects basic rights, includes procedural safeguards, and makes sure that limits on civil society are fair, reasonable, and not arbitrary.

COMPARATIVE STUDY

A comparison of how other countries regulate foreign funding will help us assess the fairness and effectiveness of India's approach under the Foreign Contribution (Regulation) Amendment Act, 2020. Many democratic countries have rules governing how foreign money can be used to fund non-governmental organizations, though these rules vary widely.

In the US, tax and transparency regulations, not rigid licensing rules, are the main ways that foreign funding of non-profit groups is controlled. Organizations that receive funding from outside must follow rules on reporting and transparency of their finances. However, there is no general rule against moving money between organizations. Regulatory oversight is more about ensuring that people are honest, audited, and held accountable than about stopping them from doing things.

The United Kingdom also has a regulatory system focused on disclosure. Charity legislation requires charities to record donations from outside the UK and to follow good governance rules. Regulatory bodies have the right to investigate misuse, but the system focuses on proportional

regulation and post-facto accountability instead of preventive limits. The UK model acknowledges the significance of civil society autonomy while promoting transparency via reporting and enforcement procedures.

India's FCRA structure, on the other hand, takes a more controlling approach. This is shown by licensing requirements, limits on how funds can be used, and more freedom for executives to make decisions. The limitations on moving foreign contributions and the centralization of banking channels reflect a regulatory approach that prioritizes monitoring over helping. Regulation is necessary for national security, but comparative models show that there are less restrictive ways to accomplish openness. The comparative approach indicates that efficient control of foreign contributions does not require stringent prohibitions or universal constraints. A system that includes graded compliance, independent oversight, and proportional enforcement may better balance openness, responsibility, and freedom for civil society. Lessons from other places show that it is possible to have a regulatory strategy that protects the national interest without imposing too many limits on non-governmental legal activities.

RESULTS AND OBSERVATIONS

This study has produced several important results based on an investigation of the Foreign Contribution Regulation (Amendment) Act, 2020, and its legal, constitutional, and practical effects. The Amendment signifies a distinct transition in policy from a facilitative regulatory framework to a control-oriented paradigm. The goal of stopping the misuse of foreign contributions is good; however, the steps taken focus on preventive measures rather than targeted punishment against organizations that don't follow the rules.

Second, the strict rules that apply to all civil society organizations, such as the ban on transferring foreign funds and the strict limit on administrative costs, don't take into consideration how different these groups are. The absence of distinction between major, well-funded organizations and tiny grassroots entities has led to inequitable demands on the latter, negatively impacting their operational capabilities.

Third, the executive's increased discretionary powers raise concerns about fairness and accountability in the process. The absence of detailed safeguards governing suspension and cancellation of registration increases the risk of arbitrary decision-making, which may undermine trust in the regulatory framework.

Fourth, the Amendment adds ways to make things clearer, such as centralized banking and stronger ID requirements. However, people sometimes confuse transparency with too much authority. For transparency to work, there needs to be openness and disclosure, not constant government interference that could stop genuine civil society engagement.

Finally, the Amendment still has important effects on the Constitution. Restrictions on how NGOs can work directly affect people's right to join groups, and there is still a legal discussion over how fair these restrictions are. The results show that the right balance between national interest and civil society autonomy has not been reached.

The study finds that the Foreign Contribution Regulation (Amendment) Act, 2020, strengthens formal regulatory control, but it also limits the ability of civil society organizations to do their work. This calls for a more balanced and rights-sensitive approach.

JUDICIAL DECISIONS

Judicial interpretation has been very important in defining the legal meaning of foreign contributions, the rules for NGOs, and the limits of state supervision. The Foreign Contribution Regulation (Amendment) Act, 2020, is a recent law, but several court cases have addressed the FCRA framework, freedom of association, and executive discretion, which can help us determine its constitutionality.

In *Indian Social Action Forum (INSAF) v. Union of India (2020)*, the Supreme Court examined the constitutional validity of clauses in the FCRA, 2010, that prohibited organizations from participating in political activities. The Court agreed that the State has the right to limit foreign funding in order to protect national sovereignty and integrity. It did stress, though, that limits shouldn't be too stringent or arbitrary, and should be narrowly construed so as not to impede legitimate civil society work. This decision is important because it holds that the State has the right to control foreign contributions, while also warning against overly broad rules.

The Supreme Court stressed the need for openness and responsibility in cases that affect the public and include democratic engagement in *PUCL v. Union of India*. The concepts of openness, proportionality, and reasoned decision-making are not directly related to the FCRA, but they are useful for judging executive action under the FCRA, especially when it comes to suspending or cancelling registration.

The Supreme Court's ruling in *K.S. Puttaswamy v. Union of India* is important in this regard. The Court acknowledged privacy as an essential right and determined that any limitation must meet the criteria of legality, necessity, and proportionality. Using this logic, the requirement that Aadhaar be provided for FCRA registration raises questions about whether this is the least restrictive way to hold people accountable.

In *Maneka Gandhi v. Union of India*, the Court held that Article 14 should cover a broader range of rights and that the government must act fairly, justly, and without bias. This notion is especially important when considering the FCRA's broad discretionary powers granted to the president, particularly with respect to suspending or cancelling registration without clear procedural protections.

These judicial decisions show that the State has the power to control foreign contributions for the sake of national security and public order, but that control must comply with constitutional principles of fairness, balance, and non-arbitrariness. The case law suggests that any future court review of the 2020 Amendment would likely focus on whether the limits go too far in violating basic rights and whether there are enough safeguards in place to stop the misuse of regulatory power.

CONCLUSION

The Foreign Contribution (Regulation) Amendment Act, 2020, marks a significant change in how India regulates non-governmental organizations that receive funds from abroad. The Amendment was passed to increase openness and accountability. It aims to give the state more control over how foreign contributions is received and used. It is both legal and constitutional for lawmakers to want to stop the misuse of foreign funding and safeguard the national interest.

The analysis conducted in this research paper indicates that the regulatory framework established by the 2020 Amendment is predominantly oriented towards control rather than equitable regulation. Measures such as the complete prohibition on transfer of foreign contributions, rigid limits on administrative expenses, and expanded executive powers operate uniformly across the civil society sector, without adequate differentiation based on organizational size, function, or compliance history. This has put too much stress on real and grassroots groups.

The Amendment's constitutional issues, especially those concerning freedom of association, non-arbitrariness, and proportionality, show that we need stronger procedural protections and clearer rules governing the executive branch's operations. Judicial precedents underscore that legislation aimed at preserving sovereignty and public order is acceptable, provided it does not excessively hinder democratic participation or civil society involvement.

In conclusion, the Foreign Contribution Regulation (Amendment) Act, 2020, enhances formal accountability measures but fails to establish a fair equilibrium between transparency and civil society autonomy. To ensure accountability goals are met without undermining the important role of civil society in a democratic polity, we need a sophisticated, rights-sensitive regulatory approach grounded in fairness and proportionality.