

**STATEMENT BY THE POPULATION FOUNDATION OF INDIA  
(On The Foreign Contribution (Regulation) Amendment Bill 2020)**

***We stand with the government of India in its efforts to put down any activities or acts that hurt India. But by failing to recognise and appreciate the diversity of qualified and committed NGOs, and presuming that all civil society organisations are suspect and guilty the Bill will end up crushing a very important pillar of India's vibrant democracy.***

***We would have been happy to participate in any discussion or pre-legislative conversation about this Bill but are disappointed that there was never any opportunity to do that.***

The Population Foundation of India, serving India for five decades now is deeply concerned about the way the FCRA framework has been modified.

It will kill **collaboration** and **cooperation** amongst NGOs, which are vital to the spirit of civil society in our country and which have supported social transformation over the years.

The restrictions on organisations getting any foreign money under FCRA, when added to the existing restrictions which prohibit Indian organisations which win foreign research grants from sub-contracting a foreign institution (which, in essence, means that no Indian organisation can be the lead institution in an international consortium), runs against the core mission of the government's desire to strengthen India's science/research performance. This amounts to throwing the baby with the bathwater and a knee-jerk response against the need to act against some, who may be breaking the law.

At a time of COVID-19, NGOs have stepped out and worked with government and with fellow NGOs with a sense of fraternity and compassion, to deliver care and comfort in our large and diverse country. ***This Bill will render all such cooperation, collaboration and camaraderie impossible. The pandemic is not over, and it is our view that more of mutual support and the fraternal spirit is the need of the hour, not an eye of suspicion towards those who collaborate and cooperate.*** The scientific research NGO community (not least in the flourishing health sector) will be sharply hit at a critical time, as new rules prohibit collaboration with other Indian organisations.

**India has a very important role on the world stage.** It has been a signatory to some of the most vital multilateral institutions, which envisage a signature role for India and it leading so many global partnerships. We fully support our Prime Minister raising the point of India getting its due on the United Nations high table. The quest for finding our place in the comity of nations is precisely what powers civil society to partner with government and with fellow-organisations - to achieve sustainable development goals, and other global commitments. ***This sense of international partnership and fraternity, so important in today's world, will be hit with these new rules looking at all foreign contributions (coming in legally and openly) with suspicion.***

**Global donors**, working with so many NGOs in India, steadily and surely, have enabled not just physical resources to be made available, but brought in their vision which ties in with our nation's ambitions and fulfils critical needs. To now have rules that bind this flow of assistance (coming in through legitimate means) is almost unmindful of the role that international philanthropists and respectable organisations have played so far and continue to do so. Our IITs and other crucial core industries have also enjoyed the support from global organisations, no doubt enriching the Indian experience. All that gets negated by the tragic portrayal of international resources as dubious from the very start.

Most of the work necessary on the ground by civil society, to enable India fulfil its destiny will be rendered impossible if the new FCRA Bill was to be accepted as the law.

Of the foreign money that comes into India, reportedly 96% goes into the corporate sector and just 4% comes to civil society by way of assistance/grants through FCRA regulation. Adding a new set of restrictions to just tie in this small fractions seems disproportionate, apart from inhibiting work on the ground.

**With limited domestic philanthropy, such guidelines that criminalise activities of even those certified as FCRA compliant, thousands of small NGOs which enable good work and are dependent on legal funds obtained internationally, will shut down, also endangering livelihoods of those dependent on them for a vocation.**

Mr Keshav Desiraju, Chairperson, Population Foundation of India and former Secretary, Government of India and said: “The spirit of voluntarism has powered India since before our independence. Non-governmental and civil society organisations played crucial roles in all successful government initiatives, especially in areas where community presence and outreach is important. We look to the government to strengthen us and allow us to function in alliance with government institutions and partner NGOs.”

Ms Poonam Muttreja, Executive Director, Population Foundation of India said: “Global donors have immense value for not just the money they bring but the ideas and vision that has enriched the work organisations in India do to battle elemental and basic challenges like hunger and disease. NGOs are committed to bringing about social transformation in India. We fear that any restrictions that end up throttling their ability to work with each other seamlessly, will slow down the process of meaningful social change and progress. We appeal to the President of India to not sign this Bill that will hamper our work seriously in the future.”

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### **More information's about The Foreign Contribution (Regulation) Amendment Bill 2020**

**The Bill can be read or downloaded at:**

[https://www.prsindia.org/sites/default/files/bill\\_files/FCRA%20Amendment%202020.pdf](https://www.prsindia.org/sites/default/files/bill_files/FCRA%20Amendment%202020.pdf)

#### **Key Changes:**

#FCRA Amendment Bill - Implications

#### **Non-transfer to others**

Thousands of small organisations are working with millions of Dalits, Scheduled castes, Tribal communities, women, children, aged, and other deprived communities on health, protection, livelihoods, and other issues. These smaller organisations can't raise funds directly from foreign donors due to language, technology, and other access issues. They will also not be able to get funds raised online by other agencies on their behalf. Prohibiting transfer of foreign contribution to them under sec. 7 (despite their having FCRA registration or permission) will bring their work to a halt and leave these communities vulnerable, that too in the middle of a raging global epidemic.

#### **Taking Over Assets on Surrender of FCRA**

If a charity has violated provisions of FCRA, their FCRA is cancelled. The law requires custody and management of all their FCRA land, building, equipment, funds, etc. to be passed to District Magistrate till the FCRA is restored.

The new bill extends this even to charities who have not violated any provision, but are surrendering their FCRA because they are now able to sustain themselves on non-FCRA funds. This provision will disrupt their existing programs and activities — it will discourage charities from moving towards self-sustainability or non-FCRA funds.

#### **20% Cap on Admin**

The term Administrative Expenses in FCRA rules is defined to include all salaries (except for school teachers, doctors, and field researchers, trainers). This means all the salaries of outreach workers, field staff who support villagers and rural communities are also counted as administrative expenses. So this amendment will be a major

blow to organisations in terms of payment of salaries, professional fees, utility bills, travel and other such expenditure. Many charities are not aware of this definition and are unable to calculate or report this correctly. Reducing the ceiling to 20% will mean that all these field workers will not be able to work. Charities will only be able to work on distribution of relief material - instead of being able to work with communities. This enormous wealth of experience and skills that even the Government relies on, will be lost.

### Centralisation through SBI

Asking 20,000 charities to move their FCRA accounts to SBI Delhi will be hugely disruptive. Many will not be able to operate these accounts properly as the home branch will be in Delhi.

### No-sub-granting

No organisation which is registered and granted a certificate or has obtained prior permission under FCRA and receives any foreign contribution, shall transfer such foreign contribution to any other organisation.

This means an institution registered or having prior permission under FCRA cannot make sub-grant/s to any other institution from foreign contributions received in its designated FCRA Bank account even if the second recipient or sub-grantee has registration or prior permission under FCRA.

**This amendment will be a major blow to NGOs working collaboratively on projects and programs.**

**This may also place 'foreign funding agencies' or 'foreign grant -making organizations' registered under FCRA in difficulty.**

### Suspension in case of contravention

*If the Ministry of Home Affairs "on the basis of any information or report, and after holding a summary inquiry, has reason to believe that a person (person includes an association) who has been granted prior permission has contravened any of the provisions of this Act, it may, pending any further inquiry, direct that such person (or association) shall not utilize the unutilized foreign contribution or receive the remaining portion of foreign contribution which has not been received or, as the case may be, any additional foreign contribution, without prior approval of the Central Government."*

**In other words, MHA will have the power to freeze the FCRA Bank account in case of any contravention of the FCRA law.**

### Aadhaar of Board Members & Copy of passport and OCI card

Organisations applying for registration, prior permission or renewal of FCRA registration shall be required to "provide as identification document, the Aadhaar number of all its office bearers or Directors or other key functionaries, by whatever name called, issued under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, or a copy of the Passport or Overseas Citizen of India Card, in case of a foreigner."

### Suspension of registration

Currently the FCRA registration of an organization which violates the provisions of FCRA may be suspended for "such period not exceeding one hundred and eighty days as may be specified".

**The Bill proposes to amend this to "one hundred and eighty days, or such further period, not exceeding one hundred and eighty days, as may be specified".**

**This amendment will empower MHA to suspend FCRA registration of an organization for more than six months.**

### Voluntary surrendering FCRA registration – Boon or Bane?

Under current law there is no provision for an organisation to voluntarily surrender its FCRA registration.

The Bill now proposes that on a request being made in this behalf by the organization, MHA may permit any organization to surrender the certificate granted under this Act, if, after making such inquiry as it deems fit, MHA is satisfied that such organization has not contravened any of the provisions of FCRA, and **the management of**

foreign contribution and asset, if any, created out of such contribution has been vested in the competent authority as provided in Section 15(1).

While this amendment will prove to be a boon for organisations no longer interested in receipt of foreign funds, it will be a bane for organisations which may have created assets (e.g. schools, hospitals, vocational training centers) out of foreign funds.

On surrendering FCRA registration, assets created out of foreign contributions may also have to be surrendered to the competent government authority.

#### **Inquiry before renewal of FCRA**

Generally, renewal of FCRA registration has been relatively easy for organisations who have been compliant with requirements under FCRA such as filing annual returns in online Form FC-4, quarterly intimation etc.

**However, it is proposed now that MHA, before renewing the certificate, shall make such inquiry, as it deems fit, to satisfy itself that such organization has fulfilled all conditions specified under Section 12(4) of FCRA 2010.**

#### **FCRA Bank Account with State Bank of India**

Currently organisations are required to open their designated FCRA Bank account with any Core Banking Compliant Bank integrated with the Public Financial Management Systems (PFMS).

The Bill now proposes that organisations granted registration or prior permission under FCRA shall receive foreign contribution only in an account designated as “FCRA Account” by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in **such branch of the State Bank of India at New Delhi**, as the Central Government may, by notification, specify in this behalf, provided that such organization may also open another FCRA Account in any other scheduled bank of their choice for the purpose of keeping or utilizing the foreign contribution which has been received from the FCRA Account in the specified branch of State Bank of India at New Delhi.

Thus, from the requirement of having designated FCRA Bank account with any Core Banking Compliant Bank integrated with the Public Financial Management Systems (PFMS) it has now been narrowed down to **such branch of the State Bank of India at New Delhi**.

The Bill also makes it incumbent on the specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the organization has opened the foreign contribution account to report to the government of India, the prescribed amount of foreign remittance; the source and manner in which the foreign remittance was received; and other particulars, in such form and manner as may be prescribed.’.

#### **Rationale for Amendment**

The Government of India’s rationale for these draconian and cumbersome amendments can be found in the ‘Statement of Objects and Reasons’. The statement avers:

The annual inflow of foreign contribution has almost doubled between the years 2010 and 2019, but many recipients of foreign contribution have not utilized the same for the purpose for which they were registered or granted prior permission under the said Act.

Many of them were also found wanting in ensuring basic statutory compliances such as submission of annual returns and maintenance of proper accounts. This has led to a situation where the Central Government had to cancel certificates of registration of more than 19,000 recipient organisations, including non-Governmental organisations, during the period between 2011 and 2019.

Criminal investigations also had to be initiated against dozens of such non-Governmental organisations which indulged in outright misappropriation or mis-utilization of foreign contribution.  
mis-utilisation

**But, it is our considered view, that these objectives are not met by such blanket rules and changes in the way the FCRA regime works.**

*Prime Minister Shri Narendra Modi on March 31, 2020 welcomed the role of NGOs and called on social welfare organisations and NGOs to help the government during the lockdown by providing basic necessities to the underprivileged, supplying medical and protective gear, and assisting with awareness campaigns on social distancing. Speaking with NGO representatives via video conferencing, the Prime Minister invoked Mahatma Gandhi to exhort the organisations to serve the poor and the downtrodden. “The entire nation is displaying immense resilience, grit and patience” in facing the challenge of COVID-19,” he said as he praised the dedication and commitment of the participating organisations towards serving humanity. NITI Aayog wrote to 92,000 NGOs appealing them to assist the government in identifying Covid-19 hotspots and delivering services to vulnerable groups at a time of Covid. The Supreme Court of India on June 9 referred to NGOs; “Although it is the responsibility and duty of the States and Union Territories to take care of the needs of the migrant labourers, in this difficult time non-governmental organisations and individuals have also contributed and played an important role in extending a helping hand to the migrants,” The Bench went onto say; “Non-governmental organisations coming forward to help the migrant workers and to fight the pandemic and extend help by providing food, water and transportation at their cost deserves all appreciation,”*

**It is our appeal that while wrongdoers are taken out for breaking the law, the entire NGO community must not be penalised. Almost 55,000 organisations who in various ways do good and beneficial work without seeking profits and want to partake in enabling India’s progress and growth.**

**Non-profits are committed to the advancement of India in all senses of the phrase.**