

“The fear that foreign funds are being used to subvert the security of the state is not well grounded . . . so long as the laws requiring accountability and transparency from NGOs are applied firmly but fairly, the responsible organ will know whether any NGO, funded locally or from abroad, has used funds improperly. If it has, vigorous steps should be taken to correct the abuse and preclude its repetition. Requiring advance approval for foreign grant, as is done in Egypt, India and Bangladesh, is a wasteful, dilatory and excessively bureaucratic approach.”

The handbook on NGO Laws discussion draft – World Bank Report

The laws applicable to the non-profit sector in India are not travelling along the main stream where drastic reforms combined with simplification of laws have taken place. For example FERA has been replaced by FEMA, but similar changes are yet to take place for laws in the NPO sector. NPOs

stringent provisions have been added making the law even more draconian.

The Home Minister has assured that the new Bill will be user-friendly. There are very few user-friendly points which have been introduced in the proposed Bill. Some of them are as below :

FROM THE FRYING PAN TO FIRE: Foreign Contribution (Management & Control) Bill, 2005

have been making representations about it for a long time. The new FC(M&C) Bill, 2005 has come as bolt from the blue to the sector.

The sector had been hoping that a new friendly enactment would be introduced to replace FCRA. But, the Bill in the present form is trying to push the sector from the frying pan to the fire and many more

- If the Registering Authority refuses the registration or prior permission, the reasons for such refusal should be recorded and a copy should be sent to the applicant.
- Any person aggrieved may appeal to the Central Government. Appeal

procedures have been introduced in the case of cancellation of certificate.

- NPOs have been allowed to receive contribution in approved bank account and allowed to re-transfer to the subsequent bank accounts for operational reasons.

But compared to the above, the harsh provisions indicated below makes the Bill more unfriendly for the users:

- The existing registered associations shall obtain within two years a certificate of registration from the new Registering Authority.
- The certificate of registration shall be valid for a period of five years and associations have to apply for renewal.
- The administrative expenses have to be restricted to 30% and the Government will notify the manner in which to calculate the administrative expenses.
- The assets purchased out of Foreign Contribution shall be disposed of in such manner to be notified by the Government.
- The new provisions like suspension and cancellation of certificate are

introduced. In the case of suspension, there is not even an appeal procedure.

There are many other new sections which have been introduced and existing rules have been enlarged adding more teeth to the Government and the prescribed authorities which makes NPOs feel that the existing laws itself are better and instead of reducing the pressure from the existing laws the new Bill has only increased the quantum and quality of the pressure on NPOs.

The NPOs need encouragement. It will be apt to mention the viewpoint expressed by Dr. Manmohan Singh on 10th January 2003 during the publication of JHU-PRIA Study in Delhi:

“Government policy should facilitate the effective functioning of this vast sector through appropriate tax regimes that provide incentives for more charitable giving and its more effective use in the country.”

The NPO sector hopes that the Government will keep in mind the above viewpoints and remove the sections which are very harsh and make it user-friendly after discussing with NPOs and then present a new Bill in the Parliament. It is also essential that the NPOs should show their solidarity and unite together and use all their efforts to lobby with the Government and work for making the law user-friendly.

FCRA and FC(M&C) Bill – A Comparison

Sl. No.	Particulars	FCRA	FC(M&C)
1.	Preamble	Regulate the acceptance and utilization of FC	Consolidate law relating to FC and prohibit FC for anti-national activities and incidental matters.
2.	Association – Definition	No such provision	It doesn't include any corporation established by Central, State Act and Govt. companies as per Sec. 617 of the Companies Act, 1956 and Societies controlled by Central/ State Governments (Sec.2(1)(a))
3.	Foreign contribution – Definition	No such provision	Interest on FC Income from FC added as FC. Any amount received by way of fee for attending any conference, subscription for journal, tuition fee for students and receipt in lieu of services rendered by such person in India excluded (Explanation 2 and Explanation 3 of Sec.2(1)(f))
4.	Organisations of political nature	Prior permission category (Sec.5(1))	Prohibition category (Sec.3(1)(f))
5.	Procedure for notifying an organisation to be of political nature	No such provision	<ol style="list-style-type: none"> 1. A notice in writing by the Central Govt. shall be given to the organisation informing the grounds on which it is proposed to be notified. 2. Rules to be notified to specify the grounds, on which the organisation shall be specified as an organisation of political nature. 3. The association can respond within 30 days of the date of the notice. Additional time can be granted by

			<p>Central Government, if it is satisfied that there was genuine reason.</p> <p>4. Government will send the representation to the authority if it considers so.</p> <p>5. After consideration of the representation and the report, the Central Government will specify such organization to be of political nature. (Sec.5)</p>
6.	Prohibition for transfer of FC to another association	Many provisions in the Act to indicate the same, but no express provision as in the FC(M&C)	Expressly provided that transfers to be done only to registered/prior permission category association (Sec7)
7.	Restriction to utilise FC for administrative purpose	<p>Not expressly provided, though indicated in some places.</p> <p>No such provision</p>	<p>1. FC can be used only for the purpose for which it was received.</p> <p>2. For administrative purposes, not more than 30% of FC received will be spent and the manner will be notified in the rules (Sec.8)</p>
8.	Registration (For FCRA registered associations)	<p>No such authority</p> <p>Not applicable</p>	<p>Registering authority provided for.</p> <p>Those registered under FCRA have to register with the authority within two years of the commencement of Act and FC received during these two years will be deemed under the new Act. (Sec.11(1))</p>
9.	Prior permission category	Organisations of political nature (Sec5(1)) and certain associations (Sec.6(1a)) were specified under prior permission category. No mention about class, areas, purposes, sources.	Persons not registered under 11(1) can apply. The Central Government can specify persons registered under Sec. 11(1), class of persons registered under 11(1), areas, purposes, sources that will

			come under prior permission category (Sec.11(3)).
10.	Fee	Not needed	Fee to be paid along with application for registration and prior permission (Sec.12(1))
11.	Registration/prior permission	Application to Central Govt. (Sec.6(1)) and Sec.6(1-A) for registration) as per permission	Application/registering authority/prescribed authority for registration/prior permission (will be notified under rules (Sec.17(1)).
12.	Registration/prior permission additional conditions	No such provision explicitly	For registration/prior permission the Registering Authority will enquire the following: <ol style="list-style-type: none"> 1. The applicant has done meaningful activity in the chosen field for the benefit of the people living in the district, for which FC is proposed to be utilised. 2. The applicant has prepared a meaningful project for the benefit of the people living in the district, for which FC is proposed to be utilised. 3. The applicant has not indulged in activities aimed at conversion, either directly or indirectly from one religious faith to another. 4. The applicant has not created communal tension or disharmony in any part of the country. 5. The applicant has not been found guilty of diversion or mis-utilisation of funds.

		<p>Particulars regarding prohibition from accepting FC is asked in the FC-8 and FC-1A.</p> <p>These particulars are asked in FC-8 and FC-1A.</p>	<p>6. The applicant is not engaged or likely to engage to propagate sedation.</p> <p>7. The applicant is not likely to use the FC for personal use.</p> <p>8. The applicant has not contravened the Act, the certificate never cancelled or suspended and has not been prohibited from accepting FC.</p> <p>9. Directors, office bearers not convicted under any law nor any prosecution is pending (Sec.12(2))</p>
13.	Refusal for registration (copy of reasons in case of Registration/prior permission)	Copy not given to applicant	Copy given (Sec.12(4))
14.	Appeal to Central Govt. against the registration (Registration/prior permission)	Not possible	Appeal within 30 days of receipt of order to Central Govt. with fee. (Sec.12(5))
15.	Period of registration	Permanent registration unless Central Govt. acts otherwise	Five years (Sec.12(7))
16.	Suspension of certificate	No such provision	Possible for a period not exceeding 90 days. FC not to be received during the period and only to utilise the FC in the manner prescribed by registering authority (Sec.13)
17.	Cancellation of certificate	No express provision, though Central Govt. can put the association in prohibition category.	1. The Central Government can cancel if the holder has provided false information in application, has violated terms and conditions of certificate, has violated Act, Rules or order or if it

			<p>is in public interest to do so.</p> <p>2. Opportunity will be given to association and they can appeal to Central Govt. within 30 days of receipt of decision with fee. (Sec.14)</p> <p>3. For 3 years from the date of cancellation, no registration under FC(M&C) (Sec.14).</p>
18.	Transfer of FC of cancelled association	No provision	The FC of cancelled persons will vest in such authority as maybe prescribed (Sec.15)
19.	Renewal of certificate	Does not arise	It is to be renewed within two years before the expiry of period by making application to registering authority (Sec.16)
20.	FC Receipts and Banks	<p>1. It could be through any bank. (Sec.6(1))</p> <p>2. No such provision</p> <p>3. Not stated</p> <p>4. No such provision</p>	<p>1. FC receipt only through single account of any branch of a Scheduled Bank (Sec.17(2))</p> <p>2. No Scheduled Bank shall allow credit of FC or withdrawal unless certificate of registration/ prior permission is obtained by the person (Sec.17(1)).</p> <p>3. A person can open one or more accounts in one or more scheduled banks for utilising FC.No funds other than FC to be deposited in such accounts (Sec.17(2)) (FC cannot be received directly in these accounts)</p> <p>4. Every Scheduled Bank receiving FC under S.17(2) shall intimate to</p>

			Registering Authority, details of all FC received in the account and amount transferred to the account referred in proviso to S.17(2) (Second Account) and amount withdrawn from such accounts (Sec.17(3))
21.	Disposal of assets	No such provision	The Central Govt. having regard to the nature of assets created out of FC, shall specify such assets which shall be disposed off and the manner and procedure (Sec.22).
22.	Seizure of accounts/records	After seizure, they will be produced before the court in which the proceeding is brought for such contravention (Sec.15)	Authority and tribunal also added with court for production of seized records (Sec.24)
23.	Seizure of article/ currency received in contravention	Any asset exceeding Rs.1,000 in value/ currency may be seized. (Sec.16)	The value is to be Rs.10,000 (Sec.25)
24.	Seizure mode	Sec.100 of code of criminal procedure, 1973 to be followed (Sec.17)	The Central Government shall specify the manner. The article or currency shall be forwarded to the officer-in-charge of the police station. The officer shall prepare an inventory and make an application to Magistrate for certifying the correctness. This will be the primary evidence. The police officer under sub section (1) shall report the seizure to court of session or Assistant Session Judge for adjudging the confiscation (Sec.26)
25.	Appeal to HC	No such provision	Persons referred to in Sec.3(1)(f) (Organisations of political nature) and Sec.6 and Sec.9 can appeal to HC in respect of an order passed u/s. 5, (Order of Central Govt.

			refusing permission) and orders made u/s. 12(2), Sec. 12(4) (Not granting certificate of registration) and Sec.14(1) (Cancellation of Certificate).
26.	Revision	No such provision	<ol style="list-style-type: none"> 1. The Registering Authority may on its own or on application by the person registered under this Act, for revision can enquire and make such orders. 2. The Registering Authority shall not of its own revise orders, which were made more than one year previously. 3. The application for revision must be made with the prescribed fee within one year from the date on which the order was communicated to him or the date on which he came to know of it, whichever is earlier. 4. The Registering Authority shall not revise any order, where an appeal has been filed against the order and the times for appeal for such order has not expired or the person has not waived this right (Sec.32).
27.	Making of false statement, declaration on delivering false accounts	No explicit section, though action can be taken under other sections.	If a person makes any false or fraudulent statement in any book or declares, alters or makes away with any document to defraud, makes a false declaration, obtains for himself or any other person,

			any advantage by making false entry in book, etc., he will be liable for imprisonment upto five years(Sec.33)
28.	Power of Central Govt. and prescribed authority to call for information/ document	No such express provision	An officer referred to in Sec.23 can call for any information from any person to know if there is any contravention of Act and examine any person acquainted with the facts of the case(Sec.41)
29.	Power of Central Govt. to give directions	No such provision	The Central Government may give directions to prescribed authority regarding execution of the provisions of this Act as to the manner in which FC shall be received and the purpose for which it shall be utilized by any person (Sec.45)
30.	Delegation of powers	No such provision	The Central Government may delegate its powers and functions to prescribed authority or any other authority (Sec.46)
31.	Prior permission – time limit of 90 days/ 120 days	Prior permission is deemed to have been granted if the application is not disposed off within 90/120 days (Sec.11)	No such provision

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