

Some of the key observations arising from the proposed Foreign Contribution (Management & Control) Bill, 2005 were shared with the some of the concerned officials in the Government of India on behalf of the Voluntary Organisations.

The issues presented are provided here.

1. Fresh Registration: Section 11(1) – Para 2:

1.1 The proposed Bill requires existing institutions registered under FCRA to seek fresh registration within two years of the commencement of the proposed Act. This will create additional administrative work since the existing FCRA registered institutions do file their

Ministry of Home Affairs can use their existing administrative and financial resources for effective monitoring of NGOs rather than re-processing registration of existing FCRA registered bodies.

1.2 **Recommendation:** Permit existing FCRA registered bodies to continue working without seeking a fresh registration under the proposed

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returns with the Ministry of Home Affairs and are complying with the existing provisions. Where any institution is not filing a return then they can be reviewed under the existing law and notices can be sent to them. Failing which action can be taken. The

FC(M&C) and the Ministry of Home Affairs (MHA) to utilize the time and financial resources to strengthen monitoring of NGOs by effectively reviewing existing records and returns.

2. Renewing of Registration: Section 12(7) read with section 16:

2.1 The proposed Bill states that the certificate of registration shall be valid for a period of five years. This provision will require about 30,000 NGOs to seek registration every five years and the Ministry of Home Affairs will have to process these applications thereby substantially increasing administrative work and cost. It also opens the avenue for corruption. The Ministry can use their existing and proposed infrastructure for more effective monitoring of NGOs, on-site visits rather than on administrative work. There are already enough safeguards in the proposed Bill to check any anti-national or violating NGO, which can be done on an annual basis or at any time by:

- (i) Monitoring the NGO, which has to file an annual intimation to the Central Government (Section 18) and these intimations can be scrutinized in-depth by MHA in the time available.
- (ii) MHA can undertake inspection of accounts and records (Section 23)
- (iii) Call for information, require production of any document and examine any person (Section 41).
- (iv) Suspension of Certificate of Registration (Section 13)

- (v) Cancellation of Certificate of Registration (Section 14)

2.2 Recommendation: Ministry of Home Affairs to concentrate on strengthening the monitoring of NGOs and reviewing in-depth the annual returns being filed by the NGOs under section 18 of the Bill; MHA can undertake inspection of the records of any suspicious NGO u/s 23; call for additional information and records and examination of persons as prescribed u/s 41 of the Bill. This monitoring, inspection and calling for information, if need be, can be done by the Ministry of Home Affairs, which will be far more effective and proactive instead of processing of renewal applications. Accordingly the need to process renewal of registration be dropped as envisaged u/s 12(7) read with section 16 of the Bill. The thrust should be on governance and monitoring of exceptional and suspicious / dubious NGOs rather than processing of applications of all NGOs whether good or bad.

3. Fixing of Administrative Cost: Section 8 read with section 47(e) and (f):

3.1 The proposed Bill specifies that not more than 30% of foreign contribution shall be used to meet administrative expenses. This clause is liable to create various hurdles for NGOs as programme expenses can be interpreted to be administrative expense, as pointed out in the following examples:

- (i) in a hospital or dispensary, will the salary cost of the doctors, nurses, ward boys, ambulance driver be termed as programme cost or administrative cost?
- (ii) in an educational institution, will the salary of teachers be programme cost or administrative cost?
- (iii) in cleaning a pond or watershed structure in a village or district, will the labour cost paid be administrative cost or programme cost?
- (iv) in printing of posters for a campaign against HIV/AIDS awareness, is printing and stationery an administration cost or programme cost?
- (v) telephone/STD calls from Tsunami or disaster affected areas; is it programme cost or administration cost?

3.2 Recommendations: The Bill should focus on governance and leave administration to the Sector i.e. the concerned NGOs. Funds are received against specified budgets and the NGO has to use the funds as per the approved budget and the agreement with the funding agency. Accordingly, specifying any details or cap with regard to administrative costs will not serve the purpose with regard to deployment of funds and will become a very contentious issue. This is a case similar to where one party can see a glass half full and the other can see the glass half empty. This provision be considered for being deleted.

4. Disposal of Assets: Section 22 read with section 47(1)(y):

4.1 The Bill authorizes the Central Government to specify the assets created out of foreign contribution, which can be disposed off and the manner thereof. This is a clause that has very wide ramifications as to what is an asset of the organization. As examples:

- (i) is a cyclone shelter created for a village an asset of the organization or is it a programme cost for the benefit of the beneficiaries;
- (ii) are houses constructed in the Tsunami affected areas the assets of the NGO building them or is it programme cost for the benefit of the beneficiaries;
- (iii) office building, it may have to be sold to get a larger or smaller one or to shift from one location to another. The NGO should be allowed to deal with such aspects;
- (iv) equipments, which get old or obsolete e.g. computers, the NGO should be allowed to deal with it as deemed;
- (v) vehicles used in projects and costly to maintain, the NGO be allowed to deal with it;

4.2 **Recommendations:** The Bill should focus on governance issues and leave the administration matters to the sector to deal with. The misuse of any asset can always be probed by the Ministry of Home Affairs under the powers granted for inspection and calling for information, documents and examining of persons. The provisions be considered for being removed.

5. Grant of Certificate of Registration: Section 12:

5.1 The grant of the Certificate of Registration is subject to the Registering Authority interpreting the following clauses:

5.2 **Section 12(3)(iv)** states that the person making the application for registration has not indulged in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another. This clause is very subjective and leaves a very wide scope for interpretation. This can be seen from the following:

- (i) The word “**inducement**” has not been defined.
- (ii) Providing drinking water to persons; building houses for the disaster affected people, providing medical relief to the poor, downtrodden or infected; providing clothes / sarees; providing education free of cost

or at a concession can all be termed as inducement. This clause itself will defeat the very principle for which funds are sought i.e. for work “having a definite cultural, economic, educational, religious or social programme” – section 11(1) of the Bill.

- (iii) The word “**indirectly**” has also not been defined. Some persons may falsely put up a claim to be acting on behalf of the concerned person so as to get the person into trouble or some people can be interpreted to be acting on behalf of the concerned person and the person will find it difficult to immediately contest such insinuations.

5.3 **Recommendation:** The words “inducement” and “indirectly” should be defined clearly. The definition should not be inclusive but specific in nature leaving no scope for misinterpretation. In the alternative the word “inducement” can be deleted and substituted by the word “fraud”, which can then be specifically defined. The word “indirectly” should be deleted.

5.4 **Section 12(3)(viii)** states that the person making the application for registration is likely to use the foreign contribution for personal use or divert it for undesirable purposes. A part of this clause relating to ‘personal use’ is subjective and wide in interpretation. As examples:

- (i) salary, fees or perquisites e.g. housing payable to the person for rendering services can be interpreted as use for personal use.
- (ii) reimbursement of vehicle expenses, mobile phones bills in the name of the concerned person can be interpreted as use for personal use.
- (iii) printing of medical and educational pamphlets / books with the person's name on it can be interpreted as use for personal use.

5.5 Recommendation: The word “personal use” be deleted and the remaining part of the sentence i.e. for ‘undesirable purposes’ be retained. If a person is misusing funds then that is covered by clause 12(3)(vi) and MHA can take appropriate action.

5.6 Section 12(3)(xi)(b) and (c) states that in the case of an individual the person has any prosecution pending against him and in case of ‘other than an individual’ the directors or office bearers have any prosecution for any offence pending against them. Prosecution pending does not imply that the person(s) are guilty, The general principle that a person is not guilty till he is finally proved should apply. Further if an appeal is pending against a judgment then the matter is still pending and the person cannot be deemed to being finally convicted.

5.7 Recommendations: The clause be amended by deleting the part referring to “any prosecution pending”. The aspect related to “conviction” should specify “conviction and where no appeal is pending or being made against the conviction”.

6. Intimation: Section 18 read with Section 47(1)(g):

6.1 The Bill specifies that every person granted a certificate of registration or prior permission shall give within such time and in such manner, intimation to the Central Government. The time is to be prescribed in the Rules to be framed. Under the existing Foreign Contribution (Regulation) Act 1976 and its Rules the time prescribed is within four months from the end of the financial year i.e. by 31st July.

6.2 Recommendation: The date for filing the intimation be prescribed as 31st October instead of 31st July to bring it at par with the date of filing of returns under the Income Tax Act, 1961. In the interim period the existing Rule 8(2) under Foreign Contribution (Regulation) Act, 1976 be amended to specify the period as 31st October.

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