

Foreign Contribution (Management & Control) Bill, 2005

- An Appeal

Dear Readers,

As you all may be aware that the Government of India has released the Draft of the Foreign Contribution (Management & Contribution) Bill [FC(M&C)], 2005, which when passed in the Parliament will replace the existing Foreign Contribution (Regulation) Act, 1976. As the proposed provisions in the FC(M&C) Bill, 2005 raises few practical concerns, we have made an appeal on behalf of the Development Organisations to the Ministry of Home Affairs sharing the same. The content of the letter written by us is provided here.

In case you agree with the points expressed therein, kindly send this appeal letter to :

Shri. Shiv Raj Patil
Ministry of Home Affairs
North Block, Central Secretariat, New Delhi - 110 001.
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Reg: Foreign Contribution (Management & Control) Bill,2005.

Dear Sir,

We do appreciate that the Foreign Contribution (Management and Control) Bill,2005 has been put in the public domain for reactions and suggestion. Before the Bill is formally introduced in the Parliament, we would like to bring to your notice the following concerns:

- **From Controls to Compliance:** After the liberalization of the economy, Foreign Exchange Regulation Act (FERA) has been replaced by Foreign Exchange Management Act (FEMA). This change brought in simpler procedure for the commercial sector to bring in foreign exchange into the country.

However, in the proposed FC(M&C) Bill,2005, we find that the controls have become even more stringent and it infringes upon the democratic space enjoyed by the Civil Society Organisations in our country. The Voluntary Sector would welcome any accountability mechanism brought in by the Government, but increasing controls would prove to be detrimental to their work and vision which is primarily to serve the poor and marginalized sections of our society. Therefore, we would like to submit that the ethos of the proposed Act be that of a “compliance” mode rather than “controls” mode.

In the light of the above, we would like to bring before you the following concerns for your kind consideration in the FC(M&C) Bill,2005:

- **Fresh Registration: Section 11(1)-Para 2:** The proposed Bill requires existing FCRA registered organisations to seek fresh registration within two years of the commencement of the proposed Act. This will create additional administration load both at the end of the Voluntary Organisations as well as of the Government.

We recommend that existing FCRA registered bodies continue working without seeking fresh registration under the proposed Act. This would imply that the new Act recognizes the existing FCRA registered organisations as registered in the proposed Act as well.

- **Renewing of Registration every five years: Sec 12(7), read with Sec16:** Again the proposed Bill states that the Certificate of Registration will be valid for a period of five years. This will mean that about 30,000 organisations (which are presently registered under FCRA) would have to go through the procedure of renewal every five years. This will again create huge administrative burden. We would like to submit that NGOs work with small budgets and few staff. So they will find it extremely difficult to cope with this new situation.

Therefore, we request you to kindly withdraw this provision so that NGOs can only have one time registration and then comply with the necessary reporting requirements as in practice now.

- **Fixing of Administrative Cost: Section 8 read with Section 47(e) and (f) :** The proposed Bill specifies that not more than 30% of Foreign Contribution shall be used to meet administrative expenses. This clause if implemented would create a lot of confusion and would be open for interpretation which could be quite subjective. The following examples are a case in point:

- (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?

Therefore we request you to drop this issue, as NGO funds come generally from donor organizations and are spent on directions from donors as well. Therefore, they allow specifically certain percentages as administrative costs which needs to be adhered to by NGOs in any case.

- **Disposal of Assets: Section 22 read with Sec 47(1) (Y)** The Bill authorizes the Central Government to specify the disposal of assets and the manner in which it can be disposed off. Again, the assets created out of Foreign Contribution can be of two types. The first type are those assets which are created at the community level as part of the project. These assets are not in control of the organization. These are managed and maintained by the beneficiaries. The second types of assets are those which are created for the organization. These assets are used for the purposes of the organization. In both the cases it will be quite complicated if the government determines the manner in which it can be disposed off as the disposal will have to be determined on the basis of its utility. The organization is in the best position to determine the same. Generally, the disposal of these assets are made with the approval of the respective donors.

Therefore, we recommend that this provision may be withdrawn. NGOs may be required to report on the sale proceeds to the Government as they are doing now, in the event of any sale of assets.

The above are a few examples of the various areas of the law which needs to be reconsidered.

We would earnestly request your goodself to kindly make the new law “compliance” oriented rather than “control” based as it is now.

Yours sincerely,
Sd/-

This can also be viewed and down loaded at : <http://www.fmsfindia.org/main/fcmc-bill.pdf>

