

14th February 2008

Smt. Sushma Swaraj (BJP)
Chairperson
Department Related Parliamentary Standing Committee
on Ministry of Home Affairs
123-A Parliament House Annex
Parliament Street, New Delhi - 110001

Dear Madam,

It is most respectfully submitted that there are certain crucial issues, which need to be considered before this bill is placed and passed. These include our national security, as well.

There are serious loopholes which actually *enhance the threat to our national security*. There are provisions which create confusion and practically defeat the purpose for which this Act is proposed. On one hand these allow unfettered access to anybody from anywhere in the world on the other hand they cripple our own companies. Under the current and proposed law even HDFC Bank, Infosys and ICICI Bank are treated as foreign contribution. Such anomalous situation has been created due to fundamental shortcomings in the current Act and the proposed bill

We fervently plead to reconsider the present Act and the proposed bill in the light of the fact that this law *has lost its relevance in the post liberalized economy* where flow of foreign currency has been liberalized to a large extent by FEMA. We also believe that this Act proposes *norms which would create needless hardship to the NGOs*. Under this law small community based village level initiatives cannot receive funds as they may not have the ability to go through the process of procuring FCRA. According to one article published in a national daily, the RBI is unable to provide details of foreign fund receipts to the extent of 23.6 billion dollars, whereas all amounts received by the NGOs were well accounted for.

We believe that there is a need to bring in a law that is holistic to address the issue of foreign currency flow into as well as out of the country for all channels including business as well as NGOs. Therefore, we once again urge to consider the memorandum enclosed herewith and take a decision in the best interest of our country.

With regards,

Ashok Seth
Plan India, New Delhi

Anup Khosla
HelpAge India, New Delhi

Anil Goel
CAF-Charities Aid Foundation
New Delhi

Asa Andersson
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Deepalaya, New Delhi

For information kindly find the enclosed copy:

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3. Shri R.K. Dhawan
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Singh
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30. Shri Beni Prasad Verma

Foreign Contribution (Regulation) Bill 2006

Crucial Issues

1. Recognizing the work done by the Civil Society Organisations

There are a host of international agencies who have stood the test of time in order to be in solidarity with the local groups. There is a need for such efforts to be recognized and they should be added to the list of 104 donor organisations already notified by the FCRA Law. The other donors need to be treated separately and there can be necessary scrutiny for them.

2. Nothing much has been achieved from FCRA mechanism so far:

- a. In the last more than 30 years that the FCRA law has been in place, not a single case of anti-national activity against NGOs has been reported and prosecuted. On the other hand, NGOs have built solidarity groups across the world thereby fostering universal peace and solidarity.
- b. The current and proposed law issues registration to NGOs to receive foreign funds. As on 31.03.2006, 32,144 such NGOs have been registered. In its latest available annual report (2005-06), the Ministry of Home Affairs has expressed grave concern over NGOs who are legally entitled to receive foreign funds, but are not filing annual returns. As a matter of fact only 18,517 annual returns were received by FCRA department for the year 2005-06. The current **norm of registering** thousands of NGOs and empowering them to receive funds from anywhere seems not to have the desired results.
- c. The stated policy of Government of India is that it will generally not encourage soliciting of foreign contribution but at the same time facilitate inflow of foreign contribution for genuine activities. Under such a policy it would make sense to identify the time-tested and credible donors like the list of 104 foreign organisations (bilateral and other UN related agencies). It may be noted that only a handful of countries and donors contribute more than 90% of the inflow and remaining 10% is received from thousands of donors and hundreds of countries (see annexure 1). Since 95% of the donors and the countries are known and time-tested friends, why not notify them?

3. The law is outdated and has not taken into consideration the changes in legal and economic environment:

Under the current and proposed law even HDFC Bank, Infosys and ICICI Bank are treated as foreign contribution. On one hand it cripples our own companies and on the other hand it allow us unfettered access to anybody from anywhere in the world. In other words these Indian companies can not freely do

charitable activity in India only because the foreign holding of their equity is more than 50%. FCRA ignored the FDI liberalization norms and therefore resulting in such incongruence.

4. The proposed law is unjust and unfair to CBOs and village level NGOs:

The proposed law fails to address the travails of small community based village level organisations which do not have the ability to procure FCRA registration. In the past three decades the grass-roots have faced problem in receiving money at their end. The small and medium NGOs do not transfer money to small village level organizations because FCRA does not permit it. It is an irony that we bring money for our poor rural places, but the law does not allow the money to directly reach them. The money has to be used by a license holder of FCRA which is unlikely to be found at the grass-roots. It is necessary that some exemptions or monetary limits are provided for such small organisations for receiving foreign funds as second recipients.

5. Anti-national foreign funding has to be understood in a larger context:

It needs to be considered that, if terror funding (foreign funds being sent and used for anti-national purposes) has to come this cannot not single out NGOs. Ironically as per an article in Economic Times dated 18th July 2007 by Swaminathan S Anklesaria Aiyar, the RBI is unable to provide detail of foreign fund receipts to the extent of 23.6 billion dollars received under small business receipts. In the same year the foreign contributions received were much less than 2 billion dollars and each dollar was known and accounted for. Therefore, the issue is of monitoring of foreign funds irrespective of whether it is for NGOs or other recipients.

6. The FCRA was enacted when the needs of India were different:

When the FCRA was enacted, our country was starving for foreign exchange. The foreign exchange generated through contributions was much more than the foreign direct investments. It is to note that in the first 4 decades after our independence we were not able to generate even 1 billion dollar of FDI. Today TATA alone invested in excess of 12 billion dollars in the *Corus* takeover deal. There has been a radical transformation as far as our economic and fiscal standing is concerned. FCRA is the royal scion of the foreign currency starved era of the 70s and 80s. In those days funds received through contributions used to form a substantial chunk of the total foreign exchange inflow. Therefore, one can understand the mindset of government in 1976 and its inability to propose any restriction on the donors and the source.

Today FCRA contribution does not form even one percent of the total foreign exchange movement or even the foreign exchange reserves. We should rise and

stand as a country and spell out our priorities, donors and countries which are welcome, particularly due to security concerns.

7. Irrational cap on administrative expenses:

The proposed law provides for a maximum of 50% in administrative expenditure. The 50% cap on administrative expenditure again is a dubious provision. If by 'administrative expenditure' the authorities imply expenditure in the nature of salary, travel, etc. then it will be highly erroneous. For example, the salary of a doctor in a health project cannot be termed as administrative in nature. There may be NGOs where most of the expenditure is in the shape of salaries, travel, publishing etc. but still the administrative expenditure could be negligible. On the other hand, 50% *per se* is a very high limit for administrative expenditures. Why should Government of India allow an illogical discretion of spending 50% of money on just administration? No foreign donor (or anybody) would accept such high expenditure on administration. Therefore, such delicate issues should not be touched unless we develop proper standards of determining such expenditures for different NGO activities.

8. Restriction on investment overriding section 11(5) of Income Tax Act:

The proposed law provides that no investments could be made in equity linked instruments. Such provisions will have an overriding effect on the provisions such as section 11(5) of the Income Tax Act, which regulates the investments permissible for charities. This may not be a desirable proposition.

9. Monitoring of asset created:

The proposed law provides that any asset created from foreign funds shall be disposed in accordance to the FCRA which may specify such authority or manner of disposal. It need to be considered that project grants are inherently restricted funds where the assets are subject to legal agreement entered with the donors as far as retention or disposal is concerned. Further, this provision will create undue hardship to the NGOs, because firstly the term 'asset' can be very misleading as a chair or a calculator are also considered as assets.

10. The proposed law has provisions which are constitutionally not sustainable:

Under section 12(3)(d) and (e) the proposed bill, it is provided that the application for registration can be rejected if any prosecution is pending under any Court of Law. Whether it would be proper for one to be judgemental about anybody before the judgement from any Court of Law is passed needs to be taken into account.

In the light of the above it is necessary that immediate attention is paid to the grave concerns which FCRA poses and also the dubious and arbitrary provisions it embodies and proposes. In the interest of our country and the sector it caters to, we need to have answers to the above questionable issues. We need a deeper understanding and sensible debate for a just, fair and safe way forward. We pray before the hon'ble custodians of our country to consider and act accordingly.

DONOR COUNTRY-WISE DETAILS

<i>Country</i>	<i>Amount of foreign contribution (Rs.'000)</i>		
		Panama	3.10
		Bahrain	2.74
United States of America	2425.88	Trinidad and Tobago	2.49
United Kingdom	1181.00	Poland	2.35
Germany	1062.44	Portugal	2.25
Italy	500.29	Indonesia	2.19
Netherlands	445.81	Vietnam	2.18
Spain	402.03	Russia	2.06
Switzerland	270.78	Mauritius	1.95
Canada	231.70	Vatican City	1.91
France	184.10	Argentina	1.74
Australia	148.20	Botswana	1.33
Belgium	122.32	Swaziland	1.21
Austria	112.22	Greece	1.20
Sweden	83.98	Israel	1.04
Japan	61.10	Chile	1.03
Ireland	59.86	Slovakia	1.02
Others	59.82	Mexico	0.98
United Arab Emirates	58.56	Liechtenstein	0.98
Kuwait	58.31	Monaco	0.85
Denmark	43.40	Reunion Island	0.83
Hong Kong	41.68	Bhutan	0.83
Norway	32.95	Afghanistan	0.75
Singapore	23.68	Venezuela	0.73
New Zealand	18.82	Pakistan	0.72
Luxembourg	18.44	Brazil	0.70
Taiwan	17.56	Lebanon	0.63
Philippines	17.04	Suriname	0.51
Finland	16.54	Croatia	0.48
Saudi Arabia	15.27	Fiji	0.48
Thailand	13.92	Mozambique	0.47
Malaysia	11.85	Iraq	0.45
Czech Republic	11.14	Ethiopia	0.44
Sri Lanka	11.05	Uruguay	0.41
Malta	10.93	Uganda	0.39
Kenya	9.62	Romania	0.39
South Africa	7.07	Jamaica	0.38
Iceland	6.10	Hungary	0.37
South Korea	5.64	Cyprus	0.35
Bangladesh	5.55	Slovenia	0.35
Nepal	5.13	Zambia	0.33
China	4.44	Burundi	0.30
Qatar	4.35	Bahamas	0.30
Tanzania	3.88	Lithuania	0.30
Oman	3.31		

Turkey	0.30	Rwanda	*0.00
Yemen	0.30	Paraguay	*0.00
Columbia	0.25	Netherlands Antilles	*0.00
Mongolia	0.22	Cameroon	*0.00
Morocco	0.21	Cuba	*0.00
Maldives	0.21	Czechoslovakia	*0.00
Iran	0.14	Palestine	*0.00
Namibia	0.13	Hewaji	*0.00
Belarus	0.13	Libya	*0.00
Myanmar	0.12	Papua New Guinea	*0.00
Kampuchea	0.10	Ecuador	*0.00
Egypt	0.10	Central African Republic	*0.00
Bulgaria	0.09	Niger	*0.00
Zimbabwe	0.09	Tunisia	*0.00
Gambia	0.08	Benin	*0.00
Peru	0.07	Jordan	*0.00
Ukraine	0.07	Laos	*0.00
Nigeria	0.07	San Marino	*0.00
Seychelles	0.07	Djibouti	*0.00
Germany-Gdr	0.06	Gabon	*0.00
Guatemala	0.06	Sierra	*0.00
Ghana	0.06	Society Island	*0.00
Malawi	0.04		
Brunei	0.04	Total	7877.72
Kazakhstan	0.04	* 0.00 denotes countries contributing less than	
Barbados	0.04	50,000	
Senegal	0.03		
Ivory Coast	0.03		
Mauritania	0.03		
Estonia	0.03		
Bosnia	0.02		
Rhenland Pfalz	0.02		
Belize	0.02		
Sudan	0.02		
Dominica	0.02		
Grenada	0.02		
Costa Rica	0.02		
Uzbekistan	0.02		
Tonga	0.01		
Yugoslavia	0.01		
Zaire	0.01		
Angola	0.01		
Malagasy (Madagascar)	0.01		
Syria	0.01		
Guinea	0.01		
Latvia	0.01		
El Salvador	0.01		
Congo	0.01		
Cayman Islands	*0.00		