

AccountAble™

116.History of FCRA

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In this issue

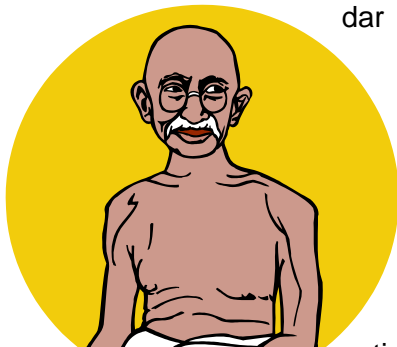
1950s: Murmurings.....	1
1960s: Arguments.....	1
1970s: The Law.....	2
1980s: Kudal Commission.....	3
1990s: The Quiet Years.....	3
2000: The new Millennium.....	3
Under other skies.....	4

Foreign Contribution Regulation Act, 1976 (FCRA) has been on the statute books for nearly 30 years. During this period, it has actually been amended just once. The Government has now drafted a new bill (FCMC), which is expected to replace FCRA once it is passed.

FCRA has had an interesting life. Not many people are aware that its history goes back to the fifties.

1950s: Murmurings

Several Indian leaders, including Sardar Patel and Mahatma Gandhi¹, had been critical of activities of foreigners for some time. After



independence, these murmurs became louder. In April 1954, the Madhya Pradesh Government set up an enquiry committee called the Niyogi Committee.

¹ Gandhi ji's interview published in *Harijan* on 11-May-1935. *The Collected Works of Mahatma Gandhi*, Volume 46 (New Delhi, 1971, p.28) and Volume 61 (Ahmedabad, 1975, p.46)

1956: Niyogi Committee Report

The six-member committee was headed by Dr. M. B. Niyogi. This committee looked into the activities of missionaries in the state. It made several recommendations at the time of submitting its final report² in April '56. This included a recommendation that 'no non-official agency should be permitted to secure foreign assistance except through Government channels'³.

1960s: Arguments

General Elections were held in 1967. Congress came back to power, but with a thinner margin. The first session of the Lok Sabha started off in March. Around the same time, some reports were published in the American press⁴ regarding CIA⁵ activities in India.

1967: CIA links?

A question was raised⁶ on this in the Lok Sabha on 20th March 1967. During the debate, it was mentioned that the CIA had contributed funds to various

² Report of the Christian Missionary Activities Enquiry Committee, Madhya Pradesh, 1956. Reprinted by Voice of India, N. Delhi, 1998

³ Volume I, Part IV, Chapter III, Para 17. See also Chapter II, paras 73, 87, 92, and 100.

⁴ Apparently, the reports were published in New York Times and Newsweek. In a subsequent development, similar allegations have emerged regarding KGB activities in India. See Chapters 17 and 18 of *The Mitrokhin Archive II*, Christopher Andrew and Vasili Mitrokhin, Penguin, London, 2005.

⁵ Central Intelligence Agency of the USA

⁶ Sarvashri George Fernandes, H.N. Mukerjee, Indrajit Gupta, S. M. Banerjee, A. K. Gopalan, Umanath

donor agencies in USA. These agencies had, in turn, given funds to some Indian organisations. With this money, some activities were carried out. Also some persons traveled abroad to attend conferences, etc. Members argued that there was also an attempt (with foreign funds) to defeat 44 progressive candidates in the 1967 elections.

Another discussion took place on 23rd March 1967. Additional information was offered by the members⁷. The External Affairs Minister, Shri M. C. Chagla, assured early action on this.

1969: FCRA is conceived

On 14th May 1969, the Home Minister, Shri Y. B. Chavan made a detailed statement⁸ in the Lok Sabha. Key points made in the statement were:

- There has been widespread concern about receipt of foreign funds by individuals and organisations working in political, social or economic fields.
- The money can not be properly quantified, but it appears to be significant.
- Foreign funds were used in the 1967 General Elections. Foreign intelligence agencies have also financed some academic and research institutions in India.



- Money is also channelised through inflated commissions, advertisement charges, translation fees, and through illicit remittances.
- Government will bring a comprehensive legislation to impose suitable restrictions on the receipt of funds from foreign sources, except those in the ordinary course of business.

1970s: The Law

It took the Government several years before the bill could be drafted and finalised.

1973: FCRA Bill is introduced

The bill⁹ was introduced in the Rajya Sabha in December '73¹⁰.

1974: Referred to JPC

However, its passage was not smooth. The bill was referred¹¹ to a Joint Parliamentary Committee (JPC) of 60 MPs. The JPC was headed by Shri Manubhai Shah.

1974-75: JPC meetings

The JPC held many sittings for the next one and a half years¹². A press release was sued. Many institutions were consulted, and witnesses heard.

1974-75: Political Developments

Lok Nayak Jayaprakash Narayan launched the 'Citizens for Democracy' movement on 18-May-1974. Then the Allahabad High court gave its judgment against Smt. Indira Gandhi's election

⁷ The Newsweek report had listed 17 alleged front organisations of CIA. These 17 organisations would funnel the funds into 7 foundations (conduits). The conduits then pass on the money to 12 international organisations. (Shri Umanath, MP from Pudukottai)

⁸ The statement was based on the investigation reports of Intelligence Bureau.

⁹ Called Foreign Contribution (Regulation) Bill, 1973

¹⁰ 24-December-1973

¹¹ 25-Mar-74

¹² 10-Apr-74 to 4-Oct-75

on 12th June 1975. Emergency was imposed on 25th June 1975.

1976: JPC Report submitted

The JPC adopted a draft report in October'75. Its final report was submitted to the Parliament on 6th January 1976. FCRA rules were also notified on the same day.

1976: FCRA becomes law

President Shri Fakhruddin Ali Ahmed gave his consent to FCRA on 5th August 1976.

1980s: Kudal Commission

The coalition Government formed by the Janata party and others could not survive for long. Mid-term elections were held again in 1980. Congress came to power again. The new Government then ordered¹³ a Commission of Enquiry into the foreign funding of certain NGOs.

The commission was to look into the activities, sources and utilisation of four NGOs¹⁴ and any other organisations connected with these four. The commission was to submit a report within five months¹⁵.

As it turned out, the enquiry ended up covering hundreds of NGOs and took five years. The first interim report was released on 25th October 1984, and the final report was dated 30th January 1987.

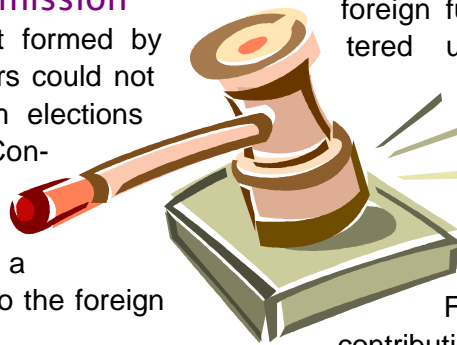
Together the seven reports consist of over 2,000 closely typed pages. Most of the reports contain carefully detailed

accounts of the enquiry. At places entire correspondence has been reproduced.

1985: FCRA Amended

Based on the initial reports from the Commission, the Government promulgated an ordinance in 1984. The Act itself was amended with retrospective effect (from 20th October 1984) in 1985.

These amendments resulted in two important changes for the NGOs. Under the new law, NGOs could not receive foreign funds unless they registered under FCRA. Another change was the concept of second or subsequent receiver. This created a chain of FCRA receivers. From now on, foreign contribution would still remain foreign, no matter how many Indian hands it passed through.



1990s: The Quiet Years

During the 90's, no changes were made to FCRA law itself. However, the rules were amended several times. Some of these changes were meant to improve reporting. Others were designed to close loopholes, such as wholesale change in management of an NGO (after FCRA registration).

2000: The new Millennium

As the millennium was drawing to a close, the NDA government started talking about amending the FCRA. This was partly in response to the changed international scenario after 9/11¹⁶.

¹³ Lok Sabha resolution dated 24-Aug-81, MHA notification dated 17-Feb-82

¹⁴ Gandhi Peace Foundation, Gandhi Smarak Nidhi, All India Sarva Seva Sangh, Association of Voluntary Agencies for Rural Development

¹⁵ By 31st July 1982

¹⁶ The 9/11 attacks led to reinforcement of the view that NGO fronts could be used to move funds for terrorists. This view already existed prior to September 2001 – the attacks merely lent focus and urgency to the

However, with a weak strength in the Rajya Sabha, it would have been difficult for the Government to pass the Bill. The project was, therefore, shelved.

2005: FCMC Bill

In 2004, the Government changed again after the general elections. The new Government moved quickly to draft the FCMC¹⁷ Bill.

The FCMC bill introduces several new changes, which will help NGOs function more effectively. However, there are also certain provisions, such as periodic renewal of FCRA registration, which can increase paperwork and nuisance.

The FCMC Bill has not yet been tabled in Parliament. It may, therefore, be quite some time before it becomes law.

Under other skies...

Is FCRA a uniquely Indian innovation? Not entirely. Many countries, including developed nations, place some restrictions on foreign funding of elections. These include UK, USA, France, Germany, Japan, Canada, and Spain¹⁸.

The difference with Indian FCRA is that it regulates funding of NGOs as well. What is the basis for this? Possibly, it is felt that NGOs can be used as a conduit for funding of political parties or electoral



views of FATF (See Financial Action Task Force's 'Report on Money Laundering Typologies 2000-01', 1-Feb-01, pp. 8-12)

¹⁷ Foreign Contribution (Management and Control) Bill, 2005

¹⁸ See AccountAble Capsules 70 and 71

politics. This is perhaps the reason why NGOs registered under FCRA are barred from getting involved in electoral politics.

And now Russia seems to have taken a leaf from the Indian law books. In April-06, the Russian Government passed a tough law to regulate the funding and activities of foreign charities in Russia, despite strong protests from Europe and USA¹⁹. In a way, this is a recognition of the growing influence of NGOs across the world.

Will other countries also follow suit? No one can say for sure.

Related AccountAble Issues:

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¹⁹ See AccountAble Capsule 183. Also see <http://en.rian.ru/russia/20060417/46479377.html>.