

AccountAble™

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Prohibitions

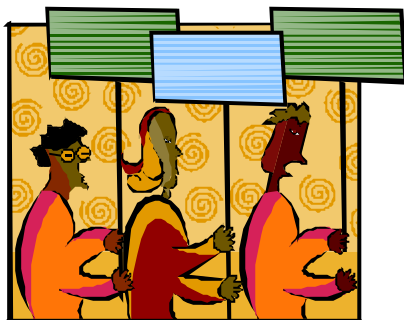
There is now an extensive list of activities that an NPO should not undertake. Some of these prohibitions are routine. Others are somewhat debatable.

Political Activity

An organisation engaging in political activity could be treated as an organisation of a political nature. It could then lose its FCRA registration and be barred from receiving further foreign funds¹.

It should be noted carefully that the section does not prohibit political activity as such.

Rather it means that an NPO registered under



FCRA will not get into political activities. It does not matter whether foreign funds are not being used for political activities.

Many NPOs with advocacy or social action agenda look at this clause with concern. What is political activity? Can you take out a rally on a social issue or

a political issue? Or will you lose your FCRA because of this?

According to section 5(1) of the FCRA Bill 2006, an organisation can be listed as an organisation of political nature based on:

- (i) Its activities, or
- (ii) Ideology propagated by it, or
- (iii) Its involvement in activities of a political party.

While the third item is fairly specific, the first two could possibly be misapplied by the Government to stop activities of an NPO.

However, there are two arguments against this possibility.

First is that the context is clearly that of electoral politics. Therefore, an NPO is free to discuss politics, so long it does not become associated with a particular political party. It should also not campaign for or against a political party. It should not try to influence the electoral processes in a partisan way, i.e. favouring one party over another.

Second argument is that in the last thirty years there appears to have been no misuse of this section².

However, there has been some uncertainty about how the section may be applied. The FCRA Bill 2006 tries to remove this. Now the Government will be required to lay down general guidelines on the basis of which an organisation

¹ Section 3(1)(f) of the FCRA Bill, 2006

² See list of 'Political Organisations' at www.AccountAid.net

can be notified under this section³.

Religious Conversions

The question of religious conversions has become a volatile issue over the last decade or so. It has led to a polarisation of public opinion as well as the political parties.

A section of the public now thinks that most of the religious conversions are achieved using foreign funds. This has led to a tarring of all foreign-supported NPOs with the same brush. In some cases, this misconception has made it difficult for foreign-funded NGOs to work on real issues.

The FCRA Bill 2006 tries to deflate this issue. A clause⁴ has been inserted to keep foreign funds out of reach of organisations, which indulge in religious conversions through inducement or force.

This clause does not prohibit use of foreign funds for propagation of one's faith or for sharing one's beliefs. Rather it addresses the populist accusation that clothing, food or housing is used to lure people from one faith to another. This should not mean that foreign-funded NPOs are barred from offering relief material to beneficiaries. However, if there is a clear nexus between



³ Proviso to section 5(2), FCRA Bill 2006

⁴ Section 12(3)(a)(ii): ...has not indulged in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another...

the material and change of one's faith, then the NPO's FCRA registration may be cancelled.

If this clause is implemented properly, it will help lift an unnecessary taint from the NGOs working on important issues related to caste and discrimination.

Interests of the State

A curious innovation is contained in section 12(3)(f)(ii). This clause talks about the security, strategic, scientific or economic interest of the State. The Government is empowered to deny FCRA registration to those who could use it to affect these interests of the state.

This clause goes beyond the well-known, but ill-defined concepts of 'public interest' or 'national interest'. It talks about interests of the State. This could lead to the conclusion that interest of the State is not the same as public interest!

This clause, interpreted strictly by the Department, could close off the use of foreign funds for a wide-range of social action. These include protests against Government's economic policies, against nuclear tests, against mining, and a plethora of similar issues.

Shall not lead to...

Clause g of section 12(3) contains some unusual wording. Accordingly, before granting FCRA registration, the Department should be sure that this⁵:

- (i) *shall not lead to* incitement of an offence;
- (ii) *shall not endanger* the life or physical safety of any person.

This wording is likely to create difficulties in processing applications. The

⁵ Emphasis added

clause effectively asks the approving authority for an iron-clad guarantee that no such problems shall arise if the permission is given. In practice, this is impossible to ensure in all cases. Logically speaking, every approval will carry some risk, no matter how nominal.

It would be more practical if the word "shall" was substituted by "is not likely to...".⁶

Pre-emptive in Nature

The Act thus seeks to control or restrict activities detrimental to national interest. This can be done in two ways.

One way is to identify and prosecute any person who undertakes such an activity. This can happen only when the person has actually carried out an objectionable activity.

A second way is to identify all persons who could possibly undertake such activities, and ensure that they are kept in preventive detention. For instance, we could identify all people who could commit a crime, and put them in jail. This is called preventive detention.



Current thinking frowns upon the second method of maintaining law and order. That is why the police often have to wait till a crime is actually committed. In some cases, the police are allowed to act when people start to conspire to

undertake a crime. However, such instances are rare and difficult to prove.

The FCRA Bill takes the first approach. It is possible that such an approach has emerged out of our colonial legacy and collective fear of foreign influences. This view is somewhat similar to what Prof. Edward Said had put forth in his important work on cultural imperialism⁷.

Broad Political Support?

NGOs have been concerned about misuse and harassment under FCRA for quite some time. They have also been advocating for its repeal. However, FCRA continues to enjoy support across a wide political spectrum.

The FCRA was brought in 30 years ago when a Centrist party was in power. It has survived many changes of the Government. Currently, a coalition led by the same party is in power again.

The right-wing parties support FCRA as it helps hold foreign cultural influences at bay. The left-wing parties support FCRA because they see NGOs as agents of Capitalist imperialism.

Draft National Policy

In 2006, the Government prepared a draft National Policy for the Voluntary Sector. One of the paragraphs reads as under:

"International funding of voluntary organizations plays a small, but significant part in supporting such organizations and their work in the country. An organisation seeking foreign funding must be registered under the Foreign Contribution

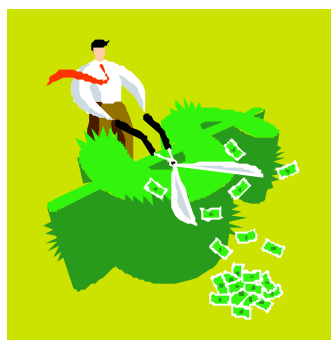
⁶ See clause f of 12(3) for similar usage

⁷ *Culture and Imperialism*, Edward W. Said, 1993, Vintage, London

(Regulation) Act. This law prescribes highly stringent screening norms that often restrict the ability for VOs to avail of foreign funds. When approved, these funds must be held in a single bank account, thus presenting enormous difficulties to VOs working at different locations. The government will review the FCRA and simplify its provisions that apply to VOs."

The new Bill meets one of the guidelines set out in the policy and allows multiple bank accounts for holding FCRA funds.

However, the other, regarding 'stringent screening norms' has not been considered while drafting the Bill.



Conclusion

There is no doubt that the Government views FCRA as an important administrative tool. This is particularly so in the changed international scenario after the 9/11 attack. As such it may be quite difficult for the Government to repeal FCRA at this stage.

However, it is also important that the Act be structured and administered in such a way so that potential for harassment and unnecessary paper-work is minimised.

This is also in keeping with the broad directions laid down in the draft National Policy for Voluntary Sector. The draft policy, an international first, was designed to help ensure that NGOs are

able to function effectively and without fear. Let us see how the draft policy fares with its first challenge.

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