

**BALANCING TRANSNATIONAL CHARITY WITH DEMOCRATIC  
ORDER, SECURITY, SOCIAL HARMONY AND  
ACCOUNTABILITY: A CRITICAL APPRAISAL OF THE  
FOREIGN CONTRIBUTION (REGULATION) ACT, 2010**

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*India has witnessed a proliferation of Not for Profit Organizations in recent times. Most of such organizations receive foreign funding. While such support definitely deserves the law's benevolence, foreign donations which are politically or religiously motivated need to be curbed in order to maintain the sanctity of the democratic process. The Foreign Contribution and Regulation Act, 1976, has failed to effectively regulate foreign funding and was observed more in breach than practice. Arguably therefore, the FCRA, 1976 needed considerable overhaul in order to keep up with the changing face of India's economic growth. Under these circumstances the Foreign Contribution and Regulation Act, 2010 was enacted. The present paper traces the historical evolution of the law along with the trend and direction of developments associated with the concerned legislation. In the context of such historical evolution, the author intends to contrast the provisions of the FCRA 2010 with the earlier procedures and undertakes a critical analysis of the same. The touchstones on which the current legislation will be assessed are the principles of accountability, social harmony, national security and most importantly, preserving the robustness of Indian democracy. In conclusion, the author argues that procedural mechanisms introduced in the new act have strengthened the support of genuine charity.*

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## I. INTRODUCTION

Love of humanity knows no territorial barriers. The tendency amidst the practitioners of charity to empathize with the unfortunate sections of people in other parts of the globe who suffer because of natural calamities, poverty, diseases and illiteracy, and extend their helping hands for the amelioration of the disadvantaged is a reflection of such love. While such charity serves the law's support, the aberrant foreign donations motivated by political manoeuvring, schemes of religious conversion, and attitudes of fomenting terrorism and disruption become instruments that undermine democracy, national security and social harmony, and require to be regulated. Upon the organizations that receive charity a burden is legally cast to be transparent and, accountable. However, having said that, law also ought to safeguard against arbitrary or over-rigid application of the control mechanism. As Mark Sidel puts it, "[a] tension between order and freedom, authority and autonomy is at the heart of relations between the state and civil society in nations throughout the world."<sup>1</sup>

The Foreign Contribution Regulation Act, 2010<sup>2</sup> (henceforth referred to as FCRA), which replaces its predecessor viz., FCRA 1976, has been a product of long debate on these issues between the policy makers and the Non Profit Voluntary Organizations (NPVOs) which seek and use foreign contribution. The policies of, and administrative practices and judicial decisions on FCRA 1976 had also accumulated certain experiences which were to be addressed in the enactment of the new statute. In view of the fact that the Act is an exclusive legal funnel for the inflow of foreign charity, which is substantial and has been increasing over times,<sup>3</sup> its facilitative role for socially useful NPVO activity needs to be properly perceived. In the absence of an accreditation system for NPVOs and systematic self-regulation as in

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<sup>1</sup> Mark Sidel, *States, Markets, and the Non-Profit Sector in South Asia: Judiciaries and the Struggle for Capital in Comparative Perspective*, 78 TULANE L. R. (2004) 1611, 1613.

<sup>2</sup> The Foreign Contribution (Regulation) Act, 2010, No. 42 of 2010, (Sept. 27, 2010).

<sup>3</sup> See generally Foreign Contributions in India, available at <http://www.indiastat.com/>

the West,<sup>4</sup> the foreign philanthropists rely on the governmental recognition of eligible fund receiving NPVOs and get tax exemption in their laws for their contribution.

Safeguards against abuse, builds up trust and confidence, and enables credibility on the part of NPVOs and donors in spite of the inconveniences of registration and other methods of regulation. It establishes the links between charitable objectives of donors across the globe and rights-protection for beneficiaries at the local level.

The protection of economic, social and cultural rights that arise from extension of foreign contribution is significant. Various positive rights like right to food, health, education, shelter and work get support from charity and private actions apart from welfare policies of the State.<sup>5</sup> Article 13 of the UN General Assembly's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1999 (UN Declaration on Human

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socialandwelfareschemes/27/foreigncontribution/18140/stats.aspx (Before 1976, the receipt of foreign contribution as recorded by the Reserve Bank of India was Rs 35 crores; in 2000 it was Rs 4000 crores under FCRA; in 2003-4 Rs 5105 crores; In 2004-5 Rs 6256 crores; in 2005-6 Rs.7878 crores; in 2006-7 Rs 11, 336 crores; in 2007-8 Rs. 9663 crores; in 2008-9 Rs 10802 crores; Rs 10338 crores in 2009-10; the number of organizations that received FCRA contribution in 2008-9 exceeded 20, 000.)

<sup>4</sup> See generally Mark Sidel, *The Guardians Guarding themselves: A comparative perspective on Non Profit Self-Regulation*, 80 CHICAGO KENT L.R. 803 (2005).

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3 (The preamble to the International Covenant on Economic, Social and Cultural Rights, 1966 realizes that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in Covenant. People's right to freely dispose natural wealth and resources for their own ends (art. 1.2), the liberty of individuals and bodies to establish and direct educational institutions for the full development of personality and human dignity and for effective participation in free society with tolerance and social harmony (art. 13.4 and 13.1), and the right of every one to take part in the cultural life (art. 15. 1.a) have clear implications for role of human rights in the working of charity.)

Rights Defenders) states, “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms, through peaceful means, in accordance with Article 3 of this Declaration.”<sup>6</sup> This obligates the States to ensure that domestic law is consistent with the task of implementing human rights instruments.<sup>7</sup>

A Committee (the ‘Mandate’) constituted by the Secretary General has noticed diverse practice amidst states which include: prohibition of money laundering and of financing the terrorist acts; prior governmental authorization; vigilance about bank transactions; prohibition of use of foreign contribution for disrupting democratic governance, constitutional system, social harmony, morality and public health. According to the ‘Mandate’, “The only legitimate requirements imposed on defenders should be those in the interest of transparency States”<sup>8</sup> should refrain from restricting the use of funds as long as they comply with the purposes expressly established in the Declaration of promoting and protecting human rights and fundamental freedoms through peaceful means.<sup>9</sup> Apropos, it can be said that the policy that

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<sup>6</sup> United Nations’ General Assembly Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders), 1999 art.13,(Mar. 8, 1999), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>.

<sup>7</sup> UN Declaration on Human Rights Defenders, *id.*art.3 (“Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted”).

<sup>8</sup> *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 96 (Jul., 2011), <http://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>.

<sup>9</sup> *Promotion and Protection of Human Rights: Human Rights Defenders*, ESCOR, 62<sup>nd</sup> sess., Item. 17(b), E/CN.4/2006/95, (Jan. 23, 2006), <http://daccess-dds.ny.un.org/>

transparency is the only ground of restriction on flow of Foreign Contribution (henceforth referred to as FC) and that all other restrictions are impermissible is flawed. The question of acceptability of the purpose of FC and the extent of restriction on its inflow is to be examined from the angle of genuine defence of human rights, survival of the socio-political system that guarantees human rights and avoidance of subversion of the national security in the era of transnational terrorism and communal attacks. The essence of the Declaration is to be understood in its focus on human right defence. It is essential to examine whether the FCRA has a policy that nullifies the spirit of Declaration on Human Rights

The present paper undertakes a survey of the historical evolution of the law, the trend and directions of development, the changes introduced by the FCRA 2010 and a critical analysis of its essential legal policy and merits of a regulatory scheme. The values of democracy, expressional freedom, social harmony, multiculturalism, organizational autonomy and national security constitute the touchstone or relevant parameters with which the legislation is to be tested. It examines whether the legislation satisfies these criteria and fulfils the social and economic dimensions of universal charity.

## **II. ORIGIN AND DEVELOPMENT**

The genesis of Foreign Contribution Regulation Act 1976 is traceable to introduction of a Bill of the same name in 1973 in the Lok Sabha, during the pre-Emergency days.<sup>10</sup> The fact that its idea

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[doc/UNDOC/GEN/G06/103/68/PDF/G0610368.pdf?OpenElement](http://doc/UNDOC/GEN/G06/103/68/PDF/G0610368.pdf?OpenElement). (last visited May 5, 2013)

<sup>10</sup> During those days, the policy of social responsibility of banks, abolition of Privy Purse, rigorous restraints on monopolies and restrictive trade practices, takeover of wholesale trade in grains, nationalization of general insurance at the central level and land reform laws at the state level had set a stage for socialistic pattern of society. The experiences of Bangla war and popularity of poverty eradication programme had reaffirmed the distrust about capitalist policies of the West especially that of the United States of America. The entry of multinational companies and penetration of foreign investments gave rise to suspicions about threat to the adherence to socialistic policies.

originated prior to the Internal Emergency and that it continued even after the Emergency in spite of changes of governments having different ideologies, rejects its depiction as exclusively an instrument of the Emergency. At that time, except the Foreign Exchange Regulation Act there was no law governing transmission of foreign money into India. Consequently, the recipients of foreign money were not obliged to account for the utilization of foreign money secured by them nor were they prohibited from receiving them in any specified situation. The Central Government felt highly concerned about the scope for foreign agencies to influence, through foreign money, organizations or individuals to subvert Parliamentary and political institutions, bureaucracy, journalists, academia and voluntary organizations. In order to ensure that these entities function in a manner consistent with the values of a sovereign democratic republic this Bill was introduced. In 1974 both the Rajya Sabha and Lok Sabha resolved to refer the matter to a Joint Committee of both the Houses. The Joint Committee so constituted under the chairmanship of Manubai Shah submitted its report in 1976.

The 1976 Bill had the following features: First, there was total prohibition of acceptance of foreign contribution or hospitality by individuals and organizations that are sensitive and important to national life. This category included candidates for elections, Government servants, Members of legislatures, Political parties and their office bearers, Correspondents, Cartoonists, Editors, Owners, Printers and Publishers and registered Newspapers. Second, it allowed acceptance of foreign contribution with prior permission of the Central Government. Organizations which, not being political parties themselves, but that may be deemed as organizations of political nature having regard to their activities or their associations with political parties come under this category. Third, legal obligations were imposed upon receivers to send intimation and render accounts to the Central Government after receipt of foreign contribution. This category covered associations having definite cultural, academic, religious or social programmes. The intimations they are required to furnish included amount of foreign contribution, source from which they received and the purpose for which and the manner in which such contribution was utilized by them.

Parliamentary debates on the FCR Bill 1976 reflected the perception of the members about abuse of the position by Multi-National Companies, flow of foreign funds to cause political destabilization in developing countries, influence of foreign assistance upon the intelligentsia and the academic community, abuse of foreign funds by religious leaders, indoctrination of capitalist views and belittling of socialistic ideas.<sup>11</sup> It was alleged that civil society movement by Jayaparakash Narayan and others was influenced by foreign funds.<sup>12</sup> Aspersions were cast upon social service clubs that had international network. From the above survey of Lok Sabha debates it can be inferred that the fear psychosis about political destabilization of the country by foreign agencies with the help of foreign funds and the endeavour to establish order and discipline were the major operative forces in the enactment of law. Accommodation of foreign contribution to educational, cultural and social activities was an exception to the policy of total prohibition. The discussions did not throw light on the positive contribution of foreign funds in promoting human security, cultural advancement and academic excellence.

The fact that suspicion and mockery about religious and social organizations lurked beneath the speeches of members shows a superficial and derogatory attitude towards the functions of these bodies. Hence recognition of genuine foreign contribution to non-political purposes was only an ancillary policy rather than major objective underlying the Bill.<sup>13</sup>

The increasing number of registered associations and fund receivers; the widening varieties of activities and expansion of beneficiaries; and more widespread distribution of their functioning

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<sup>11</sup> Sri Samar Mukherji, Smt. Mukul Banerji, Sri C K Chandrappan, Sri Shyam Sundar Mahapatra, Dharnidhar Das, BV Naik, K Lakkappa, B R Shukla, Chapalendu Bhattacharya, *Foreign Contribution Regulation Bill, 1976*, Lok Sabha, (1976); see also P. Ishwara Bhat, *History and Objectives, FCRA, 1976*, CIVIL SOCIETY VOICES 18, 19-22, (Dec., 2006), <http://www.vaniindia.org/Download/CSV-Dec2006.pdf>.

<sup>12</sup> Lok Sabha debate 1976, *Id.*

<sup>13</sup> See generally Bhat, *supra* note 11.

in various parts of India during the last three decades point out a different landscape than that of 1976.<sup>14</sup> Their significance for calamity management, education, health for the poor, poverty eradication, care for orphans, and cultural and religious functions has great social dimensions of human rights and welfare. This brings out the creative side of democratic value whose compliance enhances the worth of social capital. Since the shift towards policy of humanist support in the functioning of voluntary organizations has become unequivocal and a wide-scale phenomenon, strengthening such social support system through transparency, accountability and purpose-compliance has become a logical imperative.

On the other hand, the fear psychosis about destabilization of democracy is largely allayed because of the post-Emergency development of strong democratic culture and robust thriving or efflorescence of constitutionalism. Perhaps, the working of the major policy of the Act had also its own contribution to make. But in the background of increased instances of foreign-sponsored terrorism, the problem of destabilization through foreign money is not ruled out. Hence, the major policy of avoiding subversion of democratic institution and keeping the public life unsullied by disloyalty continues to be valid even today.

Some of the prominent changes done in 1984 to the law may also be noted. The definition of the term 'foreign contribution' was

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<sup>14</sup> Prof. Vaidyanathan, *Scrap FCRA and Save the Republic*, CENTRE RIGHT INDIA (May 2, 2012), <http://centreright.in/2012/05/scrap-fcra-and-save-the-republic-part-1/#.Ua1AidJHKOM> (38,436 associations being registered under FCRA 2010 up to 31.3.2010; 21,508 associations received Rs 10, 337 crores in 2010; highest receipt of FC is by Delhi (1816 crores), Tamil Nadu (Rs 1663 crores) and AP (1325 crores); biggest donor country is US (Rs 3105 crores), Germany (Rs 1046 crores) and UK (Rs 1038 crores); Chennai district received Rs 871 crores, Bangalore 702 crores and Mumbai 606 crores; top receivers of FC were World Vision of India (Rs 209 crores), Rural Development Trust Anantpur (Rs 151 crores), Sri Sevasubramania nadir Educational Trust, Chennai (Rs 94 crores); the purposes for which FC were utilized: establishment expenses (Rs 1482 crores), rural development (Rs 944 crores), welfare of children (Rs 742 crores), educational institutions (Rs 631 crores), scholarship to poor children Rs 454 crores.).



enlarged to include donation or contribution received by an organization from another organization out of foreign contribution received by the latter. In order to effectively monitor the receipt of foreign contribution by associations having cultural, economic, educational, religious or social programmes unregistered associations are also permitted to receive foreign contribution with the prior permission of the Central Government but subject to furnishing of intimation of accounts afterwards. A new clause was added to empower the Central Government to audit the accounts of persons or associations who did not furnish accounts or who furnished accounts defectively. Persons convicted of offences under the Act for the second time are prohibited from accepting any foreign contribution for a period of three years from the date of second conviction. It is submitted, addition of the above measures is done primarily to make the law stringent and to plug the loopholes. The controlling system under the Act was thus made rigorous.

There was reinforcement of the regulatory policy of the law in the year 2000 by introduction of the requirement of obtaining a no-objection certificate from the local District Collector before registration. This was done by change of Rules under the Act by the Home Ministry. The DC was required to pass remarks about the antecedents of the association, its welfare activity and likely benefit to the people of the locality. Any adverse finding would result in the blocking of the registration process. The aftermath of terrorist attack on Parliament has provoked the Government to announce to further tighten the regime of the Act.

### III. JUDICIARY'S FOCUS ON OBJECTIVES

The objectives of the Act, especially the concern to maintain order, had great impact upon judicial interpretation of the Act. In *State represented by Central Bureau of Investigation v. Kurian (CROSS)*<sup>15</sup> at issue was the propriety of criminal prosecution for breach of an

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<sup>15</sup> State Rep. by C.B.I. and Anr. v. M. Kurian Chief Functionary of the Cross, AIR 2001 SC 3718.

undertaking by a voluntary organization with regard to a single bank account transaction. Overruling the Delhi High Court's order for discontinuance of the prosecution the Supreme Court conceded the Government's argument about strict construction of the Act by largely relying upon the law's objectives. The Supreme Court observed,

*"The Act ...having been enacted to regulate the acceptance and utilization of foreign contribution...by persons or associations with a view to ensure that parliamentary institutions, political associations and other voluntary organizations may function in a manner consistent with the values of the sovereign democratic republic, any contravention of the Act or the Rules...should be strictly construed,...and such infraction must be held to be punishable... and the same cannot be lightly brushed aside."*<sup>16</sup>

Apropos it can be commented that from the angle of the requirement of reasonableness of legal procedure for deprivation of personal liberty under Article 21 of the Constitution, and in light of a highly promising jurisprudence meticulously developed by the judiciary in post-Emergency era, the legal measure for prosecution for breach of single bank account rule is disproportionate, especially when the law provides for the requirement of accounting and auditing. The Court, instead of applying the mainstream development under article 21, was carried away by the objectives of the Act for a strict construction. The Act is not a criminal statute asking for strict construction. The Court also observed,

*"The entire purpose behind the Act was that the recipients of such foreign contribution may not act in a manner inconsistent with the values of the sovereign republic which our founding fathers have given to us....Needless to mention that if associations and political parties would be allowed to receive foreign contribution and would deposit the same in any bank they like notwithstanding their declaration with the Central*

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<sup>16</sup> *Id.* at ¶ 4.

*Government at the time of registration, then the very purpose of conferring power on the Central Government to regulate, would be frustrated and all other provisions for inspections and auditing conferring power on the Central Government would be futile.”<sup>17</sup>*

The relevance and application of the principles of natural justice have been a matter of contestation in cases relating to registration of association under the Act or Central Government’s order of prohibiting receipt of foreign contribution by any association. Regarding both the matters the Calcutta High Court in *Calcutta Rescue* case (1996)<sup>18</sup> and Delhi High Court in *Association of Voluntary Agencies for Rural Development v. Union of India*, 43 (1991)DLT 67, have required the Home Ministry to comply with principles of natural justice and not to exercise the power mechanically. Applying the well-established principle relating to exercise of discretion affecting legal rights, Justice Ruma Pal for Calcutta High Court ruled that guidelines laid down by the Home ministry could not supplant the statute and that refusal to register on irrelevant grounds amounted to abuse of discretion and violation of principles of natural justice. But this ruling was set aside when the Supreme Court in appeal (*Union of India v. Calcutta Rescue*)<sup>19</sup> admitted a compromise between the voluntary organization and the Government which granted registration to the petitioner along with withdrawal of writ petition by the former. While application of public law principle received a setback in this process of compromise, the position is that the ultimate legal development was more an outcome of compromise rather than of judicial determination of the need to apply principles of natural justice. However, setting aside of the view of Justice Ruma Pal is an example to show that the Governmental policy to give strict and literal interpretation to the requirement of prior permission before receipt of foreign contribution by the association.

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<sup>17</sup> *Id.* at ¶ 6, 8.

<sup>18</sup> *Calcutta Rescue v. Union of India*, Calcutta H.C., Mar. 20, 1996 (Supreme Court Litigation File 1-55).

<sup>19</sup> *Union of India v. Calcutta Rescue*, Supreme Court of India, Nov. 8, 2001 (Supreme Court Litigation File 250–51)

It is submitted that such an approach proceeded from holding of the major policy of the Act to maintain order as paramount one, instead of appreciating the pro-society function of the voluntary associations. In the *Calcutta Rescue* case the association and its leader Jack Preger had involved in great health service to the people of Calcutta, and approaching the request for prior permission or registration by taking into consideration this matter would have been appropriate. But undue emphasis on security and disregard for service aspect of civil society's function arose largely because of the mind-set created by the major objective of the Act. Mark Sidel in his incisive article considers litigation strategy of the Government in the matter of FCRA as one reasserting the enormous regulatory power over the civil society.<sup>20</sup> The reasons for such an approach are traceable to the original intention of keeping order.

The factors such as inducement for religious conversion and fraud by receiving association are sternly dealt under the law. In *Watch Tower Bible Society* case,<sup>21</sup> a Jehovah's Witness organization was served with show cause notice for prohibition of receipt of foreign contribution on grounds of causing social disharmony. The confidential communication of the investigating body about the findings on efforts of religious conversion was regarded as privileged document against disclosure. The Bombay High Court perused the document and upheld the prohibition as justified in the circumstance of the case. In *Netherland Organization* case,<sup>22</sup> the complaint by the foreign contributor about cheating and fraud committed by a fund receiving NGO was dealt by the Delhi High Court, and the matter was referred to an investigating agency.

#### IV. TOWARDS REFORMS

The occurrence of terrorist attacks by use of charity funds, lack of discipline amidst fund receiving bodies in accounting and

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<sup>20</sup> See generally Sidel, *supra* note 1.

<sup>21</sup> *Watch Tower Bible & Tract Society of India, Lonavala v. Union of India*, AIR 2002 Bom. 83.

<sup>22</sup> *Netherland Organization for International Cooperation v. Union of India*, 77 (1999) DLT 720.

auditing, the need to limit the spending for administrative expenses, and the requirement of tightening criminal obligation for deviants made the Union Government think about revamping the FCRA in the first decade of the new millennium. The laws on terrorism and unlawful activities had targeted individual and organized crimes. The Prevention of Money Laundering Act, 2002, (PMLA) the Unlawful Activities Prevention Act, 2004 and the Foreign Exchange Management Act, 1999 prohibit financial transfers for terrorist activities. The PMLA is primarily applicable to banks, financial companies and other financial institutions and not directly or generally to NPVOs. However, the bank practice of KYC (know your customer) has the impact of scanning NPVOs also. As Mark Sidel comments, “Legislation to reduce and prosecute terrorist financing is another weapon in the multifaceted war on terror, and terrorist finance statutes have the potential to impact the voluntary sector in direct and indirect ways.”<sup>23</sup> Non application of PMLA to voluntary sector became problematic in view of the growing instances of faith-based terrorism. M.K. Narayanan, the Indian National Security Advisor, observed, “An important source of funds to jihadi terrorist outfits are religious charities. Sincere believers contributing to charities are perhaps unaware that a sizeable portion of the funds go to fund terrorist activities and terrorist outfits....Conduits through which such funds find their way to terrorist organizations include established banking channels.”<sup>24</sup> This had added to the prevalent problem of illegal network of transfer of funds called hawala payments.<sup>25</sup>

In order to give more attention to the aspect of preventing anti-national activities, the Union Government framed the Foreign Contribution (Management and Control) Bill 2005. Some of the long standing demands of Indian voluntary community for procedural

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<sup>23</sup> MARK SIDEL, REGULATION OF THE VOLUNTARY SECTOR 79 (2010); see also P Ananthakrishnan, *Know Your Customer and Anti-Money Laundering*, CIVIL SOCIETY VOICES 29, *supra* note 11.

<sup>24</sup> MARK SIDEL, REGULATION OF THE VOLUNTARY SECTOR 81 (2010).

<sup>25</sup> SIDEL, *Id.* at 82. (In 1998, the latest figure available, the amount of money in India's hawala system was estimated at \$680 billion, roughly the size of Canada's economy, Interpol estimates the hawala system to represent up to 40 % of India's GDP).

safeguards against arbitrary rejection of registration and clarity about the status of accretion of interest to foreign contribution, were also addressed in the Bill. The Bill had brought the banks squarely into the regulatory process, barred foreign contributions to organizations of political nature, required them to report regularly to the authorities about foreign fund receipts and withdrawals and prohibited them from providing credit or permitting withdrawal of foreign contributed funds unless the organization had been registered under the law and got permission for withdrawal. The Bill had expanded the governmental control, and enabled the government to micromanage the foreign contribution in a more efficient manner. It had also authorized the government to direct the NPVOs on the specific purposes for which foreign contribution could be used. The Bill was widely and bitterly criticized as strangulating even the good doers in the garb of dealing with global terrorism. In 2006, the Government agreed to revise the Bill with much softer provisions and also accommodate the demands for multiple bank accounts to use the foreign contribution. Instead of one time registration, registration for tenure of five years and renewal on the basis of satisfactory performance were also accommodated. Voluntary sector was critical about the new FCR Bill also, and wanted total absence of regulatory regime resembling that operating on foreign direct investment. It was criticized that while the existing law had failed in controlling terrorists, politicians and journalists, it had succeeded in harassing the political opponents and protesters of human right violations.<sup>26</sup> It is a welcome development that lobbying by the network of voluntary sector had held the Bill for public discussion for four years. Ultimately, the new Foreign Contribution Regulation Act was passed in 2010 and was brought into effect in 2011 with detailed rules.

## V. SALIENT FEATURES OF THE FCRA 2010

The Foreign Contribution (Regulation) Act 2010 has basically two important objectives to achieve: i) regulation of the acceptance

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<sup>26</sup> Rajesh Tandon, *Innovations, Insinuations and the FCRA*, CIVIL SOCIETY VOICES 14, *supra* note 11.

and utilization of foreign contribution and foreign hospitality by certain individuals, associations and companies; and ii) prohibition of acceptance and utilization of FC and FH for any activities detrimental to the national interest. The concepts of regulation and prohibition are overlapping. Sections 3,6,7,9 and 10 impose prohibitions while regulations on acceptance and utilization of FC envisage measures relating to registration and its suspension and cancellation; procedure for receiving of FC through single bank account; limits on administrative expenses; emphasis on purpose compliance; and the requirements of accounting, auditing and filing of returns. Penal and miscellaneous provisions operate on both the spheres. Before delving into the discussion of these two spheres, it is essential to know about the key concepts.

“Foreign contribution” has been defined as the donation, delivery or transfer made by any foreign source of any article. Such an article should not be given to a person as gift for his personal use and the market value of such article in India, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf.<sup>27</sup>

The explanations given in the definition make it clear that the donation of FC can be direct or indirect and routed through one or more persons. Further any interest that accrues to the FC, deposited in a bank will also be deemed as FC. Only the amounts received as fee for goods or services rendered in the course of trade transactions shall be excluded from the ambit of FC. To be FC it should have come from a ‘foreign source’. As defined in Section (2) (1) (j) foreign source has wide connotation and includes a wide range of international bodies, businesses, agencies, citizens and governments.<sup>28</sup>

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<sup>27</sup> FCRA, *supra* note 2 at § 2(1)(h).

<sup>28</sup> FCRA, *supra* note 2 at § 2(1) (j) (Foreign Source includes government of foreign country, international agencies other than UN or its other branches such as the World Bank, IMF or any other international agency notified by the government which includes the WTO. Further it may include foreign company, foreign corporation, multinational corporation, companies whose more than one half of share capital is held by foreign government, foreign citizens, foreign trade unions, foreign trust, foreign registered security and foreign citizen.).

Further, to be FC, it should have been received by a person who may include an association, a company registered under Section 25 of the Companies Act or even a Hindu Undivided Family. Although the receiver of FC need not be NPVO, the operation of the legal framework as a whole will be promoting charity as the receiving person shall have a definite cultural, economic, educational, religious or social programme<sup>29</sup> and the FC shall be utilized for the purposes for which it was received.<sup>30</sup>

Foreign Hospitality is defined in Section 2 (1) (i) as any offer, not being purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free boarding, lodging, transport or medical treatment.

#### A. POLICY OF PROHIBITION

Firstly, Section 3 (1) prohibits several classes of persons from accepting any FC. Chief among them are a candidate for election, those associated with the registered newspaper as a correspondent, columnist, editor, owner, printer or publisher as well as those engaged in the production or broadcast of audio visual news or current affairs. Judges, Government servant, employee of PSU; member of any Legislature; political party or office bearer thereof and organizations of a political nature as may be specified under section 5 and lastly, correspondent or columnist, cartoonist, editor, owner of the association or company under sub clause (g) are all barred from receiving any foreign contribution.

There is also prohibition upon persons resident in India and citizens of India residing outside India to accept any FC on behalf of persons coming under section 3(1) or to deliver FC to them. Indian citizens residing abroad are prohibited from delivering FC to any political party directly or indirectly.<sup>31</sup> However, normal activities of

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<sup>29</sup> FCRA, *supra* note 2 at § 11(1).

<sup>30</sup> FCRA, *supra* note 2 at § 8(1)(a).

<sup>31</sup> FCRA, *supra* note 2 at § 3.



persons categorized in section 3 (1) in the course of exercise of their expressional freedoms are not obstructed by the prohibition.

Therefore, to give just a few examples, persons receiving FC get exemption from the operation of section 3 when they receive it by way of salary, wages, remuneration or in the ordinary course of business; by way of payment in course of international trade as an agent of foreign source in a transaction with central or state government<sup>32</sup>.<sup>33</sup> Normal activities of persons categorized in section 3(1) in the course of exercise of their expressional freedoms are not obstructed by the prohibition. Secondly, Section 6 envisages the policy of prohibition when it states that no member of a Legislature or office bearer of a political party or Judge or Government Servant or employee of any corporation controlled by the Government shall while visiting any foreign country accept any FH except with the prior permission of the Central Government.<sup>34</sup>

Thirdly, FC is always receiver specific, and it is not open to any receiver who is registered under the Act or who has obtained prior permission under the Act to transfer the FC he has received to any other person unless the latter is also registered and had been granted the certificate or prior permission under the Act.<sup>35</sup> The rationale is to keep the purposive character of FC intact and avoid any type of abuse by transfer.

Fourthly, the Central Government may impose prohibitions on any organization receiving FC or FH when the activities of such an organization is contrary to public interest, threatens the sovereignty and integrity of India, friendly relations with a foreign state or even

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<sup>32</sup> FCRA, *supra* note 2, at § 4 (Other examples include, those who, as a member of Indian delegation, or from his relative receive a gift; or by way of remittance received in the ordinary course of business in accordance with Foreign Exchange Management Act 1999; or by way of scholarship, stipend or any like natured payment).

<sup>33</sup> FCRA, *supra* note 2, at § 4.

<sup>34</sup> FCRA, *supra* note 2, at § 6 (But this prohibition does not operate in circumstances of sudden illness during foreign travel requiring medical care.).

<sup>35</sup> FCRA, *supra* note 2 at § 7.

the freedom or fairness of elections to any legislature or any other similar ground, to name just a few. These prohibitions may range from complete prohibitions or prohibitions in the nature of seeking the prior permission of the Central Government.<sup>36</sup> Fifthly, the Central Government may prohibit, after due inquiry, any person possessing article, currency or security – whether Indian or foreign – from paying, delivering, transferring or otherwise dealing with them. Written order shall be served to such person, and thereupon the provisions of the Unlawful Activities Prevention Act 1967 shall apply to such properties. This has the potentiality of preventing foreign funding of terrorism and violence.<sup>37</sup>

The policy of prohibition underlying the above provisions has great relevance for safeguarding the democratic institutions. Shri Amarish Bagchi, Member 12<sup>th</sup> Finance Commission, Government of India has observed,

*“In order that funds from abroad do not subvert the integrity of the institutions that constitute the pillars of our secular democratic policy, the FCRA seeks to regulate the flow of funds to India from foreign sources by formulating a legal framework that enables the government to keep a vigil over undesirable foreign influence. The Act has over the years served the purpose...”*<sup>38</sup>

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<sup>36</sup> FCRA, *supra* note 2 at § 9 (“It may impose the following prohibitions or requirements: (1) prohibiting any person or organization not specified in Section 3 from accepting FC; (2) requiring any person or class of persons not specified in Section 6 to obtain prior permission of the Central Government before accepting any FH, or to furnish intimation about the receipt of FH and the source and manner of receiving it; and 3) requiring any person or class of persons not specified in Section 11 to obtain prior permission of the Central Government before accepting any FC or to furnish intimation about the amount of FC, its source and purpose.”).

<sup>37</sup> FCRA, *supra* note 2, at § 10.

<sup>38</sup> Rangan Dutta, *The Foreign Contribution (Regulation) Act 1976: An Evolving Regulatory Mechanism*, CIVIL SOCIETY VOICES 40 (2006).

The fear of indoctrination of media and public forum by foreign sources during the era of cold war was substantial, and the fear is not totally allayed. Law prohibits receiving of funds by the public men and journalists in their professional or political capacity. It avoids manipulation of public opinion or democratic decision making through the use of foreign contribution. Moreover, Indian citizen's right to access to foreign books, journals or media is not obstructed under the FCRA. In case Indian journalists and public men form associations for activities of promoting genuine charity (assistance to victims of natural calamities, disasters, alleviation of poverty, advancement of education and health), such organizations do not attract prohibition. Hence, there is no violation of right to equality also. It is only the international indoctrination of public men that is found fault with.

The FCRA 2010 has newly provided for procedure to notify an organization of a political nature and thus removed the prevalent lacuna on this matter. As per Section 5(1), the Central Government may, having regard to the activities of any political party, by order published in the official Gazette, specify such organization as an organization of political nature not being a political party.<sup>39</sup> Section 5 provides for requirement of notice, opportunity to make representation and time bound process of decision making.

## B. POLICY OF REGULATION

Regulation by requiring registration of the receiver, supervising through power of suspension, cancellation and renewal of registration, and by requiring accounting, auditing and limiting the administrative

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<sup>39</sup> FCRA, *supra* note 2 at § 5; *see also* Rule 3, Foreign Contribution (Regulation) Rules, 2011 (“The following grounds an organization may be notified as of political nature: organizations, Trade Unions and voluntary action groups having avowed political objectives, fronts or mass organizations of political parties, organizations of farmers, workers, students, youth based on caste, community, religion, language having objectives of advancement of political interests of such groups, organizations habitually engaging in common methods of political actions such as haratal, bandh, rasta rook, jail bhara in support of public causes.”).

expenses, is a vital mechanism under the FCRA. It streamlines and monitors the flow of FC to India. This mechanism is critical as it allows through a meticulous filtering process any large sum of money exceeding Rs. 10,000 crores. FCRA's contribution to transnational charity consists in systematizing the process and purpose of receiving, and ensuring accountability.

### C. REGISTRATION

Registration is a technique comparable to license system. Both at and after the registration, the governmental role comes to play. Purpose orientation is explicit in the language of the FCRA. to Section 11 (I makes it mandatory that any person or organization having a definite social, cultural, economic, religious or educational programme can operate without a certificate of registration from the Central Government. There is also provision for continuation of the existing registrations for a period of five years. Persons who have not registered under the Act may accept any FC only after obtaining prior permission of the Central Government and such prior permission shall be valid for the specific purpose.<sup>40</sup> In providing that the unutilized or un-received amount of FC because of violation of FCRA 1976 shall not be utilized or received without the prior approval of the Central Government, again the idea of purpose compliance is given effect to. The idea that only suitable persons or suitable areas shall be receivers of FC is reflected in Section 3 (i) and (ii) where the Central Government can monitor through the tool of prior permission. By saying that the Central Government may by notification in the official Gazette specify the purpose or purposes for which the FC shall be utilized, the extent of governmental role is set.<sup>41</sup> Similarly, the Central Government may specify the source or sources from which the FC shall be accepted. Although there is wide space for governmental role, in the context of registration for FC the governmental control is not all pervasive.

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<sup>40</sup> FCRA, *supra* note 2 at § 11(2).

<sup>41</sup> FCRA, *supra* note 2 at § 11(3)(iii).

#### D. UTILIZATION OF FC EXCLUSIVELY FOR INTENDED PURPOSE AND LIMIT ON ADMINISTRATIVE EXPENSES

Section 8 (I) (a) of FCRA lays down a cardinal principle as follows: *“Every person, who is registered and granted with a certificate or given prior permission under this Act and receives any FC shall utilize such contribution for the purpose for which the contribution has been received.”* Speculative business is not a permissible purpose. Further, in view of the past experience that a large part of FC was spent for administrative expenses, a cap of fifty percent per annum is imposed.<sup>42</sup> The elements of administrative expenses will also be prescribed by the Central Government through rules.<sup>43</sup> (This is a significant change that compels for utilization of at least fifty per cent of the FC for the purpose of charity and avoids contrivances of sham organizations whose administrative expenses leave little for charity.

#### E. PURPOSE SCRUTINY AT THE STAGE OF GRANT OF REGISTRATION OR PRIOR PERMISSION (SECTION 12)

When an application for grant of certificate of registration for FC or for giving prior permission is filed by a person, the Central Government, after making suitable inquiry and forming opinion that the conditions prescribed by section 12 are satisfied by the applicant, may register such person and grant certificate of registration or give him prior permission. The applicant<sup>44</sup> should have undertaken reasonable activity in its chosen field for the benefit of the society for which the

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<sup>42</sup> FCRA, *supra* note 2 at § 8(1)(b).

<sup>43</sup> FCRA, *supra* note 2 at § 8(2).

<sup>44</sup> FCRA, *supra* note 2 at § 12 (4) (Conditions are: “(i) is not fictitious person or benami; (ii) has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force either directly or indirectly, from one religious faith to another; (iii) has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country; (iv) has not been found guilty of diversion or misutilisation of its funds; (v) is not engaged or not likely to engage in propagation of sedition or advocate violent methods to achieve its ends; (vi) is not likely to use the FC for personal gains or divert for undesirable purposes; (vii) has not contravened any of the provisions of this Act; (viii) has not been prohibited from accepting FC.”).

foreign contribution is proposed to be utilized.<sup>45</sup> Further, he/she should have prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilized.<sup>46</sup>

Moreover the acceptance of FC by the applicant should not be likely to affect prejudicially the sovereignty and integrity of India; or prove detrimental to the nation in any other way.<sup>47</sup> The above provision is comprehensive enough to filter out anti-social schemes and activities endangering national and public interest. By categorically dealing with possible use of FC for the purpose of religious conversion or fomenting of communal disharmony, Social harmony transcending the cultural differences is one of its laudable aims. Reference to reasonable activity and reasonable project for the benefit of the society contemplates positive contribution through FC and promotes the objective that charity shall ameliorate suffering and advance good works, both socially and culturally. While the FCRA 1976 had no such elaborate provision, the Central Government used to exercise discretion regarding registration on the basis of rules, circulars and routine practices, and this gave rise to some confusions and complaints. Now the law is crystal clear and balances the competing considerations and interests. The requirement that the Central Government shall give reasons for refusal<sup>48</sup> and that the decision on application for registration shall be made ordinarily within ninety days<sup>49</sup> have provided for procedural safeguards and avoidance of delay.

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<sup>45</sup> FCRA, *supra* note 2 at § 12 (4) (b).

<sup>46</sup> FCRA, *supra* note 2 at § 12 (4) (c).

<sup>47</sup> FCRA, *supra* note 2 at § 12 (4) (f) (Some of the other things provided for in the act include: the security, strategic, scientific or economic interest of the State, or the public interest; freedom or fairness of election to any Legislature, or friendly relation with any foreign state; or harmony between religious, racial, social, linguistic, regional groups, castes or communities. Further, the acceptance of FC by the applicant (i) shall not lead to incitement of any offence; and (ii) shall not endanger the life or physical safety of any person.).

<sup>48</sup> FCRA, *supra* note 2 at § 12(5).

<sup>49</sup> FCRA, *supra* note 2 at § 12(3).

The certificate of registration is valid for five years<sup>50</sup> and is open to renewal on the basic application for renewal submitted within six months before the expiry of the period of certificate.<sup>51</sup> Renewal shall be done within ninety days from the date of renewal application for a period of five years subject to such terms and conditions that the Central Government may impose.<sup>52</sup> The Central Government may refuse to renew the certificate of registration in case a person has violated the provisions of the Act. The draft clause on renewal was subject to criticism by the voluntary sector as the 1976 FCRA had provided for permanent registration. However, renewal process gives an opportunity for the Central Government to scrutinize the performance of FC recipients and prevent future wrongs.

#### F. ACTIONS AGAINST DEVIATION: SUSPENSION AND CANCELLATION OF REGISTRATION

The ‘command and control’ policy makes use of the tools of suspension and cancellation of registration for the purpose of ensuring compliance with law. Section 14 allows the Central Government, after making suitable inquiry to cancel or suspend the certificate of registration<sup>53</sup> if the holder has in any way made an incorrect or false statement, violated terms and conditions prescribed in the certificate or the act and its rules and orders or has failed to engage in performing any activity in the chosen field.<sup>54</sup> The persons whose certificates are suspended shall not receive any FC during the period of suspension. However, the Central Government may allow receipt and utilization of FC in response to application by the certificate holder and subject to terms and conditions it may prescribe. In case of cancellation of certificate the FC and the assets created out of the FC in the custody of the person whose registration is cancelled shall vest in the

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<sup>50</sup> FCRA, *supra* note 2 at § 12(6).

<sup>51</sup> FCRA, *supra* note 2 at § 16(1).

<sup>52</sup> FCRA, *supra* note 2 at § 16(3).

<sup>53</sup> FCRA, *supra* note 2 at § 13 (1) (This suspension cannot be for more than 180 days.).

authority.<sup>55</sup> The authority (bank as per rules) may, if it considers necessary and in public interest, manage the activities of the person according to the directions of the Central Government or dispose the assets as per law or to return them to the person in case he subsequently gets registration.<sup>56</sup> A person whose registration is cancelled is not eligible for registration or grant of prior permission for a period of three years.<sup>57</sup>

How the power of suspension of registration takes place in reality can be seen by looking to the instance of Central Government's action against few organizations, who, being receivers of FC, indulged in agitation against nuclear power plant at Kudankulam. The Central Government came down heavily on such NGOs who conducted anti-nuclear agitation. The Prime Minister is reported to have said, "The atomic energy programme has got into difficulties because these NGOs, mostly I think based in the United States, don't appreciate the need for our country to increase the energy supply." Regarding NGOs opposing application of biotechnology to agricultural sector he expressed dissatisfaction: "There are NGOs often funded from the United States and the Scandinavian countries which are not fully appreciative of development challenges that our country faces."<sup>58</sup> Three NGOs were blacklisted after inquiry, and their FC registrations were suspended.<sup>59</sup>

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<sup>54</sup> FCRA, *supra* note 2 at § 13(1).

<sup>55</sup> FCRA, *supra* note 2 at §15(1).

<sup>56</sup> FCRA, *supra* note 2 at §§ 15(2), (3).

<sup>57</sup> FCRA, *supra* note 2 at §14(3).

<sup>58</sup> N Gopal Raj, *Manmohan criticizes NGOs for Protests in Kudankulam*, THE HINDU, (Feb. 24, 2012), <http://www.thehindu.com/news/national/manmohan-criticises-ngos-for-protests-in-kudankulam/article2924905.ece>; *see also One killed in Anti Kudankulam Protests: Shinde blames foreign NGOs*, HINDUSTHAN TIMES, (Sept. 10, 2012), <http://www.hindustantimes.com/India-news/TamilNadu/One-killed-in-anti-Kudankulam-protests-Shinde-blames-foreign-NGOs/Article1-927375.aspx>; *see also Moscow: Foreign NGOs behind India's NPP Protests*, RIA NOVOSTI, (Dec. 21, 2012), <http://en.rian.ru/russia/20121221/178315740.html>.

<sup>59</sup> *Kudankulam protests: 3 NGOs lose licence for diverting funds*, FIRST POST INDIA, (Feb. 25, 2012), <http://www.firstpost.com/india/kudankulam-protests-3-ngos-lose-licence-for-diverting-funds-224821.html>.



G. SUPERVISION THROUGH THE REQUIREMENTS OF ACCOUNTS, AUDITS AND  
RETURNS

Receiving of FC through single bank account in one of the branches of a bank is a requirement imposed under the law ever since 1976.<sup>60</sup> Such bank account shall be transacted exclusively to deal with FC. The dissatisfaction amidst the voluntary sector about the inconvenience of single bank account is now allayed by the new proviso that such person may open one or more accounts in one or more banks for utilizing the FC received by him. Under the FCRA 2010, every bank or authorized person in foreign exchange shall report to the authority prescribed by the government about the amount, source and manner of foreign remittance and furnish other particulars. This gives additional tool in the hands of Central Government to monitor FC transactions.

The requirement on the part of the person registered or permitted to receive FC to intimate in the prescribed form and time frame to the Central Government as to the amount, source and, manner of FC receipt and the purposes for which and the manner in which the FC was utilized contributes to transparency in this sphere.<sup>61</sup> Such intimation shall be accompanied with bank's certificate about funds. The receiver of FC shall maintain in the prescribed form an account of FC received by him and record as to the manner in which FC has been utilized by him.<sup>62</sup>

Central Government's power to get auditing done in case of failure of the FC receiver to properly intimate is another important control mechanism. Under section 20, where the persons registered or permitted to receive FC fails to furnish intimation under FCRA or where after inspection of the intimation the Central Government has any reasonable cause to believe that there is violation of FCRA, the

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<sup>60</sup> Foreign Contribution (Regulation) Act, 1976, No. 49 of Year 1976, § 6; FCRA, *supra* note 2 at § 17(1).

<sup>61</sup> FCRA, *supra* note 2 at § 18.

<sup>62</sup> FCRA, *supra* note 2 at § 19.

Central Government by general or special order authorize suitable gazette officer to audit any books of accounts kept or managed by such person. The officer has the power of entry to the premises at any reasonable time for the purpose of auditing.

In case the person who was permitted to receive FC ceases to exist or has become defunct all the assets of such person shall be disposed of in accordance with the law under which the person was registered or incorporated. In the absence of such law the Central Government may dispose of the assets created out of FC by following appropriate procedure.<sup>63</sup> There is also an obligation upon every candidate for election who has received FC at any time within 180 days immediately preceding date of nomination to intimate to the Central Government the amount, source and manner of receiving FC.<sup>64</sup>

The above provisions build a comprehensive legal framework for ensuring transparency and accountability in the matter of receipt and utilization of FC. Their contribution to the task of purpose compliance is significant.

#### H. COERCIVE MECHANISM FOR PURPOSE COMPLIANCE: INSPECTION, SEARCH AND SEIZURE

As a normal method of 'command and control', the law has provided for the tools of inspection, search, seizure and confiscation in suspected cases of breach of FCRA. Under Section 23 the Central Government may, in cases of suspicion about contravention of FCRA by any political party any person, organization or association, cause an inspection of accounts or records kept or maintained by such body through any suitable Gazette officer. The officer has the power of search also. After inspection of accounts or records, if the inspecting officer has reasonable cause to believe that the FCRA or law of foreign exchange is being contravened, he may seize such an account or record and produce the same before the court, tribunal or authority in which

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<sup>63</sup> FCRA, *supra* note 2 at § 22.

<sup>64</sup> FCRA, *supra* note 2 at § 21.

any proceeding is brought for dealing with contravention.<sup>65</sup> The seizure shall be done in accordance with the provisions of Criminal Procedure Code, and the seized article, currency or security may be disposed of in accordance with law.<sup>66</sup> In case of reasonable belief about excessive (that is, more than what is provided for the purpose of section 2 (1) (possession of currency, security or article by any person, the authorized Gazette officer may seize such currency, security or article.<sup>67</sup> The seized material or articles shall be liable to confiscation where they are adjudged as received in contravention of FCRA.<sup>68</sup> The adjudication shall be in session courts having territorial jurisdiction on the act and the aggrieved person has right of appeal.<sup>69</sup> Confiscation of goods shall be made only after providing reasonable opportunity of making representation.<sup>70</sup> Central Government has also the power to call for information<sup>71</sup> and the power of investigation.<sup>72</sup>

#### I. PROVISIONS ON OFFENCES AND PENALTIES

The FCRA has stringent provisions which define the offences and prescribe penalties. Making of false statements, declarations and accounts; obtaining currency or articles in violation of Section 10; contravention of the provisions of the Act by political party or organizations; non-compliance with the provisions of the Act are punishable.<sup>73</sup> The directors or office bearers in charge of the organization or company are personally liable for the criminal acts.<sup>74</sup> Previous sanction of the Central Government is required for prosecution.<sup>75</sup>

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<sup>65</sup> FCRA, *supra* note 2 at § 24.

<sup>66</sup> FCRA, *supra* note 2 at § 26.

<sup>67</sup> FCRA, *supra* note 2 at § 25.

<sup>68</sup> FCRA, *supra* note 2 at § 28.

<sup>69</sup> FCRA, *supra* note 2 at §§ 29, 31.

<sup>70</sup> FCRA, *supra* note 2 at § 30.

<sup>71</sup> FCRA, *supra* note 2 at § 42.

<sup>72</sup> FCRA, *supra* note 2 at § 43.

<sup>73</sup> FCRA, *supra* note 2 at §§ 33 - 38.

<sup>74</sup> FCRA, *supra* note 2 at § 39.

<sup>75</sup> FCRA, *supra* note 2 at § 40.

## VI. CONCLUSIONS

Globalization of charity is not a new phenomenon, but is an indispensable feature of a caring and cooperating international community, which includes individuals, organizations and states. But the values of democracy, social harmony and expressional freedom are far more superior and essential for survival of the constitutional polity. Hence, charity, in spite of its high moral ground should not have competence to subvert these values, but instead, should be complementary to them. The FCRA 2010 and its predecessor have reflected the instrumental role of transnational charity and supremacy of the democratic values. Indoctrination at the international level is encroachment of or intervention with intellectual sovereignty of the nation. But with the demise of cold war and emergence of globalization, the fear of indoctrination remains, as a paper tiger. However, being fed by FC, led by false fear and armed with borrowed ideas, chances of NPVOs acting to obstruct a developmental work may not be ruled out. Similarly, direct financial support by big nations or their bodies to public men of other nations, which had toppled the existing governments and enthroned new ones in the past, may be a potential danger. Further, transnational financial assistance to terrorism and communal disharmony threaten the health of the polity. FCRA arms the Central Government with adequate powers to deal with such contingencies. The procedural refinements and introduction of greater means of ensuring accountability of fund receivers under the new Act have added strength to support genuine charity.