



## **India: FCRA Amendment 2020 will undermine the work of Civil Society**

Today the ICJ condemned the adoption by both Houses of Parliament of the Indian Foreign Contribution (Regulation) Amendment Bill 2020 (FCRA 2020).

The legislation fails to comply with India's international legal obligations and constitutional provisions to respect and protect the rights to freedom of association, expression, and freedom of assembly. The ICJ stressed that the Bill's provisions would impose arbitrary and extraordinary obstacles on the capacity of human rights defenders and other civil society actors to carry out their important work.

Given the incompatibility of the Bill with international law, the ICJ called on India's President to withhold the assent necessary for the Bill to pass into law. At a minimum, the ICJ called on the Indian authorities to desist from implementing the provisions of the FCRA 2020 that are inconsistent with international law.

The FCRA 2020 significantly amends the previous Foreign Contribution (Regulation) Act 2010 (FCRA), which also imposed overbroad and vague restrictions on civil society. FCRA 2020 provides for overly broad rules and measures which would effectively restrict access to foreign funding particularly for public servants and smaller non-governmental organizations. It adds onerous governmental oversight, additional regulations and certification processes, and operational requirements, while simultaneously reducing the limit of administrative expenditure that can be allocated to foreign contributions to 20 percent from the previous 50 percent.

"The Bill has been passed by both Houses of Parliament only four days after it was tabled, and without any stakeholder consultation. This hasty lawmaking that clearly undermines human rights and the work of civil society, is yet another attempt by the government to destabilize the functioning of democratic institutions in India," said Ian Seiderman, ICJ Legal and Policy Director.

The UN Human Rights Council in its Resolution 22/6 on Protecting Human Rights Defenders declared that, "no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding". Further, the UN Special Rapporteur on Assembly and Association has clarified that controls in laws should not "unduly obstruct the legitimate work" and need to be "fair, objective and non-discriminatory, and not be used as a pretext to silence critics".

The ICJ noted that the restrictions in the Bill continued a larger pattern of threats and harassment faced by civil society in India. The Indian Government has sought to restrict human rights defenders from traveling outside India and used overbroad laws like sedition (Section 124A, Indian Penal Code) and Unlawful Activities Prevention, 1967 Act to arbitrarily arrest human rights defenders. At present, over 20 human rights defenders are in pre-trial detention.

“The spirit of the Bill is to stigmatize certain NGOs and lend credence to the authoritarian voices that have attacked them as “anti-national.” The unfortunate result is that many civil society organizations will be chilled from seeking or accepting scarce funds from the largest pool of donors, even in cases where it is not clear whether they would be running afoul of the FCRA. These resources are also vital to maintaining the independence of the work of NGOs,” said Seiderman.

## Contact

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## See Also

- [India: Authorities must stop harassment of Lawyers Collective and repeal Foreign Contribution \(Regulation\) Act](#)
- [Joint Open Letter to the Indian Government calling for the release Of human rights defenders at risk](#)

## Background

The FCRA regulates the receipt by “certain individuals or associations or companies” of foreign funds and prohibits the receipt of foreign funds “for any activities detrimental to the national interest.” Non-governmental organizations are required to apply to the Indian Ministry of Home Affairs for an FCRA registration certificate to receive foreign funding, and upon receipt of the certificate, are required to comply with burdensome FCRA procedural requirements on reporting, disclosure, transfer of funds, use of funding, among others.

The Indian Government on September 23, 2020 pushed through another amendment to the FCRA. Some of the key amendments FCRA 2020 brings in involve:

- a) prohibiting the transfer of foreign contribution by recipients to other registered organizations;
- b) restricting an overly broad category of individuals under the definition of public servants in Indian Penal Code from accessing foreign funds;
- c) limits on the use of foreign funds for defraying administrative expenses to 20 percent from the earlier 50 percent;
- d) requirement of Aadhar card (12 digit unique identification number issued to each resident based on biometric and demographic

- information) details for all office bearers or copy of Passport for foreigners;
- e) requirement for those who make an application for FCRA registration certificate to first open a designated FCRA account in State Bank of India, New Delhi;
  - f) increase in the suspension of FCRA certificate from 180 days to a possible additional extension of 180 days, bringing the total to 360 days; and
  - g) allowing surrender of FCRA certificate.

The UN Human Rights Council in its Resolution 22/6 on Protecting Human Rights Defenders called upon all States to ensure that any registration processes for civil society are “transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration.”

At the UN Human Rights Council’s Universal Periodic Review of India in 2017, a process wherein each State’s human rights record is evaluated every four years by the Council’s Member States, more than ten countries criticized the FCRA for its adverse human rights consequences.

The UN Human Rights Committee (Human Rights Committee), the supervisory body responsible for clarifying the content of ICCPR obligations, while evaluating laws on funding NGOs has stressed that access to funding is a part of the right to freedom of association protected under ICCPR article 22.

Further, 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 (Declaration on Human Rights Defenders), adopted by the UN General Assembly with the consensus of India and all other States, provides in Article 13 that everyone has the right “individually and in association with others” to “solicit, receive and utilize resources” for protecting human rights.

The UN Special Rapporteur on Freedom of Association and Assembly has stressed that access to resources is important for NGOs not only for the very existence of associations but also to guarantee the enjoyment of other human rights of those who benefit from the work of the organization. The Special Rapporteur has expressed the view that laws that require that associations route funding through the State, report on all funds received from foreign sources and their allocation and use, obtain authorization from authorities to receive or use funds are in breach of human rights obligations of the State.