

UNRENEWED FCRA LICENCES & FACETS OF DEVELOPMENT: A CRITICAL STUDY

by

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ABSTRACT

The Foreign Contribution (Regulation) Act was introduced in 1976 to regulate the funding from foreign sources to NGOs, CSOs, and NPOs functioning in India. A lot of these organizations function under the Constitutional Provisions conferred by Article 26, upholding religious values and charitable intentions. However, the 2020 amendment to the act seemed to create havoc due to its draconian provisions and pedantic criteria for institutions to obtain licenses. This research article presents an interdisciplinary study encompassing Legal aspects along with tangents of Social science by analyzing the subject matter based on dimensions of development. This study aims to explore the effect of the Government's move to cancel the licenses of various charitable organizations without any reason or by stating irrelevant reasons with no support under the pretext of FCRA. Qualitative data via doctrinal study in the form of various articles have been employed for this study. Furthermore, views have been countered and supported by the aid of constitutional provisions. The study succeeds in finding that misuse of FCRA by the Government acts as a deterrent to various dimensions of development, like social, cultural, and ethical. It is a peril at the door and a wake-up call as it threatens the preamble value of secularism and the rights of cultural identities to regulate their affairs. This paper identifies the cognition behind FCRA and its requirements, but also simultaneously contests the abuse of the same by the stakeholders against the minorities and vulnerable groups.

Keywords: FCRA, NGOs, Social Development, Cultural Development, Ethical Development, Cultural pluralism, Diversity, Secularism, Religious Institutions, India.

Introduction

As per Willis (2005), development goes beyond mere economic aspects, it should also consider social and cultural norms and expectations.¹ Social development means that all people, irrespective of gender, caste, or religion, can take part in the process of development by freely expressing their ideas, participating in the decision-making process, and therefore enjoying its benefits (Beverly and Sherraden, 1991).² Social and economic development are closely interconnected. Holistic development should take care of cultural development as culture deeply influences livelihood, human, and social development. Cultural development means every cultural identity has the right to run its institutions that strive to uplift the downtrodden and other backward sections of society. This is also supported by the provisions of the Indian Constitution under Article 26 (freedom to manage religious affairs). Additionally, the ethical dimension aims at enhancing development with distributive justice, human well-being, and happiness. It prioritizes maximum freedom and satisfaction for the individual over maximum gross national product (Nordhaus and Tobin, 1973).³ Civil society organizations (CSO), non-profit organizations (NPO), and non-governmental organizations (NGO) have played a very important role in safeguarding the interests of minorities and vulnerable groups in India. Most of these organizations rely on foreign funding, along with funds from the government and the public at large. The non-governmental development agencies in the developed world channel substantial volumes of aid through non-governmental partners in the developing world, providing a powerful financial stimulus, thereby acting as a strong financial boost to developmental efforts in the developing areas (Clarke, 1998).⁴ To regulate the inflow of such funds, the Government of 1976 introduced the Foreign Contribution Regulation Act (FCRA). The FCRA serves as a rulebook for NGOs attracting foreign donations as it makes sure that the money is allocated and used effectively, not to promote illegal or anti-national activities. In addition to this, the foreign funds have been constantly increasing over the years, which makes it difficult to trace their allocation. Furthermore, the probability of the use of funds on self-benefiting activities instead of the welfare of the people makes it even more questionable. So it can be considered a positive initiative. But there are some negative aspects as well. Recently,

¹ Willis, Katie, *Theories and Practices of Development* (2d ed. 2011).

² Sherraden, Michael, *Assets and the Poor: New American Welfare Policy* (1st ed. 1991).

³ William Nordhaus & James Tobin, *Is Growth Obsolete?*, in *The Measurement of Economic and Social Performance* 509-564 (Milton Moss ed., Nat'l Bureau of Econ. Rsch. 1973)

⁴ Gerald Clarke, *Non-Governmental Organizations (NGOs) and Politics in the Developing World*, 46 *Pol.Stud.*36 (1998)

after the 2020 amendments to the FCRA Act, it can be found that the Government has made the provisions exorbitantly stringent. This has ultimately led to the license cancellation of prominent NGOs such as CNI Synodical Board of Social Service (CNI-SBSS), Voluntary Health Association of India (VHAI), and others, which bear allegations of involvement in religious conversions along with violation of foreign grant regulations.⁵ VHAI has been in India for the past 50 years and has collaborated with the World Health Organization (WHO) and, Indian Council of Medical Research, and has received funds from France and the USA. CNI-SBSS played an active role in disaster events like Odisha's super cyclone, the COVID-19 pandemic, etc. In 2023 itself, approximately 100 NGOs like the Rajiv Gandhi Foundation, Oxfam India have lost their licenses due to alleged misuse of foreign grants.

According to the UN Special Rapporteur, the FCRA norms and regulations are not in conformity with international principles and standards, thereby violating the right to freedom of association incorporated in the International Covenant on Civil and Political Rights.

Another major institution named Vision India has been severely affected by this provision. The organization used to provide leadership training to young Christians, but is now unable to do it because of insufficient funds. Compassion International, being the first organization of any faith, lost its FCRA license as it annually brought \$45 million into India, which is more than any charity. Despite fulfilling all the conditions, such as submission of documents related to incoming funds, and their effective use in developmental activities, the government has still turned its back on these organizations, which is concerning in many ways.⁶ Many religious leaders who run charitable institutions with no profit in return claim that the government has an ulterior motive in cancelling their licenses. Thereby, seeing this as a government's move to control their religious affairs by encroaching on their autonomy. As a matter of fact, since 2014, FCRA licenses of more than 19,000 NGOs have been cancelled, including high-profile organizations such as the Lawyers Collective, Greenpeace India, People's Watch, Compassion International, and Public Health Foundation of India, and more. The grounds for these cancellations include "non-compliance with reporting requirements" and activities deemed "political" or against "national interest" and

⁵ Chowdhary, A., Kumar, J., & Verma, M., Repression via FCRA, 51 *ECON. & POL. WKLY.* 4 (2016) <https://www.jstor.org/stable/44166187>

⁶ Scorziell, L., The Regulation Suffocates Christian Ministries in India, *CHRISTIANITY TODAY* (Feb. 16, 2021), <https://www.christianitytoday.com/2021/02/india-christian-charity-fcra-nationalist-modi-license/>.

“economic security”.⁷ On 10 September 2020, India froze the accounts of Amnesty International India on the allegation that it had evaded the FCRA. The action forced Amnesty International India to halt its India operations (ICJ,2020). This can also serve as a shred of evidence against various dimensions of development. It not only violates constitutional provisions given under the Fundamental Rights but also attempts to contravene the ideals of ‘cultural pluralism’ and diversity.

Literature review

Mohammed (2016) discusses ‘Cultural Pluralism’, which refers to the peaceful co-living of all religions and cultures in the country. It includes respecting other people's traditions and practices, which can be seen everywhere during Eid, Christmas, Ganesh Chaturthi, and others. The author analyses that this has been going on for many centuries, but the recent “development” policies introduced by the government tend to benefit a particular section and neglect the others, causing harm to the religious harmony among people, which ultimately leads to distress and communal tensions within the country.⁸

Chowdhary, Kumar, and Verma (2016) dissect the attempt of repression instigated by the government via FCRA. The study concludes with the authors expressing solidarity over the unfair revocation of licenses of 25 organizations and demanding a just and transparent process in return.⁹

The International Commission of Jurists (2020) calls this a “repressive law” and alarms for immediate action to repeal or revise the same. It expresses this move as “a tool to silence Indian Civil Society Organizations” and “detrimental to national interest”.¹⁰

Clarke (1998) sheds light on the role played by NGOs in developing countries in the political as well as economic landscape. It also discusses the very ideology behind NGOs and how they interact with other institutions. He notes that NGOs often go unseen by political scientists and leaders, as a result of which their roles are largely underestimated.¹¹

⁷ Firstpost, FCRA Licences of 20,000 NGOs Cancelled: Act Being Used as Weapon to Silence Organisations?, FIRSTPOST (Jan. 6, 2017), <https://www.firstpost.com>.

⁸ Khalid, Mohammed, Cultural Pluralism in India: Protecting a Symbol of National Identity, in Vimal Vidushy (ed.), *Revamping Indian Society in the Era of Modernisation: Issues and Dilemmas* 111 (Twentieth Century Publ'ns 2016).

⁹ Supra note 6

¹⁰ Int'l Comm'n of Jurists, India: Repressive Law on Foreign Contributions Stifles NGOs, Must Be Revised or Scrapped, ICJ (Oct. 12, 2021), <https://www.icj.org/resource/india-repressive-law-on-foreign-contributions-stifles-ngos-must-be-revised-or-scrapped/>.

¹¹ Supra Note 4

Trollope (2015) delves into the history and evolution of NGOs in local as well as international scenarios. She actively scrutinizes the challenges NGOs are subjected to, for instance, political pressure, management issues, transparency, and more. She further emphasizes the growing significance of NGOs and other such organizations in development and social change.¹²

Case study: Examining CNI (Church of North India)'s revocation and reinstatement of FCRA license

CNI includes 6 churches that came together on 29th November 1970. Since then, CNI has been committed to breaking down the barriers created by caste, class, gender, economic inequality, and exploitation of nature. The motto of the church is: "Unity - Witness - Service". The statistics are testimony to the church's initiatives, as it has contributed to 7 theological colleges and 60 hospitals/medical centers spanning across the whole of India except for the four southern states, i.e., about two-thirds of the entire country.¹³ It ranges over hills to deserts and coastal beaches, covering both rural as well as urban zones. The church binds together people of diverse cultures, traditions, and lifestyles. The church has two boards to regulate health and development-related work in the diocese. It has a program office that works with all the dioceses for the implementation of their six-yearly "Ministry Plans", which link dioceses' concerns with the 7 desks of the program office: children, women and gender, youth, peace and interfaith concerns, marginalized, local congregational concerns and human resources development.¹⁴

The noble work of the CNI attracted foreign donors as well, however, the revocation of the organization's FCRA license led to the cessation of all activities of the trust. However, the license has been reinstated, but the initial revocation of the license serves as evidence of the Ministry of Home Affairs' attempt to snatch away autonomy of organizations over false allegations of conversions and breaking rules.

Conclusion

FCRA's need cannot be denied however, its use should be under surveillance so that it doesn't become a tool in the hands of the government to oppress minorities and cultural identities by

¹² Trollope, A.K., *Non-Governmental Organizations: Origin and Development* (2015).

¹³ Church of North India Synod, About, CHURCH OF NORTH INDIA SYNOD, <https://cnisynod.org/about/> (n.d.).

¹⁴ World Council of Churches, Church of North India, WORLD COUNCIL OF CHURCHES, <https://www.oikoumene.org/member-churches/church-of-north-india>.

robbing them of their autonomy. A strong system is very much needed to check on the use of foreign funds. But the system shouldn't turn out to be imposing and restrict the activities of the non-profit organizations. Undoubtedly, NGOs and other charitable institutions have played a significant role in the development of the country through their relentless efforts in the fields of education, health, and infrastructure. All these anti-developmental policies are violative of the fundamental rights (A.26) guaranteed under the Indian Constitution, which may reflect a negative image of India on a global level as a *messiah* of cultural diversity and pluralism. It must be realized that such policies are a threat to national brotherhood and constitutional values of equality, justice, and secularism. Hence, it can be concluded that **such encroachments act as a hindrance in the contexts of Social, Cultural, and Ethical dimensions of development.**



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