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FOREIGN CONTRIBUTION REGULATION (AMENDMENT) ACT, 2020: BALANCING TRANSPARENCY AND ACCOUNTABILITY

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ABSTRACT

The Foreign Contribution Regulation (Amendment) Act, 2020[352] introduced significant changes to India's regulatory framework governing the acceptance and utilisation of foreign contributions by individuals, associations, and non-governmental organisations (NGOs). The amendment was enacted with the objective of enhancing transparency, accountability, and governmental oversight in the management of foreign funds, while also addressing concerns relating to national security and misuse of foreign contributions. Key amendments include restrictions on transfer of foreign contribution, reduction in permissible administrative expenses, mandatory Aadhaar identification for office bearers, and compulsory opening of designated bank accounts in the State Bank of India, New Delhi branch.

This research paper critically examines the legal and constitutional dimensions of the 2020 amendment and evaluates whether the legislation successfully balances transparency with democratic freedoms. The study analyses the impact of the amendment on NGOs, civil society organisations, and grassroots welfare activities. It further examines judicial interpretation of the amendment, particularly in *Noel Harper v. Union of India*[353], where the Supreme Court upheld the constitutional validity of the law while recognising the State's authority to regulate foreign funding in the interest of sovereignty and public order.

The paper adopts a doctrinal research methodology based on analysis of statutes, judicial decisions, government reports, journal articles, and secondary legal sources. The study concludes that although the amendment strengthens financial accountability and monitoring mechanisms, it also imposes substantial compliance burdens that may adversely affect the functioning and autonomy of civil society organisations. Therefore, a balanced and proportionate regulatory approach is necessary to ensure that accountability measures do not undermine democratic participation, humanitarian work, and freedom of association in India.

Introduction

Foreign contribution plays a significant role in supporting developmental, humanitarian, educational, environmental, and human rights activities across the world. In India, thousands of non-governmental organisations (NGOs), charitable trusts, societies, and civil society organisations rely on foreign funding to carry out welfare programmes and public service initiatives. Such contributions assist in addressing social issues including poverty,

[352] The Foreign Contribution Regulation (Amendment) Act, 2020.

[353] *Noel Harper v. Union of India*, (2022) 10 SCC 1.

healthcare, child welfare, women empowerment, disaster relief, education, and environmental protection. However, alongside these benefits, concerns have consistently emerged regarding the misuse, diversion, and unlawful utilisation of foreign funds for activities affecting national security, political stability, and public order.

To regulate the acceptance and utilisation of foreign contributions, the Government of India enacted the Foreign Contribution Regulation Act, 1976[354] during the Emergency period. The primary objective of the legislation was to prevent foreign influence on political institutions, public servants, journalists, and organisations working in sensitive sectors. Over time, increasing globalisation and expansion of foreign-funded activities led to the replacement of the 1976 legislation with the Foreign Contribution Regulation Act, 2010[355] (Act 42 of 2010). The 2010 Act introduced a more structured framework for registration, monitoring, reporting, suspension, and cancellation of organisations receiving foreign contributions.

Despite the enactment of the 2010 law, the Government repeatedly expressed concerns regarding diversion of funds, lack of transparency, and misuse of foreign donations by certain organisations. According to governmental reports, several NGOs were found violating statutory requirements, utilising foreign contributions for purposes inconsistent with declared objectives, or failing to maintain proper financial records. Consequently, the Parliament enacted the Foreign Contribution Regulation (Amendment) Act, 2020 to strengthen the existing regulatory mechanism and enhance accountability in the utilisation of foreign funds.

The Foreign Contribution Regulation (Amendment) Act, 2020 introduced substantial changes to the legal framework governing foreign contributions in India. Some of the important amendments included prohibition on transfer of foreign contribution to other organisations, reduction of permissible administrative expenses from fifty percent to twenty percent, mandatory Aadhaar identification for office bearers, compulsory opening of designated FCRA accounts in the State Bank of India, New Delhi branch, and expansion of governmental powers regarding suspension of registration. The Government justified these amendments on the grounds of ensuring transparency, preventing misuse of foreign funds, and protecting national sovereignty and integrity.

However, the amendment also generated widespread criticism from NGOs, civil society groups, and international human rights organisations. Critics argued that the restrictions imposed by the amendment adversely affect the functioning of smaller organisations, limit collaborative welfare activities, and create excessive compliance burdens. It has further been argued that the amendment restricts the freedom of association guaranteed under The Constitution of India, art. 19(1)(c)[356], and narrows democratic space for civil society participation.

The constitutional validity of the amendment was challenged before the Supreme Court in *Noel Harper v. Union of India*[357], (2022) 10 SCC 1. The Supreme Court upheld the validity of the amendment while observing that no organisation has a fundamental right to receive foreign contributions and that the State possesses legitimate authority to regulate foreign funding in the interest of national security and public order. Nevertheless, debates continue regarding whether the amendment achieves a fair balance between transparency, accountability, and democratic freedoms.

This research paper critically analyses the Foreign Contribution Regulation (Amendment) Act, 2020 and examines its legal, constitutional, and practical implications. The study aims to evaluate whether the amendment effectively strengthens transparency and accountability while preserving the autonomy and functioning of civil society organisations. The paper further

[354] The Foreign Contribution Regulation Act, 1976.
[355] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010).
[356] The Constitution of India, art. 19(1)(c).
[357] *Noel Harper v. Union of India*, (2022) 10 SCC 1.

explores the broader question of how democratic states can regulate foreign funding without undermining humanitarian work, freedom of association, and participatory governance.

Conceptual Framework of Foreign Contribution Regulation

Foreign contribution regulation refers to the legal and administrative framework established by a State to monitor, control, and supervise the receipt and utilisation of foreign funds by individuals, associations, non-governmental organisations (NGOs), and other entities. The primary objective of such regulation is to ensure that foreign contributions are utilised for legitimate purposes and do not threaten national sovereignty, public order, security, or democratic institutions. In India, the Foreign Contribution Regulation Act (FCRA) serves as the principal legislation governing acceptance and utilisation of foreign contributions.

The concept of regulating foreign funding is closely connected with the principles of national security, transparency, accountability, and public interest. While foreign contributions play an important role in supporting welfare and developmental activities, unrestricted foreign funding may create risks of external influence on domestic political, social, and economic affairs. Therefore, governments impose regulatory mechanisms to maintain a balance between encouraging charitable activities and protecting national interests.

Meaning and Nature of Foreign Contribution

Under The Foreign Contribution Regulation Act, 2010[358] (Act 42 of 2010), foreign contribution generally includes donation, delivery, or transfer of any article, currency, or security by a foreign source. Foreign sources may include foreign governments, international agencies, foreign corporations, multinational companies, foreign trusts, and foreign citizens.

Foreign contributions are commonly utilised for:

1. Educational and research activities.
2. Healthcare and medical assistance.
3. Environmental protection.
4. Disaster relief and humanitarian assistance.
5. Human rights advocacy.
6. Women and child welfare programmes.
7. Rural development and poverty alleviation.

The nature of foreign contribution is therefore both economic and political. Although many foreign-funded activities promote social welfare, concerns arise when foreign funds are allegedly used to influence public opinion, electoral processes, protests, or policy decisions. Consequently, regulation becomes necessary to ensure lawful utilisation of such contributions.

Objectives of Foreign Contribution Regulation

The regulatory framework governing foreign contributions is designed to achieve several objectives:

1. Protection of National Sovereignty and Integrity

One of the primary purposes of regulating foreign contributions is to prevent foreign influence on domestic political and social processes. Excessive external funding may potentially interfere with national decision-making and democratic governance.

2. Ensuring Transparency

Organisations receiving foreign contributions are required to maintain proper records, disclose sources of funding, and submit periodic financial reports. Transparency helps in preventing corruption, fraud, and diversion of funds.

3. Promoting Accountability

Regulatory mechanisms ensure that organisations utilise foreign contributions only for the purposes for which they are received.

[358] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010).

Accountability enhances public trust and strengthens institutional credibility.

4. Prevention of Illegal Activities

Foreign funding may sometimes be misused for money laundering, terrorism financing, unlawful political activities, or activities affecting public order. Regulation enables the Government to monitor suspicious transactions and take preventive action.

5. Protection of Public Interest

The State has a duty to ensure that foreign contributions do not adversely affect social harmony, economic stability, or constitutional governance. Therefore, regulation is considered an important aspect of maintaining public order and national security.

Role of NGOs and Civil Society

Non-governmental organisations and civil society institutions play a vital role in democratic societies. They assist in implementation of welfare programmes, spread awareness regarding rights and social issues, and hold governments accountable through advocacy and public participation.

In India, NGOs have contributed significantly in areas such as:

- Education and literacy.
- Public health and sanitation.
- Women empowerment.
- Child protection.
- Environmental conservation.
- Human rights protection.
- Rural and tribal development.

Many NGOs depend on foreign funding due to limited domestic financial support. Foreign contributions enable such organisations to undertake welfare activities in remote and economically weaker regions. Therefore, while regulation is necessary, excessive restrictions may adversely affect humanitarian and developmental work.

Transparency and Accountability as Core Principles

Transparency and accountability form the conceptual foundation of foreign contribution regulation. Transparency refers to openness in financial transactions, disclosure of funding sources, and proper maintenance of records. Accountability refers to legal responsibility for proper utilisation of funds in accordance with statutory objectives. The Foreign Contribution Regulation (Amendment) Act, 2020 was introduced primarily to strengthen these principles by imposing stricter compliance obligations and monitoring mechanisms. Measures such as mandatory Aadhaar identification, centralised banking procedures, and restrictions on transfer of foreign contribution were justified on grounds of improving transparency and preventing misuse of funds. However, an important conceptual challenge lies in ensuring that regulatory measures remain proportionate and do not unnecessarily restrict the autonomy of civil society organisations. Democratic governance requires a balance between state regulation and protection of associational freedoms guaranteed under The Constitution of India, art. 19(1)(c)[359].

International Perspective

Regulation of foreign funding is not unique to India. Several countries have enacted laws to monitor foreign contributions received by organisations and advocacy groups. For example:

- The United States regulates foreign influence through the Foreign Agents Registration Act (FARA).
- Russia imposes strict controls on foreign-funded organisations under its "foreign agents" law.

[359] The Constitution of India, art. 19(1)(c).

- China maintains extensive governmental supervision over foreign NGOs.

These examples demonstrate that foreign contribution regulation is globally recognised as an instrument for protecting national interests. However, international human rights principles emphasise that such regulation must be reasonable, proportionate, and consistent with democratic freedoms.

Thus, the conceptual framework of foreign contribution regulation involves balancing two competing interests: the legitimate authority of the State to regulate foreign funding for national security and accountability, and the need to preserve freedom of association and democratic participation of civil society organisations.

Analysis of the Foreign Contribution Regulation (Amendment) Act, 2020

The Foreign Contribution Regulation (Amendment) Act, 2020 introduced substantial changes to the Foreign Contribution Regulation Act, 2010 with the objective of strengthening transparency, accountability, and governmental control over foreign contributions received by individuals and organisations in India. The amendment was enacted by Parliament in September 2020 amid growing concerns regarding misuse of foreign funds, diversion of contributions, and alleged threats to national security arising from foreign-funded activities.

The Government justified the amendment on the ground that several organisations receiving foreign contributions were not adhering to statutory compliance requirements and were allegedly misusing foreign donations for activities inconsistent with public interest. According to the Ministry of Home Affairs, stricter monitoring mechanisms were necessary to ensure that foreign contributions were utilised for genuine welfare purposes and did not adversely affect sovereignty, integrity, or public order.

However, the amendment also generated extensive criticism from non-governmental organisations (NGOs), civil society groups, and human rights organisations. Critics argued that the law imposes excessive restrictions on the functioning of NGOs, limits collaborative welfare activities, and increases administrative burdens. The amendment therefore represents an important legal development in the continuing debate between national security and democratic freedoms.

Key Features of the Amendment

1. Prohibition on Transfer of Foreign Contribution

One of the most significant amendments was made to The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 7[360]. Prior to the amendment, organisations registered under FCRA could transfer a portion of foreign contributions to other registered organisations engaged in welfare activities. The 2020 amendment completely prohibited transfer of foreign contributions to any other person or organisation.

The Government argued that this provision was necessary to prevent diversion and misuse of funds through multiple layers of transfers. According to the Government, sub-granting made monitoring difficult and increased the possibility of financial irregularities.

However, critics argue that the prohibition adversely affects smaller grassroots organisations that depend upon larger NGOs for financial support. Many local organisations working in rural and remote areas lack direct access to international donors and previously relied on collaborative funding structures. As a result, the amendment has significantly disrupted networking and partnership models within the voluntary sector.

2. Reduction of Administrative Expenses

The amendment reduced the permissible limit of administrative expenses from fifty percent to

[360] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 7.

twenty percent under The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 8[361].

The Government maintained that foreign contributions should primarily be utilised for welfare and developmental activities rather than administrative overheads. The amendment was intended to ensure efficient utilisation of funds and reduce unnecessary expenditure on salaries, travel, and office management.

While the objective of financial discipline appears reasonable, many NGOs argued that administrative expenses are essential for effective functioning of organisations. Activities such as staff training, project management, monitoring, and legal compliance require adequate administrative support. Smaller organisations particularly face difficulties in operating within the reduced limit.

3. Mandatory Aadhaar Identification

The amendment introduced Section 12A, requiring all office bearers, directors, and key functionaries of organisations seeking FCRA registration to provide Aadhaar numbers as proof of identity. Foreign nationals are required to provide copies of passports or Overseas Citizen of India (OCI) cards.

The Government justified this measure as necessary to strengthen identification mechanisms and prevent fraudulent registrations. Aadhaar-based verification was intended to improve transparency and accountability by establishing clear identification of responsible individuals managing foreign contributions.

However, concerns were raised regarding privacy, data protection, and exclusion of individuals who may face difficulties in obtaining Aadhaar documentation. Critics also argued that mandatory Aadhaar linkage increases bureaucratic hurdles for voluntary organisations.

4. Mandatory FCRA Account in SBI, New Delhi Branch

Another important amendment relates to The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 17[362], which mandates that all organisations receiving foreign contributions must open a designated FCRA account at the State Bank of India, New Delhi Main Branch.

The objective behind centralising foreign contribution accounts was to improve governmental monitoring and facilitate easier tracking of transactions. The Government claimed that centralisation would reduce financial irregularities and create a uniform system for receipt of foreign funds.

Although organisations are permitted to transfer funds to utilisation accounts in other banks after initial receipt, the requirement has been criticised for creating logistical and procedural difficulties, especially for organisations operating in remote areas.

5. Extension of Suspension Period

The amendment extended the maximum period for suspension of FCRA registration from 180 days to 360 days. During suspension, organisations face restrictions on utilisation of foreign contributions and may continue operations only with governmental permission.

The Government defended this provision by arguing that investigations into financial irregularities often require additional time. Extended suspension periods were considered necessary for effective inquiry and enforcement.

Critics, however, argue that prolonged suspension can severely disrupt humanitarian and developmental activities, particularly when investigations remain pending for extended periods without final determination of guilt.

6. Voluntary Surrender of Registration

The amendment introduced provisions allowing organisations to voluntarily surrender their FCRA registration certificates subject to approval by

[361] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 8.

[362] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 17.

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the Central Government. Before accepting surrender, the Government must ensure that management of foreign contributions and assets created from such contributions has been properly handled.

This provision provides legal clarity for organisations wishing to discontinue operations or foreign funding activities.

Government's Justification for the Amendment

The Government consistently defended the amendment on grounds of national security, transparency, and financial accountability. According to official statements, several organisations had violated FCRA provisions by:

- Diversion of funds.
- Misreporting financial transactions.
- Failure to file annual returns.
- Use of foreign contributions for activities affecting public interest.

The Government argued that stricter regulation was essential to maintain sovereignty and integrity of the nation. It further maintained that foreign contributions are not a matter of absolute right and may be regulated in public interest.

Critical Analysis of the Amendment

The Foreign Contribution Regulation (Amendment) Act, 2020 has both positive and negative implications.

Positive Aspects

1. Improved monitoring and auditing of foreign contributions.
2. Enhanced financial accountability.
3. Prevention of diversion and misuse of funds.
4. Strengthening of national security mechanisms.
5. Greater transparency through centralised banking and identification systems.

Negative Aspects

1. Increased compliance burden on NGOs.
2. Restriction on collaborative welfare activities.
3. Adverse impact on smaller grassroots organisations.
4. Excessive governmental control over civil society.
5. Potential chilling effect on advocacy and human rights organisations.

The amendment therefore raises an important constitutional and democratic question regarding the extent to which the State may regulate civil society activities in the interest of national security and accountability.

Constitutional and Judicial Analysis

The Foreign Contribution Regulation (Amendment) Act, 2020 has generated significant constitutional and judicial debate in India. While the Government justified the amendment as necessary for strengthening transparency, accountability, and national security, critics argued that the law imposes unreasonable restrictions on civil society organisations and affects fundamental freedoms guaranteed under The Constitution of India. The constitutional challenge primarily revolves around the balance between governmental regulation of foreign funding and protection of democratic rights such as freedom of association, free speech, and participation in public affairs.

The judiciary has played an important role in examining the constitutional validity of the amendment and determining the extent to which the State may regulate foreign contributions in the interest of sovereignty, integrity, and public order.

Freedom of Association under Article 19(1)(c)

One of the principal constitutional issues concerning the amendment relates to The

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Constitution of India, art. 19(1)(c)[363], which guarantees to all citizens the fundamental right to form associations or unions. Non-governmental organisations (NGOs), charitable societies, trusts, and civil society institutions operate under this constitutional protection.

Critics of the amendment argued that several provisions of the Foreign Contribution Regulation (Amendment) Act, 2020 impose excessive restrictions on the functioning of associations receiving foreign funding. In particular, the prohibition on transfer of foreign contribution under The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 7[364] was criticised for disrupting collaborative welfare activities among NGOs.

It was argued that many grassroots organisations depend upon larger NGOs for financial and operational support. By prohibiting transfer of foreign contributions, the amendment restricts networking and partnership models essential for humanitarian work. Consequently, critics contended that the amendment indirectly weakens the functioning of associations and civil society institutions protected under Article 19(1)(c).

However, the Government maintained that the right to form associations does not automatically include an unrestricted right to receive foreign contributions. According to the Government, foreign funding may be regulated in the interest of sovereignty, integrity, and public order.

Reasonable Restrictions and Public Interest

Fundamental rights under Article 19 are not absolute and may be subjected to reasonable restrictions in the interest of sovereignty, integrity, security of the State, public order, and morality. The Government relied upon these constitutional principles to justify the amendment.

The State argued that regulation of foreign funding is necessary because foreign contributions may potentially influence political processes, public opinion, and social movements. It was further contended that certain organisations had allegedly misused foreign funds for unlawful activities detrimental to national interest.

The Government therefore justified:

1. Restrictions on transfer of funds.
2. Mandatory Aadhaar identification.
3. Centralised banking requirements.
4. Increased powers of suspension and cancellation.

According to the State, these measures are preventive regulatory mechanisms designed to maintain transparency and accountability rather than suppress civil society activities.

The constitutional question therefore centres on whether the restrictions imposed by the amendment are "reasonable" and proportionate to the objectives sought to be achieved.

Right to Privacy and Aadhaar Requirement

The amendment introduced mandatory Aadhaar identification for office bearers and key functionaries of organisations seeking FCRA registration under Section 12A of the Act. This requirement raised concerns relating to the right to privacy recognised by the Supreme Court in *Justice K.S. Puttaswamy v. Union of India*[365].

Critics argued that compulsory Aadhaar linkage may violate informational privacy and expose personal data of individuals associated with NGOs. Concerns were also raised regarding exclusion of individuals lacking Aadhaar documentation.

However, the Government defended the provision by stating that Aadhaar identification is necessary to prevent fraudulent registrations and ensure transparency in management of foreign contributions. Since the requirement serves a legitimate governmental objective, it

[363] The Constitution of India, art. 19(1)(c).
[364] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 7.
[365] *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

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was argued that the restriction is proportionate and constitutionally valid.

Judicial Interpretation of FCRA Laws

Indian courts have consistently recognised the authority of the State to regulate foreign contributions in the interest of national security and sovereignty. The judiciary has generally treated foreign funding as an area involving policy considerations and governmental discretion.

Courts have repeatedly observed that foreign contributions are not an inherent or absolute right. Rather, acceptance of foreign funding is subject to statutory regulation imposed by Parliament.

At the same time, courts have emphasised that governmental powers under FCRA must not be exercised arbitrarily. Principles of natural justice, fairness, and procedural transparency remain applicable to suspension or cancellation of registration.

Noel Harper v. Union of India

The constitutional validity of the Foreign Contribution Regulation (Amendment) Act, 2020 was challenged before the Supreme Court in *Noel Harper v. Union of India*[366].

The petitioners argued that:

1. The amendment violates Article 19(1)(c) by restricting freedom of association.
2. The prohibition on transfer of foreign contribution adversely affects smaller NGOs.
3. The reduction of administrative expenses limit is unreasonable.
4. Mandatory Aadhaar identification violates the right to privacy.
5. The amendment imposes excessive governmental control over civil society organisations.

The Supreme Court rejected these arguments and upheld the constitutional validity of the amendment. The Court held that:

- No individual or organisation has a fundamental right to receive foreign contributions.
- The State possesses legitimate authority to regulate foreign funding in the interest of sovereignty and integrity.
- The amendment seeks to ensure transparency and prevent misuse of foreign contributions.
- Restrictions imposed by the amendment are reasonable and proportionate.

The Court further observed that foreign contributions have the potential to influence political and social activities within the country. Therefore, strict regulatory measures cannot be considered unconstitutional merely because they impose compliance obligations.

The Supreme Court also upheld the validity of mandatory Aadhaar identification, observing that it serves a legitimate purpose of ensuring proper identification and accountability.

Principle of Proportionality

An important constitutional doctrine relevant to the amendment is the principle of proportionality. According to this principle, restrictions imposed by the State must:

1. Pursue a legitimate objective.
2. Be suitable to achieve that objective.
3. Be necessary and least restrictive.
4. Maintain a balance between public interest and individual rights.

Supporters of the amendment argue that the law satisfies the proportionality test because its objective is to prevent misuse of foreign funds and protect national security. Critics, however, contend that some provisions—particularly the blanket prohibition on transfer of foreign

366 *Noel Harper v. Union of India*, (2022) 10 SCC 1.

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contributions—are excessive and disproportionate.

The proportionality debate remains central to evaluating the constitutional validity and democratic legitimacy of the amendment.

and participatory governance.

Impact on NGOs and Civil Society

The Foreign Contribution Regulation (Amendment) Act, 2020 has had a significant impact on non-governmental organisations (NGOs), charitable institutions, and civil society organisations functioning in India. While the Government introduced the amendment with the objective of strengthening transparency, accountability, and national security, the practical implementation of the law has created both positive and negative consequences for organisations dependent upon foreign contributions.

Civil society organisations play an essential role in democratic governance by promoting education, healthcare, environmental protection, human rights, women empowerment, disaster relief, and welfare activities. Many of these organisations rely heavily on foreign contributions due to limited domestic funding opportunities. Therefore, any restrictions imposed on foreign funding directly affect the operational capacity and sustainability of NGOs working at national and grassroots levels.

The 2020 amendment introduced stricter compliance requirements, restrictions on transfer of funds, and enhanced governmental monitoring. These changes have substantially altered the functioning of civil society organisations in India.

Impact on Grassroots Organisations

One of the most significant consequences of the amendment has been its impact on smaller grassroots organisations operating in rural and remote areas. Prior to the amendment, larger NGOs receiving foreign contributions could transfer part of the funds to smaller partner organisations engaged in local welfare activities. This collaborative structure enabled efficient implementation of social programmes in regions where larger organisations lacked direct operational presence.

However, the amendment prohibited transfer of foreign contribution to any other person or organisation under The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 7[367]. As a result, many smaller organisations lost access to financial support previously received through larger NGOs.

Grassroots organisations often lack:

1. Direct access to international donors.
2. Administrative infrastructure for FCRA registration.
3. Financial and technical resources for compliance procedures.

Consequently, several local organisations faced severe operational difficulties and reduction in welfare activities after the amendment came into force. Critics argue that the prohibition on sub-granting disproportionately affects rural development and humanitarian programmes implemented at the community level.

Increased Compliance Burden

The amendment significantly increased compliance obligations for NGOs receiving foreign contributions. Some of the major compliance requirements include:

1. Mandatory Aadhaar identification of office bearers.
2. Opening of designated FCRA accounts in the State Bank of India, New Delhi branch.
3. Enhanced reporting and disclosure requirements.
4. Restrictions on administrative expenditure.

[367] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 7.

5. Increased governmental scrutiny and monitoring.

Large organisations with professional administrative systems may be able to adapt to these requirements relatively easily. However, smaller NGOs often face difficulties due to limited financial and technical resources.

Many organisations were required to devote substantial time and resources towards compliance management rather than welfare activities. Critics argue that excessive procedural requirements create bureaucratic obstacles and reduce operational efficiency.

Financial and Operational Challenges

The reduction of permissible administrative expenses from fifty percent to twenty percent under The Foreign Contribution Regulation Act, 2010 s. 8[368] created additional financial difficulties for NGOs.

Administrative expenses generally include:

- Salaries of employees.
- Office maintenance.
- Training and capacity-building.
- Legal and auditing expenses.
- Monitoring and evaluation activities.
- Communication and travel costs.

Although the Government justified the reduction as necessary to ensure efficient utilisation of funds, many organisations argued that administrative infrastructure is essential for effective implementation of welfare programmes.

Smaller organisations, in particular, faced challenges in maintaining qualified staff and professional management systems within the reduced administrative expenditure limit. This has affected organisational sustainability and service delivery in several sectors.

Impact on Human Rights and Advocacy Organisations

Human rights organisations and advocacy groups have expressed concern that the amendment creates a restrictive environment for civil society participation. Several organisations working in areas such as environmental protection, minority rights, labour rights, and freedom of expression rely upon foreign contributions for conducting awareness campaigns, legal aid programmes, and policy advocacy.

Critics argue that stricter governmental control over foreign funding may discourage independent advocacy and weaken democratic accountability mechanisms. Some international human rights organisations have described the amendment as narrowing civic space and limiting freedom of association.

The cancellation and suspension of FCRA registrations of several organisations further intensified concerns regarding selective or arbitrary enforcement of the law[369]. Critics contend that uncertainty regarding governmental action may create a "chilling effect" on organisations engaged in public criticism or policy advocacy.

Positive Impact: Transparency and Accountability

Despite criticism, the amendment has also produced certain positive outcomes relating to financial accountability and transparency. The Government maintains that stricter monitoring mechanisms have helped reduce:

1. Diversion of funds.
2. Financial irregularities.
3. Fraudulent organisations.
4. Misuse of foreign contributions for unlawful activities.

Mandatory disclosure requirements and centralised banking procedures have improved governmental capacity to track foreign

[368] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 8.

[369] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), ss. 13, 14.

contributions and monitor utilisation of funds[370]. Supporters of the amendment argue that organisations receiving foreign funding must maintain high standards of financial discipline and public accountability.

The amendment has also encouraged greater emphasis on digital record-keeping, auditing, and financial transparency within the voluntary sector.

Effect on Civil Society and Democratic Participation

Civil society organisations play an important role in democratic societies by:

- Promoting public awareness.
- Providing welfare services.
- Protecting human rights.
- Encouraging citizen participation.
- Acting as watchdogs against abuse of power.

Excessive restrictions on NGOs may weaken democratic engagement and reduce participation of independent organisations in public policy discussions. Critics argue that strong civil society institutions are essential for maintaining constitutional democracy and protecting vulnerable communities.

At the same time, supporters of stricter regulation emphasise that accountability and national security cannot be compromised in the name of civil society freedom. According to this view, regulation is necessary to ensure that foreign contributions are not utilised for activities detrimental to sovereignty or public order.

The debate therefore revolves around finding an appropriate balance between governmental oversight and preservation of democratic freedoms.

International Reactions and Concerns

Several international organisations and foreign governments expressed concern regarding the impact of the amendment on humanitarian and civil society activities in India. Human rights groups argued that restrictions on foreign funding may adversely affect organisations working in areas such as public health, environmental protection, and social justice.

However, the Government of India defended the amendment by asserting its sovereign authority to regulate foreign contributions within its territory. The Government maintained that the law is intended solely to ensure transparency, accountability, and lawful utilisation of funds.

Balancing Transparency and Accountability

The Foreign Contribution Regulation (Amendment) Act, 2020 was enacted with the stated objective of strengthening transparency and accountability[371] in the utilisation of foreign contributions received by individuals, associations, and non-governmental organisations (NGOs) in India. The amendment reflects the Government's concern regarding misuse, diversion, and unlawful utilisation of foreign funds that could potentially affect national sovereignty, integrity, and public order. At the same time, the law has generated considerable debate regarding its impact on civil society organisations and democratic freedoms.

The central issue surrounding the amendment is whether the law successfully balances the legitimate need for governmental oversight with the constitutional principles of freedom of association[372], democratic participation, and functioning of civil society organisations. Achieving such a balance is essential in a democratic society where accountability and liberty must coexist.

Meaning of Transparency and Accountability

Transparency refers to openness, disclosure, and accessibility of information relating to receipt and utilisation of foreign contributions. It requires organisations to maintain proper financial

[370] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 17.
[371] The Foreign Contribution Regulation (Amendment) Act, 2020.
[372] The Constitution of India, art. 19(1)(c).

records, disclose sources of funding, and provide accurate reports regarding utilisation of funds.

Accountability refers to the legal and ethical responsibility of organisations to ensure that foreign contributions are utilised only for lawful and declared purposes. Accountability mechanisms ensure that organisations remain answerable to donors, beneficiaries, regulatory authorities, and the public.

The Government argued that stricter regulation under the Foreign Contribution Regulation (Amendment) Act, 2020 was necessary to enhance both transparency and accountability in the voluntary sector.

Need for Transparency in Foreign Contributions

Foreign contributions involve financial inflow from external sources into domestic institutions. Such contributions may significantly influence social, political, and developmental activities within the country. Therefore, transparency becomes necessary for several reasons:

1. Prevention of misuse and diversion of funds.
2. Protection against money laundering and unlawful financial activities.
3. Safeguarding national security and sovereignty.
4. Ensuring lawful utilisation of contributions.
5. Promoting public confidence in NGOs and charitable organisations.

The Government maintained that several organisations receiving foreign contributions had violated statutory obligations by failing to file returns, misreporting expenditures, or transferring funds through complex networks. Consequently, enhanced monitoring and disclosure mechanisms were considered necessary. Measures such as mandatory Aadhaar identification, centralised banking systems, and stricter reporting obligations were introduced to improve financial transparency[373] and facilitate governmental oversight.

Importance of Accountability in Civil Society Organisations

NGOs and civil society organisations perform important public functions in areas such as:

- Education.
- Healthcare.
- Human rights protection.
- Women empowerment.
- Disaster relief.
- Environmental conservation.

Since these organisations often receive substantial foreign funding, accountability mechanisms become essential to ensure proper utilisation of funds for intended welfare activities.

The Foreign Contribution Regulation (Amendment) Act, 2020 sought to strengthen accountability by:

1. Restricting transfer of foreign contribution.
2. Reducing administrative expenditure limits.
3. Increasing governmental monitoring powers.
4. Expanding suspension and cancellation mechanisms.

According to the Government, these provisions would reduce opportunities for financial irregularities and improve discipline within the voluntary sector.

Challenges in Achieving Balance

Although transparency and accountability are legitimate objectives, excessive regulation may adversely affect the functioning of NGOs and civil society organisations. The challenge lies in ensuring that regulatory mechanisms remain proportionate and do not unnecessarily interfere with democratic freedoms.

[373] The Foreign Contribution Regulation (Amendment) Act, 2020.

1. Restriction on Collaborative Activities

The prohibition on transfer of foreign contribution under The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 7[374] significantly affected collaboration between larger NGOs and smaller grassroots organisations.

While the Government justified the restriction as necessary to prevent diversion of funds, critics argue that collaborative funding structures are essential for implementation of welfare programmes in remote and underdeveloped regions.

2. Increased Compliance Burden

The amendment introduced several procedural requirements including:

- Aadhaar identification.
- Centralised SBI banking accounts.
- Enhanced reporting obligations.
- Stricter financial monitoring.

Smaller organisations with limited administrative resources often face difficulties in complying with these requirements. Excessive compliance obligations may divert resources away from welfare activities and reduce operational efficiency.

3. Impact on Democratic Participation

Civil society organisations play a vital role in democratic governance by promoting public participation, policy advocacy, and protection of human rights. Critics argue that excessive governmental control over foreign funding may discourage independent advocacy and reduce civic space.

The fear of suspension or cancellation of registration may also create uncertainty among NGOs, thereby affecting their ability to engage in public discourse and policy criticism.

Principle of Proportionality

A key constitutional principle relevant to balancing transparency and accountability is the doctrine of proportionality. According to this principle, restrictions imposed by the State must:

1. Pursue a legitimate objective.
2. Be reasonable and necessary.
3. Use the least restrictive means available.
4. Maintain a balance between public interest and individual freedoms.

While regulation of foreign contributions is necessary for national security and financial integrity, restrictions should not be so excessive that they undermine legitimate humanitarian and developmental activities.

In *Noel Harper v. Union of India*[375], the Supreme Court upheld the constitutional validity of the amendment and recognised the authority of the State to regulate foreign contributions. However, the broader debate regarding proportionality and democratic freedoms continues.

Comparative International Perspective

Many countries regulate foreign funding received by NGOs and civil society organisations. For example:

- The United States requires disclosure under the Foreign Agents Registration Act (FARA).
- Russia imposes strict restrictions through its “foreign agents” law.
- China maintains extensive supervision over foreign NGOs.

India’s regulatory framework reflects similar concerns regarding foreign influence and national security. However, as a constitutional democracy, India must also ensure protection of associational freedoms and civil society participation guaranteed under The Constitution of India.

Therefore, regulatory frameworks should strike a balance between legitimate state interests and democratic values.

[374] The Foreign Contribution Regulation Act, 2010 (Act 42 of 2010), s. 7.

[375] *Noel Harper v. Union of India*, (2022) 10 SCC 1.

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Need for a Balanced Approach

An effective foreign contribution regulatory system should:

1. Ensure transparency in financial transactions.
2. Prevent misuse and diversion of funds.
3. Protect sovereignty and public order.
4. Encourage lawful welfare activities.
5. Avoid unnecessary procedural burdens.
6. Promote cooperation between the State and civil society.

The Government and civil society organisations should work collaboratively to create a regulatory environment based on trust, accountability, and transparency rather than excessive suspicion and control[376].

Suggestions for Better Balance

The following measures may help in balancing transparency and accountability more effectively:

1. Simplification of compliance procedures for smaller NGOs.
2. Allowing limited transfer of funds under strict monitoring safeguards.
3. Ensuring transparent and reasoned governmental decisions regarding suspension and cancellation.
4. Establishing independent review mechanisms for FCRA-related disputes.
5. Providing training and compliance support to NGOs.
6. Encouraging digital transparency and public disclosure systems.
7. Periodic parliamentary review of the functioning and impact of FCRA laws.

Conclusion

The Foreign Contribution Regulation (Amendment) Act, 2020 represents a major development in India's legal framework governing foreign contributions and the functioning of non-governmental organisations (NGOs). The amendment was introduced with the objective of strengthening transparency, accountability, and governmental oversight over foreign funding received by individuals, associations, and charitable institutions. By imposing stricter compliance mechanisms such as prohibition on transfer of foreign contributions, reduction of administrative expenses, mandatory Aadhaar identification, and centralised banking procedures, the Government sought to prevent misuse and diversion of foreign funds and safeguard national sovereignty and public order.

The study reveals that the amendment has both positive and negative implications. On one hand, the law strengthens financial discipline, improves monitoring mechanisms, and enhances governmental capacity to track utilisation of foreign contributions. Increased transparency and accountability are necessary to ensure that foreign funds are utilised for lawful and genuine welfare activities. In this regard, the amendment reflects the legitimate interest of the State in protecting national security and preventing unlawful foreign influence.

On the other hand, the amendment has also imposed significant operational and financial burdens upon NGOs and civil society organisations. Smaller grassroots organisations have been particularly affected due to restrictions on transfer of funds and increased compliance requirements. The amendment has disrupted collaborative welfare structures and created concerns regarding shrinking civic space and excessive governmental control over voluntary organisations. Critics argue that such restrictions may adversely affect humanitarian work, policy advocacy, and democratic participation.

The constitutional debate surrounding the amendment primarily concerns the balance

[376] Law Commission of India, "144th Report on Conflicting Judicial Decisions Pertaining to the Code of Civil Procedure, 1908" (April, 1992).

between state regulation and protection of fundamental freedoms[377] under The Constitution of India, particularly freedom of association under art. 19(1)(c). In *Noel Harper v. Union of India*[378], the Supreme Court upheld the constitutional validity of the amendment and recognised the authority of the State to regulate foreign contributions in the interest of sovereignty and integrity. However, the broader debate regarding proportionality, fairness, and democratic accountability continues.

The research concludes that transparency and accountability are essential principles in regulation of foreign contributions, but regulatory mechanisms must remain reasonable, proportionate, and non-arbitrary. Excessive restrictions may undermine the important role played by NGOs and civil society institutions in promoting social welfare, human rights, and participatory governance. Therefore, a balanced regulatory framework is necessary to harmonise national security concerns with constitutional freedoms and democratic values.

Ultimately, the effectiveness of the Foreign Contribution Regulation (Amendment) Act, 2020 will depend upon fair implementation, transparent decision-making, and constructive cooperation between the Government and civil society organisations. A democratic society requires both accountability and active civic participation[379]. Therefore, the challenge before the State is not merely to regulate foreign contributions, but to create a system that ensures transparency while preserving the autonomy and legitimate functioning of civil society in India.

[377] The Constitution of India, art. 19(1)(c).
[378] *Noel Harper v. Union of India*, (2022) 10 SCC 1.
[379] V.N. Shukla, *Constitution of India* 214 (Eastern Book Company, Lucknow, 13th edn., 2017).

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