

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	574
Land:	Indien
Kilde:	International Center for Not-for-Profit Law
Titel:	Civic Freedom Monitor India
Udgivet:	1. oktober 2024
Optaget på baggrundsmaterialet:	2. januar 2025

India



Update

In September 2024, the Financial Action Task Force (FATF) released its final [Mutual Evaluation Review](#) of India, finding India only partially compliant with Recommendation 8 on non-profit organisations (NPOs) due to the government's failure to implement a risk-based approach to the sector. Additionally, FATF found that the government had not conducted sufficient outreach to NPOs, and was not adequately calibrating terrorist financing prevention measures 'to the subset of NPOs identified as at risk for TF abuse.'

FATF specifically identified the Foreign Contribution (Regulation) Act (FCRA), India's law restricting cross-border funding for non-profits, to have been 'implemented without adequate consultation with NPOs, impacting their activity or operating models.' Nevertheless, the government continues to cancel FCRA registrations for notable service and humanitarian NPOs.

On July 1, 2024, new criminal laws came into effect, replacing the Indian Penal Code of 1860, the 1973 Code of Criminal Procedure and the Indian Evidence Act of 1872. These criminal laws contain concerning provisions and have already been wielded against journalists in cases violating the freedom of expression. The Digital Personal Data Protection Act, 2023, which raises privacy concerns, is still not fully in effect.

‘Civil Society’ is not a term commonly used in India, although in recent years the media has begun to adopt it. Civil society in India is largely equated with voluntary organizations or the more colloquially used term “NGO,” or non-governmental organization. The Central Statistical Institute of India announced in 2009 that there were 3.3 million NGOs registered in India, or one NGO for every 400 Indian citizens. In 2020, GuideStar India (GSI) had more than 10,000 verified NGOs and more than 1,600 certified NGOs on its portal. There are also 143,946 NGOs registered on the ‘NGO Darpan’ Portal of Nitti Aayog.

The voluntary sector of India is noted for its vibrancy, innovation, and research-based advocacy. It has played an important role in supporting government as a partner in nation building. Historically, Indian voluntary development organizations have played three significant roles: first, filling gaps in the government’s welfare systems, such as delivering basic services like health care, education, water, and sanitation to the most remote locations in the country; second, conducting research-based advocacy, such as analyzing the efficacy and reach of various government projects to provide guidance to the government for policy change; and, third, working on a rights-based approach and entitlements.

Civil society in India has been organized and active pre- and post-Independence in 1947. India has a common law system, which is a British pre-Independence legacy. The legal framework is generally supportive of civil society. However, in practice, the government sometimes oversteps its regulatory role and instead tries to control the civic sector. This has been the case particularly over the last few years.

To highlight just one example, at the end of September 2020 Amnesty International closed its operations in India due to government pressure on its activities. Amnesty International’s work in India, like elsewhere across the globe, is to uphold universal human rights and build a global movement of people who take injustice personally. These are the same values that are enshrined in the Indian Constitution and flow from a long and rich Indian tradition of pluralism, tolerance, and dissent. Nevertheless, Amnesty has faced increasing difficulty and resistance from the State to its Indian operations, and has been accused of violating various domestic regulatory restrictions.

The human rights situation in general continues to deteriorate, with greater risk of sectarian violence against minority communities and continued harassment against well-known defenders (see, e.g., the recent [travel ban](#) and allegations of financial crimes against Aakar Patel, chair of Amnesty International in India, as well as similar measures against Washington Post journalist Rana Ayyub). In June 2022, Indian authorities arrested well-known journalist [Mohammed Zubair](#), co-founder of ALT News, an independent fact-checking website. It also ordered Freedom House to [remove tweets](#) about India’s [decline in internet freedoms](#), and arrested human rights defender [Teesta Setalvad](#), a long-time justice campaigner for the 2002 Gujarat riots.

This Civic Freedom Monitor (CFM) country note was made possible through the research conducted by Noshir H. Dadrawala, CEO – Centre for Advancement of Philanthropy, India.

At a Glance

Organizational Forms	Trusts, Societies and Companies
Registration Body	State-level authorities.

Approximate Number	200,000 tax exempt organizations, according to the Income Tax Department
Barriers to Entry	It can take several months to complete all registration procedures.
Barriers to Operations	The “advancement of any other object of general public utility” is not considered a charitable purpose under certain conditions. In addition, an institution or trust whose dominant object is political in character is said to not have been established for charitable purpose.
Barriers to Speech and/or Advocacy	NGOs cannot engage in political or legislative activities such as endorsing candidates for public office.
Barriers to International Contact	None.
Barriers to Resources	Significant restrictions under Foreign Contribution Regulation Act 2010 (FCRA) and 2020 Amendments to the FCRA.
Barriers to Assembly	Permission often required with conditions enforced, particularly at certain places; deportations and criminal sanctions against foreigners being ‘associated’ with protests; excessive force used often with wooden batons.

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Key Indicators

Population	1,339,330,514 (July 2021 est.)
Capital	Delhi
Type of Government	Federal parliamentary constitutional republic
Life Expectancy at Birth	70.62 years (2024 est.)
Literacy Rate	76.32% (2024 est.)
Religious Groups	Hindu 79.8%, Muslim 14.2%, Christian 2.3%, Sikh 1.7%, other and unspecified 2% (2011 est.)
Ethnic Groups	India has more than 2,000 ethnic groups
GDP per capita	\$6,700 (2019 est.)

Source: [The World Factbook](#). Washington, DC: Central Intelligence Agency.

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International and Regional Human Rights Agreements

Key International Agreements	Ratification*	Year
International Covenant on Civil and Political Rights (ICCPR)	Yes	1979
Optional Protocol to ICCPR (ICCPR-OP1)	No	—
International Covenant on Economic, Social, and Cultural Rights (ICESCR)	Yes	1979
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Yes	1968
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	Yes	1993
Optional Protocol to the Convention on the Elimination of Discrimination Against Women	No	—
Convention on the Rights of the Child (CRC)	Yes	1992
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW)	No	—
Convention on the Rights of Persons with Disabilities (CRPD)	Yes	2007
Regional Treaties		
South Asian Association for Regional Cooperation (SAARC)	Yes	1979
Shanghai Cooperation Organisation (SCO)	Yes	2014

* Category includes ratification, accession, or succession to the treaty

Constitutional Framework

The right of all citizens to form associations or unions is guaranteed by the [Constitution of India](#), Article 19(1)(c).

Article 19 guarantees the following six freedoms:

1. **Freedom of speech and expression**, which allows an individual to take part in public activities. Though the words “freedom of press” are not mentioned in Article 19, “freedom of expression” also encompasses “freedom of press.” However, reasonable limitations can be imposed to maintain public order and to protect decorum and the dignity of the State.

2. **Freedom to assemble peacefully without arms**, though the State can enforce reasonable limitations to maintain public order and the autonomy and integrity of India.
3. **Freedom to form associations or unions**, with certain restrictions enforced by the State in the interest of public order, morality, and the sovereignty and integrity of India.
4. **Freedom to move freely throughout the territory of India**, subject to certain restrictions to maintain the interest of the general public. For instance, the state can restrict travelling or commuting during epidemics to prevent disease from spreading.
5. **Freedom to live and settle in any part of the territory of India**, subject to certain limitations by the State to maintain the interest of the general public or to safeguard the rights of the native ‘scheduled tribes’ and protect them from exploitation and oppression.
6. **Freedom to practice any profession or to carry on any occupation, trade or business**. Here the state may impose justified limitations to protect the general public. For example, nobody has the right to run a hazardous or corrupt business. Professional or technical qualifications may be required to practice any profession or carry out any particular business.

Non-profit organisations in India must not engage in political campaign activities or legislative activities. Indian not-for-profit entities may “lobby” for non-political causes, provided that such activity promotes “general public utility” and is incidental to the attainment of the charity’s objects. Under Section 20 of the Societies Registration Act of 1860, societies may have the diffusion of political education as their primary objective. In addition, under the Foreign Contributions Regulation Act, not-for-profit organizations involved in political activities cannot receive foreign contributions.

National Laws and Regulations Affecting Sector

1. [Indian Trusts Act 1882](#)
2. [Societies Registration Act 1860](#)
3. [Maharashtra Public Trusts Act 1950 \(state-level\)](#)
4. [Foreign Contribution Regulation Act 2010](#)
5. [Indian Companies Act 2013](#)
6. Direct Tax Code (replacing the Income Tax Act 1961)
7. [Foreign Contribution Regulation Amendment Rules 2015](#)
8. [Goods & Service Tax Act 2017](#)
9. Finance Act 2020
10. Foreign Contribution Regulation Amendment Act 2020
11. [Digital Personal Data Protection Act, 2023](#)

Pending NGO Legislative / Regulatory Initiatives

1. *Personal Data Protection Bill, 2019*

On August 11, 2023, the modified version of the Digital Personal Data Protection Act, 2023 (DPDP Act) was notified in the official gazette after being passed by the Parliament and receiving Presidential Assent. However, this Act will only be effectively implemented once the Rules under DPDP Act are notified. Until then Section 43A of the Information Technology Act 2000, read with the Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011, will govern issues of data privacy.

In India, the right to privacy is enshrined under the fundamental right to life. In a landmark judgment delivered by the Supreme Court in [K.S. Puttuswamy v. Union of India](#) in 2017 it was held that right to privacy includes informational and technological privacy. In particular, the right to identification, the right to control the broadcast of personal information, the right to be forgotten, and the privacy of children are all included in the right to privacy.

There are data privacy laws in place in more than 130 around the world. Some of the most notable data privacy laws include, General Data Protection Regulation (GDPR), California Consumer Privacy Act (CCPA) in the United States applicable to businesses, Personal Data Protection Act (PDPA) in Singapore, etc.

What is DPDP Act?

The DPDP Act requires data fiduciaries, such as digital service providers, to seek user consent for collecting and processing personal data. Personal data is defined to include any data that can be used to identify an individual. However, any personal data that is made publicly available by the data principal (the individual whose personal data is collected) will not be protected by the DPDP Act.

The DPDP Act clarifies that if the data principal seeks to withdraw their consent, they need to bear all consequences resulting from withdrawal of such consent. This implies that the data fiduciaries may deny access of services to such data principals who have withdrawn their consent. Further, the data fiduciaries are required to erase all personal data if the data principal has withdrawn their consent or when the purpose of collecting such data is fulfilled.

In essence, the DPDP Act mandates 'free consent' by a data principal before a service provider can process/use user personal data. However, the DPDP Act provides no recourse on consequences that a data principal may face if consent is withheld or withdrawn.

Rationale behind DPDP Act

Technology has changed the way consideration is paid for services. 'Zero price markets' have emerged where services are paid for using 'data'. Data has gained significant economic value, and possession of data is now considered as a competitive advantage over other players in the market. For a 'free' service, Indian users almost never hesitate to share their personal data with the service providers. The new **DPDP Act, 2023** seeks to fill this gap of requiring 'user consent' before collecting and processing user data.

The DPDP Act will apply to the processing of Personal Data collected in India under two circumstances:

1. When Personal Data is collected online from Data Principals, and
2. When Personal Data is collected offline and then transferred to a digital format.

The Act will also cover processing personal data outside of India if that processing is related to profiling people in India or offering goods and services to data principals in India.

Applicability to NGOs/NPOs

The DPDP Act will apply to all NGOs/NPOs that collect personal information from their stakeholders online or offline and then digitize it.

NGOs collect data, such as the name, age, PAN, Adhar, photographs, profession, income, caste, and religion, of their beneficiaries as well as data concerning their donors. NGOs also collect data of those participating in capacity-building workshops, conferences and webinars or at public meetings.

2. Restrictive Right to Information Amendments

The Right to Information (Amendment) Bill, 2019 [passed](#) in both the lower (Lok Sabha) and upper house (Rajya Sabha) in July 2021, and will become law once it receives presidential assent. The Bill amends India's Right to Information Act, 2005 by allowing the central government to decide the tenure and conditions for information commissioners at both central and state levels. Experts say that these measures will dilute the law, [reduce transparency](#), and take away the autonomy of the Central Information Commission (CIC), which is the highest appellate body on information

applications. Seven former Information Commissioners have come together and outlined their opposition to the amendments, which were introduced in a secretive manner and handed to lawmakers only two days before they were tabled, with the government completely skipping the mandatory public disclosure and consultation process.

3. New Grounds for Cancelling Tax-Exempt Status of Nonprofits in India

The Finance Act, 2019 amended the Income Tax Act, 1961 by adding grounds on which the tax-exempt status of a nonprofit could be cancelled. In particular, under the Act (as amended), a nonprofit could lose its tax-exempt status at the discretion of the Tax Principal Commissioner or Commissioner if the nonprofit has violated any law material to achieving its objectives. This proposal threatens the independence of the nonprofit sector as it gives the government wide discretion to cancel the tax-exempt status of a nonprofit for even minor violations of the law. Please see [Account Aid](#) and the [Centre for Advancement for Philanthropy](#) for detailed write ups on this proposed change.

4. Unique Identification Number (UIN)

The government on April 1, 2021 initiated a process to create a National Register of all charitable and religious institutions. When the process is complete, the Income Tax Department will issue a Unique Identification Number (UIN) to all charitable and religious institutions. This will likely be a positive development and assist with proper collection of data and analysis of that data.

5. Amendments to the Finance (No. 2) Bill 2024

Finance Minister Nirmala Sitharaman introduced Finance (No. 2) Bill 2024 in the Lok Sabha on July 23, 2024. Overall, the proposed amendments will not affect NPOs/NGOs adversely. Even the proposed phasing out of the tax regime under section 10(23C) (iv), (v), (vi) or (via) is not likely to impact the sector significantly since most NPOs/NGOs are registered under Section 12(AB). Also, aside from minor benefits under section 10(23C), the requirements and benefits of tax exemption under both are almost the same. Finally, institutions already registered 10(23C) (iv), (v), (vi) or (via) will not lose their existing benefits (concerning modes of investment) upon making the transition.

6. Income Tax Act Review

An internal committee of the Income Tax Department will review the 1961 Income Tax Act to eliminate redundant clauses as well as to adopt best global practices. This will simplify the law for taxpayers and allow for better compliance. The panel, which comprises income tax officials from across the country, has started working to identify areas of improvement. The exercise is being conducted under a central government-mandated comprehensive review of the law.

We are currently unaware of any other pending initiatives. Please help keep us informed; if you are aware of pending initiatives, write to ICNL at ngomonitor@icnl.org.

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Legal Analysis

Organizational Forms

An NGO can register itself first at the state level either as a public charitable trust or as a society under the Societies Registration Act of 1860 or as a company under Section 8 of the Indian Companies Act of 2013 (formerly Section 25 of the Indian Companies Act of 1956).

While the Indian Companies Act of 2013 is central/federal legislation, the Trusts Acts and Societies Acts vary from state to state. In Maharashtra State, for example, there is the Maharashtra Public Trusts Act of 1950. The same Act is applicable in neighboring Gujarat State, but with some variations. In states that do not have a Trusts Act, the principles of the Indian Trusts Act of 1882 apply. The Societies Registration Act of 1860 also varies from state to state. For example, a society registered in Maharashtra or Gujarat does not have to renew its registration. However, societies registered in the northeastern states must renew their registrations annually.

To enjoy tax exemption and provide tax deductions to donors, NGOs must register “u/s 12AB” and “u/s 80G” respectively under the Income Tax Act 1961.

Every NGO receiving funds from “foreign sources” must either obtain prior permission or register under the Foreign Contributions Regulation Act (FCRA) of 2010. Apart from these key pieces of legislation, labour laws or goods & services tax (GST) laws that also apply, depending on the size or nature of activities an NGO undertakes. For example, any NGO employing more than 20 employees must comply with the Employees’ Provident Fund (compliance is voluntary if an NGO has less than 20 employees). GST laws would apply if the supply of commercial services exceeds a sum of two million Indian rupees or the supply of goods exceeds four million Indian rupees in any fiscal year.

Trusts

Public charitable trusts may be established for many purposes, including poverty relief, education, medical relief, providing facilities for recreation, and any other objective of general public utility. Indian public trusts are generally irrevocable. No national law governs public charitable trusts in India, although many states, particularly Maharashtra, Gujarat, Rajasthan, and Madhya Pradesh, have Public Trusts Acts. In these states, a trust can be registered with the State Charity Commissioner. In states where there is no Charity Commissioner or Trusts Act in force, the Deed of Trust may simply be registered with the office of the Registrar of Deeds/Assurances.

Societies

Societies are membership organizations that may be registered for charitable purposes. They are usually managed by a governing council or a managing committee and are regulated by the Societies Registration Act of 1860, which has been adopted by various states. Unlike trusts, societies may be dissolved. Virtually every state in India has a Registrar of Societies where a society can be registered.

Companies

The Indian Companies Act of 1956 has been replaced by the new Indian Companies Act of 2013. The new Act came into force on April 1, 2014, and the old Section 25 has now become Section 8 with further additions.

According to Section 8, The Central Government may issue a license to a *limited or private limited company that “(a) has as its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object; (b) intends to apply its profits, if any, or other income in promoting its objects; and (c) intends to prohibit the payment of any dividend to its members.”*

Thus, a not-for-profit company may be registered with the Registrar of Companies.

Public Benefit Status

To be eligible for tax exemption under the Income Tax Act of 1961, a not-for-profit entity must be established for religious or charitable purposes. Charitable purposes include “relief of the poor, education, medical relief, and the advancement of any other object of general public utility.” The Finance (No.2) Act of 2009 added “preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest” to the list of charitable purposes.

Previously, institutions established for a “charitable purpose” falling under the category of “advancement of any other object of general public utility” were under threat of losing their tax exemption if income from their “business activity” exceeded Rs. 2.5 million during the financial year. This provision was amended with a requirement that for the institution to retain its tax exemption, any activity related to trade, commerce, or business or any activity rendering any service in relation to any trade, commerce, or business for a cess, tax, or fee or any other consideration, irrespective of the nature of use or application or retention of the income from such activity, must meet the following criteria:

1. Such activity must be undertaken in the course of actual carrying out of such advancement of any other object of general public utility and
2. The aggregate receipts from such activity or activities during the previous year do not exceed twenty per cent of the total receipts of the trust or institution under such activity or activities of that previous year.

Public charitable trusts, by definition, must be created for the benefit of the public. Societies may be registered for charitable purposes, among other purposes. Section 25/8 companies are formed for the purposes of promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of the environment, or any other object.

Section 135 of the [Indian Companies Act of 2013](#) requires every company having net worth of Rs. 500/- crore (Rs. 5 Billion) or more, or turnover of Rs. 1,000/- crore (Rs. 10 Billion) or more, or net profit of Rs. 5 crore (Rs. 50 Million) or more, to establish a corporate social responsibility (CSR) committee of its board and disclose the composition of the CSR committee in the board’s report; formulate a CSR policy and spend at least 2% of its aggregate net profit over the block of the previous three years on CSR activities as outlined under Schedule VII of the Indian Companies Act, 2013; and disclose the CSR activities and amounts spent in the company’s annual report.

Several not-for-profit Section 8 Companies have been served with a Show Cause Notice under Section 134(8) for violation of Section 134(3)(O) read with Section 135 of the Indian Companies Act, 2013. One such organization, for example, runs centers in major cities of India where children afflicted with cancer and their families receive shelter, healthcare, and nutritional support. Section 8 companies that are registered as tax exempt organizations under Section 12AA of the [Income Tax Act of 1961](#) are required to spend at least 85% of their total income each financial year. It is therefore odd that the Ministry of Corporate Affairs is insisting that such organizations should spend a mere 2% on CSR activities.

The Central Board of Direct Taxes (CBDT) in a [Notification](#) dated August 10, 2022 inserted the new Rule 17AA to the Income Tax Rules regarding “Books of account and other documents to be kept and maintained” by “every fund or institution or trust or any university or other educational institution or any hospital or other medical institution which is required to keep and maintain books of account and other documents.” The new Rule 17AA of the Income Tax Rules provides details of the specific ‘books of accounts’ and ‘other documents (financial records),’ which must be maintained by all institutions enjoying tax exemption either under section 10(23C) or under section 12AB of the Income tax Act 1961.

The Ministry of Corporate Affairs (MCA) issued a [Notification](#) [G.S.R. 715(E)] dated September 20, 2022, which amended certain provisions of the Companies (Corporate Social Responsibility (CSR) Policy) Rules. Most of these amendments are enabling and are not of any major concern to companies or to the CSR implementing agencies. In particular, a key welcome change is that Rule 4 has been amended to recognize trust, societies, and section 8 companies registered under Section 10(23C) (iv), (v), (vi) or (via) (educational and medical institutions) of the Income Tax Act as eligible CSR implementing agencies. Until this recent amendment, only trust, societies, and section 8 companies registered u/s 12A (now 12AB) of the Income Tax act were recognized.

On October 19, 2022 the Supreme Court of India delivered two judgments, one of which was specific to ‘educational’ institutions claiming tax exemption under section 10(23C) of the Income Tax Act, 1961. The other judgment (Supreme Court of India, Civil Appeal No. 21762 OF 2017,

Assistant Commissioner of Income Tax (Exemptions) vs. Ahmadabad Urban Development Authority) pertains to the applicability of tax exemptions for charitable trusts and institutions engaged in commercial (revenue based) activities in the sixth category of ‘Charitable Purpose’ as defined under Section 2(15) of the Income Tax Act “the advancement of any other object of general public utility” (GPU) (i.e., charitable activities other than relief of the poor, education, yoga, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest).

Public Participation

Under Indian law, there is no legal requirement to invite public input on draft legislation. In practice, before the adoption of any amendment to a law or rule, the responsible ministry may invite public comment on the draft amendment and revise the draft amendment based on feedback received. The government may, however, ignore such a participatory approach. When the Foreign Contributions Regulatory Act (FCRA) was amended in 2020, for example, there was no opportunity for consultation or public debate whatsoever. Moreover, advocacy and rights-based groups tend to face greater state pressure and government restrictions on their participatory rights.

Barriers to Entry

The law does not specifically or explicitly prohibit the formation and operation of “unregistered” groups. In fact, the Income Tax Act of 1961 recognizes both registered and unregistered associations of persons. However, the Ministry of Home Affairs also makes it clear that FCRA registration or prior permission is mandatory for an association (registered or unregistered) to receive contributions from any foreign source. FCRA registration is mandatory even for an individual receiving a foreign contribution for a specific cultural, educational, economic, religious or social program.

There are no sanctions or penalties for carrying out activities through an unregistered organization, although there are tax and FCRA violation implications.

A trust, society, or Section 8 company can be established by either a company or individuals. A trust or company can be established by two individuals, whereas a society requires seven founding members. A trust may be settled with a token sum of money (Rs. 500/-), which would then be considered ‘Trust Property’. A society requires no initial capital, and a Section 8 company can be established with or without share capital.

Under the Indian Trusts Act of 1882, “a trust may be created by every person competent to contract.” Under Indian Contract Act of 1872, “Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.”

There is no specific bar on foreigners as founders or trustees under the Bombay Public Trusts Act of 1950, the Indian Companies Act of 2013, the Societies Registration Act of 1860, or the Income Tax Act of 1961.

There is a specific bar only under the FCRA, which applies only if the NGO is seeking a foreign contribution.

Registration fees are nominal. However, the registration process moves slowly: often it takes several months and sometimes up to a year to get all the registrations. FCRA applications are required by law to be processed within a period of 3 months, but it generally takes much longer. The government has the right to deny registration or even suspend or cancel an existing registration (income tax exemption or an FCRA registration) for violation of any provision of the statute or the rules thereunder, but they must allow due process and give the NGO an opportunity to be heard. If

an NGO's registration is refused or canceled, the NGO has the right of redress before a higher competent authority.

Generally, as long as the objects of the NGO as stated in its charter document are for a charitable purpose, it may take some time to receive the registration, but it will not be denied. An existing registration may be cancelled for reasons such as not functioning in line with the stated objects, failure to file returns, or violation of any provision of the law.

Barriers to Operational Activity

Shortly after the Supreme Court issued its April 2022 judgment that upheld most of the provisions of the restrictive FCRA amendments of September 2020 (see the Barriers to Resources section below in this report), the Central Bureau of Investigation (CBI) carried out raids and arrests across 40 locations as part of a crackdown on an alleged bribery nexus between NGOs (including the Omidyar Network) and Ministry of Home Affairs (MHA) officials. Later, in September 2022, the Income Tax Department conducted raids on the offices of a leading think tank, Centre for Policy Research (CPR), as well as Oxfam India and the Independent and Public-Spirited Media Foundation (IPSMF), which funds independent journalism. The raids were purportedly connected with simultaneous searches in Haryana, Maharashtra, Chhattisgarh, Uttar Pradesh, and Gujarat, among other places, “over the funding of more than 20 registered but non-recognised political parties.” (For more, please see ICNL’s [comparative report on SSEs](#), [digital freedoms](#) series, and legal framework for peaceful protest in this [assembly research report](#)).

Nevertheless, as long as the activities of an NGO are within the framework of a charitable purpose, the law does not impose burdens or constraints on the NGO's operations.

According to Section 2(15) of the Income Tax Act of 1961, “charitable purpose” includes:

- Relief of the poor;
- Education;
- Medical relief;
- Preservation of the environment (including watersheds, forests, and wildlife);
- Preservation of monuments or places or objects of artistic or historic interest; and
- The advancement of any other object of general public utility.

Amendments made under the Finance Acts of 2008, 2010, 2011, and 2015 have affected all organizations falling under the latter category, “The advancement of any other object of general public utility.” According the 2015 amendment of the Finance Act, 2015: *the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless:*

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) The aggregate receipts from such activity or activities during the previous year do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that fiscal year.

One could argue that “improvement of democracy and governance in India through political and electoral reforms” could be deemed as a charitable purpose under the category “Advancement of any other object of general public utility” as long as the organization is not involved in “carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for any fee, tax or other consideration.” This would still be the case even if the aggregate value of receipts from such activity does not exceed twenty percent of the total receipts of the trust or institution in that fiscal year.

However, courts in India have held that an institution or trust whose dominant object is political in character cannot be said to have been established for charitable purpose [Lokamanya Tilak Jubilee National Trust Fund, [1942] 10 ITR 26 (Bom.); CIT v. All India Hindu Mahasabha [1983] 140 ITR 748 (Delhi)]. In the Lokamanya Tilak case, a trust was created to give effect to the wishes of Lokamanya Tilak as expressed in his will. The trust was created for spreading political education through the Kesari and Maratha newspapers to raise public awareness of political rights and demand changes in the structure of the country’s administration. However, the Supreme Court held that the trust was not a public charitable trust as defined under the Bombay Public Trusts Act. The court’s position is summarized in Halsbury’s Laws of England: “A trust for the attainment of political objects is invalid, not because it is illegal — for everyone is at liberty to advocate or promote by any lawful means a change in the law, but because the court has no means of judging whether a proposed change in the law will or will not be for the public welfare or benefit, and therefore cannot say that a gift to secure the change is a charitable gift.” This argument was also advanced by Lord Parkar in *Bowman v. Secular Society Limited*.

Political purposes include, but also extend beyond, the support of political parties or of those seeking political office. Supporting or opposing a change to the law or government policy is a political purpose and not a charitable purpose. In addition, attempts to sway public opinion on controversial social issues are legitimate and lawful but not charitable.

A purpose pursued by an NGO would be considered political if:

- It is concerned with party politics;
- It involves the dissemination of ‘propaganda’ for some cause; or
- It involves seeking changes to the law, to the administration of the law, or to government policy.

It is the third of these notions of “political” that creates difficulties for activist welfare organizations. English courts and other Commonwealth country courts, including in India, deem activities such as advocating changes to the law as “political” through reasoning that a purpose cannot be held to be charitable unless it is beneficial to the public. Accordingly, when a court has to decide whether a trust or other organization which aims to change the law, the administration of the law, or some government policy is charitable, it must determine whether the change sought would be beneficial. However, a court, whose task is to resolve disputes according to existing law, cannot rule on whether a particular change to the law would or would not be beneficial.

NGOs are independent concerning internal governance. The government has the right to regulate but not control the internal affairs of an NGO. Fines and penalties may be imposed for compounding certain irregularities such as not filing returns in time. NGOs may also be subject to random financial or tax assessments by the regulatory authorities.

The Finance Bill, 2017

The Finance Bill, 2017 was approved after modifications by both Houses of Parliament and received the assent of the President of India on March 31, 2017. It brought about several changes to the voluntary sector in India:

1) Restrictions on inter-charity corpus donations. One charitable organization may contribute funds to another charitable organization but not as a corpus donation or grant. However, under the

Finance Act, 2023 the law has been amended such that if one tax exempt NPO donates to another tax exempt NPO, only 85% of the contribution would qualify as an “application of income for charitable purpose”.

2) Restrictions on cash donations. Sub-section 5D of section 80G has been amended to lower the limit on cash donations under section 80G to 2000 rupees. The move is in line with the government’s overall efforts to promote a cashless economy and increase transparency.

3) Expansion of power of survey inspection. Amended section 133A now expressly empowers the Income Tax Authority to enter any places of “activity of charitable purpose” to inspect the account books, verify cash, stock, or valuable articles, or furnish any relevant information.

In 2018 the Maharashtra State Charity Commissioner issued an order directing around 400 NGOs and trusts registered in the state to remove the words “corruption” and “human rights” from their names or risk a suspension under the Maharashtra Public Trusts Act of 1950. The charity commissioner’s office in Pune had previously taken similar action against 16 NGOs with the word “corruption” in their names, including Anna Hazare’s Bhrashtachar Virodhi Jan Andolan, which was suspended. The NGO’s case to regain its registration has since been pending in court. According to press reports, the State Charity Commissioner believes that only the government has the machinery to prevent corruption and protect human rights.

Under the Finance Act, 2019, the Principal Commissioner or Commissioner of Income Tax may cancel the registration of any trust or institution under Section 12AA on “granting tax exemptions” if the trust or institution violates its obligations under any other law. The loss of registration under Section 12AA subjects a trust or other institution to an obligation to pay an annual income tax at the maximum marginal rate of 30 percent, as well as an annual tax on accreted income.

Starting from April 1, 2021, all organizations receiving a tax exemption under Section 12AA of the Income Tax Act were required to reapply for the exemption under Section 12AB (Finance Act (2020) Section 12AB). Registration under Section 12AB will be valid for five years. Organizations receiving a tax deduction under Section 80G of the Income Tax Act must also reapply for the deduction. The limit given by Income tax authorities for this was June 30, 2021.

In addition, pursuant to the Taxation Law Amendment Act, 2019, the new income tax regime now allows companies to be taxed at a reduced income tax rate, provided they forego exemptions and deductions which are otherwise allowable under the Income Tax Act.

Companies which opt for a reduced tax rate will be exempt from payment of Minimum Alternate Tax (MAT) and the reduced rate of tax will be 22% (instead of tax rate ranging from 26% to 29.12% depending on turnover of the company).

The effective tax rate under the new regime will be 25.168% for domestic companies, provided they forego exemptions and deductions which are otherwise allowable under the Act. This would include deduction u/s 80G for donations and grants to charitable trusts and institutions.

Companies are provided the option to choose the regime for payment of tax. However, once an option is exercised, it cannot be withdrawn in subsequent years. Many companies have chosen the lower tax option and therefore giving to an NPO is no longer a tax incentive for such companies.

The Finance Act, 2021 now also requires that donations received towards corpus or endowment must be invested in approved securities as per Section 11(5) of Income Tax Act, and the investment must be tagged to or identified with that corpus.

National Investigation Agency (NIA) Bill, 2019

The [National Investigation Agency \(NIA\) Bill, 2019](#), which passed in the Lok Sabha on July 15, 2019, expanded the NIA’s ability to investigate and prosecute offences, and allows for the creation

of special courts for the trial of scheduled offences. The three major amendments were as follows:

- The Bill enabled the investigation of additional offences related to human trafficking, counterfeit currency, manufacturing or selling prohibited arms, cyber-terrorism, and offences under the Explosive Substances Act, 1908. This expanded the scope of the cases that can be investigated under the NIA Act, 2008.
- NIA officers now have the power to investigate scheduled offences committed outside India, thereby expanding the NIA's jurisdiction. The 2019 Easter Sunday terror attack in Sri Lanka has been used to justify this provision.
- Sessions courts can be designated as special courts for trials of scheduled offences. Under the original NIA Act, 2008 special courts are allowed for only NIA trials.

Critics of the amendments argued that “providing sweeping powers to police officers is not advisable at a time when the central agencies were being ‘misused’ for political vendetta,” with the Opposition deeming it an attempt to make India a police state.

Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021

The Ministry of Corporate Affairs (MCA) on January 22, 2021 notified the [Companies \(Corporate Social Responsibility Policy\) Amendment Rules, 2021](#). With these Amendment Rules, significant changes have been made to the existing Companies (Corporate Social Responsibility Policy) Rules, 2014. They include the following:

1. Amendment to Rule 2 (‘Definitions’)

Administrative overheads

Under the Amended Rules “Administrative overheads” will now mean expenses incurred by the company for ‘general management and administration’ of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme.

2. CSR activity to include research and development for new vaccine, medicines and medical devices

“Corporate Social Responsibility (CSR)” will now include activities undertaken in pursuance of normal course of business of the company provided that the company undertakes research and development activities of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that:

- such research and development activities shall be carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act;
- details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report.

3. CSR activity to include overseas training of Indian sports personnel

CSR will include any activity undertaken by the company outside India provided it is for training of Indian sports personnel representing any State or Union territory at national level or India at international level;

The following would not be considered as CSR expenditure:

- activities undertaken in pursuance of normal course of business of the company;

- contribution of any amount directly or indirectly to any political party under section 182 of the Act;
- activities benefitting employees of the company;
- activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services; and
- activities carried out for fulfilment of any other statutory obligations under any law in force in India.

4. International Organization

‘International Organization’ means an organisations notified by the Central Government as an international organization under section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply;

5. Ongoing Project

‘Ongoing Project’ means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification.

6. Amendment to Rule 4 (CSR Implementation)

The Board shall ensure that CSR activities are undertaken by the company itself or through:

- a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or
- a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
- any entity established under an Act of Parliament or a State legislature; or
- a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

Thus, what was proposed earlier under the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 has been revoked and the status quo maintained.

Registered Public Trusts and Registered Societies, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities will continue to qualify as CSR Implanting Agencies’ and not just Section 8 Companies as was proposed earlier in March 2020.

7. Obtain a CSR Registration Number

Every entity referred to earlier, including a trust, society or section 8 company established by the company, either singly or along with any other company or a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities which intends to undertake any CSR activity, must register itself with the Central Government (MCA) by filing the form CSR-1 electronically with the Registrar, with effect from April 1, 2021, Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to April 1, 2021.

On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

8. Role of International Organisations

For implementing CSR, a company may also engage International Organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

To reiterate, ‘international organization’ means an organisations notified by the Central Government as an international organization under section 3 of the United Nations (Privileges and Immunities) Act, 1947.

Thus, Companies may now engage with International Organisations such as World Health Organization (WHO), International Labour Organization (ILO), Food and Agriculture Organization, United Nations Educational, Scientific and Cultural Organization (UNESCO) for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of the company’s own personnel for CSR.

A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

9. Company’s CFO must certify CSR utilization

The Board of a company shall satisfy itself that the funds so disbursed have been utilized for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

10. Ongoing projects

In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

To reiterate, ‘ongoing project’ means a multi-year project undertaken by a Company in fulfillment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification

11. Amendment to Rule 5 (CSR Committee)

The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:

- the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
- the modalities of utilization of funds and implementation schedules for the projects or programmes;
- monitoring and reporting mechanism for the projects or programmes; and
- details of need and impact assessment, if any, for the projects undertaken by the company:

Provided that the Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

Thus, amendment to Rule 5 has introduced impact assessment for the projects undertaken by the company and companies may engage with International Organisations for the same.

12. Rule 6 deleted (Capacity building)

Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 has deleted Rule 6 which allowed Companies to “*build CSR capacities of their own personnel as well as those of their ‘Implementing agencies’ through Institutions with established track records of at least three financial years but such expenditure [“including expenditure on administrative overheads,”] shall not exceed five percent of total CSR expenditure of the company in one financial year.*”

By inference, this would mean companies can no longer use up to five percent of the total CSR expenditure of the company in one financial year to build CSR capacities of their ‘Implementing agencies’.

However, as explained earlier, a company may engage International Organisations for capacity building of the company’s own personnel for CSR and there appears to be no cap on such expenditure.

13. Amendment to Rule 7 (CSR Expenditure)

Administrative overheads

The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

As explained earlier, administrative overheads would mean expenses incurred by the company for ‘general management and administration’ of Corporate Social Responsibility functions in the company. However, expenses directly incurred by the company for “designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme shall be considered as CSR expenditure and not administrative overheads

14. Surplus arising out of the CSR activities

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

This means in case the project is income generating by way of fees etc., such income should be ploughed back into the same project but not form part of the business profit of the company.

15. Excess CSR spends may be set off

Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that the excess amount available for set off shall not include the surplus arising out of the CSR activities and the Board of the company shall pass a resolution to that effect.

Thus, excess CSR spend in any particular year can be set off against CSR expenditure over the immediate succeeding three financial years and the Board of the company passing a resolution to that effect.

16. Acquisition of capital assets

The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by:

- a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under Rule 4(2); or
- beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- a public authority:

Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this Rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

Once again, what was proposed earlier under the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 has been revoked and status quo maintained.

CSR assets (e.g., schools, hospitals, skill development centers etc.) can be held by a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under Rule 4(2) and not just Section 8 Companies as was proposed earlier in March 2020.

17. Amendment to Rule 8 (CSR Reporting to include Impact Assessment)

Impact Assessment

Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

How much can be spent on ‘impact assessment’? A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

18. Amendment to Rule 9 (Display of CSR activities on its website)

The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

19. Amendment to Rule 10 (Transfer of unspent CSR amount)

Until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.”

Under Companies (Amendment) Act, 2020 a third proviso has been added to sub-section (5) of Section 135 whereby: if the company spends an amount in excess of two per cent of the average net profits of the company made during the three immediately preceding financial years, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.

In other words, companies that spend more than the mandatory two percent on CSR in a particular financial year may carry it forward as credit for fulfillment of CSR obligations for the block of the

next three years.

20. Managing unspent CSR expenditure

Sub-section (6) to Section 135 which was proposed earlier under clause 21 of the Indian Companies (Amendment) Act 2019 appears to have been left unchanged.

Accordingly, any amount remaining unspent under sub-section (5) of Section 135, pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the “Unspent Corporate Social Responsibility Account”, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

21. Penalties for Noncompliance

Companies (Amendment) Act, 2020 has done away with some of the draconian changes proposed earlier under clause 21 of the Indian Companies (Amendment) Act 2019 ‘criminalizing’ certain defaults in compliance under the Indian Companies Act 2013.

The Amendment Act has made spending two per cent of the average net profits of the company during the three immediately preceding financial years mandatory, albeit with certain relaxations.

As per Section 135(7), the penalty is twice the amount unspent, or ten million rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount unspent or two hundred thousand rupees, whichever is less.

22. Income Tax Rules

The Income Tax Rules have made the filing of a Statement of Donations received during the previous financial year (through Form 10BD) mandatory. This new Rule 18AB of Income Tax Rules is applicable to all entities that have approval u/s 80G and u/s 35(1) of the Income Tax Act, 1961, which allows tax deductions for donors. The statement of donations for every Financial Year starting with fiscal 2021-22 is required to be filed by May 31.

After the filing of Statement of Donations in Form 10BD, one can download and issue the Certificate of Donations in Form 10BE, which will contain details of the charitable trust or institution and the name of the charitable trust or institution and the approval numbers u/s 80G or 35(1) along with details of the donations and donor.

Failure to comply will result in a fee of Rs.200/- per day of delay as per newly inserted section 234G. Apart from the fee for delay in furnishing statement of donations in Form 10BD, failure to file such statement will also attract penalty u/s 271K, which shall not be less than Rs.10,000/- and which may extend up to Rs.1,00,000/-.

Barriers to Speech / Advocacy

There are no specific restrictions on the ability of NGOs to criticize the government or to advocate for politically unpopular causes, including issues of human rights and democracy. However, NGOs cannot engage in political or legislative activities such as endorsing candidates for public office. NGOs have nonetheless often been successful in advocacy work, especially on issues such as children’s rights and marginalized communities, and they have thus indirectly influenced the drafting of more enabling laws and policies.

On March 24, 2015, India's Supreme Court declared Section 66A of the Information Technology Act ("IT Act") as unconstitutional. Prior to this, section 66A of the IT Act was often misused by politicians, political parties, and their followers to silence critics through the power to arrest and jail those who spoke out, especially on social media. As a result of the decision, Internet content cannot be removed without a court order, and the threat of arrest for posting content on the Internet is gone. The court, however, upheld the validity of section 69B and the 2011 guidelines for the implementation of the IT Act, which allow the government to block websites if their content has the potential to create communal disturbance, social disorder, or affect India's relationship with other countries.

More recently, on October 25, 2018, the Enforcement Directorate (ED) of the Department of Revenue took action against Amnesty International in Bengaluru 20 days after the ED conducted searches of Greenpeace's office in the same city. On charges of an FCRA violation, the ED confiscated various documents and even individual laptops. Before this raid, Amnesty International had issued a statement that raids on media houses were an attempt to hinder the free press. According to reports, Aakar Patel, the Executive Director of Amnesty India, had said that the Income Tax Department's search on Quintillion Media Private Ltd, which runs a news website The Quint, and the homes of its owners, Raghav Bahl and Ritu Kapoor, indicated a clampdown on the free press.

According to a statement issued by the ED, after Amnesty International India Foundation Trust (AIIFT) was denied permission/registration under FCRA by the Ministry of Home Affairs (MHA), AIIFT bypassed FCRA by floating a commercial entity in the name of Amnesty International India Pvt. Ltd (AIPL). This entity, according to the ED, had *received Rs 36 crore of foreign funds through a commercial route*, of which 10 crore was received as long-term loans. This amount was immediately placed in fixed deposits (FDs) and another Indian entity, Indians for Amnesty International Trust (IAIT), established an overdraft facility for Rs. 14.25 crore with the Rs.10 crore FD as collateral. The remaining Rs.26 crore was received in two other bank accounts of AIPL as "consultancy services."

Explanation 3 to Section 2(1)(h) of FCRA states that "Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent or a foreign source towards such fee or cost *shall be excluded from the definition of foreign contribution within the meaning of this clause*" (*italics added for emphasis*).

The ED appears to believe that Amnesty International took advantage of this loophole and received contributions from a foreign source for a definite charitable, religious, economic, education, or social purpose under the cover of "commercial transactions" and thus violated FCRA.

Earlier, in 2016, the Bengaluru police had filed a sedition case against Amnesty International based on a complaint filed by the *Akhil Bharatiya Vidyarthi Parishad* for organizing a program that sought to portray the human suffering from the Kashmir conflict. The police charged Amnesty India with sedition under section 124A of the Indian Penal Code. Sedition is defined as "*whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law.*" The government also filed cases against Amnesty's representatives under sections 142, 143, 147, and 149 for unlawful assembly and rioting and Section 153a for promoting enmity between groups.

The separate ED crackdown on Greenpeace occurred on October 5, 2018, when its offices were raided in Bengaluru and its bank accounts frozen for alleged FCRA violations and "raising funds through fraudulent means." The ED also claimed to have found "important evidence" of corrupt practices by Greenpeace India. Greenpeace India is the Indian branch of the global environmental group Greenpeace and claims it receives 60% of its funding from individual donors in India and does not, as a policy, receive any funding from the government or companies. In 2015, the central

government had cancelled the FCRA registration of Greenpeace and accused it of being involved in “anti-national activities,” a charge denied by Greenpeace.

Restrictions on Amnesty surfaced again on November 15, 2019, when India’s federal investigative agency, the Central Bureau of Investigation (CBI), conducted searches at the offices of Amnesty International India Private Limited (a for-profit entity) and Indians for Amnesty International Trust (a not-for-profit entity) in Bangalore. The raids occurred because of alleged Foreign Contribution (Regulation) Act (FCRA), 2010 violations based on complaints received from the Ministry of Home Affairs (MHA).

According to CBI, Amnesty International (India) has received foreign contributions to the tune of INR 46 Crore (1 Crore = 10 million) from Amnesty International (UK) through the for-profit company named Amnesty International India Private Limited (AIPL). The complaint by the MHA was that Amnesty India used commercial methods in order to illegally circumvent the provisions of the FCRA, which Amnesty was obliged to observe. Under law, commercial receipts from any ‘foreign source’, including fees in lieu of goods or services, do not fall under the ambit of ‘foreign contribution’ as defined under the FCRA. To evade the FCRA, Amnesty (UK) reportedly remitted Rs 10 Crore to the for-profit entity in India and classified it as Foreign Direct Investment (FDI) under Foreign Exchange Management Act (FEMA) instead of FCRA.

Purportedly upon inspecting the Books of Accounts of Amnesty International India Pvt. Ltd, Bangalore, the MHA found that the for-profit company indulged in activities “that were not commensurate to the activities of a for-profit company but constituted activities that are either prohibited or regulated under FCRA.”

Under FCRA, any person, which includes associations, having a definite cultural, economic, educational, religious, or social programme can receive foreign contributions only after obtaining the prior permission of the Central Government, or becoming registered with the Central Government under FCRA. In other words, the MHA believes that Amnesty International India Pvt. Ltd. as an association has received funds from a ‘foreign source’ “for a definite cultural, economic, educational, religious or social programme” without prior permission or registration under FCRA 2010.

Following the raids, Amnesty International stated that “over the past year, a pattern of harassment has emerged every time Amnesty International India stands up and speaks out against human rights violations in India. Amnesty International India stands in full compliance with Indian and international law.”

The Right to Information (Amendment) Act, 2019 was also passed on August 1, 2019 and amended India’s Right to Information Act, 2005 by allowing the central government to decide the tenure and conditions for information commissioners at both central and state levels. Experts argue that these measures will dilute the law, [reduce transparency](#), and take away the autonomy of the Central Information Commission (CIC), which is the highest appellate body on information applications. Seven former Information Commissioners had come together and outlined their opposition to the amendments, which were introduced in a secretive manner and handed to lawmakers only two days before they were tabled, with the government completely skipping the mandatory public disclosure and consultation process.

Further, in late 2021, national security adviser Ajit Doval labeled civil society as the “new frontier of war”. This was considered to be a warning to dissenters and to reflect the Narendra Modi government’s tendency to consider all criticism as enemy action. Doval also added that, “It’s civil society that can be subverted, suborned, divided and manipulated to hurt the interest of a nation. You are there to see this land is fully protected.”

Lastly, new criminal laws replaced the Indian Penal Code of 1860, the 1973 Code of Criminal Procedure, and the Indian Evidence Act of 1872 once they came into effect on July 1, 2024. These new criminal laws contain concerning provisions, such as the replacement of sedition clauses with a new clause punishing “acts endangering sovereignty, unity and integrity of India,” which also

increases the minimum punishment for violations to seven years. Other provisions raise various due process, privacy, and free expression concerns. Amnesty International and other NGOs have called for the laws' repeal. Police in Uttar Pradesh used the new penal code to charge journalists who reported on the alleged mob lynching of a Muslim resident shortly after the criminal laws took effect.

Barriers to International Contact

Section 6(6) of the Foreign Exchange Management Act (FEMA) of 1999 regulates the establishment of branch offices, liaison offices, or project offices or any other place of business in India by foreign entities (for-profit or non-profit). Previously provisions of the FCRA were not applicable to International NGOs (INGOS) or International Donor Agencies (IDAs) having their offices in India, as long as these offices received funds or grants in India directly and only from their head office situated overseas. These offices had to be registered with the Reserve Bank of India (RBI) and were regulated by FEMA and not FCRA.

However, the RBI's Notification No. FEMA 22(R) /RB-2016 of March 31, 2016 was amended on August 31, 2018 to state that "where approval of the Reserve Bank is required in certain cases for establishment of branch office, liaison office or project office or any other place of business in India and if the applicant is a *Non-Government Organization, Non-Profit Organization, Body/Agency/Department of a foreign government, if such entity is engaged, partly or wholly, in any of the activities covered under Foreign Contribution (Regulation) Act, 2010 (FCRA), they shall obtain a certificate of registration under FCRA and shall not seek permission under FEMA*" (*italics added for emphasis*).

INGOs or IDAs seeking registration under FEMA will now be required to apply to the MHA under FCRA and not RBI. If they choose to register with RBI and not with MHA under FCRA they will then be required to declare in the amended Form FNC (Annex C): "*We will not undertake either partly or fully, any activity that is covered under Foreign Contribution Regulation Act, 2010 (FCRA) and we understand that any misrepresentation made or false information furnished by us in this behalf would render the approval granted under the Foreign Exchange Management (Establishment in India of a branch office or liaison office or a project office or any other place of business) Regulations, 2016, automatically as void ab initio (Latin for 'from the beginning') and such approval by the Reserve Bank shall stand withdrawn without any further notice*" (*italics added for emphasis*).

There are several items for which the August 31, 2018 amendment creates some uncertainty:

- 1) whether every INGO having a definite cultural, religious, economic, educational or social (CREES) program in its Memorandum of Association or running CREES programs or activities in its home country or other countries must apply for registration under FCRA to establish its liaison office in India, even if the liaison office would not be carrying out or funding any definite CREES program or activity in India; and
- 2) whether existing liaison offices now have to apply for registration under FCRA, or whether this amendment applies prospectively only to INGOs seeking to register an office in India after the August 31, 2018 amendment.

The amendment also comes in the context of the MHA viewing liaison offices with suspicion for several years. In August 2016 the Economic Times, for example, reported, "The Home Ministry wants Finance Ministry to stop registering NGOs under Foreign Exchange Management Act (FEMA) so that there's only one custodian to monitor flow of foreign funds to these organisations. To make its case, the Home Ministry has drawn up a list of 67 NGOs which were found violating FCRA but tried to escape penalty by invoking their FEMA registration."

The MHA has long believed that INGOs from Europe and the U.S. avoided coming under the FCRA by registering as a liaison office with RBI under FEMA. With the August 31, 2018 amendment, it would seem the MHA has succeeded in making the Ministry of Finance withdraw its

power to regulate INGOs under FEMA, 1999 and make FCRA the “umbrella legislation” for registering all NGOs, international or otherwise, receiving funds from foreign sources.

In addition, the MHA issued a notification dated September 16, 2019 [G.S.R. 659(E)] regarding a new affidavit that each office bearer and key functionary and member in the prescribed proforma must now execute. This notification raised concerns among those already registered under the FCRA, those that have prior permission, and those whose applications for registration, prior permission, or renewal was still in process, as it imposed another administrative burden on organizations. However, after complaining, most organizations dependent on foreign contributions ended up accepting the regulation. In addition to imposing compliance burdens, the FCRA is also sometimes considered humiliating because it compels a person of good standing to affirm and declare what MHA wants him/her to declare.

Barriers to Resources

1. Foreign Contributions Regulation Act, 2010 (FCRA)

Under the Foreign Contribution Regulation Act 2010 (FCRA), all NGOs in India, such as public charitable trusts, societies, and Section 8 companies, wishing to accept foreign contributions must: a) register with the central government; b) agree to accept contributions through designated banks; and c) maintain separate books of accounts with regard to all receipts and disbursements of funds.

NGOs are required to report the amount of the foreign contribution, its source, the manner in which it was received, the purpose for which it was intended, and the manner in which it was used. Foreign contributions include currency, securities, and articles. Funds collected by an Indian citizen in a foreign country on behalf of an NGO registered in India are considered foreign contributions. Moreover, funds received in India in Indian currency from a foreign source are considered foreign contributions.

Under FCRA, a foreign contribution does not include commercial receipts. NPOs can receive consultancy or other commercial receipts from foreign sources even without FCRA registration. FCRA-registered NGOs should receive commercial receipts in their domestic account, and NGOs are not required to report commercial receipts to the FCRA department.

Earlier FCRA guidelines required that an organization that is allowed to receive funds from a foreign source may provide funds from its FCRA account to another organization only if the other organization also has clearance from the Ministry of Home Affairs (MHA) to receive funds from a foreign source. This has specifically been disallowed since September 29, 2020 under the Foreign Contribution Regulation (Amendment) Act, 2020.

If the foreign donor agency specifies in writing that the whole or part of the grant may be directed to the recipient organization’s capital fund or endowment, the organization may do so. Such an endowment or capital fund may be invested in an approved security.

Any interest or dividends should be accounted for as an amount received by way of interest on a deposit drawn out of funds received from a foreign source. In other words, even the interest or dividend received in India, in Indian rupees, must be disclosed in the return. Contributions from an expatriate Indian are not considered foreign contributions if the individual has not become a citizen of a foreign country.

The government has blacklisted dozens of NGOs for failing to adhere to different aspects of the FCRA, including 69 NGOs in March 2015 alone. In addition, on March 3, 2015, the Ministry of Home Affairs cancelled the FCRA registration of 1,142 NGOs that received funding from foreign sources in one state, Andhra Pradesh, for failure to file annual returns for 2009 to 2012.

On June 16, 2016, the MHA cancelled “with immediate effect” the registration of the NGO Sabrang Trust under the FCRA for receiving funds from a foreign source. Sabrang Trust is run by civil rights activist Teesta Setelvad, who is known for promoting the rights of Gujarat riot victims and has

received funds from the US-based Ford Foundation. The Ford Foundation was put on a watch list following a Gujarat government complaint that it was interfering in India's internal affairs and promoting communal disharmony through engagement with Setelvad's NGO. The MHA argued that foreign funds received by Sabrang Trust under the FCRA license had not been used for the rightful purposes.

The FCRA has not been without opposition. In November 2016, the MHA permanently cancelled the FCRA registration of the NGO Lawyers Collective because it allegedly misused foreign funds. In a January 30, 2017 [interim order](#), the Bombay High Court ruled that while the MHA has powers under the FCRA to "regulate or even prevent the acceptance of foreign funds by an association," the Act does not "provide for a government to stifle the very functioning of individuals or associations." The Court thus ordered the government to un-freeze the Lawyers Collective's domestic and non-FCRA bank accounts.

Other court rulings, however, have upheld the FCRA. For example, on January 11, 2017, the Supreme Court of India [ordered an audit of 3 million NGOs](#) receiving funds from the government or foreign sources under the FCRA. It also ordered penal action against NGOs found not to be submitting their records on time in accordance with General Financial Rules, 2005. The audit was mandated to be completed by March 31, 2017. According to Supreme Court, "mere blacklisting of NGOs who do not file annual statements will not suffice but also action must be initiated like criminal proceedings for misappropriation and civil action for recovery of given funds." The order came after an amicus curiae cited a finding by the Central Bureau of Investigation (CBI) that only 10% of NGOs filed annual income and expenditure statements.

2. Foreign Contribution Regulation Rules

In December 2015, the MHA issued amended [Foreign Contribution Regulation Amendment Rules](#). The application process for registration under the FCRA is now completely online, and reporting requirements on foreign contributions have increased significantly. The MHA subsequently issued a [circular](#) dated December 14, 2015 stating that application for renewal of FCRA registration must now be made online at fcraonline.nic.in. The last date for filing a renewal application was extended to March 15, 2016, and then extended again to June 30, 2016. The validity of FCRA registration for organizations that were registered before the enactment of FCRA was extended from October 31, 2015 to October 31, 2016. Under the new system there is no need to post hard copies, and fees can be paid online.

Under the amended Foreign Contribution Regulation Rules:

- - Application for new registration, prior permission, or renewal of existing registration must now be made in the new Form FC 3.
 - The application must be digitally signed.
 - Applications sent by post will not be accepted. The process now must be completed online. Payment of processing fees has also been made electronic.
 - Every person receiving foreign contribution, regardless of the amount received, is required to post on one's own website or on the government's website the annual audited statement of accounts of receipt and utilization. This report must include income and expenditure statements, receipt and payment accounts, and balance sheets and must be completed within nine months of the end of the financial year when the foreign contribution was received. Previously, only organizations that received foreign contribution in excess of 10 million rupees (about \$146,000) were required to report summary information about the receipt and utilization of foreign contributions for the year of receipt and one year thereafter.
 - An organization receiving foreign contributions are now required to post quarterly statements containing details of those contributions on its own website or the government's website within 15 days of the completion of a quarter of a financial year, including details of donors, amounts, and dates of receipt. (This, however, has no longer been a requirement since July 2022).
 - Banks are now required to report to the government within 48 hours any foreign contribution received by any person, including those having

- registration or prior permission under the FCRA.
- An NGO registered under the FCRA but does not receive foreign contributions may continue to file annual returns in the new Form FC 4 to keep the registration active. However, these organizations are now exempt from filing certificates issued by chartered accountants or income and expenditure statements, along with receipt and payment accounts and balance sheets.
- NGOs are now required to notify the government of a change of name or address within 45 days. Similarly, NGOs must notify the government within 45 days of changes to an NGO's nature; objectives; registration with local or relevant authorities; bank, bank branch, or designated bank account number for foreign contributions; or of replacement of any "key members" of the organization. The term "key members" has not been defined, though it includes all governing Board Members.
- Annual returns must be filed in the new Form FC 4, along with an affirmation that the NGO has "not used the foreign funds for activities that are likely to prejudicially affect the sovereignty and integrity of the country, the security, strategic, scientific and economic interests of the State and the public interest." Organizations that work on human rights issues, legal rights, policy, governance, electoral reform, and other sensitive issues are likely to be affected by this provision.

The MHA has also issued [Notification](#) S.O. 2291(E) dated June 5, 2018, which lists offences that hitherto were not compoundable (e.g. defraying of foreign contribution beyond 50% of the contribution received for administrative expenses). For virtually every offence, the minimum penalty is Rs. 100,000, with the exception of the offence of accepting any foreign hospitality in contravention of FCRA, where the penalty is Rs. 10,000,. The Notification also lists officers competent for compounding such offences. In all cases it is the Director, or as the case may be, the Deputy Secretary in-charge of the section responsible for the administration of the Act. To date, however, no specific instances of audits appear to have been initiated by the Comptroller and Auditor General (CAG) of India.

3. The Foreign Contribution (Regulation) Amendment, 2020

The Foreign Contribution (Regulation) Amendment Act (FCRA) 2020 came into effect on September 29, 2020.

The key changes include the following:

- An institution registered or having prior permission under FCRA cannot make sub-grant(s) to any other institution from foreign contributions received in its designated FCRA Bank account even if the second recipient or sub-grantee has registration or prior permission under FCRA. This will be detrimental to NGOs working collaboratively on projects and programs and may also place 'foreign funding agencies' or 'foreign grant-making organizations' registered under FCRA in difficulty.
- Currently institutions are allowed to spend up to 50% of foreign funds received during the fiscal year on administrative expenditures, but the amendments now reduce it to 20%. This amendment negatively affects organizations' payment of salaries, professional fees, utility bills, travel, and other expenditures.
- If the Ministry of Home Affairs (MHA) "on the basis of any information or report, and after holding a summary inquiry" has reason to believe that an organization has contravened any of the provisions of FCRA, it may, pending any further inquiry, suspend the organization from receiving or using foreign contributions for a period of 360 days.
- On a request being made by an organization, the MHA may permit any organization to surrender the certificate granted under FCRA, but, upon surrendering FCRA registration, assets generated from foreign contributions will have to be vested in a competent government authority. (While this amendment will prove to be a boon for organizations no longer interested in receiving foreign

funds, it will be detrimental for organizations that have generated assets, such schools, hospitals, and vocational training centers, from foreign funds.)

– Organizations granted registration or prior permission under FCRA must receive foreign contributions only in the State Bank of India's New Delhi main branch.

4. Foreign Contribution Regulation (Amendment) Rules, 2020

On November 10, 2020 the Ministry of Home Affairs (MHA) notified the Foreign Contribution Regulation (Amendment) (FCRA) Rules, 2020. The Rules did not provide any relief except some relaxation with regard to opening the designated FCRA Bank Account with State Bank of India New Delhi Main Branch by March 31, 2021 (later extended to June 30, 2021). All other provisions of the Foreign Contribution Regulation (Amendment) Act 2020 remain effective from September 29, 2020, including no sub-granting of foreign contributions received and the new threshold of no more than twenty per cent of expenditures on administration.

Organization of a 'Political Nature'

Rule 3, which provides guidelines for declaring any organization (which is not a political party) to be of a 'political nature,' has been amended such that organizations receiving foreign contributions shall be considered to be of a political nature "if they participate in active politics or party politics, as the case may be". This amendment is in sync with the ruling of the Supreme Court of India. However, organizations involved in active lobbying and advocacy work should still carry out their activities with restraint and caution.

Eligibility Criteria for Registration

Previously, the eligibility criteria for registering under FCRA was existence for three years and spending a minimum sum of one million Rupees on core activities for the benefit of society during the last three financial years. The sum of one million Rupees, however, has been raised to one and a half million Rupees.

Eligibility Criteria for Prior Permission

If prior permission is sought for a sum of over ten million Rupees, the MHA may permit the receipt of such a foreign contribution in installments, as it may deem fit. This is provided that the second and subsequent installment shall be released only after submission of proof of utilization of at least seventy-five per cent of the foreign contribution received in the previous installment and after a field inquiry of the utilization of foreign contribution.

Renewal Requirement

The application for renewal of FCRA registration should be made in a Form FC-3C accompanied by an affidavit executed by each office bearer, key functionary, and key member in Proforma 'AA' six months before the date of expiry of the certificate of registration.

The amendment Rules make it clear that on the expiry of the validity of the FCRA certificate the organization can neither receive further contributions nor utilize balance funds in the FCRA Bank account until the registration is renewed.

Further, if the application for renewal is not received by MHA before the expiry date, the FCRA registration shall be deemed to have ceased. Further, the amount of foreign contribution lying unutilized in the FCRA Account and utilization account of the organizations whose certificate of registration is deemed to have ceased and their assets, if any, created out of the foreign contribution, shall vest with the prescribed government authority under the Act until the certificate is renewed or a fresh registration is granted.

The five year FCRA license of about 15,000 organizations expired on September 30, 2021. Almost all these organizations had applied for renewal at least six months prior to the date of expiry of the

license as required under law. However, hundreds of other organizations are still waiting for their license to get renewed as of March 2024. Online tracking usually reveals their status as “under process” or “under field inquiry”.

In the meantime, the Ministry of Home Affairs extended the validity of licenses which have expired since September 30, 2021 and are still “under process” to June 30, 2024. While this provides some relief to the organizations, foreign funders will not feel comfortable giving to them until their licenses get renewed for at least five years. Moreover, several organizations that would have applied for the renewal of the license have been denied renewal.

Designated FCRA Bank Account

Furnishing details of the FCRA Bank Account with State Bank of India, New Delhi Main Branch shall be mandatory when applying to MHA for registration, prior permission, or renewal of FCRA registration.

Fees

The fees for granting of prior permission and renewal of registration shall be five thousand Rupees and for new registration a sum of ten thousand Rupees.

Online Forms

The online forms have also undergone several changes.

1. A new online Form FC-7 has been introduced for voluntary surrender of FCRA registration.
2. In the online form for registration, prior permission and renewal if the nature of the association is religious must state whether the organization is (a) Hindu (b) Sikh (c) Muslim (d) Christian (e) Buddhist (f) Others.
3. Officebearers and other key functionaries must disclose details of PAN and Aadhaar along with nationality and relationship with other member(s) of the executive council/governing body/office bearers.
4. It must also be disclosed whether any current office bearers or directors or other key functionaries of the association has, in the discharge of his/her official functions or private conduct, been prosecuted for any offence pending against him/her.

Declarations in the Annual Return

In the Annual Return in Form FC-4 the Chief Functionary must declare whether during the period under report:

- any foreign contribution was transferred to any FCRA registered association?
- any foreign contribution was transferred to any Non FCRA registered association?
- any functionary of the Association has been prosecuted or convicted under the law of the land?
- any asset created out of a foreign contribution is registered in names other than the name of the association?
- any domestic contribution has been credited in any “FCRA Account”?
- the association has received any foreign Contribution in an account other than the designated FCRA receipt account?
- the Association has utilized foreign contribution for any purpose other than the defined purposes in the FCRA certificate of registration or prior permission?
- the Association has invested any foreign contribution in any speculative activity as defined in Rule 4 of the Foreign Contribution (Regulation) Rules, 2011?
- the Association or any of its functionaries/office bearers has violated any of the conditions as enumerated under sub-section (4) of section 12 of the Act?

- the Association has made expenditure on administrative expenses exceeding 20 percent of the foreign contribution received?
- any fixed asset acquired out of foreign contribution has been sold out?
- any sale proceed of above fixed assets has been diverted/has not been deposited in “FCRA Account”?
- any FD proceeds has been credited in any account other than the “FCRA Account”?
- any organization/entity not belonging to the Association is being managed/financially supported by the Association?
- the Association has utilized any foreign contribution outside India?

If the answer to any of the above question is ‘yes’, brief details must be provided.

Change in Governing Board

Previously one had to provide intimation to MHA in online Form FC-6E only if there was change in more than fifty per cent of the key members. Now intimation must be provided even if one new key member is appointed, elected, resigns or dies, within fifteen day and the change shall be effective only after MHA approves the same.

5. Public Notice, September 30, 2021

The requirement to renew registration certificates issued by the Ministry of Home Affairs (MHA) under the Foreign Contribution Regulation Act (FCRA), 2010, was introduced in 2015 through an Amendment to the Foreign Contributions Regulation Rules, 2011. Under this 2015 Amendment, all FCRA certificates will be valid for a period of five years unless they have been suspended or canceled on account of any violation of the Act or the Rules. All organizations which had been registered under FCRA prior to this Amendment applied for renewal and most of them were granted renewal for a period of five years with effect from November 1, 2016. Accordingly, these certificates expire on October 31, 2021.

However, the MHA issued a new [Public Notice](#) on September 30, 2021 (No. II/21022/23(22)/2020-FCRA-III) to extend the validity of the FCRA certificate. As a result, all FCRA registrations which expire between September 29, 2020 and December 31, 2021 will remain valid until December 31, 2021. Despite this, a key point to emphasize is only those organizations which have applied for and are awaiting renewal of registration within the specified time limit (which in most cases is October 31, 2021) will be eligible for the extension of the certificate.

The failure to apply for the renewal of the FCRA certificate before the date of expiry (October 31, 2021) would render the registration certificate invalid from November 1, 2021 and organizations which failed to renew would not be allowed to receive foreign contributions. However, if the application for renewal is made before the date of expiry, an organization may continue to enjoy the extended validity and continue to receive foreign funds until December 31, 2021. An organization which fails to apply for renewal and pay the renewal fees, under Rule 12(8) still has the option to apply for renewal for up to one year after the expiry of the registration period if the organization is able to give a reason for its delay.

6. Domestic Funding

An NGO may raise funds in any lawful manner, including by soliciting donations and grants or sponsorships or organizing fundraising events.

Under amendments to Section 11(4A) of the Income Tax Act of 1961, an NGO is not taxed on income from a business that it operates that is incidental to the attainment of the NGO’s objects, provided that the entity maintains separate books and accounts for the business. Furthermore, certain activities resulting in profit, such as renting out auditoriums, are not treated as income from a business.

The Finance Act, 2008 had changed the definition of charitable purpose so that the “advancement of any other object of general public utility” would not be considered a “charitable purpose” if it

involved carrying on any activity in the nature of trade, commerce, or business, or any activity rendering services in relation to trade, commerce, or business for a fee, tax, or other consideration. However, the Finance Act, 2015 limited this exception by exempting the aggregate value of the receipts from such activities up to 20% of the total receipt of the trust or institution in that fiscal year. Two years later, Parliament passed the Finance Act, 2017 on March 30, 2017, which, among other changes:

- Restricts inter-charity corpus donations (i.e., provides that one charitable organization may contribute funds to another charitable organization, but not as a corpus donation or grant);
- Conditions tax exemption under Sections 11 and 12 on the timely filing of a tax return; and
- Mandates that in order to receive available tax deductions, a donation for an amount larger than 2,000 rupees must be made by cheque or electronic transfer, and not in cash, which is part of the government's efforts to promote a cashless economy and increased transparency.

Local *Ganapati mandals*, *Navratri mandals*, associations, and societies that are unregistered but seek donations for various programs and religious functions will now be required to seek permission.

A permission certificate issued by the office of the charity commissioner enabling unregistered bodies and individuals to raise funds will be valid for only six months, and an organization will have to seek fresh permissions each time the certificate lapses to continue seeking donations; alternately, it can seek registration as a charitable trust or society under the Societies Registration Act of 1860.

Raising funds without permission could result in a jail term of three months and/or a penalty up to one and a half times the total amount of donations collected.

Amendment of the Maharashtra Public Trust Act (MPTA), 1950

On the state level, Maharashtra has regulated the funding of NGOs. For example, “in the name of bringing accountability and transparency in the transactions of unregistered NGOs or groups who collect donations for charitable, religious or public purposes, the state cabinet approved stringent rules that will regulate these donations.” On April 18, 2017, the Maharashtra state cabinet approved an amendment of the Maharashtra Public Trust Act (MPTA), 1950 requiring unregistered organizations or even individuals who seek donations to receive permission from the assistant or deputy charity commissioner and requiring that all such donations and other transactions by unregistered bodies and individuals be audited by the charity commissioner. Nonetheless, some civil society experts and activists believe the amendment is appropriate and needed and that charitable trusts (including societies registered under the Societies Registration Act of 1860) that are already registered with the Charity Commissioner have no reason to feel concerned or uncomfortable. They argue that currently there is no regulation that monitors these donations and their use and that there is frequent misappropriation of funds under the garb of donations, so these organizations must be made more accountable.

The proposed penalty for violating the amendment of Section 66 of the MPTA, such as collecting donations without prior permission of the charity commissioner, is a jail term of three months and/or a penalty up to 1.5 times the total amount of donations collected.

All organizations except registered public trusts will be covered under the new rules. This amendment may also affect crowd funding platforms, which thus far have remained unregulated.

Barriers to Assembly

In recent years, there have been several prominent legal issues affecting the right to freedom of assembly. They include the following.

1. Ban on Protests at Jantar Mantar

In 2010, the National Green Tribunal (NGT) was established to effectively and expeditiously dispose of cases relating to environmental protection and conservation of forests and other natural resources. Residents of Jantar Mantar Road, in the heart of New Delhi, filed a case claiming that

processions and agitations “violate their right to live in a peaceful and healthy environment, right to silence, right to sleep and right to life with dignity”. In October 2017, NGT banned all protests at Jantar Mantar and directed the Delhi government, Delhi police, and New Delhi Municipal Council to stop all protests at Jantar Mantar and to remove the protesters sitting there to Ramlila Ground. NGT held that the protests violated environmental laws, including the Air (Prevention and Control of Pollution) Act of 1981, and upheld the right of the residents of the surrounding area to live peacefully and comfortably. Social activists and environmentalists decried the move as yet another attempt by the government to curb protests, dissent, and the freedom of assembly. Questioning the logic behind the order, civil rights activist and co-convenor of National Campaign for People’s Right to Information, Anjali Bharadwaj, stated, “the issue is not of noise pollution but of what kind of space people are getting to express themselves freely and it links to our fundamental right of speech and expression. From the civil society perspective it would be very regressive to shut down this space which is close to Parliament.” There is also no empirical data to support the alleged claim of noise pollution.

Since 2017, there have continued to be restrictions on protests at Jantar Mantar, including a case where armed men beat up students marching to there in January 2020. Jantar Mantar has been a popular place for protestors for more than a quarter of a century. Even there, protestors were given very limited space, and it was never a venue for big protests. In New Delhi, Jantar Mantar has often been equated to the Speaker’s Corner at Hyde Park in London and synonymous with the rights of people to protest against government policy or injustice. The NGT order has changed this set up for the time being, and an intervention by the Supreme Court is required to restore the right of people to protest in the area.

A peaceful public protest is a civic activity intended to draw the attention of lawmakers, policymakers, and the general public to critical issues of governance and to demand redress and accountability. The space where protest takes place is, therefore, crucial. It must facilitate direct interface with officials and political representatives; it must also be situated so that interested bystanders can be enlisted for the cause.

2. Amnesty International Charged with Sedition

A panel discussion organized by Amnesty International India at United Theological College in Bangalore on August 13, 2017 was disrupted when some pro-independence Kashmiris, who were primarily young people and students, allegedly engaged in heated debate with a Kashmiri Pandit leader who was praising the Indian Army. Amnesty International India had organized the event as part of a campaign to seek justice for “victims of human rights violations” in Jammu and Kashmir. The police were invited and present at the event.

Acting on a complaint filed by the Akhil Bharatiya Vidyarthi Parishad (ABVP), the J.C. Nagar police on August 15, 2017 charged Amnesty International India with sedition under Section 124-A of the Indian Penal Code, which defines sedition as an act that “brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government of India”. Amnesty subsequently argued that it organized the event to defend constitutional values, that the event should not be branded as “anti-India” or criminalized, and that international human rights law protects the right to peacefully advocate political solutions that do not involve incitement to discrimination, hostility or violence.

3. Farmers’ Protests

In 2024, the farmers’ protests resurged due to the government’s failure to hold to its promises to guarantee a minimum support price (MSP) for all crops, waive loans, and withdraw legal cases brought against farmers during the earlier 2021 protests. Authorities responded to the protests by barricading highways leading to New Delhi with cement blocks, metal containers, barbed wire and iron spikes to prevent the farmers from entering the capital. When the farmers tried to push through, police fired at least 4,500 tear gas grenades at the protesters, including some via drones, which was the first use of drones to disperse a protest in India. Protesters also sustained injuries after police fired kinetic impact projectiles (rubber bullets) at them.

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News and Additional Resources

While we aim to maintain information that is as current as possible, we realize that situations can rapidly change. If you are aware of any additional information or inaccuracies on this page, please keep us informed; write to ICNL at ngomonitor@icnl.org.

General News

India Bars 20,600 NGO's From Accepting Foreign Donations (September 2024)

Over the past decade, under new laws passed by Prime Minister Narendra Modi's government, more than 20,600 NGOs in India have been barred from receiving foreign donations, according to an Amnesty International report published this month. Many of these groups, the report notes, "have long promoted human rights in the country." There is also a delay in prosecutions under the laws "resulting in a high number of pending cases and accused persons in judicial custody waiting for cases to be tried and concluded". Such delays, Amnesty adds, illustrate the possibility that these laws are being misused to clamp down on human rights defenders by ensuring that the criminal proceedings characterized by stringent bail provisions, prolonged detention, and lengthy investigation act as punishment.

India Using Anti-money Laundering Laws To Harass NGOs: Amnesty (September 2024)

India must stop its "witch hunt" against civil society groups under the pretext of tackling money laundering or terrorism financing, Amnesty International has said following a report by a global money laundering watchdog. Rights organizations and news outlets have long complained of harassment under Prime Minister Narendra Modi's Hindu-nationalist administration, a charge it has denied. In the last decade, India has cancelled the licenses of thousands of NGOs using the Foreign Contribution Regulation Act (FCRA).

FATF Report Critiques India's Approach to Regulation of NGOs (September 2024)

The Financial Action Task Force (FATF) noted that the Foreign Contribution (Regulation) Act is not being used as a targeted tool against terror financing of India-based NGOs, but instead monitors all foreign funding regardless of the organization's or source's risk level. The FATF called for India to ensure that measures against NPOs to prevent terror financing are based on a "risk-based approach" in the second mutual evaluation report released by the FATF on India.

Committee formed for Income Tax Act review (August 2024)

An internal committee of the Income Tax Department will review the 1961 Direct Tax Law to eliminate redundant clauses as well as adopt best global practices to simplify it for taxpayers for better compliance. The panel, comprising income tax officials from across the country, has started working to identify areas of improvement in the Income Tax Act, 1961.

Under proposed 'urban Naxal' law, I could be arrested for fulfilling my duty (July 2024)

It is in the nature of government, particularly these days, that persons in high places will suddenly come up with a bright idea and without much ado, draconian laws are made and pushed through Parliament. They are pushed through without discussion and without sending these obnoxious bills to Select Committees. Such is the nature of the special public security acts passed in Chhattisgarh, Telangana, Andhra Pradesh and Odisha. One such legislation has now been tabled in Maharashtra — the Special Public Security Act, 2024. Reading the Bill through the eyes of a human rights lawyer, I could see straightaway how my participation in meetings to explain to social workers the provisions of criminal law and the Constitution could have terrible repercussions.

Indian police launch criminal investigation into 2 journalists under new penal code (July 2024)

After a debate that the opposition boycotted in both Houses of Parliament (for good reasons), three Bills to replace (and re-enact) the Indian Penal Code, 1860, the Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872 were passed. The new Bills carried names in Hindi (or Sanskrit) even in the English versions of the Bills. The President gave her assent to the Bills and the government notified that the new laws will come into force on July 1, 2024. There is stiff

opposition to the new laws from many quarters. The government has dismissed the grounds of opposition as irrelevant and motivated.

Indian police launch criminal investigation into 2 journalists under new penal code (July 2024)

The Committee to Protect Journalists called on police in Uttar Pradesh state to drop their investigation into a claim that independent journalists Zakir Ali Tyagi and Wasim Akram Tyagi incited religious enmity through “malicious” posts on social media platform X alleging that a Muslim resident of Shamli district was killed in a July 4 “mob lynching.”

Empty beds, lost jobs: The price of India’s crackdown on NGO funds (July 2024)

Lakshman Yeme saw firsthand what happens when foreign funds are cut off under laws the Indian government says are meant to crack down on corruption but that critics say hurt the poorest most. Yeme works as a doctor at a hospital in Anjanwel in the coastal region of Maharashtra, and for years, he toiled almost alone in a poorly equipped, nearly empty building. Three years ago, the Bombay Sarvodaya Friendship Centre (BSFC), a Mumbai-based NGO, came to his rescue, building an operating theatre, paying for extra staff and subsidising surgeries. But BSFC’s licence to receive funds from foreign donors expired in October 2021 and since then it has not been able to renew it.... Thousands of civil society groups in India have had their licences to receive overseas donations cancelled since Prime Minister Narendra Modi’s government tightened surveillance on non-profit groups regulated under the Foreign Contribution Regulation Act (FCRA). According to the government’s FCRA dashboard, only 15,947 NGOs with an FCRA licence are still active — the permissions for 35,488 NGOs have either been cancelled or have expired and not been renewed. This has left many organisations struggling to survive and left some of the most vulnerable in this nation of 1.4 billion lacking vital services.

MHA Cancels FCRA Registration Of NGO Which Flagged Environmental Hazards Of Adani Project (July 2024)

The Ministry of Home Affairs (MHA) has reportedly cancelled the FCRA registration of the parent entity of the non-profit Centre for Financial Accountability (CFA), which monitors and critiques the role of domestic and international financial institutions and their impact on development, human rights and the environment, among other areas. The cancellation of FCRA registration of CFA comes days after it highlighted in a report how additional projects sanctioned in a Special Economic Zone operated by the Adani Group in the Kutch region of Gujarat “will compound environmental hazards and increase the health risks for the people while further polluting the environment and accelerating degradation of the ecology.”

India Passes FATF Scrutiny, But Concerns Raised Over Stringent Oversight Mechanism for NGOs (June 2024)

While the Financial Action Task Force (FATF) has acknowledged that India has achieved a “high level” of compliance, it has also emphasized that New Delhi is falling short in conducting case-by-case risk assessments due to its stringent crackdown on NGOs. The FATF plenary discussed India’s second report, but it will be made public only later.

The enormous stakes of India’s election (May 2024)

The 2024 Indian election is the largest in world history. Administering such a giant election is an immensely difficult task, especially in a middle-income country where poverty remains all too common. There are dozens of different parties on the ballot, with all sorts of different fault lines — including caste, religion, language, gender, and wealth — playing a role in shaping Indian voters’ decisions. But distilled down to its essence, the election is about one really big thing: Prime Minister Narendra Modi’s democracy-threatening quest to revolutionize the Indian state.

Misuse of FATF standards to undermine civil society groups in India (March 2024)

On February 12, 2024, FIDH and OMCT within the framework of the Observatory for the Protection of Human Rights Defenders, along with six other groups, wrote to the Financial Action Task Force (FATF) urging the global body to ensure its assessment team meets an independent and diverse set of civil society actors as part of its mutual evaluation of India’s anti-money laundering and countering financing of terrorism (AML/CFT) regime in India.

MHA's Decision to Cancel FCRA Registration 'Incomprehensible' (January 2024)

The Union Ministry of Home Affairs has cancelled the Foreign Contribution Regulation Act (FCRA) registration of the Centre for Policy Research (CPR). This registration had earlier been suspended in February 2023. The policy think tank had said at the time that it is in complete compliance with all laws and was working with the authorities to have the license issue resolved.

Acts of violence, divisive policies in India are causes for concern (January 2024)

The European Parliament adopted a resolution expressing concern about “acts of violence, increasing nationalistic rhetoric and divisive policies” in India. The resolution, adopted months ahead of the 2024 Lok Sabha polls, draws attention to acts of violence and discrimination against religious minorities and the “harmful effects” of the Foreign Contribution Regulation Act and the Unlawful Activities (Prevention) Act on civil society organizations.

Omidyar Network India Shutting Down Operations (December 2023)

Impact investment firm Omidyar Network India, which has a dual-chequebook investment model, is exiting India after a decade of operations. Backed by the Omidyar Group and supported by eBay founder Pierre Omidyar and Pam Omidyar, the India-specific entity will not make any new investments going ahead, though it will be closing follow-on rounds committed to date.

India Could Be Under FATF Scrutiny for Pressuring NGOs and Civil Society (October 2023)

The Financial Action Task Force (FATF), an anti-money laundering intergovernmental organization, is asking if India, under the Narendra Modi government, is seeking to apply laws regarding the financing of organizations “overzealously” and therefore, “misusing local laws to crack down on non-profit organizations like Amnesty International and policy think tanks.” A FATF team is to visit India in November and is slated to catch up with NGOs to make a close assessment of the situation.

A New Report Examines the Law on Civil Society in India (October 2023)

Over the last few years, a perception has developed in India that scrutiny of the civil society by authorities has increased. This perception is scaffolded by data of rise in invocation of laws such as the Foreign Contribution (Regulation) Act, 2010, the Prevention of Money Laundering Act, 2002 and pressure from the Enforcement Directorate and Central Bureau of Investigation. The perception is also fuelled by an increase in the number of licence cancellations among non-profit organisations (NPOs) in India.

Government Revokes Tax Exemption Status of 4 More NGOs (October 2023)

The Income Tax department has revoked the tax exemption status of four more NGOs, with the revocation for two of the NGOs having been linked to protests against the Adani Group. In July this year, the tax exemption status of public policy think tank Centre for Policy Research was also revoked.

India passes data protection law amid surveillance concerns (August 2023)

The Digital Personal Data Protection Bill, 2023, passed on 9 August, has led to fears of insufficient privacy protections and increased surveillance by the government. Although the law gives users the right to correct or erase their personal data, it also gives the government powers to exempt state agencies from the law and seek information from firms and issue directions to block content on the advice of a data protection board appointed by the federal government.

'Save The Children' loses its FCRA permit (August 2023)

The Ministry of Home Affairs (MHA) has withdrawn the permit under the Foreign Contribution Regulation Act (FCRA) for U.K.-based NGO Save The Children's Indian offshoot, Bal Raksha Bharat.... In India since 2008, Bal Raksha Bharat is spread across 16 States. Last year, it had come under the government's radar for a fundraising campaign on malnutrition, which was objected to by the Ministry of Women and Child Development on the ground that the issue was being “vigorously pursued” by the government through its schemes.

Indian govt proposes revamp of colonial-era laws (August 2023)

The Indian government has proposed legislation to overhaul colonial-era criminal and penal laws,

many of which were introduced in the 19th century during British rule. On the last day of the monsoon session of the parliament, Union Home Minister Amit Shah introduced three bills to repeal and replace the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act. The Bharatiya Nyaya Sanhita will replace The Indian Penal Code of 1860; the Bharatiya Nagarik Suraksha Sanhita will replace the Code of Criminal Procedure; and the Bharatiya Sakshya Bill will replace Indian Evidence Act.

India's Data Protection Law Weakens Citizens' Right to Information (RTIA) (August 2023)

The implementation of the Right to Information Act (RTIA) still faces incidents of non-disclosure, non-compliance, and minuscule imposition of penalties on erring officials.... More recently, the RTIA is now in direct conflict with the just-passed Digital Personal Data Protection Act (DPDP) 2023.

MHA suspends FCRA licence of CARE India over Violations (June 2023)

The Ministry of Home Affairs (MHA) suspended the foreign funding license of CARE India over alleged violations of the Foreign Contribution (Regulation) Act, 2010. CARE India is a part of CARE International Confederation and has been working for the past 70 years with the aim of ending poverty and social exclusion. Some prominent NGOs including Oxfam India and Centre for Policy Research (CPR) have been denied a license over similar allegations.

Sebi Grants Nod for Social Stock Exchange (SSE) (December 2022)

SSE is a novel concept in India and is meant to serve the private and non-profit sectors by channeling greater capital to them. Sebi has asked social enterprises raising funds using SSE to disclose Annual Impact Report (AIR) within 90 days from the end of financial year to capture the qualitative and quantitative aspects of the social impact generated by the entity and, where applicable, the impact that is generated by the project or solution for which funds have been raised on SSE.

IT Department Raids Offices of Centre for Policy Research, Oxfam & IPSMF (September 2022)

The Income Tax (IT) Department is conducting raids at the offices of leading think tank, Centre for Policy Research (CPR), Oxfam India, and the Independent and Public-Spirited Media Foundation (IPSMF). The raids are connected with simultaneous searches in Haryana, Maharashtra, Chhattisgarh, Uttar Pradesh, and Gujarat, among other places, "over funding of more than 20 registered but non-recognized political parties." While CPR is a public policy think tank, Oxfam is a global organization dedicated to fighting "poverty and injustice." The Independent and Public-Spirited Media Foundation (IPSMF) promotes excellence in and funds "independent, public-spirited and socially impactful journalism."

FCRA Bribery Case: CBI Detains MHA Official After Raid (May 2022)

The Central Bureau of Investigation (CBI) detained an Under Secretary rank officer of the ministry of home affairs (MHA) in the Foreign Contribution (Regulation) Act (FCRA) in a bribery case. His name surfaced during questioning of arrested six staff members of MHA posted in FCRA division in a bribery case. CBI has also named representatives of at least 12 non-government organisations (NGOs) and institutions over the alleged case of bribe-for-approval.

Home Ministry Plans Overhaul of FCRA Division (April 2022)

The ministry of home affairs (MHA) has decided to revamp its Foreign Contribution Regulation Act (FCRA) division for better oversight, enhanced verification and restricted access to files of non-government organisations (NGOs) seeking registration or renewal of foreign funding licences. The ministry's decision came two days after the Central Bureau of Investigation (CBI) unearthed an alleged organised nexus between NGOs, government officials and middlemen for "illegal clearance" of FCRA licences. At least 14 people, including six government servants, were arrested.

Rana Ayyub, Journalist and Modi Critic, Barred from Leaving India (April 2022)

A prominent Indian journalist and activist says she has been barred from boarding a flight to London where she was scheduled to address an event on targeting of journalists in the world's largest democracy. An author of a book on the 2002 pogrom in Modi's home state of Gujarat, Rana

Ayyub has been a victim of relentless attacks – including rape threats – by members of right-wing Hindu groups for her reports and columns, mainly on the persecution of Muslims in India.

Supreme Court Upholds Recent Amendments to Foreign Contribution Regulation Act: But is its Reasoning Persuasive? (April 2022)

A three-judge bench of the Supreme Court upheld the constitutional validity of the 2020 Amendment to the Foreign Contribution (Regulation) Act, 2010. The Leaflet breaks down the judgment to understand its implications in this article.

Accepting Foreign Funds Not an Absolute Right (April 2022)

The Supreme Court of India has affirmed the validity of the Foreign Contribution (Regulation) Amendment Act, 2020, which imposes new conditions on receipt and use of funds by NGOs, besides making it mandatory for them to receive foreign funds only in an SBI account. A three-judge bench wrote in the order that “the strict regime had become essential because of the past experience of abuse and misutilisation of foreign contributions.” The Foreign Contribution (Regulation) Amendment Bill, 2020 was passed in both houses of Parliament in September 2020.

Comforting the Comfortable and Afflicting the Afflicted: The Supreme Court’s FCRA Judgment (April 2022)

In 2020, Parliament amended the Foreign Control (Regulation) Act of 2020. The FCRA is India’s umbrella law for regulating foreign donations to non-governmental organisations. The FCRA amendments did four consequential things: Section 7 of the FCRA was amended to prohibit “sub-transfers” – i.e., the transfer of funds from an FCRA-registered NGO to any other body or person (notably, this included transfers to other FCRA-registered bodies as well); Section 8 of the FCRA was amended to prohibit more than 20% of donated funds being used for administrative activities (the earlier cap was 50%); Sections 12 and 17A of the FCRA were amended to stipulate that FCRA funds could only be received in one branch of the State Bank of India at New Delhi; and Section 12 was also amended to stipulate that those applying for an FCRA registration or renewal may be required to produce their Aadhaar number as proof of identification.

Amnesty Official Barred from Leaving India (April 2022)

Indian immigration authorities have barred Aakar Patel, chair of Amnesty International in India, from travelling to the United States because of an order issued by the Central Bureau of Investigation (CBI) over a case against the rights body’s India office in 2019. Amnesty International said Indian authorities must immediately lift the arbitrary travel ban imposed on Patel. Last week, prominent Indian journalist and activist Rana Ayyub was also barred from boarding her flight to London where she was scheduled to address an event on the “targeting of journalists in the world’s largest democracy.”

FCRA in 2022: How We Got Here, and What it Means (February 2022)

The Foreign Contribution Regulation Act (FCRA) is the law that controls the flow of foreign funding to nonprofits in India. It decides who can provide resources, whom the resources can go to, and how these resources can be used. The reason the Act has been in the news lately is that on January 1, 2022, the government revoked the FCRA license of almost 6,000 nonprofits, including prominent entities like Mother Teresa’s Missionaries of Charity, Oxfam India, Delhi University, IIT Delhi, and Jamia Millia University. This was followed by a huge furor in the media, strong responses from leading politicians, and international attention. Possibly as a consequence, some of these licenses were restored.

Hyderabad ‘on the Brink of Becoming a Total Surveillance City’ (November 2021)

Extensive surveillance of Hyderabad in India is putting human rights at risk, Amnesty International said in an update to the ongoing Ban The Scan campaign to ban intrusive facial recognition technology. The city in Telangana state – one of the most surveilled cities in the world – has begun construction of an ominous ‘Command and Control Centre’ (CCC), intended to connect the state’s vast facial recognition-capable CCTV infrastructure in real time. In addition, a study by the Internet Freedom Foundation found that Telangana state has the highest number of facial recognition technology (FRT) projects in India.

Madhya Pradesh Plans Law to Recover Damages from Protesters (November 2021)

The Madhya Pradesh government is set to introduce a bill that will allow the administration to recover the cost of damages caused to public and private property by an individual or a group during protests. Claim tribunals will be instituted across the state to settle the claims and recover the losses incurred. After Uttar Pradesh and Haryana, Madhya Pradesh will be the third BJP-ruled state to enact such a law.

‘Getting funds not NGOs’ fundamental right’ (November 2021)

The government informed the Supreme Court that no NGO had a fundamental right to receive funds from abroad and argued that the provisions of the Foreign Contribution Regulation Act (FCRA) were amended to stop NGOs from making chain-transfers of foreign funds. Several NGOs allege that the new provisions would stifle their funds and impede their social work.

NSA Ajit Doval says civil society is ‘new frontier of war’ (November 2021)

Veteran security officials and rights defenders have chided national security adviser Ajit Doval for saying civil society is the “new frontier of war”, arguing this amounts to a warning to dissenters and reflects the Narendra Modi government’s tendency to consider all criticism as enemy action. “The new frontier of war, what you call the fourth-generation warfare, is civil society... that can be... manipulated to hurt the interest of a nation,” Doval said.

Sebi Approves Framework for Gold, Social Stock Exchanges in Board Meeting (September 2021)

The board of Securities and Exchange Board of India (Sebi) approved frameworks for gold and social stock exchanges. “The instrument representing gold will be called ‘Electronic Gold Receipt’ (EGR) and will be notified as ‘securities’ under Securities Contracts (Regulation) Act, 1956,” the market regulator said. The EGRs will have trading, clearing and settlement features akin to any other securities and any recognized stock exchange can launch trading in EGRs.

Modi Government’s Auditors Question NGOs about Muslim Employees and Beneficiaries (July 2021)

Hundreds of Indian NGOs are in the midst of unprecedented audits by the government, triggering fears that Prime Minister Narendra Modi’s government will eventually use its audit findings in actions or reprisals against specific organizations. At least since January, government auditors have been paying visits to NGO offices, staying 10-14 days on each occasion to comb through financial records. In several cases, the visiting auditors also asked pointed questions about Muslim employees and beneficiaries, and about the political allegiances of NGO staff.

Bar Council Amends Rules to Restrict Lawyers’ Speech (June 2021)

Bar Council of India (BCI) has amended its Rules to make any statement by a lawyer which is indecent or derogatory, defamatory, motivated, malicious or mischievous against any court, judge, State Bar Council or the BCI a ground for suspension or cancellation of licence to practice law. Further, criticizing or attacking any decision of any State Bar Council or BCI in the public domain will also amount to “misconduct,” which could lead to disqualification or suspension. The new amendment was notified in the gazette on June 25.

Police visit Twitter after it labels Modi’s party’s tweet as “manipulated media” (May 2021)

Twitter’s decision to label a tweet from a leading member of India’s governing party as “manipulated media” could make things even harder for the company. Police visited Twitter’s offices to order the social media company to cooperate with an investigation into a tweet posted by a member of the Bharatiya Janata Party (BJP). The tweet was posted by BJP spokesperson Sambit Patra.

WhatsApp sues Indian government over new privacy rules (May 2021)

WhatsApp has filed a lawsuit in Delhi against the Indian government seeking to block regulations coming into force that experts say would compel Facebook’s messaging app to break privacy protections.

How FCRA inhibits ‘giving’ to India? (May 2021)

Today hundreds and thousands of overseas individuals and institutions want to provide assistance to India through accredited NGOs with a known track record of service but cannot due to absolutely dis-enabling provisions of the Foreign Contributions Regulation Act (FCRA) as Amended in September 2020. To begin with all NGOs registered under FCRA can receive foreign contributions only if they have managed to open a FCRA designated bank account with State Bank of India, New Delhi Main Branch (SBI NDMB). What’s worse, right now even those who have successfully managed to open a bank account with SBI NDMB are not authorized to operate this bank account till the Ministry of Home Affairs gives its official approval.

FCRA rules affect COVID aid to hospitals and NGOs (May 2021)

Indian entities, including hospitals and charitable trusts, hoping to receive COVID-19 relief material from overseas individual donors or donor agencies, could be in trouble, unless they are registered under the Foreign Contribution Regulation Act (FCRA) with a stated objective involving provision of medical care. The prospect of facing prosecution under the FCRA Act’s strict provisions is jeopardizing some large donors’ plans to buy equipment like oxygen plants and concentrators for Indian hospitals and smaller charities.

Delhi High Court issues notice in NGO’s plea seeking 6-month extension for opening FCRA account with SBI (May 2021)

The Delhi High Court has issued notice following a plea by NGO Christian Educational Society to obtain a 6-month extension to open an FCRA account with the State Bank of India, New Delhi. Despite applying to open an SBI account in advance of the deadline, CEA’s application is still pending. As a result it has had to severely restrict its activities and refuse foreign contributions for COVID-relief. The government will now be required to respond to the Court on the matter.

NGOs request home ministry to waive new FCRA provisions for at least six months due to COVID crisis (April 2021)

The amended provisions of the Foreign Currency Regulation Act (FCRA) may be temporarily waived for NGOs following the COVID-19 public health emergency. NGOs had requested the home ministry for such a waiver from new FCRA laws suspending their provisions for at least six months. The home ministry is responsible for granting and renewing FCRA licences, and the waiver may be made after May 31, 2021, when NGOs apply for licence renewal.

Niti group works on new policy to regulate civil society groups (March 2021)

NITI Aayog group is working on a national policy to regulate civil society organisations following directions from the Prime Minister’s Office. Constituted in September last year, the Working Group for Formulation of New National Policy for Voluntary Sector, chaired by Niti Aayog Vice-Chairman Rajiv Kumar, has begun receiving recommendations, including those from the Central Economic Intelligence Bureau under the Finance Ministry’s Department of Revenue, officials said.

India tightens regulatory grip on social media companies (February 2021)

India has announced new rules to regulate content on social media, making Facebook, WhatsApp, Twitter and others more accountable to legal requests for the swift removal of posts and the sharing of information on the origins of messages. The rules come after Twitter recently ignored government orders to drop content related to the farmers’ protests.

Government withdraws order on online science meetings (February 2021)

After a backlash from scientists, the government has withdrawn a controversial order that required scientists and researchers participating in online international scientific seminars and conferences to get prior clearance from the Ministry of External Affairs (MEA). The restrictions, according to scientists, were too broad-based and vague and would have made it impossible for many scientists to participate in online conferences without contravening the law.

Universities Need Government Approval for Online International Events on India’s ‘Internal Matters’ (January 2021)

In a new restriction on academic freedom at the country’s publicly-funded universities, professors and administrators will now have to get prior approval from the ministry of external affairs (MEA)

if they want to hold online international conferences or seminars that are centred around issues relating to the security of the Indian state or which are “clearly related to India’s internal matters.” The latter phrase is so broad as to include virtually every topic of interest to academics.

Indian city plans facial recognition to spot ‘women in distress’ (January 2021)

A plan to monitor women’s expressions with facial recognition technology to prevent street harassment in a north Indian city will lead to intrusive policing, digital rights experts have warned. In Lucknow, the capital of India’s most populous Uttar Pradesh state, police have identified some 200 harassment hotspots that women visit often and where most complaints are reported, said police commissioner DK Thakur. But technology analysts and privacy experts say the benefits are not clear and could breach people’s privacy or lead to greater surveillance.

COVID-19: Manipur Government Seeks Help From NGOs (April 2020)

As part of its COVID-19 containment process, the Manipur government has invited non-governmental organisations (NGOs) to assist it in its fight against the deadly virus in the state. Acknowledging the important role played by civil societies, NGOs and like-minded individuals during the lockdown for their humanitarian actions, the government also urged them to distribute relief items when lockdown is relaxed and to purchase essential commodities and follow proper social distancing.

Central Government Cannot Brand an Organization as ‘Political’ for Aiding a Public Cause (March 2020)

The central government cannot brand an organization ‘political’ and deprive it of its right to receive foreign funds for using “legitimate forms of dissent,” the Supreme Court held. But the foreign funding pipeline could be cut if an organization took recourse to forms of protest to score a political goal, the court said. The verdict came on a petition filed by the Indian Social Action Forum challenging certain provisions of the Foreign Contribution Regulation Act (FCRA), 2010 and the Foreign Contribution (Regulation) Rules, 2011.

Finance Bill 2020 – Potential Death Knell for Charitable Giving (January 2020)

NGOs in India carry out their welfare and development and work mainly with the aid of charitable contributions from individuals and funding from corporate houses. Such contributions are tax deductible for the donor, and thus donations and grants to charitable trusts and institutions having an 80G certificate is an added incentive provided to the donor, be it an individual or a company. However, under the Finance Bill 2020 and the Taxation Law Amendment Act 2019, tax deductions could now be forfeited. A new income tax regime has been proposed which would tax individuals and HUFs at a reduced rate, provided they forego exemptions and deductions that are otherwise allowable under the Act.

India Likely to Force Facebook, WhatsApp to Identify Originators of Messages (January 2020)

New Delhi is inching closer to recommending regulations that would require social media companies and instant messaging app providers to help law enforcement agencies identify users who have posted content — or sent messages — it deems questionable. The suggested change, the conditions of which may be altered before it is finalized, currently says that law enforcement agencies will have to produce a court order before exercising such requests, sources who have been briefed on the matter said.

The Laws Being Used to Suspend Internet, and What SC Laid Down (January 2020)

India’s Supreme Court has given the government a week to review its suspension of internet services in Indian-administered Kashmir. The region has not had access to the internet for more than 150 days, India’s longest such shutdown. The Court’s ruling found that the indefinite suspension of internet services is “impermissible” and such restrictions can “be temporary only.”

Draconian New Rules To Fix Rule-breaking Tata Trusts Will Hit Small NGOs (January 2020)

Changes to the forthcoming budget could enable tax authorities to seize trustees’ personal assets if there is a breach of objectives governing registered charitable trusts, and hold trustees personally liable in the case of an alleged violation.

Attacks on protesters at JNU Lead to Demonstrations in Support of Students (January 2020)

College campuses across the country and overseas saw students and teachers turning out in support of those who were attacked in Jawaharlal Nehru University (JNU). Candlelight vigils, marches and sit-ins marked the day. Demonstrations were also reported to have been held at Oxford and Columbia universities. The wave of protests began soon after videos and photos of the attack began circulating on social media and being shown on television.

Personal Data Protection Bill Weak on Protections/privacy (December 2019)

Commentators critique the proposed Personal Data Protection Bill, 2019, for its overemphasis on national security and deference to state power, at the expense of citizens' privacy and data protection.

Amnesty India Offices In Delhi, Bengaluru Raided By CBI (November 2019)

Human rights group Amnesty International India's offices in Bangalore and Delhi have been raided by India's Central Bureau of Investigation (CBI) over alleged violations of rules involving foreign funding, including the Foreign Contribution (Regulation) Act (FCRA). Amnesty has stated that it is being targeted for speaking out against human rights violations in the country.

Lok Sabha Passes Bill Amending RTI Act amidst Strong Objection (July 2019)

The Lok Sabha passed the Right to Information (Amendment) Bill, 2019 three days after it was introduced. It seeks to amend the landmark transparency law and states that the functions being carried out by the Election Commission of India and the Central and State Information Commissions are totally different.

What is the National Investigation Agency Bill? (July 2019)

The National Investigation Agency (Amendment) Bill 2019 was passed in the Lok Sabha on July 15. Home Minister Amit Shah during the debate on the Bill in the Lower House had said that "terrorism has no religion, no caste and no gender". The debate had attained political hues, with the opposition stating that the passing of the Bill would mean that the country would turn into a police state.

14 Aligarh Muslim University students booked for sedition (February 2019)

Fourteen students of Aligarh Muslim University in Uttar Pradesh were charged with sedition after clashes following a confrontation with journalists from news channel Republic TV. The police filed a First Information Report against the students based on a complaint by Bharatiya Janata Party Yuva Morcha district leader Mukesh Lodhi.

Amnesty, Greenpeace accuse Indian government of impeding work (February 2019)

International aid and rights groups with deep roots in India say they are struggling to operate under Prime Minister Narendra Modi, whose Hindu nationalist Bharatiya Janata Party (BJP) has elevated the role of sympathetic homegrown social organisations while cracking down on foreign charities. Greenpeace India, which has repeatedly pushed the government to address hazardous air quality in cities across India, said this month that it was forced to close two regional offices and sharply reduce its staff after its Bengaluru offices were raided and its bank accounts were frozen.

'Activists in Shackles': Indians Denounce Arrests as Crackdown on Dissent (September 2018)

Since Mr. Modi and his Hindu nationalist Bharatiya Janata Party ascended to power in 2014, a wave of nationalism driven by hard-line Hindu groups has spread, and several prominent critics of the party and the government have been killed. The spark for the activists' arrests can be traced to New Year's Day, when thousands of low-caste Dalits, or "untouchables," gathered at a monument in Bhima-Koregaon, a village near the city of Pune, to commemorate the victory 200 years ago of a British-led force against high-caste Hindus.

NGOs, trusts asked to remove 'human rights' or 'corruption' from their registered names (July 2018)

Maharashtra State Charity Commissioner Shivkumar Dige has issued an order directing around 400 non-government organisations (NGOs) and trusts registered in the state to remove the words

‘corruption’ and ‘human rights’ from their names or risk suspension under the Maharashtra Public Trusts Act 1950.

Finance Act Amended to Clarify Standard Deduction for Pensioners (April 2018)

In relation to the changes that were proposed in the Budget, the Finance Act, 2018 has issued a clarification regarding applicability of standard deduction to pension received from a former employer. The media statement released by the Income Tax Department states, “Clarified Section 16 of Income-tax Act, 1961 to provide a deduction of Rs 40,000 or the amount of salary, whichever is less, to the salaried class for computing taxable income .”

How to Choose the Right Income Tax Return Form? (April 2018)

The new income tax return (ITR) forms have been notified and you might have already got the Form 16 from your employer. But before you sit down to file income tax return (ITR) do you know what is the most common mistake while filing ITR? It happens at the first step while selecting the ITR form. The confusion arises from the fact that there are seven ITR forms depending on what kind of income you have. It is important to select the correct ITR form as the wrong selection can get your ITR form rejected by the Income Tax Department.

Modi govt representative meets Anna Hazare and assures him of considering his demands (March 2018)

Three days after Anna Hazare began his second indefinite hunger strike in New Delhi, the central government sent a representative to talk him and look into his demands. Hazare has been on strike in Delhi with three main demands: the appointment of a Lokpal, better policies for India’s farmers; and electoral reforms. But the response to his campaign has been indifferent, with even opposition party members not meeting Hazare during the strike. “This time the opposition parties, especially Congress and AAP, have not made any attempt to meet Anna so far,” said Shyam Pathade, secretary of Hazare’s NGO Bhrashtachar Virodhi Jan Andolan Nyas.

Maharashtra charity commissioner de-registers 1 lakh trusts (February 2018)

Nearly 1 lakh defunct charitable trusts in the state have been de-registered by the state charity commissioner’s office in the past five months. Around 3 lakh trusts, mostly from Pune and Mumbai, were listed to be de-registered in the state for non-performance in August.

What is Aadhaar Enrolment ID or Number for Income Tax Return? (February 2018)

We already know that Aadhaar issued by the Unique Identification Authority of India (UIDAI) to a resident of India, is a unique 12 digit identity number based on the biometric data obtained from an individual. This identity card is now essential for carrying out multiple tasks in practically every government related service including filing your ITR (income tax return). Whether you have your Aadhaar card or not, the unique identification number generated on applying for Aadhaar or called the Aadhaar Enrolment ID is mandatory to quote in the ITR form.

Protesters detained near Jantar Mantar (November 2017)

Police detained four protesters and will initiate legal action against a group of right-wing activists after they marched to Kerala Bhawan on Jantar Mantar Road without prior permission. The protesters had reached the barricade that bans them from entering the zone. The incident happened in the afternoon when a group led by students reached the Kerala Bhawan against the alleged killings of RSS workers in Kerala. Police said around 100 of them were stopped at the barricade, but they continued to raise slogans against the government.

“Right to Privacy is a fundamental right, it is intrinsic to right to life” (September 2017)

The Supreme Court (SC) ruled that privacy is a fundamental right because it is intrinsic to the right to life. This judgement is a blow to Aadhaar as the Centre now has to convince SC that forcing citizens to give a sample of their fingerprints and their iris scan does not violate privacy. The question about the constitutional status of right to privacy arose in a bunch of petitions led by retired HC judge KS Puttaswamy, which in 2012 challenged the UPA government’s decision to introduce the biometric data-enabled Aadhaar ID for citizens.

Panel calls for ‘light regulation’ of NGOs (July 2017)

A high-power committee appointed by the central government on the orders of the Supreme Court has recommended several steps to ensure the “light regulation” of non-governmental organisations (NGOs) so as to reduce their harassment. A shortened version of the recommendation is now before the Supreme Court, although the government is yet to accept the full set. The committee recommended that “registration procedures be modernised so as to facilitate the seamless operation of the applicable provisions of the Income Tax Act and Foreign Contribution Regulation Act with respect to NGOs without the need for cumbersome and intrusive processes.” On the Supreme Court’s recommendation, the committee has drawn up a framework of guidelines for the accreditation of NGOs, audits of their accounts, and procedures to initiate action for recovering grants in the case of misappropriation.

Maharashtra cabinet approves stringent rules to regulate transactions of unregistered NGOs (April 2017)

The state cabinet approved an amendment of the Maharashtra Public Trust Act, 1950 to make it compulsory for unregistered organizations or even individuals who seek donations to take permission from the assistant or deputy charity commissioner, and all the donations and other transactions will be audited by the charity commissioner.

Renewal of FCRA Licence Denied to 1,300 NGOs in 2016 (March 2017)

More than 1,300 NGOs were refused renewal of licence to receive foreign funding last year over violations of the Foreign Contributions Regulation Act 2010 and the rules made under it. Minister Kiren Rijiju in a written reply to a question in the Rajya Sabha said that licences of over 14,000 NGOs had been cancelled to date for violations of FCRA, 2010, as well as for violations of rules under the Act. NGOs were told to apply for renewal of their FCRA licence by October 31, 2016. However, when around 11,319 NGOs did not file the renewal application within the deadline, their registrations were deemed expired with effect from November 1, 2016. In addition, over 1,300 NGOs were found unfit for renewal of licence on grounds of having violated FCRA 2010 and the rules framed under the Act.

Major Christian Charity Is Closing India Operations Amid a Crackdown (February 2017)

India’s crackdown on foreign aid will claim its most prominent casualty this month, as a Colorado-based Christian charity that is one of India’s biggest donors closes its operations here after 48 years, informing tens of thousands of children that they will no longer receive meals, medical care or tuition payments. The shutdown of the charity, Compassion International, on suspicion of engaging in religious conversion, comes as India, a rising economic power with a swelling spirit of nationalism, curtails the flow of foreign money to activities it deems “detrimental to the national interest.”

Narendra Modi’s Crackdown on Civil Society in India (January 2017)

Among their common traits, illiberal strongmen share a virulent mistrust of civil society. Here in India, Prime Minister Narendra Modi’s government is going after their money. Mr. Modi’s government has also been openly hostile to civil society groups. It repeatedly denounces human rights and environmental activism as “anti-national” — a phrase that carries connotations of treason.

Foreign Funding Law Used to Harass 25 Groups (November 2016)

The Indian central government’s refusal to renew foreign funding licenses of 25 nongovernmental organizations (NGOs) without valid reasons violates their rights to freedom of expression and association, Amnesty International India and Human Rights Watch said. On November 5, 2016, media reports quoted unnamed officials from the Ministry of Home Affairs as saying that the NGOs were denied permission under the Foreign Contribution Regulation Act (FCRA), which regulates foreign funding for NGOs, because their activities are not in the “national interest”. While the government has not published the list of affected groups, it appears to include several human rights organizations.

Sedition case filed against Amnesty International India (August 2016)

The Bengaluru Police have filed a criminal case against Amnesty International India for organizing

an event as part of a campaign to seek justice for human rights violations in Jammu and Kashmir. The event involved discussions with families from Kashmir, who were featured in a 2015 report, who had travelled to Bengaluru to narrate their personal stories of grief and loss. The Newsminute has reported that a First Information Report was filed on the basis of a complaint filed by the Akhil Bharatiya Vidyarthi Parishad (ABVP), a student organization affiliated with the Rashtriya Swayamsevak Sangh (RSS), which is linked to the Bharatiya Janata Party.

FCRA violations: Government cancels Teesta Setalvad NGO's registration (June 2016)

The Home Ministry cancelled the registration of activist Teesta Setalvad's Sabrang Trust under the Foreign Contribution Regulation Act, 2010 (FCRA) for alleged violation of its provisions, thus barring the organisation from receiving any foreign funds. The ministry alleged that Sabrang Trust used foreign contributions for purposes that are not authorised under FCRA, mixed foreign and domestic contribution, and utilised foreign contribution for personal gain.

UN rights experts ask India to repeal FCRA (June 2016)

Three UN human rights experts have called on India to repeal a law restricting NGOs' access to crucial foreign funding, saying its provisions are increasingly being used to "silence" groups that are critical of government's policies.

The KPMG Survey of Corporate Responsibility Reporting 2015 (November 2015)

The results of KPMG's Survey of Corporate Responsibility Reporting 2015 on corporate citizenship reveal that most companies produce annual reports in compliance with the Companies Act, 2013 and the CSR Rules, and many in the prescribed format, which suggests a focused approach for compliance with CSR requirements.

Government Drops Two Contentious Clauses on NGOs (September 2015)

Wary of being dubbed "anti-civil society", the Narendra Modi government has decided to drop a contentious clause in the Foreign Contribution Regulation Rules (FCRR), 2015, which would have made it mandatory for NGOs receiving foreign contributions to declare their social media accounts such as their Twitter handle and Facebook pages with the government. It will be made optional instead. The government has also dropped the clause which required NGOs to post their returns and activities on a weekly basis. It will now be done quarterly.

Supreme Court strikes down Section 66A of IT Act (March 2015)

The Supreme Court declared Section 66A of Information Technology Act as unconstitutional and struck it down. This section had been widely misused by police in various states to arrest innocent persons for posting critical comments about social and political issues and political leaders on social networking sites. The court said such a law hit at the root of liberty and freedom of expression. The court, however, upheld the validity of section 69B and the 2011 guidelines for the implementation of the IT Act, which allow the government to block websites if their content has the potential to create communal disturbance, social disorder or affect India's relationship with other countries.

Civil society wants government to end campaign of intimidation against NGOs (November 2014)

Amid definite signs of unease within the government over the roles of NGOs and human rights activists who have been critical to its policies, civil society leaders from across the country joined the environmental group Greenpeace India in demanding the home ministry end its campaign of intimidation. Asking the government to "respect right to dissent" in a free and democratic society like India, the leaders emphasized that the roles of civil society should be seen positively. The home ministry had submitted an affidavit in the Delhi High Court against Greenpeace India on October 9 and told the High Court that Greenpeace India was working against national interest by often opposing government policy.

India's pioneering CSR law could have promise, but progress is slow (October 2014)

India became the first country to mandate corporate social responsibility (CSR) by law in an effort to share the cost of development with the many companies growing fat on its economic rise. The government first estimated CSR spending could top \$3.3 billion, exciting development actors who

saw a significant source of new funding. But more than seven months after the ambitious rules came into force, implementation is slow and officials are slashing spending estimates because companies don't expect to meet their targets in the first year.

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