Time to Repeal FCRA

The origins of the FCRA

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- The original **Foreign Contribution (Regulation) Act was enacted in 1976** by the Indira Gandhi-led government during the Emergency.
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- It prohibits electoral candidates, political parties, judges, MPs and even cartoonists from accepting foreign contributions.
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- As the inclusion of 'cartoonists' under its ambit suggests, the intent was to clamp down on political dissent.
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- The given for the law **was to curb foreign interference in domestic politics.**
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- The FCRA was aimed at preventing political parties from accepting contributions from foreign sources.
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What amendments are made to FCRA?

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- Both the Bharatiya Janata Party (BJP) and the Congress were pulled up by the Delhi High Court in 2014 for violating the FCRA by accepting contributions from the Indian subsidiaries of the London-based multinational, Vedanta.
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- It ordered the government and the Election Commission to take action against both the parties.
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- Instead, earlier this year, the government quietly introduced a clause in the Finance Bill that amended the relevant section of the FCRA, 2010, so that what was hitherto a **"foreign company" now became an Indian**

company.
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- This amendment was introduced with retrospective effect.
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- This amendment has also opened the doors for all political parties to accept funding from foreign companies, so long as it is channelled through an Indian subsidiary.
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Why FCRA is in news recently?

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- In early November, the Union Ministry of Home Affairs rejected the licence renewal applications, under the Foreign Contribution (Regulation) Act, 2010 (FCRA), of 25 non-governmental organisations (NGO).
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- That means these NGOs can no longer receive funds from foreign donors. Many of the affected organisations were rights-based advocacy groups, with some involved in human rights work.
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- The National Democratic Alliance (NDA) government has defended its action by claiming that these organisations had violated FCRA norms by engaging in activities detrimental to public interest.
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- Opposition parties have criticised the move by terming it “a decision motivated by the politics of vendetta, victimisation and an effort to bully them into silence”.
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- This mass cancellation of FCRA licences is not the first time that the legislation has been used thus. In 2015, the Home Ministry had cancelled the FCRA licences of 10,000 organisations.
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- Prominent international funding **agency Ford Foundation, the environmentalist group Greenpeace**, and human rights advocacy group Lawyers Collective have all been targets of FCRA-linked curbs on their activity, suggesting a larger pattern in the way the state has used this law.
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What are the differences between FCRA 1976 and 2010?

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- First, FCRA registration under the earlier law was permanent, but under the new one, it expired after **five years**, and had to be renewed afresh.
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- One may recall that earlier this year, 11,319 NGOs lost their FCRA licences without the government having to either examine their records or suspend their registrations individually — their licences simply expired as the deadline for renewal passed.
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- Second, the new law **put a restriction (50 per cent) on the proportion of foreign funds that could be used for administrative expenses,** thereby allowing the government to control how a civil society organisation (CSO) spends its money.
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- Third, the 1976 law was primarily aimed at political parties, the new law set the stage for shifting the focus to "organisations of a political nature".
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- The FCRA Rules, 2011, framed by the United Progressive Alliance government, has served the NDA well as a manual on how to target inconvenient NGOs, especially those working on governance accountability.
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- It helpfully enumerates the kind of organisation that could be targeted under the FCRA as "an organisation of a political nature".
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- Ex- trade unions, students' unions, workers' unions, youth forums, women's wing of a political party … which habitually engages itself in or employs common methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail roko' or 'jail bharo' in support of public causes".
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What United Nation says about FCRA,2010?

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- Last April, the **UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association undertook a legal analysis of the FCRA, 2010.**

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- He submitted a note to the Indian government which stated unambiguously that the FCRA provisions and rules “are not in conformity with international law, principles and standards”.
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- The UN Special Rapporteur’s argument was fairly straightforward.
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- **The right to freedom of association is incorporated under the International Covenant on Civil and Political Rights, to which India is a party.**
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- Access to resources, particularly foreign funding, is part of the right to freedom of association.
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- While this is not an absolute right and is subject to restrictions, those have to be precise, and defined in a way that “would enable a CSO to know in advance whether its activities could reasonably be construed to be in violation of the Act”.
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- The report says that restrictions in the name of **“public interest”** and **“economic interest”** as invoked under the FCRA rules fail the test of **“legitimate restrictions”**.
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- The terms are too vague and give the state excessive discretionary powers to apply the provision in an arbitrary manner.
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- Besides, given that the **right to freedom of association is part of the Universal Declaration of Human Rights (article 20)**, a violation of this right also constitutes a human rights violation.
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Does all this mean that the FCRA should be repealed? If yes, how then do we monitor the foreign funding of NGOs?

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- Of course, NGO funding needs to be regulated. One cannot deny that corrupt NGOs exist, or that unscrupulous NGOs that receive foreign funds may serve as conduits for money laundering.
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- In fact, a seven-member task force was set up way back in 2009 to create

a national-level self-regulatory agency, the National Accreditation Council of India (NACI),that would monitor and accredit CSOs.
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- It was to be an **independent, statutory body** along the lines of the Bar Council.
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- The task force submitted its report to the Planning Commission in September 2010. It was never heard of again.
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