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A lethal injection for a boil?

The anxiety the proposed amendment to the foreign contribution Bill has created is justified

The proposed amendment to the Foreign Contribution Regulation Act (FCRA) has created anxiety among civil-society organisations (CSO). The anxiety is not unfounded, and we need to take note of the overreach of the state apparatus. Before we get into the merits of the argument, let us understand what the amendment proposes. The amendment elaborates the mechanism to take over the assets of an entity that has lost permission to receive foreign contributions under the FCRA Act. The amendment chapter elaborates on the process of the assets vesting with the state.

While the insertion of the chapter in the Act has caused concern, the state always had the powers to vest the property of organisations that were denied permission to receive foreign donations. Like all boilerplate clauses, this clause, with the following text, was always present in the FCRA

15. (1) The foreign contribution and assets created out of the foreign contribution in the custody of every person whose certificate has been cancelled under section 14 shall vest in such authority as may be prescribed.

When the FCRA was amended in 2020, the clause was ominously present. Even as a CSO voluntarily indicated that it did not intend to receive further grants from international sources, the amendment said that the permission to surrender the certificate would be granted only after the assets created out of the past foreign contributions were vested with the designated authority. So, the current amendment only rubs much salt into a big wound that has festered in CSOs. The amendment

has introduced a full chapter to elaborate on this clause. It has been elaborated in such detail that there is a valid concern that the boilerplate clause has become a routine clause.

First, let us see if we need to have CSOs in the country and if they should receive international funding. The immediate image of CSOs that comes to our mind is that of the Akshaya Patra, providing midday meals to children, Mother Teresa's Missionaries of Charity, and the Mazdoor Kisan Shakti Sangathan (MKSS), which was instrumental in passing the laws on the right to employment and right to information. Such CSOs could be seen as an extension of the state because they work for the larger good of society. Welfare CSOs undertake welfare-redistribution activities of the state in a specialised and efficient manner while activist CSOs like the MKSS articulate the rights of the marginalised and become their voice.

The law enables registering charitable trusts, societies, and Section 8 companies. The income-tax authorities (after scrutiny) provide multiple types of exemption to these organisations, reinforcing their nature of welfare. The state is forgoing tax because these CSOs are perceived to be undertaking activities that the state ought to perform but is unable to, or does not have the bandwidth to perform.

Should they receive international funding? This is an intricate question because there could be agenda-driven donations, donations with political undertones and, of course, usual conspiracy theories. That is why we have the FCRA,

which does due diligence before an entity is authorised to receive funding. It has detailed stipulation on purposes, how funding could be used, and how it should be reported. So, when the state issues a certificate, it is assumed that due diligence has been done. From there on, we should assume that the regulation of the organisation and its activities vis-à-vis foreign funding happen through regular mechanisms of audit, and the supervision and filing of returns without creating an existential problem.

There are stipulations for violating rules, and natural justice demands that punishment should be proportionate to the transgression. A thorough scrutiny at the time of issuing the certificate and a regular filing of returns should suffice for the organisation to carry out its operations.

The current amendment is like applying a bulldozer, irrespective of the magnitude of the transgression. And, in most cases, the nature of the transgression is not even known. Cancelling the certificate usually has a prospective effect and the CSO whose FCRA certificate has been withdrawn is not prevented from continuing operations with local funding. In such a case, vesting assets built out of prior funding gives an unlimited retrospective effect to the current transgression. This is disproportionate and does not follow the principles of natural justice. If the transgression is serious, the state has the powers to shut the CSO down, after following due process. A boilerplate clause is always available for exceptions.

The FCRA was amended in 2020 to ensure that the trail of money was clearly established. All contributions initially come to one account in State Bank of India's Parliament Street (New Delhi) branch, and it is further transmitted through clearly earmarked accounts. There are restrictions on using the money for administrative purposes (the upper limit is 20 per cent); it cannot be sub-granted to another CSO; a separate set of accounts just for the foreign money has to be maintained and filed; and most of the money is to be spent on programmes or assets that make the "purpose" effective. In addition, every change in the board must be notified and approved by the Union home ministry. The clauses indicate that there are already adequate checks on the CSO. While vesting assets is understandable for serious transgression, a mere surrender or cancellation of a permission to receive foreign money, particularly when the entity could potentially continue its operations with Indian money, looks disproportionate.

Since we have robust laws to deal with transgression, this chapter or even the boilerplate clause is unnecessary. CSOs are institutions set up for general welfare. When they liquidate, their funds — by law — have to go to a similar CSO or to the state. Therefore, the state is the residual beneficial owner in the case of liquidation. If a CSO is a going concern, then the law should proportionately apply to the operations of the enterprise, without posing an existential threat to its day-to-day autonomy and regular operations. It is best that the Bill is withdrawn.

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