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# REGULATING FOREIGN FUNDS AND PROTECTING NATIONAL INTEREST: A COMPREHENSIVE CRITICAL STUDY OF THE PROPOSED 2026 AMENDMENT BILL

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**ABSTRACT**

*This research paper provides an exhaustive analytical and legal investigation into the Foreign Contribution (Regulation) Act (FCRA) framework in India. It traces the legislative trajectory from the original emergency-era enactment in 1976 to the comprehensive re-enactment in 2010, the restrictive amendments of 2020, and recent developments in 2026—distinguishing between the newly notified FCRA Rules, 2026 (notified June 22, 2026) and the pending Foreign Contribution (Regulation) Amendment Bill, 2026 (introduced in Lok Sabha on March 25, 2026). The paper re-examines historical compliance challenges, official reports on non-filing of annual returns (FC-4), and verified constitutional precedents including Noel Harper v. Union of India (2022), INSAF v. Union of India (2020), ADR v. Union of India (2014), and Rev. Stainislaus v. State of M.P. (1977). Furthermore, a devoted analytical chapter evaluates the 2026 Amendment Bill, focusing on the proposed Section 14B, Chapter IIIA, Section 12 timeline restrictions, Section 13 asset custody during suspension, and Section 43 prior government approval for*

*investigations. It critically assesses the statutory evolution of asset vesting from the skeletal framework of Section 15 to the detailed mechanisms of Designated Authorities and Administrators under the proposed 2026 Bill.*

## 1. INTRODUCTION AND HISTORICAL CONTEXT

The flow of foreign capital into domestic non-governmental organizations (NGOs), civil society entities, educational institutions, and statutory associations has long remained a subject of intense legal, political, and socio-economic discourse in sovereign nations. In developing democracies like India, foreign contribution serves a dual purpose: on one hand, it supports humanitarian efforts, rural development, educational advancements, and public health initiatives; on the other hand, unregulated foreign funding carries potential risks of foreign political interference, economic disruption, and non-compliance with domestic regulatory standards. The primary legislative mechanism governing foreign monetary and material transfers in India is the Foreign Contribution (Regulation) Act (FCRA).

The historical origin of FCRA traces back to the mid-1970s. During the Internal Emergency (1975–1977), concerns regarding covert foreign influence on Indian electoral processes, trade unions, media houses, and parliamentarians prompted legislative action. In response, Parliament enacted the original Foreign Contribution (Regulation) Act, 1976 (Act No. 49 of 1976). The 1976 Act aimed primarily at curbing foreign interference in domestic politics by barring political parties, candidates, judges, public servants, and journalists from receiving foreign hospitality or financial contributions without prior governmental clearance.

With the rapid growth of the non-profit sector and complex international banking channels in the post-liberalization era, Parliament enacted the Foreign Contribution (Regulation) Act, 2010 (Act No. 42 of 2010), repealing the 1976 statute. FCRA 2010 introduced structured compliance regimes, mandatory five-year registration renewals, caps on administrative expenses, and statutory powers for the Ministry of Home Affairs (MHA).

Subsequent legislative interventions—most notably the FCRA Amendment Act, 2020—further tightened operational parameters by prohibiting sub-granting between FCRA-registered entities, reducing administrative expenditure caps to 20% (from 50%), mandating FCRA bank accounts exclusively at the State Bank of India (SBI) Main Branch in New Delhi, and requiring identification credentials for key office-bearers. This paper presents a complete academic evaluation of this regulatory trajectory, including

recent developments in 2026: the notification of the FCRA Rules, 2026 on June 22, 2026, and the pending Foreign Contribution (Regulation) Amendment Bill, 2026 introduced in Lok Sabha on March 25, 2026.

## 2. CORE OBJECTIVES AND STATUTORY STRUCTURE OF FCRA

The fundamental objective of the FCRA statutory framework, as articulated in the Preamble of the 2010 Act, is twofold: (a) to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals, associations, or companies, and (b) to prohibit the acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to national interest, sovereign stability, and matters connected therewith or incidental thereto.

### 2.1 Key Statutory Definitions

Under Section 2(1)(h) of FCRA 2010, 'foreign contribution' is defined broadly as the donation, delivery, or transfer made by any foreign source of any article (excluding gifts for personal use up to a specified value), any currency (whether Indian or foreign), or any security as defined in the Securities Contracts (Regulation) Act, 1956. Interest accrued on foreign contribution funds deposited in banks or income generated from assets created out of foreign contribution also constitutes foreign contribution.

Section 2(1)(j) defines 'foreign source' comprehensively to include foreign governments, foreign agencies, international bodies (excluding UN agencies and specialized entities), foreign companies, multinational corporations, foreign trusts, foundations, and non-resident foreign citizens**.**

### 2.2 Total Prohibition on Specific Categories (Section 3)

Section 3(1) of the Act establishes an absolute statutory bar against receiving foreign contributions for specific classes of recipients due to their democratic sensitivity. These prohibited entities include election candidates, newspaper correspondents/editors/publishers, judges, government servants, members of any Legislature, political parties or office-bearers thereof, and organizations of a political nature specified under Section 5.

### 2.3 Statutory Pathways and Current Asset Framework

Entities having a definite cultural, economic, educational, religious, or social program can receive foreign contribution only through two statutory pathways under Section 11: (1) FCRA Certificate of Registration granted under Section 12 (valid for five years, renewable under Section 16), or (2) Prior Permission granted for a specific project and donor.

Under Section 15 of the 2010 Act, existing law already establishes that upon cancellation of an FCRA certificate, the unutilized foreign contribution and assets created out of foreign funds vest in the authority prescribed by the Central Government. The 2026 Amendment Bill builds upon this existing foundation by proposing a more detailed operational structure.

## 3. EXAMINATION OF HISTORICAL COMPLIANCE MATTERS AND GOVERNMENT INVESTIGATIONS

The regulatory evolution of FCRA has been accompanied by official inquiries, Parliamentary statements, and administrative actions addressing financial reporting, fund utilization, and non-governmental sector compliance.

### 3.1 Inquiries Regarding Fund Diversion and Project Agitations

A prominent official investigation concerning foreign contribution misuse occurred during the anti-nuclear agitations around the Kudankulam Nuclear Power Plant in Tamil Nadu (2011–2012). The Ministry of Home Affairs conducted inquiries into several FCRA-registered non-governmental organizations operating in the region. Government reports and statements in Parliament indicated that investigations were initiated into allegations that certain foreign contributions intended for charitable, social, and educational purposes had been diverted to support agitations and protests against the strategic energy project. Following these regulatory inquiries and law enforcement referrals, administrative action, including cancellation of registration under Section 14, was initiated against defaulting entities.

### 3.2 Shell Organizations, Sub-Granting, and Administrative Expenditure

Prior to the 2020 Legislative Amendments, Section 7 of FCRA allowed registered entities to transfer foreign contributions to other FCRA-registered entities. Regulatory reviews revealed that multi-tiered sub-granting weakened audit trails and complicated monitoring of ultimate beneficial utilization. This led Parliament to amend Section 7 in 2020, instituting a complete prohibition on sub-granting foreign funds between entities.

Similarly, while FCRA 2010 originally permitted up to 50% of foreign contributions to be utilized for administrative expenses under Section 8, Parliament subsequently reduced this cap to 20% under the 2020 Amendments to ensure that the primary volume of foreign funds directly benefits programmatic charitable objectives.

### 3.3 Financial Reporting Default Statistics (Official Parliamentary Data)

A critical aspect of FCRA administration involves compliance with Section 18, which mandates the annual filing of audited financial returns (Form FC-4). Official data submitted by the Ministry of Home Affairs to Parliament in 2017 clarified the scale of reporting defaults. The Government reported that more than 18,000 NGOs had failed to file their statutory annual returns for the financial years 2010–11 through 2014–15. Following a dedicated statutory compliance window offered by the government, approximately 8,000 entities regularized their filings, while approximately 6,000 entities remained in default and were subsequently issued show-cause notices for cancellation under Section 14.

## 4. STATUTORY PROVISIONS AND CONSTITUTIONAL PRECEDENTS

A rigorous academic evaluation of FCRA requires examining verified statutory provisions alongside seminal constitutional decisions of the Supreme Court of India and High Courts.

### 4.1 Core Statutory Framework

• **Section 3:** Absolute bar on foreign contribution to political parties, candidates, judges, public servants, and media representatives.

• **Section 7:** Complete prohibition on sub-granting or transferring foreign contribution to any other entity.

• **Section 8:** Statutory cap restricting administrative expenses to a maximum of 20% of foreign contributions received in a fiscal year.

• **Section 11 & 12:** Mandatory requirement of Registration or Prior Permission prior to receipt of foreign funds.

• **Section 13:** Power of the Central Government to suspend registration pending inquiry for up to 180 days (extendable by an additional 180 days).

• **Section 14:** Grounds and procedures for cancellation of FCRA registration.

• **Section 15:** Existing statutory provision governing the vesting of foreign contribution and assets created therefrom upon certificate cancellation.

• **Section 17:** Requirement to maintain primary FCRA Account exclusively in designated SBI Main Branch, New Delhi.

• **Section 18:** Obligation to submit mandatory annual returns (Form FC-4) within nine months of the close of the financial year.

### 4.2 Precedents and Constitutional Principles

**1. Noel Harper & Ors. v. Union of India (2022 SCC OnLine SC 434):**

In this milestone decision, a three-judge Bench of the Supreme Court upheld the constitutional validity of the FCRA Amendment Act, 2020. The Court established that the receipt of foreign contributions is not a fundamental right under Article 19(1)(c) or Article 19(1)(g) of the Constitution. The Bench observed that Parliament possesses the sovereign authority to regulate foreign inflows to safeguard national sovereignty, democratic integrity, and public interest under Article 19(4).

**2. Indian Social Action Forum (INSAF) v. Union of India ((2020) 7 SCC 249):**

The Supreme Court examined Section 5(1) of FCRA 2010 regarding executive powers to classify associations as 'organizations of a political nature'. The Court held that political party involvement or direct electoral support is necessary to classify an entity as political, thereby protecting non-aligned voluntary civic advocacy from broad executive classification.

**3. Association for Democratic Reforms (ADR) & Anr. v. Union of India (2014 SCC OnLine Del 1172):**

The Division Bench of the Delhi High Court examined foreign-source contributions under Section 3 of FCRA in the context of political party funding. The High Court held major political entities accountable for accepting donations from Indian companies that were corporate subsidiaries of foreign entities under Section 2(1)(j), highlighting strict judicial enforcement of statutory bans on foreign political funding.

**4. Rev. Stainislaus v. State of Madhya Pradesh ((1977) 1 SCC 677):**

While primarily a Constitution Bench ruling on Article 25 of the Constitution regarding freedom of conscience, this judgment serves as an important constitutional backdrop relevant to state regulation of religious activities. The Supreme Court held that the right to 'propagate' religion does not include the right to convert another person through inducement, force, or financial coercion.

## 5. SPECIAL FOCUS: THE FOREIGN CONTRIBUTION (REGULATION) AMENDMENT BILL, 2026

On March 25, 2026, the Foreign Contribution (Regulation) Amendment Bill, 2026 was introduced in the Lok Sabha. It is essential to emphasize the legislative status: as of 2026, this measure remains a pending Bill under parliamentary consideration and has not yet been enacted into law. Present compliance and

enforcement continue to be governed by FCRA 2010 (as amended in 2020) and the FCRA Rules, 2026 (notified on June 22, 2026).

**5.1 Key Proposed Modifications in the 2026 Bill**

**1. Continuity and Refinement of Asset Vesting (Section 14B & Chapter IIIA):** The 2026 Bill does not create the concept of vesting foreign-funded assets for the first time; rather, it seeks to replace the relatively skeletal Section 15 framework with a comprehensive statutory regime under proposed Section 14B and Chapter IIIA. The proposed framework governs certificate 'cessation'—encompassing cancellation (Section 14), voluntary surrender (Section 14A), and non-renewal/refusal of renewal (Section 16).

**2. Institutional Mechanism: Designated Authority and Administrator:** Under the proposed Chapter IIIA, the Bill outlines mechanisms for provisional and permanent vesting of unutilized foreign contributions and assets acquired out of foreign funds. It provides for the appointment of a 'Designated Authority' and an 'Administrator' who will take custody, supervise, manage, and, where necessary in the public interest, dispose of such assets, ensuring public utility character is preserved.

**3. Timeline Restrictions under Prior Permission (Section 12):** The 2026 Bill proposes specific timelines for the receipt and utilization of foreign contributions granted under the Prior Permission pathway, requiring entities to utilize funds within prescribed statutory timeframes for approved purposes.

**4. Asset Custody During Suspension (Section 13):** The Bill proposes enhanced interim safeguards during the suspension of an FCRA certificate under Section 13, including clear management rules for assets and foreign contribution bank accounts during the pendency of inquiries.

**5. Rationalization of Penalties and Key Functionaries Accountability:** The proposed amendments modify Section 35 to rationalize penalty structures while expanding accountability standards to include 'Key Functionaries' who exercise actual operational, administrative, or financial control over non-profit operations.

**5.2 Safeguard Mechanism: Prior Central Government Approval (Section 43)**

The 2026 Bill proposes an important procedural modification to Section 43, requiring prior approval from the Central Government before an investigating officer or law enforcement agency can initiate a formal investigation or register an offense under FCRA. This serves as a statutory filter against unauthorized or localized regulatory harassment.

### 5.3 Legal and Practical Comparative Matrix

| Dimension / Provision | Existing Framework (FCRA 2010 / 2020) | Proposed Framework (2026 Bill) |
|---|---|---|
| Asset Vesting Mechanism | Skeletal framework under Section 15 upon cancellation. | Detailed regime (Section 14B & Chapter IIIA) for provisional/permanent vesting, Designated Authority, and Administrator. |
| Prior Permission Timelines | General project-based authorization under Section 12. | Prescribed statutory timelines for receipt and utilization under Section 12. |
| Investigative Approval | Standard law enforcement initiation under Section 43. | Mandatory Prior Approval of Central Government required under Section 43 before investigation. |

## 6. CRITICAL EVALUATION AND POLICY RECOMMENDATIONS

The ongoing evolution of India's FCRA jurisprudence reflects the constitutional imperative to balance state security with civic participation. Freedom of association under Article 19(1)(c) encompasses the right of civil society organizations to seek funding for lawful pursuits, subject to reasonable restrictions under Article 19(4) on grounds of sovereignty, public order, and national security.

To foster administrative clarity and statutory efficiency, the following policy measures are recommended: 1. Streamlined Administrative Guidelines: Formulating transparent rules for asset custody and management under proposed Chapter IIIA. 2. Time-Bound Inquiry Procedures: Establishing fixed statutory windows for completing suspensions under Section 13. 3. Single-Window Digital Portal: Enhancing MHA digital compliance infrastructure to streamline Form FC-4 annual returns and renewal applications under Section 16.

## 7. CONCLUSION

The Foreign Contribution (Regulation) Act framework represents India's continuing legislative effort to regulate foreign financial assistance while preserving national sovereignty, public accountability, and legitimate civil-society activity. The evolution from the Foreign Contribution (Regulation) Act, 1976 to the Foreign Contribution (Regulation) Act, 2010, followed by the significant amendments introduced in 2020, demonstrates that the regulatory framework has progressively responded to emerging concerns relating to financial transparency, diversion of foreign contributions, regulatory compliance, administrative expenditure, and the potential misuse of foreign funding in activities having implications for public order, democratic institutions, and national security.

The regulatory philosophy underlying the FCRA is not merely to restrict the receipt of foreign contributions but to ensure that such contributions are received, accounted for, and utilised for lawful and declared purposes. The requirements relating to registration and prior permission, designated bank accounts, maintenance of accounts and records, annual reporting, restrictions on transfer of foreign contribution, and limitations on administrative expenditure collectively establish a system of financial traceability and institutional accountability. At the same time, the statutory framework must recognise the legitimate and constitutionally protected role of voluntary organisations in areas such as education, healthcare, social welfare, humanitarian assistance, research, environmental protection, and community development.

The judicial approach has also contributed significantly to defining the constitutional boundaries of FCRA regulation. The Supreme Court's decision in Noel Harper & Ors. v. Union of India reaffirmed that there is no fundamental right to receive foreign contributions and recognised the State's legitimate interest in regulating foreign funding in the interests of national sovereignty and public order. However, the exercise of regulatory power must remain consistent with constitutional principles, including non-arbitrariness, procedural fairness, proportionality, and the rule of law. Consequently, national security cannot become an unrestricted justification for administrative intervention, and regulatory mechanisms must be supported by clear statutory standards and appropriate procedural safeguards.

Against this background, the Foreign Contribution (Regulation) Amendment Bill, 2026 represents an important proposed structural development in the FCRA framework. Its proposed provisions concerning cessation of FCRA certificates, provisional and permanent vesting of foreign-funded assets, the role of the Designated Authority and Administrator, accountability of key functionaries, prescribed timelines for

utilisation of foreign contributions, and prior Central Government approval for investigation indicate an attempt to address practical and enforcement gaps that have emerged under the existing framework. In particular, the proposed statutory mechanism for dealing with assets after cessation of an FCRA certificate seeks to provide greater clarity and institutional structure to an area that has significant implications for both regulatory enforcement and property rights.

Nevertheless, stronger regulatory powers must be accompanied by equally strong safeguards against arbitrary or disproportionate action. The proposed vesting and management of assets should operate through transparent procedures, reasoned orders, clearly defined statutory criteria, opportunities for representation, and effective judicial review. Similarly, expanded accountability of key functionaries should distinguish between genuine decision-makers and individuals whose involvement is merely formal or incidental. Such safeguards are essential to prevent regulatory compliance from becoming an instrument of excessive governmental interference in the functioning of bona fide voluntary organisations.

The experience of FCRA implementation also demonstrates that compliance failures should not automatically be equated with criminality or anti-national activity. Delayed filing, accounting irregularities, technical violations, or administrative deficiencies may require corrective and proportionate regulatory responses, whereas deliberate diversion, fraud, money laundering, or activities demonstrably prejudicial to national security may justify stringent enforcement. A calibrated distinction between technical non-compliance and substantive wrongdoing would strengthen the credibility and legitimacy of the FCRA regime.

The future of FCRA regulation therefore depends upon achieving an appropriate equilibrium between national security and civil-society autonomy, financial accountability and operational freedom, regulatory enforcement and procedural fairness. Excessive liberalisation may create opportunities for illicit financial influence, while excessive regulation may discourage genuine philanthropic, humanitarian, educational, and developmental activities. The objective should consequently be neither unrestricted foreign funding nor indiscriminate regulatory control, but a transparent, proportionate, risk-based, and constitutionally accountable regulatory framework.

Ultimately, the effectiveness of the FCRA should be measured not merely by the number of registrations cancelled, bank accounts restricted, or organisations subjected to regulatory action, but by its ability to ensure that legitimate foreign contributions reach their intended beneficiaries while preventing their misuse for unlawful purposes. Greater digitisation of compliance, timely processing of applications and renewals, transparent publication of regulatory decisions, predictable enforcement standards, institutional

capacity-building, and accessible mechanisms for grievance redressal can further strengthen the framework.

The proposed 2026 reforms therefore provide an opportunity to move from a predominantly control-oriented model towards a more sophisticated system of transparent regulation, risk-based supervision, institutional accountability, and constitutional governance. India's national interests require effective oversight of foreign funding, but the strength of that oversight will ultimately depend upon its fairness, transparency, consistency, and respect for the rule of law. A balanced statutory approach can simultaneously protect sovereignty and national security while enabling a responsible, independent, transparent, and socially productive voluntary sector to contribute to India's democratic and developmental objectives.

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