

**Background Note**  
**Laws to Regulate Foreign Contribution in Commonwealth Nations**

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In 2000, world leaders agreed on eight goals to achieve complete poverty eradication targets, which are popularly known as Millennium Development Goals (MDGs). It was also realized that achieving MDG targets needs commitment from all stakeholders, governments, the private sector and civil society and there were also calls for international cooperation - the latter being very crucial. Acceptance of MDGs called for action from both the south and north worlds. The south world gave a commitment to implement programmes for reducing poverty through recognizing rights whilst the north world committed to provide all kinds of resource support. When MDGs were taking shape it was realized that poverty reduction and development is such a huge task and that without international cooperation it is beyond the capacity of a particular nation. However various countries responded to this issue differently. One of the initial responses to this international cooperation is policy and legislation on foreign donations, grants and contributions since this type of policy and legislation affects the foreign funding to countries. This paper analyzes the policies and legislation of different Commonwealth countries related to foreign contributions and donations. It is still puzzling to note that while most Commonwealth nations have no such legislation separately dealing with foreign money; some of them like India and Bangladesh have a specific legislation dealing with foreign money.

**Issues Related to Foreign Money**

- Any laws related to foreign contributions are primarily aimed at monitoring the flow of foreign funds to civil society organizations. However the basic premise on which they are enacted is essentially political. In the name of political destabilization, various governments have enacted archaic legislation (e.g. India and Bangladesh).
- Some countries have not enacted any legislation on foreign contributions but they try to control and regulate foreign funding of NGOs through other acts.
- In some Commonwealth nations (such as Pakistan) governments are planning to bring forth legislation to regulate and control foreign funds to NGOs but due to growing pressure from civil society and donor agencies they are keeping them in the backseat. However, it is feared that at any opportunity available the government would enact such legislation.
- There is a general feeling among governments that foreign funds to NGOs need some regulations. These regulations are forcing certain funding agencies to stop their operations as they find these stringent laws more difficult for their smooth operations.

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## Country Cases

### India

- In 1976, the government of India (GOI) enacted the Foreign Contribution Regulation Act, 1976 “... to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic, and for matters connected....” The main purpose to bring out such an Act was, not only to monitor foreign contributions, but also to check the foreign funding to political groups in India. According to the Act, any organizations that have access to foreign funding need to be registered with Ministry of Home Affairs (MHA). Some organizations not registered with MHA need to obtain prior permission before receiving any foreign contribution.
- In 1984-85, the FCRA was comprehensively amended in order to tighten existing provisions even further, under the pretext that some voluntary organizations were using the foreign contributions for undesirable, and sometimes for anti-national, purposes. The amendments extended by the existing regime relate to an increase in the scope of its coverage, as well as the degree of discretion granted by the government to the administering authority and the enforcement mechanisms. The amendments carried out also put the individual foreign contribution outside the purview of the FCRA net.
- In 2005, the GOI proposed a draft Bill, namely the Foreign Contribution Management and Control Bill 2005. The MHA views this proposed Bill as necessary to smoothen the functioning of NGOs without compromising national security. However, an analysis of the proposed Bill shows that it aims to put stricter control mechanisms on NGOs. Some of the more controversial features of the proposed Bill which are opposed by the voluntary sector are:
  - The requirement for re-registration of already registered organizations within two years, instead of allowing those who have got the approval to receive foreign contributions automatically.
  - The necessity for associations to obtain a renewal certificate every five years.
  - Provisions such as the suspension and cancellation of registration certificate.
  - A restriction on associations not to exceed 30% of the total contribution on administrative expenses.
  - A restriction on foreign funding to “organizations of political nature” without defining clearly what are the criteria of being an “organization of political nature”.
  - The emphasis (section 11 (3) (a-d)) that the central government can specify, by the notification in the Official Gazette, who should receive foreign contributions, from whom the funds are received, in which broad areas such funds can be utilized and for what purposes
  - These provisions not only restrict the foreign funding to NGOs but also violate their civil and political rights and intend to control its operations.

## Bangladesh

- Bangladesh, like India, has separate legislation dealing with foreign contribution i.e. the Foreign Donation (Voluntary Activity) Regulation Ordinance, 1978 (FDR), which was amended in 1982 and was known as the Foreign Contribution (Regulation) Ordinance, 1982 (FCO).
- FDR 1978 Ordinance was passed to control the flow of foreign money to the voluntary sector in the martial law regime of post-independence Bangladesh. According to the ordinance, no organization or person(s) is allowed to undertake any voluntary activities or receive any foreign funds unless they obtain approval from Ministry of Home Affairs as well as the concerned Ministry responsible for the field of work. The organization receiving foreign money is also required to declare such receipt to the government. The ordinance also empowered the government to impose fines, imprisonment or cancellation of registration of those organizations or persons who do not comply with rules and regulations.
- Provisions of FDR 1978 and FCO 1982 of Bangladesh correspond with the provision of FCRA 1976 of India - especially the provisions regarding registration and cancellation and prior approval.
- Four years later, the government of Bangladesh came up with stricter laws on foreign contributions, namely Foreign Contribution (Regulation) Ordinance, (FCO) 1982. This ordinance, again passed by the military government of Bangladesh of that time, broadens the scope of the ordinance to cover all kinds of foreign contributions and also imposed greater approval restrictions on NGOs. According to the ordinance, any foreign government, organization or citizen is not allowed to make any contribution/donation in Bangladesh without prior approval of the government.
- The obvious objective of these laws is to monitor and control the flow of foreign money to civil society. Some believe that these laws also have a hidden political motive i.e. to check the flow of foreign money from political groups from foreign countries which might be used for political destabilization rather than relief and development work of NGOs. These motives are also reflected by the GOI in enacting FCRA 1976.
- In 2004, the Govt of Bangladesh proposed to enact the Foreign Donations (Voluntary Activities) Regulation (Amendment) Act, 2004. The proposed Act plans to put even greater restrictions on NGO operations in Bangladesh. Some of the points in the proposed Act aimed at curbing civil and political rights of NGOs in Bangladesh and also freedom of NGO operations in Bangladesh include:
  - The prohibition of "political activity" included in the proposed Bill. According to section 2, sub-section (g): " 'political activity' (...) includes any activity which may be interpreted as political, or may affect politics, or such other activities which may be interpreted to be detrimental to national independence, sovereignty, culture, ethnic and religious sentiment (...)" . This section fails to provide precise definitions and criteria as to what activities can be perceived as "detrimental to national independence", and fails to offer any guarantee that legitimate NGO activities, especially in the field of human rights, will not come under attack by the authorities. Any activity critical of the government might come under the scope of the law, and as such be prohibited.
  - The proposed provision (Section 6, sub section 4) allowing the authorities to remove the Chief Executive of an organisation if the government "is satisfied that

the Chief Executive (...) has been responsible for any irregularity in respect of its funds or for any mal-administration in the conduct of its affairs, (...) or has caused the organisation to be involved in any political activity, or any activity influencing politics directly". Such a provision will grant the government the power to interfere with internal NGO management, especially when coupled with (i) the new definition of "irregularity" and "mal-administration" (2, e and f) and (ii) the power to dissolve an NGO and liquidate its assets as provided in the proposed Bill (6, 3, g).

- Some of the provisions of this Bill are reflected in the proposed FCMC Bill 2005 in India, such as restriction on organizations of political nature, greater control of the government on NGO operations, and cancellation of registration of organizations.
- The positive note in this regard is that under immense pressure from donor agencies and civil society organizations, the Government of Bangladesh withdrew this proposed Bill with a promise of revision of the FCO 1982.

## Conclusion

Governments have proposed to impose restrictions on organizations working on issue political issues without defining clearly what these governments meant by "political activity" (Bangladesh) or "organizations of political nature" (India). It is interesting to note here that even in diverse countries with very different socio-political settings, the political motive has guided policies in dealing with legislation on foreign funding.

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