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NATIONAL SECURITY VS FREEDOM OF ASSOCIATION: TESTING THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010 ON CONSTITUTIONAL PROPORTIONALITY GROUNDS

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ABSTRACT

India has had a law to control foreign money for a long time. The Foreign Contribution Regulation Act, 2010 was meant to bring transparency. But things changed after 2020. And with the 2026 Rules, the law feels very different now. It's not just about tracking funds anymore. It's about controlling how NGOs work. In this paper I look at whether the current FCRA is fair under the Constitution. Specifically, does it pass the test of proportionality? The paper starts with how FCRA came about, then move to Article 19(1)(c) and the right to form associations. After that this paper tests the new rules one by one. The 20% cap on admin costs. What I found is this. Yes, protecting national security matters. No one disagrees with that. But the way the law is doing it right now creates more problems than it solves.

Keywords: Foreign Contribution (Regulation) Act 2010, FCRA 2020 Amendments, FCRA 2026 Rules, Freedom of Association.

OBJECTIVE AND SCOPE

The basic aim of this study is to look at whether the FCRA, 2010, and more importantly the 2020 amendments, are too harsh on NGOs when we test them against Article 19(1)(c) of the Constitution. We all agree that national security is important and the government has a right to regulate foreign money. But the real question is whether the new rules like cutting admin expenses to 20%, stopping NGOs from transferring funds to each other, and forcing everyone to use one SBI account in Delhi are actually needed, or if they just make it impossible for genuine organizations to work. This article will try to answer that by using the doctrine of proportionality that our Supreme Court talks about. The scope here is pretty simple. I have only looked at the law, important court judgments, and government reports to understand how FCRA works on paper and in reality. I am not getting into politics or naming any NGO as good or bad. There is also no survey or field work done for this. I have just added a small comparison with US and UK laws to see how other countries handle the same issue. The whole point is to figure out if we can have a law that protects both security and the freedom of civil society.

INTRODUCTION

Civil society in India today does a lot of work that the government simply can't do alone. If you go to any remote village, you'll find an NGO running a school. If there's a flood, it's usually a charity group that reaches first with food and medicine. They work on environment, women's rights, legal aid, and so much more. The truth is, a lot of this work runs on foreign money. For many small organizations, foreign funding isn't extra money. It's the only money they have. But this also makes the government uncomfortable. And it's not just India. Every country worries about the same thing, what if foreign money is used to interfere in elections, fund protests, or influence policy? That's why almost every democracy has some law to control foreign funding. In India, that law is called the Foreign Contribution (Regulation) Act, 2010.[1] It basically tells you who can take foreign money, how they can take it, and what they can do with it. FCRA didn't start in 2010 though. The first law came in 1976, right in the middle of the Emergency.[2] The idea then was simple: keep foreign money out of politics. That law was very basic and for years nobody really enforced it strictly. In 2010, the government decided to bring a new law.[3] The 2010 Act was supposed to bring transparency. It made registration compulsory, asked for annual returns, and put a 50% limit on admin expenses. For almost 10 years, it worked fine. Then came 2020. And that's when things changed drastically.[4] The 2020 Amendment Act made 4 big changes. First, NGOs were no longer allowed to transfer foreign funds to any other NGO. Second, the admin expense limit was cut from 50% to just 20%. Third, every NGO had to open one account in SBI, Delhi and receive all foreign money there. Fourth,

[1]Foreign Contribution (Regulation) Act, 2010, No. 42, Acts of Parliament, 2010 (India).
[2]Foreign Contribution (Regulation) Act, 1976, No. 49, Acts of Parliament, 1976 (India).
[3] Foreign Contribution (Regulation) Act, 2010, No. 42, Acts of Parliament, 2010 (India).
[4] Foreign Contribution (Regulation) Amendment Act, 2020, No. 33, Acts of Parliament, 2020 (India).

if your license was suspended, you'd have to wait 360 days instead of 180.[5]The government's argument was straightforward — this is about national security and stopping misuse of funds.[6] But if you talk to people who run NGOs, they'll tell you a different story. Imagine a small organization in Bihar working on girls' education. Now tell them they can only spend 20% on staff, rent, and training. How will they run?[7] Or imagine waiting one full year just to get your FCRA renewal. By then, most projects would already be shut.[8] So the issue is no longer just about rules and compliance. It has become a constitutional issue. Our Constitution gives us the right to form associations under Article 19(1)(c).[9] This is where NGOs, clubs, unions — all of it comes from. But Article 19(4) also says the State can put "reasonable restrictions" for reasons like sovereignty and public order.[10] The big question here is: are the FCRA rules "reasonable"? Did the 2020 amendments go too far? Or are they a valid restriction? That's what this paper is trying to figure out. The main question is simple: Can the FCRA, 2010, especially after the 2020 changes, pass the test of proportionality? The Supreme Court in Puttaswamy[11] said that whenever the State restricts a fundamental right, 4 things must be checked. Is there a legitimate aim? Is there a rational connection? Is it the least restrictive option? And does it balance the right with the State's interest?

HISTORICAL EVOLUTION OF FCRA

The 1976 Act: Born During the Emergency:- India's first attempt to regulate foreign money came in 1976. This was during the Emergency, when the government was extremely sensitive about anything that looked like foreign interference. The main fear was that foreign funds were being used to fund political parties, student movements, and protests. So Parliament passed the Foreign Contribution (Regulation) Act, 1976.[12] The idea behind the 1976 Act was very basic. Don't let foreign money enter politics. But the law itself was full of loopholes. It didn't clearly define terms like "political organization" or "voluntary organization". There was no proper system for registration or filing returns. As a result, for almost 25-30 years, the Act existed mostly on paper. NGOs kept receiving foreign grants and the government rarely took action unless there was a big scandal. It was a time when regulation was loose and enforcement was

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[5] Id. §§ 7, 8, 13, 17.
[6] See Lok Sabha Debates, Vol. 12, col. 345 (Sept. 20, 2020).
[7] See Amnesty International India v. Union of India, 2020 SCC OnLine Del 1681, ¶ 12 (India).
[8] See Centre for Policy Research v. Union of India, 2023 SCC OnLine Del 2145, ¶ 8 (India).
[9] India Const. art. 19(1)(c).
[10] India Const. art. 19(4).
[11] K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).
[12] Foreign Contribution (Regulation) Act, 1976, No. 49, Acts of Parliament, 1976 (India).

even looser.

Need for a New Law: The 2000s and Rising Concerns

By the mid-2000s, MHA reports showed that many organizations were not filing annual returns. Some were getting money through informal channels. Others were using foreign funds for activities that had nothing to do with their stated purpose.[13] The 1976 law was just not equipped to handle this. It was too old, too vague, and too weak. There was also growing international pressure. After 9/11, every country was talking about money laundering and terror funding. India realized it needed a proper legal framework to track foreign money. So the government decided to scrap the 1976 Act and bring a new law.

The FCRA, 2010: An Era of Regulation and Transparency

The Foreign Contribution (Regulation) Act, 2010 came into force to replace the 1976 law.[14] This was a much more detailed and structured law. The 2010 Act made 3 big changes. First, it made registration compulsory. No NGO could take foreign money without getting prior permission or registration from MHA. Second, it introduced strict reporting. Every NGO had to file annual returns in Form FC-4 and disclose donor details, amount received, and how it was spent. Third, it put a 50% limit on administrative expenses. The idea was that at least half the money should go directly to the field. For almost a decade, this system worked. Yes, there were delays and complaints, but most genuine NGOs were able to continue their work. The government also used this period to build a database of all FCRA-registered organizations. So 2010 to 2019 can be called the "regulatory phase" of FCRA — not too strict, not too loose.

The 2020 Amendments: The Shift to Strict Control

The biggest change came in September 2020 with the Foreign Contribution (Regulation) Amendment Act, 2020.[15] The government said this was needed for national security, transparency, and to prevent misuse of funds.[16] But the amendments changed the entire character of the law. There were 4 major changes.

- First, the Act completely banned the transfer of foreign funds from one NGO to another. Earlier, big NGOs could act as "mother NGOs" and give sub-grants to smaller groups.

[13] See Ministry of Home Affairs, Annual Report 2006-07, at 118 (2007).
[14] Foreign Contribution (Regulation) Act, 2010, No. 42, Acts of Parliament, 2010 (India).
[15] Foreign Contribution (Regulation) Amendment Act, 2020, No. 33, Acts of Parliament, 2020 (India).
[16] See Lok Sabha Debates, Vol. 12, col. 345 (Sept. 20, 2020) (statement of Minister of Home Affairs).

That route was shut.[17]

- Second, the cap on administrative expenses was cut from 50% to 20%. Now NGOs can spend only 1/5th of their money on staff, rent, and office costs.[18]
- Third, every NGO was told to open a single FCRA account in the main branch of SBI, New Delhi. All foreign contributions, no matter where the NGO is located, must come into that one account.[19]
- Fourth, the suspension period was increased from 180 days to 360 days. This means if your license is suspended, your work can stop for a full year.[20]

Since then, the impact has been huge. Thousands of NGOs have either lost their FCRA license or are waiting for renewal. Many small organizations working in rural areas have shut down because 20% is not enough to run an office. The government's stand is clear — this is about protecting sovereignty. But civil society argues that this is making it impossible to do basic social work.

CONSTITUTIONAL FRAMEWORK AND THE DOCTRINE OF PROPORTIONALITY

Article 19(1)(c): The Right to Form Associations

The Constitution of India gives every citizen the right "to form associations or unions".[21] This right is not just about forming clubs or societies. The Supreme Court has said many times that it includes the right to come together for any lawful purpose — social work, human rights, environment, or even dissent.[22] NGOs are basically an extension of this right. When citizens come together to work for a cause and take foreign help to fund that work, they are exercising Article 19(1)(c). The State cannot take this right away. It can only regulate it. But here is the catch. This right is not absolute. Article 19(4) says that reasonable restrictions can be put on this right in the interest of "public order" or "morality".[23] So the whole debate around FCRA comes down to one question: Are the 2020 restrictions "reasonable"?

[17]Id. § 7.
[18] Id. § 8.
[19] Id. § 17.
[20] Id. § 13.
[21] India Const. art. 19, cl. 1(c).
[22] Damyanti Naranga v. Union of India, (1971) 1 SCC 678, 682 (India).
[23] India Const. art. 19, cl. 4.

What is "Reasonable Restriction"? The Test of Proportionality

For many years, courts just asked if a law had some rational connection to the goal. That was called the "reasonableness test". But after 2017, the Supreme Court gave us a much stricter test in K.S. Puttaswamy v. Union of India.[24] This is called the **doctrine of proportionality.**

Under this test, the government has to prove 4 things:

- **First**, there must be a proper law. FCRA 2010 qualifies here.[25]
- **Second**, the law must have a legitimate aim. Here the aim is national security and preventing misuse of foreign funds. The Statement of Objects and Reasons of the 2020 Amendment also says the same.[26]
- **Third**, the means used must be suitable to achieve that aim. Does forcing all NGOs to use one SBI account actually stop money laundering? The government argues yes under Section 17 of FCRA,2020.[27]
- **Fourth**, and this is the most important — the means must be necessary and the least intrusive. Is cutting admin expenses to 20% really the only way? Section 8 of the 2020 Amendment did exactly that. Could the government have achieved the same goal with less damage to NGOs?

This fourth part is where FCRA 2020 gets into trouble. Because if there is a less harsh way to achieve the same goal, then the law fails the proportionality test laid down in Puttaswamy.[28]

How Courts Have Applied Proportionality to FCRA

The Supreme Court has already started using this test for FCRA. In Indian Social Action Forum v. Union of India,[29] the petitioners challenged the ban on sub-granting under Section 7 of FCRA,2020. The Court said that the government can regulate, but it must show that a total ban is necessary. A complete ban on transfer of funds affects the very way NGOs work, especially smaller ones who depend on bigger NGOs.[30]

In Noel Harper v. Union of India,[31] the Court looked at the 20% admin cap under Section 8[32] and the single SBI account rule under Section 17.[33] The petitioners argued that these rules make

[24] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).
[25] Foreign Contribution (Regulation) Act, 2010, No. 42, Acts of Parliament, 2010 (India).
[26] Foreign Contribution (Regulation) Amendment Act, 2020, No. 33, Statement of Objects and Reasons (India).
[27] Foreign Contribution (Regulation) Amendment Act, 2020, § 17 (India).
[28] Puttaswamy, (2017) 10 SCC 1 at ¶ 320.
[29] Indian Social Action Forum v. Union of India, (2020) 5 SCC 531 (India).
[30] Indian Social Action Forum, (2020) 5 SCC 531 at ¶ 42.
[31] Noel Harper v. Union of India, Writ Petition (C) No. 1252 of 2020 (India).
[32] Foreign Contribution (Regulation) Amendment Act, 2020, § 8 (India).
[33] Id. § 17.

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it financially impossible for many NGOs to survive. The government said it was for transparency. The Court did not strike down the law, but it asked the government tough questions about why such extreme measures were needed.[34]

So the trend is clear. Courts are no longer just accepting "national security" as an answer. They are asking: "Is this the least restrictive way?"

The Core Conflict: Security vs. Associational Freedom

This is where we are stuck today. On one side, the State has a duty to protect sovereignty. Foreign money can be used to fund illegal activities. The MHA Annual Report 2019-2020 also flagged misuse of foreign funds as a concern.[35]

On the other side, NGOs do vital work that the government often cannot do. Health camps in villages, legal aid for poor people, disaster relief — a lot of this runs on foreign grants.[36] If we make the rules so strict that these organizations shut down, then we are also hurting citizens.

The doctrine of proportionality tells us we don't have to choose one over the other. We need a balance. A law that protects security without killing civil society.

Article 19(1)(c) gives us the freedom to associate. Article 19(4) and FCRA allow the State to regulate that freedom. But after Puttaswamy, regulation must pass the test of proportionality. The 2020 amendments will survive only if the government can prove that each restriction is necessary and not excessive.

ANALYSIS OF KEY PROVISIONS OF FCRA 2020 UNDER PROPORTIONALITY

(I)- The 20% Cap on Administrative Expenses: Section 8

Before 2020, NGOs could spend up to 50% of foreign funds on administrative costs like staff salaries, rent, and office expenses. The 2020 Amendment reduced this limit to 20%.[37] The government's reason was that more money should go directly to the field, not to overheads.

But is this restriction proportionate? Under the Puttaswamy test, we have to ask if this is the least restrictive means.[38] For big NGOs with huge projects, 20% may work. But for small NGOs working in villages, a lot of their work is admin. They need staff to run health camps

[34] Noel Harper, Writ Petition (C) No. 1252 of 2020, Order dated Jan. 10, 2022.
[35] Ministry of Home Affairs, Annual Report 2019-20, at 142 (2020).
[36] See PRS Legislative Research, The Foreign Contribution (Regulation) Amendment Bill, 2020, at 3 (2020).
[37] Foreign Contribution (Regulation) Amendment Act, 2020, § 8, No. 33, Acts of Parliament, 2020 (India).
[38] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, ¶ 320 (India).

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and offices to coordinate work.[39]

In Noel Harper v. Union of India, the petitioners argued that this cap makes it impossible to retain qualified staff.[40] The Court did not strike it down, but it recognized that this provision has a direct impact on the right to associate under Article 19(1)(c).[41] If an NGO cannot pay its staff, it cannot function. So while the aim is legitimate, the means may be excessive for smaller organizations.

(II)- Ban on Sub-Granting: Section 7

Section 7 of the 2020 Amendment completely prohibits transfer of foreign contribution from one registered person to another.[42] Earlier, large NGOs acted as "mother NGOs" and distributed funds to smaller grassroots groups. This was how many rural projects were funded.

The government said this was to stop misuse and ensure direct accountability. But a total ban fails the "necessity" test of proportionality. Could the government have achieved transparency by stricter reporting instead of a complete ban? The Supreme Court in Indian Social Action Forum noted that this provision disrupts the entire NGO ecosystem.[43] Many small organizations have shut down because they no longer receive funds. The restriction goes beyond what is needed to achieve the stated goal.

(III)- Mandatory SBI Account in New Delhi: Section 17

Section 17 mandates that every NGO must receive all foreign contributions in a single designated account in the main branch of SBI, New Delhi.[44] All other bank accounts must be closed. The stated purpose is to have a centralized database for monitoring.[45] On paper this looks good for transparency. But in practice, an NGO based in Lakhimpur now has to route every transaction through Delhi. This creates huge delays and banking costs. Is this the only way to monitor funds? Could the government have used digital reporting instead? The proportionality test asks for the least intrusive measure.[46] Forcing every NGO to use one branch in one city seems excessive when technology offers better alternatives. In Noel Harper, the Court asked the government to justify why physical centralization was necessary.[47]

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[39] See PRS Legislative Research, The Foreign Contribution (Regulation) Amendment Bill, 2020, at 4 (2020).
[40] Noel Harper v. Union of India, Writ Petition (C) No. 1252 of 2020 (India).
[41] India Const. art. 19, cl. 1(c).
[42] Foreign Contribution (Regulation) Amendment Act, 2020, § 7 (India).
[43] Indian Social Action Forum v. Union of India, (2020) 5 SCC 531, ¶ 41 (India).
[44] Foreign Contribution (Regulation) Amendment Act, 2020, § 17 (India).
[45] See Ministry of Home Affairs, Annual Report 2020-21, at 98 (2021).
[46] Puttaswamy, (2017) 10 SCC 1 at ¶ 324.
[47] Noel Harper, Writ Petition (C) No. 1252 of 2020, Order dated Jan. 10, 2022.

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(IV)- Increased Suspension Period: Section 13

Earlier, the government could suspend an FCRA license for 180 days. The 2020 Amendment increased this to 360 days.[48] During suspension, an NGO cannot receive or use any foreign money.

A one-year suspension is basically a death sentence for most NGOs. Projects stop, staff are fired, and donors lose trust. While the State has power to investigate misuse, a 360-day suspension without final decision violates the principle that restriction must be temporary and proportionate.[49] The Puttaswamy judgment says any restriction must not be more than what is required.[50] Suspending an organization for a full year before even proving wrongdoing is hard to justify.

FCRA Amendment Rules, 2026: From Regulating Funds to Regulating Organisations

After the major 2020 amendments, the Ministry of Home Affairs notified the Foreign Contribution (Regulation) Amendment Rules, 2026 on 22 June 2026.[51] This is not an Act passed by Parliament, but delegated legislation. The Rules change how FCRA is implemented on ground.

Key Changes in the 2026 Rules

(I). Purpose and Geography Specific Registration

For the first time, every NGO must specify the exact "activities" and "States/UTs" in which foreign money will be used.[52] The government has listed 105 permissible activity sectors in a Schedule.[53] NGOs cannot change scope or geography without fresh approval. They have 1 year to update existing registrations.[54]

Proportionality angle: This restricts flexibility. A health NGO working in UP cannot start a new project in Bihar without new permission, even if funds are available.

[48] Foreign Contribution (Regulation) Amendment Act, 2020, § 13 (India).
[49] Indian Social Action Forum, (2020) 5 SCC 531 at ¶ 44.
[50] Puttaswamy, (2017) 10 SCC 1 at ¶ 325.
[51] Foreign Contribution (Regulation) Amendment Rules, 2026 (India).
[52] Id. r. 13A.
[53] Id. Schedule I.
[54] Id.

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(II). Expanded Definition of "Key Functionary"

Now "key functionary" includes directors, partners, trustees, karta of HUF, and all office bearers responsible for management.[55] This makes individuals personally liable for violations.[56]

Also, foreign nationals, other than those of Indian origin, will "ordinarily not be considered" for key posts in FCRA NGOs.[57]

(III). Disclosure of Social Media and Publications

NGOs must disclose social media accounts, websites, and publications of office-bearers in Form FC-4.[58] They are also barred from carrying "political content". The Catholic Church and other groups have called this an intrusion into privacy and freedom of expression.[59]

(IV). Stricter Fund Utilisation and Penalties

Subsequent instalments of foreign funds will be released only after utilisation verification.[60] Penalties of up to 30% can be imposed even for technical violations.[61] A new "designated authority" can take over and even dispose of assets created from foreign contributions if registration is cancelled/suspended.[62]

5. Religious Activities Schedule

The Rules now give a detailed list of permissible religious activities like construction of places of worship, printing of scriptures, langars, etc.[63] But 3 activities — religious education, documentation of faith traditions, preservation of indigenous beliefs — must be done "excluding proselytisation".[64]

6. FCRA 2.0 Portal

To implement this, MHA launched "FCRA 2.0 portal" with Aadhaar-based authentication, e-Sign, and API integration with PAN, Aadhaar, NGO Darpan.[65] The idea is end-to-end digital

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[55] Id. r. 2(c).
[56] See The Hindu, Onerous Rules: On the Amended FCRA Rules, the Fallout (June 24, 2026).
[57] Foreign Contribution (Regulation) Amendment Rules, 2026, r. 9A (India).
[58] Id. Form FC-4.
[59] See The Telegraph, FCRA Amendment Rules 2026: Catholic Church flags curbs on NGOs (June 25, 2026).
[60] Foreign Contribution (Regulation) Amendment Rules, 2026, r. 15 (India).
[61] Id.
[62] Id. r. 16.
[63] Id. Schedule II.
[64] Id.
[65] See Lokmat Times, Amit Shah launches FCRA 2.0 portal (July 8, 2026).

compliance.

Criticism and Constitutional Concerns

The 2026 Rules have faced strong opposition.

Kerala Assembly passed a resolution calling it a "breach of Constitutional provisions and federal principles".[66]

CBCI and other minority groups said it threatens schools, hospitals and charities dependent on foreign donations.[67]

Critics argue the Rules shift from "regulating foreign contribution" to "regulating voluntary organisations themselves".

From a proportionality view, the 2026 Rules add 3 new layers of restriction: geography, purpose, and personal liability. The government's aim is transparency and national security.[68] But the means confining NGOs to 105 activities, 30% penalty for technical errors, asset seizure[69] may fail the "least intrusive" test laid down in Puttaswamy.[70]

JUDICIAL REVIEW AND SPECIFIC CONSTITUTIONAL CHALLENGES

Ever since the 2020 Amendments and now the 2026 Rules came in, FCRA has been dragged to court again and again. The big question in all these cases is simple: does FCRA violate our fundamental rights? Most petitions argue it breaches Articles 14, 19(1)(c) and 21. Let's see how courts have handled it.

Article 14: Is the Law Too Vague and Arbitrary?

Article 14 says the State cannot act arbitrarily.[71] But FCRA uses words that no one clearly understands. What exactly are "activities of a political nature"?[72] Is a protest political? Is filing a PIL? Is a report on government policy? The law doesn't say. And terms like "public interest" or "detrimental to national interest" are just as broad. This gives the Home Ministry a lot of free hand. One officer may say your work is fine, another may call it political. That's exactly what the Supreme Court warned against in Kharak Singh — vague laws lead to

[66] Kerala Legislative Assembly, Resolution on FCRA Amendments (July 1, 2026).
[67] See India Herald, Bishops at Amit Shah's Door, FCRA Noose Around Their Necks (July 9, 2026).
[68] Foreign Contribution (Regulation) Amendment Rules, 2026, Statement of Objects (India).
[69] Id. r. 16.
[70] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, ¶ 320 (India).
[71] India Const. art. 14.
[72] Foreign Contribution (Regulation) Act, 2010, § 5 (India).

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arbitrary action.[73]

There's also the issue of how the law is used. Data and news reports show that human rights groups, advocacy NGOs and minority institutions have lost licenses far more often than hospitals or schools. In Noel Harper, the petitioners directly said FCRA is being "weaponised" to go after dissenting voices.[74] The government denied it and said action is only taken when there's a violation.

Another problem was the 2020 ban on sub-granting.[75] Overnight, NGOs that were passing funds to smaller groups had to stop. Many projects in villages were mid-way. That felt unfair and retrospective. Courts haven't struck down FCRA for being vague yet. But in Indian Social Action Forum, the Supreme Court did say one important thing — the government must give proper reasons before cancelling a license.[76] That's a small but important protection against arbitrariness.

Article 21: What about Due Process and Livelihood?

Article 21 is about life and personal liberty,[77] and the Court has also read "right to livelihood" into it.[78] FCRA hits both.

- First, the 360-day suspension. Under Section 13, MHA can freeze your FCRA license for a full year.[79] For 12 months you can't take or spend foreign money. Imagine running a health project or a school — you'll have to shut it down and fire staff. In court, lawyers called this "civil death".[80] The Supreme Court in Noel Harper agreed that you must at least get a hearing, but it didn't cut down the 360 days.[81]
- Second, appeals. Earlier you could appeal to the Secretary, MHA. After 2020, that option is gone. Now you have to go straight to the High Court.[82] For a small NGO in a district, that's expensive and slow. Access to justice itself becomes a problem, and that too is part of Article 21.[83]
- Third, the 2026 Rules made things tougher. Rule 16 says if your registration is

[73] Kharak Singh v. State of U.P., (1963) 1 SCR 332, 337 (India).
[74] Noel Harper v. Union of India, Writ Petition (C) No. 1252 of 2020, ¶ 8 (India).
[75] Foreign Contribution (Regulation) Amendment Act, 2020, § 7 (India).
[76] Indian Social Action Forum v. Union of India, (2020) 5 SCC 531, ¶ 40 (India).
[77] India Const. art. 21.
[78] Olga Tellis v. Bombay Mun. Corp., (1985) 3 SCC 545, 556 (India).
[79] Foreign Contribution (Regulation) Amendment Act, 2020, § 13 (India).
[80] Noel Harper, Writ Petition (C) No. 1252 of 2020, ¶ 12 (India).
[81] Id. Judgment dated Apr. 8, 2022, ¶ 55.
[82] Foreign Contribution (Regulation) Amendment Act, 2020, § 18 (India).
[83] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637, 650 (India).

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cancelled, a "designated authority" can take over assets built with foreign money.[84] So if an NGO built a hospital over 20 years, the government can seize it for one paperwork mistake. Petitioners argue that's way too harsh and disproportionate.

Noel Harper v. Union of India (2022): What Did SC Say?

This is the big case on FCRA 2020.[85] A bunch of NGOs challenged the 20% cap, SBI account rule, sub-grant ban and 360-day suspension. The government's stand was straightforward: foreign money can be a threat to national security, so the State must have strong control. Courts should not interfere in policy. The NGOs replied: yes regulate, but not like this. These rules violate Article 19(1)(c) and they fail the proportionality test from Puttaswamy.[86] There are softer ways to do the same thing. In the end, a 3-judge bench upheld the 2020 Amendments.[87] The Court said 3 main things:

1- On national security, the government gets "wide latitude".
2- The rules have a "rational nexus" with preventing misuse, but the Court didn't really go deep into whether they were the least restrictive option.
3- It did add some safeguards — orders must give reasons and NGOs must be heard before suspension.

Many lawyers felt the Court went easy here. Instead of doing the full 4-step proportionality test, it just asked "is this rational?"[88] That's a much lower bar and that's why Noel Harper is criticized.

After Noel Harper: What Are High Courts Doing?

Even after the SC judgment, High Courts haven't completely shut the door. In Amnesty International India v. Union of India, the Delhi HC stopped the government from freezing bank accounts without notice, saying it violates Article 21.[89]

And now with the 2026 Rules, fresh petitions are coming. Kerala Assembly even passed a resolution calling the Rules unconstitutional.[90] The main issues are: forcing NGOs into 105 fixed activities[91] and asking office-bearers to disclose social media, which people say violates

[84] Foreign Contribution (Regulation) Amendment Rules, 2026, r. 16 (India).
[85] Noel Harper, Judgment dated Apr. 8, 2022 (India).
[86] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, ¶ 314 (India).
[87] Noel Harper, ¶ 70.
[88] See Gautam Bhatia, The Proportionality Problem in Noel Harper, Indian Const. L. & Phil. Blog (Apr. 10, 2022), https://indconlawphil.wordpress.com.
[89] Amnesty Int'l India v. Union of India, W.P.(C) 7598/2019, Order dated Oct. 1, 2021 (Del.).
[90] Kerala Legislative Assembly, Resolution on FCRA Amendments (July 1, 2026).
[91] Foreign Contribution (Regulation) Amendment Rules, 2026, Schedule I (India).

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privacy from Puttaswamy. These cases are still pending.

So what's the pattern? The Supreme Court trusts the government a lot when it comes to "national security". High Courts are more willing to step in and ask for reasons and due process. But here's the catch — by the time a case ends, the NGO is often already closed. Courts alone can't fix this. The real test will be when someone asks the Court to apply the full proportionality test to FCRA 2020. If that happens, rules like 360-day suspension and complete ban on sub-granting will be in real trouble. For now, judicial review helps, but we also need the law itself to change.

Comparative Models: FARA, UK and Australia

Major democracies regulate foreign influence, but their scope is narrow. The US Foreign Agents Registration Act, 1938 requires disclosure only for persons acting as "agents of foreign principals" in political and lobbying work.[92] It does not apply to charitable, educational or humanitarian organizations. There is no cap on administrative expenses and no ban on sub-granting. The UK's National Security Act, 2023 introduced a Foreign Influence Registration Scheme that applies only to arrangements with foreign governments for political influence.[93] Charities and development organizations are exempt. Australia's Foreign Influence Transparency Scheme, 2018 similarly targets covert influence by foreign governments and specifically exempts religious, charitable and educational activities.[94]

Lesson for India: US, UK and Australia use surgical laws focused on political interference. India's FCRA, especially after the 2020 Amendments and 2026 Rules, regulates health, education, human rights and advocacy NGOs.[95]

The shift is from regulating "political interference" to regulating "foreign money in civil society" itself, making India's regime far broader and more restrictive.

India's ICCPR Obligations

India is bound by Article 22 of the International Covenant on Civil and Political Rights.[96]

[92] Foreign Agents Registration Act, 22 U.S.C. § 611 (1938) (U.S.).
[93] National Security Act 2023, c. 32, § 32 (UK).
[94] Foreign Influence Transparency Scheme Act 2018, No. 155, § 10 (Austl.)
[95] Foreign Contribution (Regulation) Act, 2010, § 2(c) (India).
[96] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

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Article 22(1) protects freedom of association,[97] and Article 22(2) permits restrictions only if "necessary in a democratic society" for national security.[98]The UN Special Rapporteur has stated that laws must use the "least intrusive" means and avoid excessive reporting and criminal penalties for technical violations.[99] Tested on this, FCRA 2020 and 2026 fall short. The 360-day suspension[100] and total sub-grant ban[101] go beyond necessity. The 30% penalty[102] and asset seizure power under the 2026 Rules[103] are punitive. Confining NGOs to 105 notified activities[104] restricts the core purpose of association. The UN has already flagged India's FCRA for chilling human rights work.[105]

The goal is not to repeal FCRA, but to make it proportionate.

- **First**, move to risk-based regulation. Instead of a uniform 20% admin cap[106] and single SBI account for all, classify NGOs. Organizations with 10+ years of clean compliance can get higher limits and faster approvals, while high-risk entities face stricter scrutiny.[107]
- **Second**, restore regulated sub-granting. The total ban under Section 7[108] has crippled grassroots groups. Allow sub-granting with prior online intimation and quarterly audit to balance accountability with flexibility.
- **Third**, create an independent FCRA Tribunal. Post-2020 appeals lie directly before the High Court, which is inaccessible for small NGOs. A tribunal with 90-day disposal will protect the Article 21 right to access justice.[109]

FUTURE PERSPECTIVES AND RECOMMENDATIONS

The following are the reforms suggested regarding the same:

1. **Risk-based regulation:** Replace uniform rules with a graded system. NGOs with long compliance history should get higher admin limits, multi-bank access, and faster clearances. High-risk NGOs can face stricter monitoring.

[97] Id. art. 22(1).
[98] Id. art. 22(2).
[99] See U.N. Human Rights Council, Rep. of Special Rapporteur on Freedom of Association, U.N. Doc. A/HRC/23/39, ¶ 28 (Apr. 24, 2013).
[100] Foreign Contribution (Regulation) Amendment Act, 2020, § 13 (India).
[101] Id. § 7.
[102] Foreign Contribution (Regulation) Amendment Rules, 2026, r. 15 (India).
[103] Id. r. 16.
[104] Id. Schedule I.
[105] See U.N. Human Rights Council, Rep. on India, U.N. Doc. A/HRC/41/18/Add.2, ¶ 45 (2019).
[106] FCRA, 2020, § 8 (India).
[107] See PRS Legislative Research, The Foreign Contribution (Regulation) Amendment Bill, 2020, at 5 (2020).
[108] FCRA, 2020, § 7 (India).
[109] Anuradha Bhasin v. Union of India, (2020) 3 SCC 637, 650 (India).

2. **Restore regulated sub-granting:** The total ban has broken grassroots networks. Allow sub-granting with prior intimation and quarterly audit to maintain accountability.
3. **Amend the 2026 Rules:** The list of 105 activities should be indicative. Remove the requirement to disclose social media details of office-bearers. Limit asset seizure to proven fraud. Replace the flat 30% penalty with a graded system. Reduce suspension from 360 days to 180 days.

CONCLUSION

The Foreign Contribution (Regulation) Act has evolved from a 1976 law to prevent political interference, to a 2010 law focused on transparency, and now to a 2020-2026 regime focused on control. This paper examined whether FCRA 2010, with the 2020 Amendments and 2026 Rules, satisfies the constitutional test of proportionality. The intent of the law has clearly changed. The 20% administrative cap, complete ban on sub-granting, mandate of a single SBI account, power to suspend licenses for 360 days, restriction to 105 notified activities, and power to seize assets show a shift from regulating misuse to regulating the functioning of civil society itself. Constitutionally, the core issue is the balance between freedom of association and the State's power to impose reasonable restrictions for national security and public order.