LETTER & SPIRIT

Constitutional faultlines in FCRA Bill

The FCRA Amendment Bill, 2026 provides for a 'Designated Authority' to oversee the management and disposal of foreign contributions and assets when an organisation's FCRA certificate is cancelled or ceases to exist; raising questions about the extent of State intervention and the need for sufficient safeguards against overreach

Opposition MPs protest in New Delhi on April 1, demanding the withdrawal of the FCRA Amendment Bill.

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THE GIST

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It is hard to deny that the state has a legitimate concern in regulating foreign contributions in India, as foreign donations raise issues concerning national security, transparency in democracy, and public accountability. For decades, the Foreign Contribution (Regulation) Act has been the instrument through which this interest has been pursued. However, the Foreign Contribution (Regulation) Amendment Bill, 2026 raises a different question altogether. It goes beyond regulating foreign contributions, to the extent to which the state may intervene in assets and institutional activities associated with them.

The fundamental issue, therefore, is not a debate between civil society and national security. It is about where the State, in pursuit of its legitimate regulatory goal, may cross the boundary from regulating foreign contributions to exercising undue executive control over the institutions that receive them.

The Bill's most important aspect is a statutory framework for the vesting, supervision, management and disposal of foreign contributions and assets through a 'Designated Authority'. Where an organisation's FCRA certificate is cancelled, surrendered or ceases to exist, including due to non-renewal, the Central government may appoint an authority to which the foreign contribution and assets created from it may vest provisionally. The measure is framed as an accountability mechanism to prevent the diversion or abuse of such properties.

Expansion of statutory consequences

However, the constitutional difficulty lies elsewhere.

The FCRA has always empowered the state to scrutinise foreign funding. If there are any violations in this regard, registrations can be withdrawn, cancellation can follow continuing non-compliance, and penalties can attach to the diversion or misappropriation of foreign contributions. The Bill, however, represents a significant expansion of the statutory consequences that can follow the loss of FCRA registration. Importantly, the existing FCRA law already contains a provision for vesting assets created from foreign funds upon cancellation. What is new is the detailed statutory framework for their provisional vesting, possession, management, restoration and ultimately, permanent vesting and disposal.

In case of cancellation, surrender, or cessation of registration, the government may, through the Designated Authority, take possession of and manage assets created from foreign contributions and, where considered necessary or expedient in the public interest, undertake the management of the concerned organisation's activities. This is not merely a change in administrative policy; it raises a constitutional question about the extent to which a statute regulating foreign contributions may permit executive authorities to assume possession and, in specified circumstances, management of institutional assets and activities.

Even if the dichotomy between ownership and custody may have some legal relevance, its practical consequences are not. An entity whose success is dependent on the continuity of management will place greater emphasis on control than ownership. Ownership may remain formally undisturbed, but a change in management control fundamentally alters the relationship between the institution and the state. A hospital, school or laboratory is not made effective by ownership alone; it depends on its independence to administer, for charitable ends, what it owns.

Evaluation of proportionality

This is where the doctrine of constitutional proportionality may be relevant. The Supreme Court has repeatedly held that even where the state pursues a legitimate objective, the means it adopts must bear a reasonable connection to that objective and must maintain an appropriate balance between the public purpose and the burden imposed on rights. The amendment raises difficult questions when measured against the said rationale. If the consequence of losing FCRA registration is the provisional vesting of assets in, and potentially the management of institutional activities by a government-appointed authority, the safeguards attending that transfer must be commensurately robust.

Therefore, the Bill warrants scrutiny of the extent of the discretion delegated to the executive, the safeguards governing its exercise and the standards applicable to decisions concerning possession, management, and permanent vesting. The Bill provides for the restoration of assets when registration is obtained, renewed, or restored within the prescribed period, as well as mechanisms for revision and judicial appeal. The constitutional question is whether these safeguards are sufficiently clear, timely and effective.

This concern becomes more significant against the broader regulatory landscape. Over the past decade, thousands of FCRA registrations have ceased to operate for reasons ranging from non-renewal to alleged statutory violations. While many regulatory actions may be justified, the Bill may increase the consequences arising from the cessation of registration. What might previously have been limited to the loss of eligibility to receive foreign funds could, under the proposed framework, extend to provisional management and, if registration is not restored within the prescribed period, permanent vesting and disposal of assets.

None of this suggests that the government lacks the authority to strengthen financial oversight or ensure that funds from abroad are used for lawful and proper ends. But in a constitutional order, any regime that reaches into the management of civil society's institutional infrastructure must operate within clear legislative standards.

Ultimately, the constitutional question posed by the FCRA Amendment Bill is not whether foreign contributions should be regulated, but how far the state may go in regulating institutions and their assets.

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