

Bill No. 123 of 2020

THE FOREIGN CONTRIBUTION (REGULATION)
AMENDMENT BILL, 2020

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BILL

further to amend the Foreign Contribution (Regulation) Act, 2010.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Foreign Contribution (Regulation) Amendment Act, 2020. Short title and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

42 of 2010. 2. In section 3 of the Foreign Contribution (Regulation) Act, 2010 (hereinafter referred to as the principal Act), in sub-section (1),— Amendment of section 3.

(i) for clause (c), the following clause shall be substituted, namely:—

10 "(c) public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;"

(ii) for the *Explanation*, the following *Explanations* shall be substituted, namely:—

Explanation 1.—For the purpose of clause (c), "public servant" means a public servant as defined in section 21 of the Indian Penal Code. 45 of 1860.

Explanation 2.—In clause (c) and section 6, the expression "corporation" means a corporation owned or controlled by the Government and includes a Government company as defined in clause (45) of section 2 of the Companies Act, 2013.'. 5
18 of 2013.

Substitution of new section for section 7.

3. For section 7 of the principal Act, the following section shall be substituted, namely:—

Prohibition to transfer foreign contribution to other person.

"7. No person who— 10

(a) is registered and granted a certificate or has obtained prior permission under this Act; and

(b) receives any foreign contribution,

shall transfer such foreign contribution to any other person."

Amendment of section 8.

4. In section 8 of the principal Act, in sub-section (1), for the words "fifty per cent.", at both the places where they occur, the words "twenty per cent." shall be substituted. 15

Amendment of section 11.

5. In section 11 of the principal Act, in sub-section (2), in the proviso, for the words "Provided that if the person referred to in sub-sections (1) and (2) has been found guilty", the following shall be substituted, namely:—

"Provided that the Central Government, on the basis of any information or report, and after holding a summary inquiry, has reason to believe that a person who has been granted prior permission has contravened any of the provisions of this Act, it may, pending any further inquiry, direct that such person shall not utilise the unutilised foreign contribution or receive the remaining portion of foreign contribution which has not been received or, as the case may be, any additional foreign contribution, without prior approval of the Central Government: 20
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Provided further that if the person referred to in sub-section (1) or in this sub-section has been found guilty."

Amendment of section 12.

6. In section 12 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:— 30

"(1A) Every person who makes an application under sub-section (1) shall be required to open FCRA Account in the manner specified in section 17 and mention details of such account in his application."

Insertion of new section 12A.

7. After section 12 of the principal Act, the following section shall be inserted, namely:—

Power of Central Government to require Aadhaar number, etc., as identification document.

"12A. Notwithstanding anything contained in this Act, the Central Government may require that any person who seeks prior permission or prior approval under section 11, or makes an application for grant of certificate under section 12, or, as the case may be, for renewal of certificate under section 16, shall provide as identification document, the Aadhaar number of all its office bearers or Directors or other key functionaries, by whatever name called, issued under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, or a copy of the Passport or Overseas Citizen of India Card, in case of a foreigner." 35
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18 of 2016.

Amendment of section 13.

8. In section 13 of the principal Act, in sub-section (1), for the words "for such period not exceeding one hundred and eighty days as may be specified", the words "for a period of one hundred and eighty days, or such further period, not exceeding one hundred and eighty days, as may be specified" shall be substituted. 45

	9. After section 14 of the principal Act, the following section shall be inserted, namely:—	Insertion of new section 14A.
5	"14A. On a request being made in this behalf, the Central Government may permit any person to surrender the certificate granted under this Act, if, after making such inquiry as it deems fit, it is satisfied that such person has not contravened any of the provisions of this Act, and the management of foreign contribution and asset, if any, created out of such contribution has been vested in the authority as provided in sub-section (1) of section 15."	Surrender of certificate.
	10. In section 15 of the principal Act,—	Amendment of section 15.
10	(i) in the marginal heading, after the word "cancelled", the words "or surrendered" shall be inserted;	
	(ii) in sub-section (1), after the word and figures "section 14", the words, figures and letter "or surrendered under section 14A" shall be inserted.	
	11. In section 16 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—	Amendment of section 16.
15	"Provided that the Central Government may, before renewing the certificate, make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions specified in sub-section (4) of section 12."	
	12. For section 17 of the principal Act, the following section shall be substituted, namely:—	Substitution of new section for section 17.
20	'17. (1) Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf:	Foreign contribution through scheduled bank.
25	Provided that such person may also open another FCRA Account in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his FCRA Account in the specified branch of State Bank of India at New Delhi:	
30	Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his FCRA account in the specified branch of the State Bank of India at New Delhi or kept by him in another FCRA Account in a scheduled bank of his choice:	
35	Provided also that no funds other than foreign contribution shall be received or deposited in any such account.	
	(2) The specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person referred to in sub-section (1) has opened his foreign contribution account or the authorised person in foreign exchange, shall report to such authority as may be specified,—	
40	(a) the prescribed amount of foreign remittance;	
	(b) the source and manner in which the foreign remittance was received; and	
	(c) other particulars,	
	in such form and manner as may be prescribed.'	

STATEMENT OF OBJECTS AND REASONS

The Foreign Contribution (Regulation) Act, 2010 was enacted to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

2. The said Act has come into force on the 1st day of May, 2011 and has been amended twice. The first amendment was made by section 236 of the Finance Act, 2016 and the second amendment was made by section 220 of the Finance Act, 2018.

3. The annual inflow of foreign contribution has almost doubled between the years 2010 and 2019, but many recipients of foreign contribution have not utilised the same for the purpose for which they were registered or granted prior permission under the said Act. Many of them were also found wanting in ensuring basic statutory compliances such as submission of annual returns and maintenance of proper accounts. This has led to a situation where the Central Government had to cancel certificates of registration of more than 19,000 recipient organisations, including non-Governmental organisations, during the period between 2011 and 2019. The criminal investigations also had to be initiated against dozens of such non-Governmental organisations which indulged in outright misappropriation or mis-utilisation of foreign contribution.

4. Therefore, there is a need to streamline the provisions of the said Act by strengthening the compliance mechanism, enhancing transparency and accountability in the receipt and utilisation of foreign contribution worth thousands of crores of rupees every year and facilitating genuine non-Governmental organisations or associations who are working for the welfare of the society.

5. The Foreign Contribution (Regulation) Amendment Bill, 2020, *inter alia*, seeks to provide for—

(a) amendment of clause (c) of sub-section (1) of section 3 to include "public servant" also within its ambit, to provide that no foreign contribution shall be accepted by any public servant;

(b) amendment of section 7 to prohibit any transfer of foreign contribution to any association/person;

(c) amendment of sub-section (1) of section 8 to reduce the limit for defraying administrative expenses from existing "fifty per cent." to "twenty per cent.";

(d) insertion of a new section 12A empowering the Central Government to require Aadhaar number, etc., as identification document;

(e) insertion of a new section 14A enabling the Central Government to permit any person to surrender the certificate granted under the Act;

(f) amendment of section 17 to provide that every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" which shall be opened by him in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify and for other consequential matters relating thereto.

6. The Bill seeks to achieve the above objects.

NEW DELHI;
The 16th September, 2020.

AMIT SHAH.

ANNEXURE

EXTRACTS FROM THE FOREIGN CONTRIBUTION (REGULATION) ACT, 2010

(42 OF 2010)

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CHAPTER II

REGULATION OF FOREIGN CONTRIBUTION AND FOREIGN HOSPITALITY

3. (1) No foreign contribution shall be accepted by any—

Prohibition to accept foreign contribution.

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(c) Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;

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Explanation.—In clause (c) and section 6, the expression "corporation" means a corporation owned or controlled by the Government and includes a Government company as defined in section 617 of the Companies Act, 1956.

1 of 1956.

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7. No person who—

Prohibition to transfer foreign contribution to other person.

(a) is registered and granted a certificate or has obtained prior permission under this Act; and

(b) receives any foreign contribution,

shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:

Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government.

8. (1) Every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution,—

Restriction to utilise foreign contribution for administrative purpose.

(a) shall utilise such contribution for the purposes for which the contribution has been received:

Provided that any foreign contribution or any income arising out of it shall not be used for speculative business:

Provided further that the Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section;

(b) shall not defray as far as possible such sum, not exceeding fifty per cent. of such contribution, received in a financial year, to meet administrative expenses:

Provided that administrative expenses exceeding fifty per cent. of such contribution may be defrayed with prior approval of the Central Government.

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CHAPTER III

REGISTRATION

Registration of certain persons with Central Government. **11. (1)** * * * *

(2) Every person referred to in sub-section (1) may, if it is not registered with the Central Government under that sub-section, accept any foreign contribution only after obtaining the prior permission of the Central Government and such prior permission shall be valid for the specific purpose for which it is obtained and from the specific source:

Provided that if the person referred to in sub-sections (1) and (2) has been found guilty of violation of any of the provisions of this Act or the Foreign Contribution (Regulation) Act, 1976, the unutilised or unreceived amount of foreign contribution shall not be utilised or received, as the case may be, without the prior approval of the Central Government. 49 of 1976.

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Grant of certificate of registration. **12. (1)** An application by a person, referred to in section 11 for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.

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Suspension of certificate. **13. (1)** Where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of cancelling the certificate on any of the grounds mentioned in sub-section (1) of section 14, it is necessary so to do, it may, by order in writing, suspend the certificate for such period not exceeding one hundred and eighty days as may be specified in the order.

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Management of foreign contribution of person whose certificate has been cancelled. **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.

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Renewal of certificate. **16. (1)** Every person who has been granted a certificate under section 12 shall have such certificate renewed within six months before the expiry of the period of the certificate.

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CHAPTER IV

ACCOUNTS, INTIMATION, AUDIT AND DISPOSAL OF ASSETS, ETC.

Foreign contribution through scheduled bank. **17. (1)** Every person who has been granted a certificate or given prior permission under section 12 shall receive foreign contribution in a single account only through such one of the branches of a bank as he may specify in his application for grant of certificate:

Provided that such person may open one or more accounts in one or more banks for utilising the foreign contribution received by him:

Provided further that no funds other than foreign contribution shall be received or deposited in such account or accounts.

(2) Every bank or authorised person in foreign exchange shall report to such authority as may be specified—

- (a) prescribed amount of foreign remittance;
- (b) the source and manner in which the foreign remittance was received; and
- (c) other particulars,

in such form and manner as may be prescribed.

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further to amend the Foreign Contribution (Regulation) Act, 2010.

(Shri Amit Shah, Minister of Home Affairs)