

PARLIAMENT OF INDIA

RAJYA SABHA

**DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS**

ONE HUNDRED AND THIRTY FOURTH REPORT

ON

THE FOREIGN CONTRIBUTION (REGULATION) BILL, 2006

**(PRESENTED TO RAJYA SABHA ON 21ST OCTOBER, 2008)
(LAID ON THE TABLE OF LOK SABHA ON 21ST OCTOBER, 2008)**

**RAJYA SABHA SECRETARIAT
NEW DELHI**

OCTOBER, 2008/ASVINA, 1930 (SAKA)

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* To be inserted at printing stage.

COMMITTEE ON HOME AFFAIRS
(Constituted on 5 August 2007)

1. Smt. Sushma Swaraj - Chairperson

RAJYA SABHA

2. Shri Rishang Keishing
3. Shri Rama Chandra Khuntia
4. Shri R.K. Dhawan
5. Shri S.S. Ahluwalia
6. Shri Janeshwar Mishra
7. Shri Prasanta Chatterjee
8. Shri Tiruchi Siva
9. Shri Satish Chandra Misra
10. Shri Sanjay Raut

LOK SABHA

11. Shri L.K. Advani
12. Dr. Rattan Singh Ajnala
13. Shri Ilyas Azmi
14. Km. Mamata Banerjee
15. Smt. Sangeeta Kumari Singh Deo
16. Shri Biren Singh Engti
17. Shri Tapir Gao
18. Shri Hemant Khandelwal
19. Shri Naveen Jindal
20. Shri Ajit Jogi
21. Prof. K.M. Kader Mohideen
22. Shri T.K. Hamza
23. Shri Ramchandra Paswan
24. Shri Sachin Pilot
25. Shri Ashok Kumar Pradhan
26. Vacant
27. Shri Mekapati Rajamohan Reddy
28. Shri Baju Ban Riyan
29. Choudhary Bijendra Singh
30. Shri Brij Bhushan Sharan Singh
31. Shri Mohan Singh

SECRETARIAT

Shri Tapan Chatterjee, Joint Secretary
Shri P.P.K. Ramacharyulu, Director
Shri D.K. Mishra, Deputy Director
Shri Bhupendra Bhaskar, Committee Officer

PREFACE

I, the Chairperson of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Thirty-fourth Report on the Foreign Contribution (Regulation) Bill, 2006 (**Annexure I**).

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred* the Foreign Contribution (Regulation) Bill, 2006, as introduced in the Rajya Sabha on 18 December 2006 and pending therein, to the Committee for examination and report within three months. Due to preoccupation of the Committee with other urgent and pressing work relating to Bills and legislative business, extension of time upto the last week of the Monsoon Session (2007) was initially granted by the Chairman, Rajya Sabha, for presentation of the Report. Further extensions were granted by the Chairman, the last being upto the first week of the Monsoon Session, 2008.

3. The Foreign Contribution (Regulation) Bill, 2006 has been brought to consolidate the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto. The Bill also seeks to repeal the present Act, namely, The Foreign Contribution (Regulation) Act, 1976.

4. The Committee issued a Press Communiqué (**Annexure II**) on the Bill on 9th February 2007 inviting views/suggestions on the Bill. In response thereof, a large number of memoranda were received. After scrutiny, 52 memoranda were found relevant and forwarded to the Ministry of Home Affairs for their comments. The Committee also sought views/suggestions of various political parties on the Bill and received the same from six political parties (**Annexure IV**).

5. The Committee in its meeting held on 12th June 2007, heard the presentation of the Home Secretary, Government of India on the Bill and held preliminary discussion thereon. The Committee in its meeting held on 20th June 2007 decided to hear non-official witnesses including representatives of RBI, SBI, ICICI & HDFC Banks as well as some NGOs on the Bill.

* vide Rajya Sabha Parliamentary Bulletin Part II No. 43741 dated 22 December, 2006.

5.1 In its sittings held on 16th & 17th July, and 3rd October 2007, the Committee heard the views of Dr. Bimal Jalan, Member of Parliament, Rajya Sabha and ex-Governor, RBI and representatives of the following organizations on the Bill:

- (i) Reserve Bank of India;
- (ii) State Bank of India;
- (iii) ICICI Bank;
- (iv) HDFC Bank;
- (v) Catholic Bishop's Conference of India;
- (vi) National Council of Churches in India;
- (vii) National Council of YMCA of India;
- (viii) Representatives of Voluntary Action Network India; and
- (ix) Institute of Chartered Accountants of India

5.2 The Committee in its sitting held on 6th November 2007 and 9th January 2008 heard the representatives of Planning Commission on the compatibility of the Bill vis-à-vis National Policy on Voluntary Sector, a policy document of Voluntary Sector Cell, Planning Commission, Government of India. The Committee also heard Heads of the four expert groups who had worked on the draft policy in its meeting held on 9th January 2008.

6. The Committee took up clause-by-clause consideration of the Bill its meetings held on 15th and 16th May, 2008.

6.1 The Committee considered the draft Report in its sitting held on 4th July, 2008 and adopted the same.

7. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

8. On behalf of the Committee, I would like to acknowledge with thanks the valuable contributions made by the witnesses who deposed before it and facilitated the Committee in formulating its views on the Bill.

(Sushma Swaraj)

Chairperson

New Delhi
4 July, 2008

Department-related Parliamentary
Standing Committee on Home Affairs

REPORT

The Foreign Contribution (Regulation) Bill, 2006 has been brought with a view to regulate the acceptance, utilization and accounting of foreign contribution and acceptance of foreign hospitality by a person or association of companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and to replace the present Foreign Contribution (Regulation) Act, 1976.

1.1 The Foreign Contribution (Regulation) Bill, 2006, *inter-alia* seeks to:-

- (i) consolidate the law to regulate, acceptance and utilization of foreign contribution or foreign hospitality and prohibit use of the same for any activities detrimental to the national interest;
- (ii) prohibit organizations of political nature, not being political parties from receiving foreign contribution;
- (iii) bring association or company engaged in production or broadcast of audio news or audio visual news or current affairs programme through any electronic mode or any other electronic form, or any other mode of mass communication under the purview of the Bill;
- (iv) prohibit the use of foreign contribution for any speculative business;
- (v) cap administrative expenses at fifty per cent of the receipt of foreign contribution;
- (vi) exclude foreign funds received from relatives living abroad;
- (vii) make provision for intimating grounds for refusal of registration or prior permission;
- (viii) provide arrangement for sharing of information on receipt of foreign remittances by the concerned agencies, to strengthen monitoring;

- (ix) make registration valid for five years with a provision for renewal for a further period of five years at a time;
- (x) provide for suspension and for cancellation of registration after due enquiry and giving reasonable opportunity of being heard; and
- (xi) make provision for compounding of certain offences.

The Foreign Contribution (Regulation) Act, 1976

2. The Foreign Contribution (Regulation) Act, 1976 was enacted to regulate the acceptance and utilization of foreign contribution or hospitality with a view to ensuring that our parliamentary institutions, political associations, academic and other voluntary organizations as well as individuals working in important areas of national life may function in a manner consistent with the values of a sovereign democratic republic. The Act was amended in 1984 to extend its provisions to cover second and subsequent recipients of foreign contribution and to the members of higher judiciary, besides introducing the system of grant of registration to the associations receiving foreign contribution.

2.1 As stated in the statement of Objects and Reasons of the present Bill, significant developments have taken place since the enactment of the Act of 1976 and its amendment in 1984 such as change in internal security scenario in the country, ever increasing influence of voluntary organizations, spread of use of communication and information technology, quantum jump in the amount of foreign contribution being received resulting growth in the number of registered organizations. This, according to the Government, has necessitated large scale changes in the existing Act.

Need for New Legislation

3. The Ministry of Home Affairs informed this Committee that since the amendment of FCRA, 1976 in 1984, the need for a comprehensive review of the Act had been felt due to various factors including (i) recommendations made in the Forty-fifth Report of Estimates Committee of the Eighth Lok Sabha in 1986-87; (ii) recommendations made by the Group of Ministers on Reforming the National Security System in 2001; (iii) difficulties faced in the operation of the act because of large growth in the number of registered organizations and the volume

of annual inflow of foreign contribution, and (iv) concerns expressed by Members of Parliament resulting in large number of parliament assurances on amendment of Act, pending for fulfillment.

3.1 This Committee was also informed that as a run-up to the new legislation, the Ministry of Home Affairs had organized a national seminar on FCRA on 24th & 25th June, 2005 which was attended by more than 500 delegates representing various stakeholders. The suggestions given by the stakeholders were considered in detail and suitably incorporated in the draft Bill which proposes to replace the Foreign Contribution (Regulation) Act, 1976.

Presentation on the Bill

4. The Additional Secretary in the Ministry of Home Affairs made a power-point presentation on the Bill before the Committee on 12th June, 2007. He stated that the Bill seeks to consolidate the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies. The Bill also prohibits acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to national interest. The following salient points were put forth in support of the Bill :-

- (i) this Bill is to facilitate foreign contribution for genuine activities;
- (ii) transparency in decision making process is the major thrust of the proposed Bill;
- (iii) the Bill strengthens the monitoring of receipt and utilization of foreign contribution;
- (iv) it prevents diversion of foreign contribution for activities detrimental to national interest;
- (v) foreign contribution if intended for genuine activities can be received either by registration or obtaining prior permission of the Central Government;
- (vi) the preamble of the Bill outlines the emphasis on consolidating the law to regulate receipt and utilization of foreign contribution and foreign

hospitality, and to prohibit acceptance and utilization thereof for activities detrimental to national interest;

- (vii) income from or interest accrued on foreign contribution is included in the definition of 'foreign contribution' to bring about clarity and ease in accounting;
- (viii) amount received as fee, payment in lieu of goods and services rendered, etc. is excluded from definition of 'foreign contribution' to facilitate normal business activities;
- (ix) individuals are also allowed to receive foreign contribution for carrying out genuine activities;
- (x) relatives are out of purview of the Act to facilitate normal family remittances;
- (xi) electronic media is included in the prohibited category since it plays an important role in influencing public opinion;
- (xii) use of foreign contribution or any income arising out of it for speculative business is not allowed to ensure that foreign contribution is utilized for genuine welfare activities;
- (xiii) administrative expenses have been capped at fifty percent of the foreign contribution to prevent diversion of funds from core welfare activities, and to ensure good governance;
- (xiv) grounds for refusal of applications for registration/prior permission are spelt out to reduce discretion;
- (xv) grounds for refusal of registration/prior permission would be intimated to bring in transparency;
- (xvi) registration for a period of five years with a provision for renewal for five years is to ensure weeding out of defunct organizations;

- (xvii) provision has been made for cancellation/suspension of registration to ensure compliance of law, and proper monitoring of receipt and utilization of foreign contribution;
- (xviii) foreign contribution is to be received in single bank account and utilization is allowed from multiple accounts as suggested by the stakeholders;
- (xix) provision for reporting of receipt of foreign remittances through banking channels to strengthen monitoring.

Oral Evidence of witnesses/Memoranda from Public

5. The Committee heard a number of witnesses on the Bill including Dr. Bimal Jalan, Member of Parliament (Rajya Sabha) and former Governor, Reserve Bank of India (RBI), representatives of RBI, State Bank of India (SBI), ICICI Bank, HDFC Bank and representatives of various NGOs and other organizations like Catholic Bishop's Conference of India, National Council of Churches in India, National Council of YMCA of India. Witnesses, who deposed before the Committee, have expressed the following major viewpoints/suggestions on the provisions of the Bill:-

5.1 Suggestions of Dr. Bimal Jalan : Dr. Jalan appeared before the Committee on 16th July, 2007 and expressed his viewpoints on the Bill. He stated that the NGOs, particularly small organizations engaged in social, health and educational work for disadvantaged sections of the society were highly concerned about the implications of this Bill. His main concern was about cumbersome and bureaucratic administrative provisions in the Bill and requested for review of this aspect with a view to simplifying them. He also made the following suggestions :-

- (i) there should be an “automatic route” for registration of NGO’s which receive grants from Ministries/public sector units/organizations controlled by Central and State Governments. Registration should be automatically granted to such institutions within seven days after filing of applications along with a certificate that those are government-aided. No further information or enquiry is necessary. Similar “automatic routes” have been set up by Ministry of Finance and other economic ministries for granting permission in other areas;

- (ii) accounts of all registered NGOs should be annually audited by qualified Chartered Accountants as per normal procedure. However, there should be no fifty per cent limit on administrative expenditure as provided in the Bill. In respect of service organizations, most of the expenditure could be in the form of salaries allowances for field-work, and it is not possible to differentiate between administrative expenses and other expenses, like salaries;
- (iii) the validity of registration should be for ten years and not five years;
- (iv) except in respect of suspected terrorist activities, there should be no power with the government for search, seizure and discretionary inspection of NGOs as provided in the Bill. In respect of terrorist activities such powers should be exercised under anti-terrorism laws and not under FCR Act. Chapter V of the present Bill should be deleted altogether;
- (v) for NGOs, which are not government aided, registration certificates should be issued within 30 days. There should be provision for electronic filing so that NGOs do not have to visit the Ministry for physical filing or follow-up purposes;
- (vi) if any NGO is suspected of indulging in illegal activities, the government should have the power to cancel registration after giving due notice. However, any other penal action should be taken under laws which are already in place (such as, Foreign Exchange Management Act);
- (vii) the provision in the Bill providing for reporting of foreign remittances by the banks should be deleted as it will put additional burden on the Banks. The Act should provide that where there is evidence of suspicious activities, any information, which is required, will be supplied to the Ministry and penal action may be taken against the banks not furnishing the required information;
- (viii) FCR Act should principally address issues like prohibited class, e.g., political parties, Member of Parliaments, educational institutions, institutions which government does not want to be aided by the international agencies, auditing of accounts;

- (i) there is little possibility of FCRA route being used for terror funding as there are other channels of transferring funds meant for creating internal disturbances, terrorism etc. Making the provisions in the FCR Bill stringent may result in stifling the legitimate activities of the NGOs more than their illegitimate activities. It can also impose burden on NGOs dependent on small grants received from abroad; and
- (ii) State-aided agencies, Government-funded agencies, official agencies which are providing funds to any State-recognized agency or anybody who is receiving funds from official, bilateral/multilateral donors, recognized by the Ministry of Finance, may be exempted from the purview of FCRA.

5.2 Views of the representatives of Banks: - The Committee heard the views of the Deputy Governor, Reserve Bank of India, the Chairman, State Bank of India and the representatives of ICICI and HDFC Banks on 16th July, 2007. The views expressed by them have been summarized as under:-

- (i) definition of 'foreign source' may be modified to exclude Indian companies where the foreign holding is in excess of fifty percent.
- (ii) cancellation of permission to receive foreign contribution may be advised through interact to avoid delay in receipt of communication in this regard by the bank.
- (iii) five years restriction for renewal could be dispensed with because this can be monitored on a regular basis through an electronic system and a unique identification number.
- (iv) there is already a system of reporting suspicious transactions by the bank branches directly to the Financial Intelligence Unit. Any cash transaction above Rs. 10 lakh or small transactions aggregating more than Rs. 10 lakh in a month is also reported. There should be a threshold limit beyond which bank may report. A threshold limit of Rs. 5 lakh or above may be fixed.
- (v) the banks could report certain identified types of remittances but it is difficult to report all types of foreign remittances.

- (vi) voluminous data on foreign remittances will put an extra burden on the financial institutions, which will increase cost of the banks. It will also divert the focus on monitoring of suspicious transactions.
- (vii) registration number allotted by the Ministry of Home Affairs should be unique and a relative bank's code be incorporated in the registration number so that use of the same certificate for opening an account in different branches of different banks would not be possible.
- (viii) monitoring of entire foreign remittances will slow down the foreign fund flow through legitimate channels and encourage hawala channels.

5.3 Views of representatives of NGOs and other organizations: The Committee received several memoranda from various organizations/institutions/individuals. The Committee invited some of them to appear before it to hear their views/suggestions on the Bill. The list of witnesses is at **Annexure V**. The gist of views given in the written memoranda and those expressed by the witnesses in their oral evidence, are given as under:-

- (i) preamble of the Bill should be amended. The use of negative expression-'to prohibit' has the potential to curb the freedom of voluntary sector, which works for the betterment of the poor. Therefore, the term 'prohibition' should be deleted;
- (ii) definition of 'foreign source' may be modified suitably, so as to exclude Indian companies with more than fifty percent foreign holding from the purview of the definition of "foreign source".
- (iii) 'organisation of political nature' may be kept in the 'prior permission category' instead of putting them in the 'prohibited category';
- (iv) procedure which has been laid down in the proposed Bill to declare an organization as being an organization of a political nature puts no onus on the Government, after an inquiry, to inform the organization whether it has been declared as an organization of a political nature or not;
- (v) the term 'political nature' is very subjective. The Government should specify as to what constitutes an organization of political nature.

- (vi) provision under Clause 8(i)(a) prohibiting investment of foreign contribution in speculative business, may be dropped. According to Section 11(5) of the Income Tax Act, there are certain statutory investments in which an NGO can park its funds. Both the Acts should be synchronized in a manner that one does not contradict the other;
- (vii) the restriction of fifty per cent on administrative expenditure may not be practical and may have a negative effect on the utilization of funds. Further, administrative expenses cannot be clearly defined;
- (viii) the statutory prohibition of fifty per cent should be in the rules and not in the statute;
- (ix) there is no time limit for the Government within which it shall grant registration or renew registration, as per the provisions of clauses 1 and 16 (3), respectively. The time limit of ninety days may be provided to bring about transparency and accountability;
- (x) registration should be granted liberally and monitoring should be made more effective since certifying/fulfilling of conditions for grant of registration/prior permission is a time consuming exercise;
- (xi) one of the conditions for grant of registration stipulates that an organization has not indulged or involved in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another. These expressions are not defined and if these undefined expressions become cause for rejecting an application for registration, then it will have negative effect;
- (xii) another condition for grant of registration is that an organization has not created communal tension or disharmony in any district or any part of the country. This is again very broad and undefined expression which may give wide discretion to the concerned authorities;
- (xiii) in Clause 12(3)(a)(ii), the term 'inducement' may be replaced by 'deceit or fraud' and the term 'indirectly' may be deleted, as these terms are prone to subjective interpretation;

- (xiv) conditions for registration such as activities, not detrimental to national interest; not involving conversion through inducement or force; not to create communal tension or disharmony; undertaking meaningful activity; any pending prosecution for any offence; sovereignty and integrity; are very subjective areas and leave room for wide discretion. These conditions lead to vesting powers with authorities and give scope for corruption;
- (xv) clause 12(3) refers to 'meaningful activity'. This prevents a new person from undertaking a good work and also prevents a person presently undertaking a particular activity from expanding to newer programmes;
- (xvi) 'meaningful activity' is very subjective, the negative interpretation of which may discourage the voluntary sector;
- (xvii) the words "harmony between religious, racial, social, linguistic, regional groups, caste or communities" mentioned in clause 12(3)(f)(vi) have broad connotations and may lead to subjective decisions;
- (xviii) there is no need for proposed renewal of registration as there are several monitoring provisions in the Bill;
- (xix) the provision of validity of registration certificate for five years will lead to uncertainty for an organization. The Bill has enough provisions to ensure proper working such as suspension, seizure and also regular submission of accounts, auditing etc. This time limit should be removed;
- (xx) furnishing a certificate from an officer of the bank or authorized person in foreign exchange on details of foreign contribution received, is not necessary in view of the provision in the Bill requiring annual report from banks on foreign contribution received;
- (xxi) when an organization ceases to exist or its license is suspended, the funds, after selling off assets, should go to another organization, doing a similar service;
- (xxii) the provision for appeal provided in Clause 31 should not be limited to certain clauses only and should be made applicable to all sections;

- (xxiii) there is no criteria specified or mentioned as to on what ground the Central Government can exempt a particular organization or individual from the operation of clause 50. Procedure for grant of exemption under this clause should be included to bring transparency;
- (xxiv) there is no need for a new legislation because enough monitoring is being done through the Income Tax Act, reporting to the Ministry of Home Affairs, etc. For national security concerns, amendments with stringent conditions may be brought in the existing Acts to protect national interest and to curb terrorist activities; and
- (xxv) the Bill should be an enabling one and not prohibitive to facilitate the voluntary sector to do or continue to do what they have been doing. The intended purpose of the Bill to prevent mis-utilisation of foreign contribution is already being taken care by FEMA, PMLA and IT Act, etc. The Bill should not be mixed up with the objects of curbing use of funds for terrorism.

5.4 Views of the political parties: In view of the wide implications of the Bill, the Committee sought the views of the major National Political Parties. In response six Political Parties had send their comments on the Bill (**Annexure IV**). Views contained in the written comments submitted by the Political Parties are briefly summarized as under:-

- (i) the preamble of the Bill contains the words “to prohibit” whereas in the existing FCRA, 1976 the words used are “to regulate”. The use of the negative expression – “to prohibit” has the potential to curb freedom of voluntary sector and hinder its functioning which works for the betterment of the poor and marginalized.
- (ii) the Bill aims at prohibiting “activities detrimental to national interest” which is a subjective expression and no indicator mentioned anywhere in the Bill as to what constitute activities detrimental to national interest. Therefore, the words “and to prohibit acceptance and utilization of foreign contribution and foreign hospitality for any activities detrimental to the national interest and for matters connected herewith or incidental thereto” be deleted.

- (iii) the definition of “a candidate for election” in clause 2(1) (d) is not explicit as to the time from when a person shall be considered as “duly nominated”. The words “by filing his nomination paper with Returning Officer” be inserted after the words “duly nominated”.
- (iv) India is a democratic republic. So everyone has the right to be part of the political process. Clause 3 (1) (f), whereby the organization of political nature is prohibited from accepting foreign contribution as specified by the Central Government, seems to be inconsistent with the rights guaranteed by the Constitution of India. Therefore, Clauses 3(1) (f), 5(1) and 54 (2) (b) be deleted.
- (v) in clause 4, the following sub-clause may be added: “(g) by way of scholarship, stipend or any payment of like nature from any foreign source”.
- (vi) clause 5 requires reformulation by incorporating within it a time bound post decisional hearing after declaring an organization as an organization of a political nature.
- (vii) the term ‘any foreign hospitality’ may require a more focussed and appropriate definition to avoid possibility of uncertainty.
- (viii) a provision should be incorporated in the Bill that it shall not be necessary to obtain any permission for accepting foreign hospitality, if such hospitality is in connection with religious programme of an individual provided, an intimation is given to the Central Government within a month of availing hospitality. This is justified in view of the Fundamental Right to Freedom of Religion.
- (ix) prohibition on transferring foreign contribution to other person is detrimental to the interest of the voluntary organisations. This means that a voluntary organisation headed by any small group or any right thinking individual will be the ultimate sufferer because they are the people who are working in the remotest parts of the country and they will not get the funds unless registered or have obtained prior permission and will be caught in the quagmire of re-tapism.
- (x) the cap of fifty percent on administrative expenses is very high and should be reduced to twenty-five percent. Government should also have the power to relax the provision in appropriate cases.

- (xi) clause 9(a) prohibits certain persons or organizations from receiving foreign contribution. Such persons/organizations should be given reasonable opportunity of being heard.
- (xii) clause 11(3)(ii) restricts the area or areas in which foreign contribution shall be accepted and utilized, with the prior permission of Central Government. This is unjust, discriminatory and unconstitutional as it violates the right to equality.
- (xiii) clause 12 does not prescribe any period within which the Government is to dispose of an application for registration or prior permission. New provisions in this clause may be added prescribing a time period of ninety days for disposing of an application for registration or prior permission. Otherwise the applicant should be deemed to have been granted registration or prior permission.
- (xiv) the Bill does not define the words ‘inducement’, ‘indirectly’, “not engaged or likely to engage to propagate sedition etc” leaving it to the subjective interpretation of the authorized official. These words should be appropriately defined.
- (xv) clause 12 (3)(a)(vi) states that the authorized officer is required to be satisfied that the organization is “not likely to use foreign contribution for personal gains or divert it for undesirable purposes”. This should also not be left to the subjective assessment of the concerned official and should be appropriately defined. In certain cases, an affidavit can be sought.
- (xvi) clause 12 (3)(a)(iii) provides reasons for non-registration of an organization if it is involved in certain activities. It mentions about 'communal tension' or 'disharmony' as grounds for disallowing registration and does not mention about any organization promoting caste hatred.
- (xvii) clause 12 (3)(b)(c) states that the official is required to determine whether the organization intending to receive foreign funds, has ‘prepared a meaningful project’ and “meaningful activity” for the targeted group. These forward-looking statements are liable to subjective interpretations of the officers and should be appropriately defined. In certain cases, an affidavit can be sought.
- (xviii) as per the principle of natural justice, a person cannot be held guilty until proven. However, according to clause 12 (3)(d), even if there

is a prosecution pending against the person, he is prohibited from receiving foreign funds. This will restrict the number of organizations from obtaining FCRA registration since false cases and accusations can be levelled against social activists who are working on the right issues on behalf of the marginalized communities.

- (xix) in Clause 12(3)(g), it needs to be clarified that the acceptance of foreign contribution shall not lead to incitement of an offence by the applicant. The words ‘by the applicant’ may be inserted after the word “offence”.
- (xx) clause 12(4) be deleted as the applicant should always have the right to know the reasons for refusal of his application.
- (xxi) clause 16 should contain a provision wherein a person who was made application for renewal of a registration certificate, within 6 months before the expiry of the period of the certificate, it should be deemed to have been renewed in the absence of a decision of the Central Government, before the expiry of the period of the certificate.
- (xxii) all organizations receiving foreign contribution should submit yearly audited accounts to the Government, which should also be published through Website.
- (xxiii) clause 38 provides for prohibiting an association from receiving foreign contribution for a period of three years from the date of second conviction. It should be amended. Any organization which is convicted of any offence under the Act should be prohibited from accepting foreign contribution for a period of five years from the date of first conviction.
- (xxiv) a balance should be maintained between national security concerns and the need to provide a transparent regime for flow of funds for charitable purposes.
- (xxv) there are possibilities of by-passing FCRA requirements by channelling the funds through commercial firms as consultant fees, exports etc. There is a need to plug the loopholes by appropriate amendments.

(xxvi) it has often been seen that foreign contributions received for noble activities, are surreptitiously and clandestinely diverted for subversive purpose. Here the question is, who will be monitoring the corpus of the foreign contribution. Hence the need of the hour is to make more specific and stringent provisions in the Bill to prevent such activities.

National Policy on Voluntary Sector vis-à-vis the Foreign Contribution (Regulation) Bill, 2006

6. During the course of examination of the Bill, representatives of some NGOs who appeared before the Committee submitted that the provisions of the Bill were not in conformity with the 'National Policy on Voluntary Sector' formulated by the Planning Commission. The Committee noted that the proposal to repeal the FCRA, 1976 and to replace it with a new Act, was considered and approved by the Cabinet on 9th November, 2006 whereas the National Policy had been in circulation in draft form since May, 2005, which was notified by the Planning Commission on 31st July, 2007. The Committee, in view of the concerns raised in different quarters, decided to hear the representatives of the Planning Commission in the matter.

6.1 Principal Adviser and Deputy Adviser, Planning Commission appeared before the Committee on 6th November, 2007 to place the views of the Commission on the proposed Bill vis-à-vis the National Policy on Voluntary Sector. The Principal Adviser during the course of evidence stated that there is no conflict between the Bill and the Policy, as far as the Planning Commission is concerned. He further stated that there is only one major suggestion of the Planning Commission namely; there should be a mechanism of joint consultations where representatives of the Government and concerned NGOs may sit together from time to time and suggest changes to make the FCRA simplified and easier to operate.

6.2 On a query, whether the Planning Commission took into consideration, the recommendations of the Estimates Committee of Lok Sabha and the Kudal Commission while drafting the policy, the Principal Adviser stated that four experts groups had been constituted and all the concerned documentation was taken into account while drafting the Policy. However, the Planning Commission in its written reply had informed as under:

"while drafting the Policy, inputs available in various documents, such as, the earlier Five Year Plans, Action Plan for collaborative relationship

between Government & Voluntary Agencies, Report of the Steering Committee on Voluntary Sector for the Tenth Plan, a write-up on the Role of the Civil Society, which appeared in the Tenth Plan Document, and the Kudal Commission Report (1987) on Gandhi Peace Foundation & other organizations were utilized. Shri Sanjay Aggarwal, Account-Aid, who was chairing the Expert Group on Legal & Operating Environment and Financing Issues set-up for revising the Policy, had also consulted the Kudal Commission Report. However, the Forty-fifth Report of the Estimates Committee of the Ministry of Home Affairs presented to the Eighth Lok Sabha could not be referred to, while drafting the Policy".

6.2.1 The Committee, therefore, decided to hear the views of the Heads of four experts' group and the Secretary, Planning Commission.

6.3 Secretary, Planning Commission alongwith Senior Adviser, Voluntary Action Cell (VAC) and other representatives of the Commission appeared before the Committee on 9th January, 2008. The Deputy Adviser (VAC), made a powerpoint presentation before the Committee. During the course of presentation he stated that the first draft of the policy was prepared by the Planning Commission during the year 2003 on the recommendations of the joint machinery for collaborative relationship between Government and Voluntary Sector, under the Chairmanship of Deputy Chairman, Planning Commission. The draft policy was then revised after a meeting of 40 experts on the voluntary sector, to improve it. It was also decided to constitute four expert groups to further improve upon the draft policy. The expert groups then met to further modify the policy and on the basis of changes suggested by the groups, a Cabinet Note was prepared. Meanwhile, the draft policy was circulated to concerned Ministries/Departments for obtaining their comments. The draft policy was also forwarded to all States/UTs. The Cabinet considered and approved the policy on 17th May, 2007 and it was notified in the Gazette of India on 31st July, 2007.

6.4 The Deputy Adviser (VAC), Planning Commission further added that the National Policy on Voluntary Sector 2007 was considered as a significant step towards recognition of the contribution of the voluntary sector, as it provided legitimacy to the voluntary sector, as well as brought the desired accountability on their part. He also added that the policy inter-alia provided for review of FCRA from time to time and simplifying its provisions relating to voluntary organizations. According to him, the basic objectives of the policy are as under:-

- (i) to create an enabling environment for Voluntary Organisations that stimulates their enterprise and effectiveness and safeguards their autonomy.
- (ii) to enable Voluntary Organisations to legitimately mobilize necessary financial resources from India and abroad.
- (iii) to identify systems by which the Government may work together with Voluntary Organisations on the basis of the principles of mutual trust and respect, and with shared responsibility.
- (iv) to encourage Voluntary Organisations to adopt transparent and accountable systems of governance and management.

6.5 The Committee also heard the heads of expert groups, who had worked on the draft policy on 9th January, 2008. Commenting on the provisions contained in the policy vis-à-vis the FC(R) Bill, 2006, the Secretary, Planning Commission as well as the heads of expert groups stated that the Bill was not incongruous to the National Policy on Voluntary Sector. He also made the following submissions:-

- (i) the Policy only makes a broad suggestion that the provisions of FCRA should be simplified and reviewed from time to time in consultation with the voluntary organizations, so that its implementation becomes effective;
- (ii) the Policy was formulated in a participatory spirit, involving a number of voluntary organizations and other stakeholders, over a number of consultations;
- (iii) the Policy also suggests having Joint Consultative Forums/Groups of all concerned Ministries/Departments, as well as at State and District levels having representatives of voluntary organizations and Government to discuss mutual concerns on a regular basis;
- (iv) it is expected that once such a Consultative Forum is set up by the Ministry of Home Affairs, problems faced by voluntary organizations would be reviewed and resolved on a regular basis.

6.6 The Ministry of Home Affairs, responding to the views of the Planning Commission, stated that the National Policy of Voluntary Sector not only advocates for liberal policy of Government for the growth and development of the voluntary sector but also speaks of tightening administrative and penal procedure to ensure that the incentives were not misused. It was stated that the proposed Bill seeks to achieve the said objectives by putting in place an improved monitoring mechanism and that it was not contrary to the policy. It rather seeks to facilitate voluntary organizations engaged in bonafide activities.

Major issues raised, responses of the Ministry of Home Affairs and Observations/Recommendations of the Committee

7. Several issues/suggestions were raised/made in the written memoranda submitted to the Committee and in the oral deposition of the witnesses and by the Members of the Committee. A statement showing gist of suggestions made and comments of the Ministry of Home Affairs thereon is placed at **Annexure -III**. The following are some of the major issues raised and the responses of the Ministry of Home Affairs thereon:

7.1 FOREIGN SOURCE

Suggestion

7.1.1 Definition of 'Foreign Source' may be modified to exclude Indian companies where the foreign holding is in excess of fifty percent since such foreign holding is permitted under FDI or FII norms.

Comments of the Ministry

7.1.2 The definition of 'foreign source' provided in the Bill is along the lines of the provision contained in Section 2(1)(e) of the existing FCR Act, 1976. The said provision in the Bill would not affect the normal operations of Indian companies with foreign holding of more than fifty percent which would be governed by various regulations pertaining to foreign investment. The context of FCRA is different and it is felt that retaining the existing provision would not impact negatively on those who may want to receive foreign contribution from such companies for their legitimate activities.

Observations/Recommendations of the Committee

7.1.3 The Committee feels that the definition of 'foreign source' is vague in relation to the status of the Indian companies with more than fifty percent foreign holding. The Committee has been given to understand that such foreign holding is permitted under FDI or FII norms. The Committee, therefore, recommends that Indian companies, where the foreign holding is in excess of fifty percent, may be excluded from the purview of the definition of 'foreign source' and accordingly the definition may be modified.

7.2 PROVISION FOR SCHOLARSHIP, STIPEND ETC.

Suggestion

7.2.1 In clause 4, the following sub-clause be added:

"(g) by way of scholarship, stipend or any payment of like nature from any foreign source."

Comments of the Ministry

7.2.2 The Home Secretary during the course of his oral evidence stated as under :

" we are not providing anything in the Bill, which means that if he is receiving a stipend, he can continue to receive it.....however the Ministry will certainly consider the recommendations of the Committee. "

Observations/Recommendations of the Committee

7.2.3 The Committee noted that clause 4, as presently worded, does not specifically exclude the receipt of foreign scholarship or stipend by Indian citizens studying in Indian or foreign academic institutions from the prohibition as laid down in clause 3. According to the Committee, scholarship/stipend for academic pursuit ought not to be curbed, directly or indirectly. In this context, the Committee noted that section 7 of FCRA, 1976 does lay down a procedure for giving intimation to Central Government

about receipt of scholarships/stipend or any payment of like nature from any foreign source. That section also waives the requirement of giving information if the annual value of such scholarship/stipend or any payment of like nature, does not exceed the prescribed limit.

7.2.4 The Committee is therefore of the considered view that clause 4 may be suitably amended so that the recipients of scholarship/stipend or any payment of like nature from bonafide foreign source do not face any problem in that regard.

7.3 TIME-BOUND POST DECISIONAL HEARING

Suggestion

7.3.1 Clause 5 requires reformulation by incorporating a time bound post-decisional hearing after declaring an organization as an organization of a political nature not being a political party.

Comments of the Ministry

7.3.2 Clause 5(2) of the Bill deals with the procedure for notifying an organization of a political nature and reads as under:

"Before making an order under sub-section (1), the Central Government shall give the organization in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organization of political nature under that sub-section."

7.3.3 There is, therefore, a provision for giving notice before declaring an association as an organization of political nature. Further, Clause 5(3) provides the association with an opportunity to make a representation against the said notice within a period of thirty days and thereby, the association is provided with a reasonable opportunity of being heard. In view of this provision, there is no necessity for keeping a provision for post decisional hearing. It is also mentioned that a set of guidelines to define an organization of political nature not being a political party, will be included in the rules to be framed under the Act.

7.3.4 The Home Secretary further clarifying the position during the course of his oral evidence, observed as under:

"in clause 5(3) there is a provision of 30 days for notice period and that period may be increased. This is in case of a person wanting to represent against such a proposal. Now there is no time-frame mentioned here for the decision of the authority thereafter. In this case, my suggestion and humble observation is that this thing starts with a notice being given to such a person to say why it should not be prohibited. In other words, this clause starts with the giving of a notice to somebody that why not you should be banned."

Observations/Recommendations of the Committee

7.3.5 The Committee took note of the fact that clause 5(3) provides for a notice period of thirty days for the organization to represent during the notice served to them. The Committee, however, expresses its concern over the fact that there is no provision or a time frame in the clause for a post-decisional hearing or in other words, there is no provision for an appellate authority before whom an appeal may be made against the Government's decision. In the absence of a time frame and an appellate authority, Government may procrastinate a decision and during this period of animated suspension, the sword of damocles will be hanging on the organisation. The Committee, therefore, recommends that a time frame may be provided within which the Government has to take a decision on specifying an organization of a political nature not being a political party. The clause should also provide for an appellate mechanism to redress grievances arising out of decisions of the Central Government under sub-clause (1).

7.4 FOREIGN HOSPITALITY

Suggestion

7.4.1 Most of the Members of the Committee were of the view that the definition of 'foreign hospitality' needs clarity. The words 'purely casual one' in clause 2(1)(i) being ambiguous, also needs to be clarified.

Comments of the Ministry

7.4.2 The Ministry has submitted that the term “foreign hospitality” has been defined in clause 2(1)(i). The restriction on acceptance of ‘foreign hospitality’ as provided for in clause 6 of the Bill, pertains to a limited category of persons viz. member of a legislature, office bearers of a political party, judge, government servant or employees of any corporation/body owned or controlled by the Government. As may be seen that each and every category of person/associations specified in clause 3(1) where restrictions regarding receipt of foreign contribution have been made are not covered by clause 6. The import of this restriction on this limited category of persons is based on the premise that they are not expected to avail of foreign hospitality from any foreign source in view of their official position. Seen in this light, the exception of ‘not being of a purely casual one’ could be interpreted as being self explanatory. However, a doubt could arise with reference to acceptance of foreign hospitality from a citizen of a foreign country who could be a friend, particularly when any type of foreign hospitality is being offered/availed in a purely personal capacity by a person travelling abroad. One way of resolving this doubt is to leave the question of availing of such hospitality to the best judgment of the person concerned depending on what kind of information has to be given to any official authority because the Bill is not seeking to restrict people traveling abroad to meet friends, relatives etc. However, any suggestion that the Committee might make in this regard will be duly considered.

Observations/Recommendations of the Committee

7.4.3 The Committee having discussed the matter at length, comes to the conclusion that the definition of 'foreign hospitality' is not clear regarding the status of a person i.e. whether in official or personal capacity, when he/she is on foreign visit. The Committee feels that this aspect should be adequately clarified and accordingly recommends that the words "when on official visit" may be added after the words "a person" in clause 2(1)(i).

7.4.4 Likewise, the Committee is of the view that clause 6 does not clarify the status of a person when travelling abroad i.e. whether in personal or official capacity. The Committee therefore also feels that the restriction on acceptance of foreign hospitality provided in clause 6 should appropriately apply to a person when one is travelling to a foreign country in one's official capacity.

7.5 TRANSFER OF FOREIGN CONTRIBUTION TO OTHERS

Suggestion

7.5.1 Prohibition of transfer of foreign contribution to an other person implies that an NGO headed by a small group or any right thinking individual, will be the ultimate sufferer because those are the people who are working in the remotest parts of the country and they will not get the funds unless they are registered or have obtained prior permission and will be caught in the quagmire of red-tapism.

Comments of the Ministry

7.5.2 This provision was incorporated in the existing Act in the year 1984 and the same has been retained in the Bill. The objective of this provision is to monitor the utilization of foreign contribution received and also to ensure that such foreign contribution is not diverted to associations whose antecedents and credentials have not been verified by the field agencies. This would prevent diversion and mis-utilisation of foreign contribution received. However, if necessary, this aspect could be appropriately addressed in the rules.

7.5.3 Home Secretary further clarifying the position during the course of oral evidence, stated as under:

"Sir, we have said that it would come under rules. You have mentioned about present system of monitoring in which there have been shortfalls and some big NGOs are giving something to any one and when its complaint come to the notice, this question will rise. Later, if certificate is to be obtained from District Magistrate that means there has to be some disclosure. In the first instance we want to give it to someone. If we want to give it to someone then is it not necessary to verify him. I think it is necessary.....possibly, the arrangement can be that the prior permission on behalf of that particular association could, perhaps, be taken by the mother NGO so that the problem that is being expressed is addressed."

Observations/Recommendations of the Committee

7.5.4 The Committee felt that due to the restriction as aforesaid, the ultimate sufferers would be the smaller NGOs who are working in remotest parts of the country. They would not get funds unless registered or have obtained

prior permission and they will be victims of red-tapism. Therefore, as observed by the Home Secretary, the larger organization or the mother NGO which wants to give funds to smaller organizations should obtain prior permission and clearance for such transfers. The Committee, therefore, recommends that necessary amendment may be made in this regard in clause 7, specifying or laying down that an organization which is seeking to transfer the foreign contribution to any other organization, it should obtain prior permission from the Central Government.

7.6 ADMINISTRATIVE EXPENDITURE

Suggestion

7.6.1 Section 8(1)(b) of the Bill is restricting the utilization of foreign contribution for administrative expenses not exceeding fifty percent of such contribution. The restriction of fifty percent on administrative expenses may not be practical and may have a negative effect on the utilization of funds. Further, administrative expenses have not been defined. If at all the restriction is to be retained, then it should be in the rules and not in the statute. Extent of funds to be used for administrative purposes should be left to the donor and donee to decide. These expenses would not be detrimental to the national interest and are outside the objects specified in the preamble of the Bill. On the other hand, it is also suggested that the cap of fifty percent on administrative expenses was very high and should be brought down to twenty five percent. Further, Government should have the power to relax the ceiling in appropriate cases.

Comments of the Ministry

7.6.2 The basic purpose of the Act is to ensure that the foreign contribution received for specific tasks is not utilized for activities other than the stated objectives of the organization. Therefore, a limit of fifty percent on administrative expenses has been provided in the proposed Bill as per the recommendations of 'GoM' to prevent diversion of foreign contribution from the core activities of the association and also to encourage good governance in the voluntary sector. The limit is considered reasonable keeping in view the diverse nature of the activities undertaken by the NGOs. As an illustration, associations engaged in educational and research activities will have higher proportion of administrative expenses. The term 'administrative expenses' could be defined in the Rules.

7.6.3 Home Secretary further clarifying the position during the course of oral evidence, stated as under:

"if the Committee is of the view that administrative expenditure should be defined and then it should be further reduced, we will most certainly consider this and reduce it."

Observations/Recommendations of the Committee

7.6.4 The Committee is inclined to agree with the view that in the absence of the definition of "administrative expenses", it would be difficult to identify the items of expenditure under that head. The Committee therefore recommends that the term "administrative expenses" may be appropriately defined in the Bill.

7.6.5 Having regard to the two opposing viewpoints on the proposed cap on administrative expenditure and also having regard to the various pros and cons of the matter, the consensus in the Committee was in favour of endorsing the provision of the ceiling of fifty percent, of foreign contribution received in a financial year, to meet administrative expenses, which according to the Committee is a reasonable restriction.

7.7 TIME LIMIT FOR REGISTRATION AND GRANT OF CERTIFICATE

Suggestion

7.7.1 Clause 12 does not prescribe any period within which the Central Government is to dispose of an application for registration or prior permission. New provision in this clause may be added prescribing a period of ninety days for disposing of an application for registration or prior permission. If no decision is communicated to the applicant, registration or prior permission would be deemed to have granted.

7.7.2 Clause 16 is silent on the scenario when a person having applied for renewal of certificate of registration within six months before the expiry of the period of the certificate, does not get intimation either about renewal or refusal of renewal, by the expiry date of the certificate. It has been suggested that a deeming provision should be incorporated to the effect that in case no intimation is received

by the applicant by the expiry date of the certificate, it shall be deemed that the certificate has been renewed.

Comments of the Ministry

7.7.3 Verification of antecedents and activities of the recipient association and the donor(s) is conducted through designated field agencies. In some cases, a detailed verification of antecedents/activities of recipient associations and donors is required, which is a time consuming process. However, a broad timeframe within which applications will have to be considered/cleared may be prescribed in the rules or guidelines to be framed for implementation of this provision of the Bill.

7.7.4 Home Secretary, further clarifying the position during the course of oral evidence, stated as under:

".....suppose some application of registration or permission have come up then we may need to make enquiries in some cases, even about the donor. So, it may take a little bit of time. You had desired that we should make provisions for prescribing a time limit either in the rules or somewhere else.....even for renewal we can make some provision of that kind. Madam, in the last meeting a point was raised that six months before the date of renewal comes to an end, he should be required to give application. If it does not happen during that period, it will be deemed to have been renewed, or, it will remain as a provisional registration. We will certainly make some provisions whereby this concern of the honourable Committee may be adequately addressed"

Observations/Recommendations of the Committee

7.7.5 The Committee observes that clause 12 which is quite exhaustive, does not cast any obligation upon the Central Government to dispose of an application for grant of certificate of registration or for prior permission. Thus an applicant may be kept waiting indefinitely for a decision by the Central Government. The Committee is of the considered view that the Government should consider prescribing a time limit of ordinarily ninety days for taking a decision on an application for grant of certificate of registration or giving prior permission. The Committee is further of the

considered view that in case of delay in grant of certificate or prior permission, beyond the normal period of ninety days, it shall be the duty of the central Government to record the reasons for such delay in waiting on the lines of the provisions of sub-clause (4) of clause 12.

7.7.6 The Committee therefore, recommends that the Government should adequately address the suggestion made by it in the preceding para.

7.7.7 The Committee also recommends that in sub-section (c) of sub-clause (3) of clause 12, the word "meaningful" should be omitted as the expression is liable to be interpreted subjectively. The Committee further recommends that the word 'people' appearing in the said sub-section, may be substituted by the word 'society', which is a better expression, with reference to the context.

7.7.8 Like in the case of grant of certificate of registration or prior permission, the Committee feels that in the absence of a time limit for renewal of registration, the applicant may be kept waiting indefinitely for a final decision. The Committee observed that there should be a time limit for the purpose of renewal of registration, which could be ordinarily up to ninety days from the date of application, made under sub-clause (1) of clause 16. The Committee therefore recommends that the Government should adequately address the suggestion made in this regard.

7.8 REPORTING OF SUSPICIOUS TRANSACTIONS

Suggestion

7.8.1 There is already a system of reporting suspicious transactions by the banks' branches directly to the Financial Intelligence Unit. Any cash transaction above Rs.10 lakh or small transactions aggregating more than Rs.10 lakh in a month is also reported. There should be a threshold limit beyond which the bank may report. A threshold limit of Rs. 5 lakh or above may be considered.

Comments of the Ministry

7.8.2 The threshold limit for reporting of foreign remittance by Banks is proposed to be kept at Rs.10 lakh and may be finalized at the time of formulation of rules under the Act. The Financial Intelligence Unit shall be the nodal agency

for collection of information pertaining to receipt of foreign contribution beyond a threshold limit and repeated transactions, even if the amount is slightly less than, or aggregates to a cumulative amount, which may be slightly less than the threshold limit. Sufficient measures will be taken to avoid additional burden on the reporting entities.

7.8.3 Home Secretary further clarifying the position during the course of oral evidence, stated as under:

".....it is proposed that to have each and every remittance reported is not required and there would be a threshold limit which would be defined. The threshold limit would be Rs.10 lakh. It there is a fund flow of more than Rs.10 Lakh in a transaction or in repeated transactions, then only, the bank will inform the Financial Intelligence Unit. That is also part of further strengthening of the financial monitoring. If anything is found to be suspicious by the bank or the Financial Intelligence Unit, they will report it to the appropriate authority."

Observation of the Committee

7.8.4 The Committee recommends that there should be a threshold limit of Rs. 10 lakh for reporting by banks to specified authority and each bank may be asked to report every foreign remittance above that limit. The Committee, therefore, recommends that the proposed threshold limit may be incorporated in clause 17(2) (a).

Clause-by-clause consideration of the Bill

8. The Committee took up the clause-by-clause consideration of the Bill in its sittings held on 15th and 16th May, 2008 wherein the Home Secretary, Secretary, Legislative Department and Secretary, Department of Legal Affairs were present.

Clause 2

8.1. The clause seeks to define the various terms/expressions used in the Bill.

8.1.1 Clause 2 (1)(i) defines 'foreign hospitality'.

8.1.2 The issue has already been discussed in this report at paras 7.4.1 and 7.4.2. The Committee recommends that the words 'when on official visit' may be added after the words 'a person' in sub-section (i) of sub-clause (1) of clause 2.

8.1.3 Clause 2 (1) (j) defines 'foreign source'.

8.1.4 The status of Indian companies with foreign holdings of more than fifty per cent, in relation to this definition, has been discussed in paras 7.1.1 and 7.1.2 of this report. The Committee recommends that such Indian companies may be excluded from the purview of the definition of 'foreign source' and that sub-section (vi) of sub-clause (j) may be suitably amended.

8.1.5 Clause 2 (1) (k) deals with definition of 'legislature'.

8.1.6 Having regard to the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992, the Committee is of the view that Municipal Councils (for small urban areas) and the Panchayati Raj Institutions should also be covered by the definition of 'legislature'. The Committee, therefore, recommends that sub-clause (k) may be amended accordingly.

8.1.7 Subject to the above observations/recommendations, clause 2 is adopted.

Clause 3

8.2 This clause provides for prohibition to accept foreign contribution by certain persons or associations.

8.2.1 The clause is adopted without any change.

Clause 4

8.3 This clause provides that the prohibition to accept foreign contribution under clause 3 shall not apply in case where such contribution is accepted by way of salary, wages or other remuneration from any foreign source or by way of

payment in the ordinary course of business transacted in India by the foreign source; or by way of payment in the course of international trade or commerce or in the ordinary course of business transacted outside India or as an agent of foreign source in relation to any transaction made by such foreign source with the Central Government; or State Government or by way of gift or presentation made to him as a member of any Indian delegation if such gift or present was in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or by way of remittance received in the ordinary course of business through any official channel, post office or any authorized person in foreign exchange under the Foreign Exchange Management Act, 1999; or by way of payment received from the relative of any person referred to in clause 3. However, in case any foreign contribution received by any person specified under this clause, such contribution shall be deemed to have been accepted in contravention of the provisions of clause 3.

8.3.1 The issues connected with this clause have been discussed in paras 7.2.1 and 7.2.2 of the Report. The observations/recommendations of the Committee are contained in paras 7.2.3 and 7.2.4 *ibid*.

8.3.2 Subject to the observations/recommendations contained in paras 7.2.3 and 7.2.4, the clause is adopted.

Clause 5

8.4 This clause lays down the procedure to notify an organization of a political nature.

8.4.1 The issues connected with this clause have been discussed in paras 7.3.1 to 7.3.4 of the Report. The observations/recommendations of the Committee are contained in para 7.3.5 *ibid*.

8.4.2 Subject to the observations/recommendations made in para 7.3.5, the clause is adopted.

Clause 6

8.5 This clause provides for restriction on acceptance of foreign hospitality.

8.5.1 The issues connected with this clause have been discussed in paras 7.4.1 and 7.4.2 of the Report. The observations/recommendations of the Committee are contained in paras 7.4.3 and 7.4.4 *ibid*.

8.5.2 Subject to the observations/recommendations made in para 7.4.4, the clause is adopted.

Clause 7

8.6 This clause prohibits the transfer of foreign contribution to any other person.

8.6.1 The issues raised in relation to this clause have been discussed in paras 7.5.1 to 7.5.3 of the Report. The observations/recommendations of the Committee are contained in para 7.5.4 *ibid*.

8.6.2 Subject to the observations/recommendations made in para 7.5.4, the clause is adopted.

Clause 8

8.7 This clause contains restriction to utilize foreign contribution for administrative purposes.

8.7.1 The issues raised and observations/recommendations of the Committee are contained in paras 7.6.1 to 7.6.5 of the Report.

8.7.2 Subject to the observations/recommendations made in paras 7.6.4 and 7.6.5, the clause is adopted.

Clause 9

8.8 This clause confers power upon the Central Government to prohibit receipt of foreign contribution, etc. in certain cases.

8.8.1 The clause is adopted without any change.

Clause 10

8.9 This clause confers power upon the central Government to prohibit payment of currency received in contravention of the proposed legislation.

8.9.1 The clause is adopted without any change.

Clause 11

8.10 This clause contains provisions relating to registration of certain persons with the Central Government.

8.10.1 The clause is adopted without any change.

Clause 12

8.11 This clause seeks to provide for grant of certificate of registration.

8.11.1 The issues raised and observations/recommendations of the Committee are contained in paras 7.7.1 to 7.7.8 of the Report.

8.11.2 Subject to the observations/recommendations made in paras 7.7.5, 7.7.6 and 7.7.7, the clause is adopted.

Clause 13

8.12 The clause confers power upon the Central Government to suspend the certificate of registration up to one hundred and eighty days.

8.12.1 The clause is adopted without any change.

Clause 14

8.13 This clause contains provisions relating to cancellation of certificate of registration.

8.13.1 The Reserve Bank of India has suggested that the cancellation of permission to receive foreign contribution may be advised through the website of the Ministry of Home Affairs to avoid delay in receipt of communication in this regard by the Bank. The Committee notes that the Ministry has agreed to consider the suggestion at the time of framing of rules.

8.13.2 Subject to the above, the clause is adopted.

Clause 15

8.14 This clause contains provisions relating to management of foreign contribution of person whose certificate has been cancelled.

8.14.1 The clause is adopted without any change.

Clause 16

8.15 This clause contains provisions relating to renewal of certificate.

8.15.1 The issues raised and observations/recommendations of the Committee are contained in paras 7.7.2 to 7.7.8 of the Report.

8.15.2 Subject to the observations/recommendations made in para 7.7.8, the clause is adopted.

Clause 17

8.16 This clause contains provisions relating to foreign contribution through banks.

8.16.1 The issues raised and observations/recommendations of the Committee are contained in paras 7.8.1 to 7.8.4 of the Report.

8.16.2 Subject to the observations/recommendations made in para 7.8.4, the clause is adopted.

Clauses 18-22

8.17 These clauses contain provisions relating to furnishing intimation to the Central Government regarding granting of certificate of registration etc., maintenance of accounts by every person who has been granted a certificate of registration or given prior permission under the proposed legislation, provisions relating to audit of accounts, intimation by candidate for election and disposal of assets created out of foreign contribution.

8.17.1 These clauses are adopted without any change.

Clauses 23-27

8.18 These clauses contain provisions relating to inspection of accounts or records, seizure of accounts or records, seizure of article or currency or security received in contravention of the proposed legislation and disposal of seized articles or currency or security.

8.18.1 These clauses are adopted without any change.

Clauses 28-30

8.19 These clauses contain provisions relating to confiscation of article or currency or security obtained in contravention of the proposed legislation, adjudication and procedure for confiscation.

8.19.1 These clauses are adopted without any change.

Clauses 31-32

8.20 These clauses contain provisions relating to appeal and revision of orders by the Central Government.

8.20.1 Both the clauses are adopted without any change.

Clause 33

8.21 This clause provides for punishment of imprisonment for a term which may be extended to three years or with fine or with both for making false statement, declaration or delivering false accounts.

8.21.1 The Committee noted that section 177 of Indian Penal Code (IPC) prescribes punishment of simple imprisonment for a term which may extend

to 6 months, or with fine which may extend to Rs. 1000, or with both, to a person who furnishes false information to any public servant. The Committee also notes that section 181 of IPC prescribes the punishment to a person for giving false statement on oath or affirmation to public servant etc., which may extend to 3 years, and shall also be liable to fine. The classification of offences under the said sections of IPC is comparable to those included in clause 33. In this context, the Committee observed that the punishment prescribed under that clause is not in consonance with sections 177 and 181 of IPC. The Committee therefore recommends that clause 33 may be re-visited so that it is in tune with the said sections of IPC.

8.21.2 Subject to the above, the clause is adopted.

Clauses 34-37

8.22 These clauses provide for penalty for article or currency or security obtained in contravention of clause 10; punishment for contravention of any provision of the proposed legislation; confers power upon the court to impose additional fine where article or currency or security is not available for confiscation; provides for penalty for offences where no separate punishment has been provided under the proposed legislation.

8.22.1 These clauses are adopted without any change.

Clause 38

8.23 Clause 38 deals with prohibition of acceptance of foreign contribution. It provides for punishment of debarring a person from accepting any foreign contribution for a period of three years for the second or subsequent convictions under clauses 35 and 37.

8.23.1 The Committee felt that in a second or subsequent conviction, a person should be debarred from accepting any foreign contribution for five years instead of three years, as provided in the Clause. The Committee, therefore, recommends that necessary amendment may be made in Clause 38 accordingly.

8.23.2 Subject to the above, the Clause is adopted.

Clauses 39-41

8.24 These clauses provide for offences by companies; bar to prosecution of offences under the Act; and composition of certain offences.

8.24.1 These clauses are adopted without any change.

Clauses 42-54

8.25 These clauses provides for miscellaneous provisions covering inter-alia power to call for information or document, investigation into cases under the Act, protection of action taken in good faith, power of Central Government to give directions, power to make rules, power to exempt in certain cases etc.

8.25.1 The clauses are adopted without any change.

Clause 1, the Enacting Formula and the Title

8.26 Clause 1, the Enacting Formula and the Title are adopted with some changes which are of consequential or drafting nature, namely, “2006” and ‘Fifty-seventh” to be substituted by “2008” and “Fifty-ninth”, wherever these occur.
