

# Foreign Funding Barriers Hinder COVID Relief Efforts in India

“the legislation is costing lives”



India’s spring 2021 COVID-19 surge witnessed an outpouring of aid from the international community. However, significant regulatory barriers – most notably India’s Foreign Contribution (Regulation) Act (FCRA) – obstructed the humanitarian response, preventing non-profits, including hospitals, civil society groups, and charitable trusts, from being able to accept oxygen, medical equipment, donations, and other critical supplies.

*“We had to refuse a 50 Unit O2 Concentrator donation as we could not accept it [due to FCRA restrictions]” – quote from a local NGO partner*



## India’s Foreign Contribution (Regulation) Act (FCRA)

First enacted in 1976, the FCRA was revised in 2010 in response to pressure from foreign governments and the Financial Action Task Force (FATF) and amended in September 2020. Among other restrictions, it:

- Imposes blanket measures aimed at controlling cross-border funding for all non-profits;
- Allows only non-profit entities with a valid FCRA registration to legally receive charitable funds and materials from donors outside India;
- Prohibits sub-granting by FCRA-registered NGOs to other NGOs (whether or not FCRA-registered), preventing those receiving aid from forwarding it to grassroots organizations;
- Institutes a 20% cap for administrative expenses drawn from foreign funds; and
- Requires opening a bank account at State Bank of India (SBI) Delhi branch.



**Since 2010, thousands of NGOs, including Compassion International, Indian Social Action Forum (INSAF) and Sanchal Foundation, have had their FCRA registrations cancelled; with the upcoming expiration of more than 80% of FCRA registrations in October 31, 2021, the government could conceivably cancel the FCRA certificates of thousands of additional NGOs.**

## Other Restrictive Regulations

- The 2019 taxation law amendment limits most donor tax deductions to 50% of the donation, and only up to 10% of donors' income; it further offers a favorable reduced income tax rate for entities forgoing deductions, thereby deterring charitable donations.
- India's Corporate Social Responsibility (CSR) regime requires companies to spend 2% of their pre-tax profits on CSR activities, but allows companies to meet this requirement by donating to the Prime Minister's national relief funds (PM CARES & PMNRF), which are not subject to FCRA or public disclosures. Moreover, donations to these funds are eligible for the full 100% tax deduction, resulting in further shifting of resources away from community organizations and non-profits.
- The Goods & Services Tax subjects donations of certain goods and services, including some medical supplies, to an average 18% GST.

*"In previous national crises, the 2001 earthquake in Gujarat for instance, FCRA restrictions were relaxed and donors in India provided 100% tax deduction for disaster relief contributions. In this far more calamitous situation, neither has been forthcoming." – [Ingrid Srinath](#), Centre for Social Impact and Philanthropy at Ashoka University*



## Impact of Funding Barriers on the Pandemic Response

- Of more than 20,000 NGOs with active FCRA Registration, only around 3,000 had active SBI accounts at the beginning of the surge; as of July 2021 only around 50% of FCRA registered organizations had an operational SBI account. The lack of operational bank accounts has prevented NGOs from being able to accept readily available COVID-relief donations.
- Inability to subgrant has prevented larger and intermediary Indian non-profits from being able to distribute foreign funds and donations to smaller, grassroots organizations, particularly in rural areas.
- Confusion around donations of goods and relief has impacted hospitals, public health organizations, and those in need, slowing down the response with red tape and contributing to the high mortality rate.

*Nearly two dozen patients died after oxygen supplies were not replenished in a timely manner in a large hospital where foreign donors were keen to donate an oxygen production plant, but were held up by the lack of an FCRA approval.*



## RECOMMENDATIONS

- **The government should facilitate humanitarian and disaster relief by removing regulatory burdens that prevent civic actors from being able to respond to crises with characteristic speed and effectiveness.**
- **The government should roll back the FCRA Amendments and other restrictive regulations, or at least suspend them for the duration of the pandemic, similar to actions taken during the 2001 Gujarat earthquake.**
- **Alternately, the government could suspend or extend deadlines for the most restrictive provisions (renewal deadline, administrative expense limitation, subgrant prohibition, bank account requirement, asset seizure upon voluntary surrender of FCRA, etc.) while COVID-19 continues.**
- **The government should refrain from censorship and/or surveillance of social media, journalists, human rights defenders, and other civic actors, instead protecting those engaged in independent coverage of the pandemic.**
- **The government should engage in collaborative, ongoing dialogue with non-profits to improve civic space, transparency, and the regulatory environment, and to better coordinate emergency response.**