



Resource support on NGO Governance, Accounting and Regulations



Standards & NORMS

A joint initiative of FMSF & VANI

Legal Series Vol. IV, Issue 9, January 2012

For private circulation only

(REVISED ISSUE)

POLITICAL NATURE UNDER FCRA

IMPORTANT

**AN ORGANISATION CAN BE DECLARED AS POLITICAL ONLY
WITH APPROVAL OF BOTH HOUSES OF THE PARLIAMENT**



Editorial Team : **Sanjay Patra**, Executive Director, FMSF,
Sandeep Sharma, Head, Programme Desk, FMSF,

Author : **Manoj Fogla***

* The Author is a consultant, can be contacted at mfogla@yahoo.com



Standards & NORMS

A joint initiative of FMSF & VANI

Legal Series Vol. IV, Issue 9, January 2012

For private circulation only

ORGANISATIONS OF POLITICAL NATURE

CONTENTS

INTRODUCTION	01
CAN A NON POLITICAL ORGANISATION BE DECLARED AS ORGANISATION OF POLITICAL NATURE	02
WHAT IS A LEGISLATURE	03
WILL WORKING WITH PANCHAYAT BE TREATED AS POLITICAL ACTIVITY	03
PROCEDURE TO NOTIFY AN ORGANISATION OF A POLITICAL NATURE	03
ORDER OF DECLARING POLITICAL NATURE TO BE LAID BEFORE PARLIAMENT	05
OVERALL SUMMARY	05

INTRODUCTION

1.01 The FCRA 2010 has amended the provision pertaining to organisations of political nature. Earlier such organisations were entitled to receive foreign contribution with prior approval. The new law has totally prohibited such organisation from receiving foreign contributions. Section 3(1)(f) provides that no foreign contribution shall be accepted by organisations. The statutory definition is as under :

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

(f) organization of a political nature as may be specified under subsection (1) of Section 5 by the Central Government.

CAN A NON POLITICAL ORGANISATION BE DECLARED AS ORGANISATION OF POLITICAL NATURE

1.02 Yes, the Central Government has framed rules for the circumstances under which any organisation could be declared as an organisation of political nature. The guidelines for declaring an organisation to be of a political nature, are provided in Rule 3 of the FCR Rules 2011. The guidelines are as under :

- 3. Guidelines for declaration of an organisation to be of a political nature, not being a political party.-** The Central Government may specify any organisation as organisation of political nature on one or more of the following grounds:-
- (i) organisation having avowed political objectives in its Memorandum of Association or bylaws;
 - (ii) any Trade Union whose objectives include activities for promoting political goals;
 - (iii) any voluntary action group with objectives of a political nature or which participates in political activities;
 - (iv) front or mass organisations like Students Unions, Workers' Unions, Youth Forums and Women's wing of a political party;
 - (v) organisation of farmers, workers, students, youth based on caste, community, religion, language or otherwise, which is not directly aligned to any political party, but whose objectives, as stated in the Memorandum of Association, or activities gathered through other material evidence, include steps towards advancement of political interests of such groups;
 - (vi) any organisation, by whatever name called, which habitually engages itself in or employs common methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail roko' or 'jail bhara' in support of public causes.

1.03 From the above Rule, it can be seen that if an organisation engages in various specified activities as stated above, it can be declared to be an organisation of political nature. **It may be noted that once an organisation is declared as an organisation of political nature, it will be debarred from receiving foreign contribution for any purpose.**

1.04 It may also be noted that the nature of action may be treated as political even if the activity is apolitical in nature. In other words, the FCRA Act empowers the FCRA department to artificially deem an organisation to be of political in nature if it engages in certain method of activities which normally is employed by political parties. However, a safeguard has been provided in Section 49 of the Act which provides that any such order of declaring an organisation to be of political in nature should be placed before the Parliament before becoming effective.

WHAT IS A LEGISLATURE

1.05 As per section 2(1)(k) of FCRA the statutory definition of 'legislature' is as under :

- (k) "Legislature" means —
- (A) either House of Parliament;
 - (B) the Legislative Assembly of a State, or in the case of a State having a Legislative Council, either House of the Legislature of that State;
 - (C) Legislative Assembly of a Union territory constituted under the Government of Union Territories Act, 1963;
 - (D) Legislative Assembly for the National Capital Territory of Delhi referred to in the Government of National Capital Territory of Delhi Act, 1991;
 - (E) Municipality as defined in clause (e) of article 243P of the Constitution;
 - (F) District Councils and Regional Councils in the States of Assam, Meghalaya, Tripura and Mizoram as provided in the Sixth Schedule to the Constitution;
 - (G) Panchayat as defined in clause (d) of article 243 of the Constitution;
or
 - (H) any other elective body as may be notified by the Central Government;

It may be noted that a 'Panchayat' has been included in the definition of legislature.

WILL WORKING WITH PANCHAYAT BE TREATED AS POLITICAL ACTIVITY

1.06 Working in rural area for development and other permissible activity is not prohibited. However, if an organisation sets up candidates for Panchayat election or tries to determine/constitute the panchayat, then it may be treated as an activity of political nature. Collaborating with Panchayat in activities for the village development should not be construed as a violation.

PROCEDURE TO NOTIFY AN ORGANISATION OF POLITICAL NATURE

1.07 The Central Government may, under section 5 of FCRA, 2010 read with Rule 3, initiate proceedings of notifying an organisation of political nature. The following

steps will be involved.

- A notice in writing shall be issued to the organisation which is proposed to be notified as an organisation of political nature.
- The grounds on which the organisation is proposed to be notified as an organisation of a political nature shall be provided in writing.
- Such organisation will have an opportunity to make a representation to the Central Government giving reasons in its defence. Such representation should be made within 30 days from the date of notice.
- If there is a delay in making representation within 30 days, then the Central Government may condone the delay if legitimate reasons are furnished.
- The Central Government may withdraw the proceedings or notify the organisation as an organisation of political nature within 120 days from the date of issue of notice.
- If no order is passed within 120 days then Central Government can pass the order within a further period of 60 days after recording the reasons for the delay.

1.08 The procedure of notifying an organisation of political nature as provided in Section 5 of FCRA, 2010 is as under :

5.(1) The Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in clause (f) of sub-section (1) of section 3:

Provided that the Central Government may, by rules made by it, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature.

(2) Before making an order under sub-section (1), the Central Government shall give the organisation 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 organisation of political nature under that sub-section:

(3) The organisation to whom a notice has been served under sub-section (2), may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation as an organisation under sub-section (1):

Provided that the Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the organisation was prevented by sufficient cause from making the representation within thirty days.

(4) The Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation.

(5) The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organisation as an organisation of a political nature not being a political party and make an order under sub-section (1) accordingly.

(6) Every order under sub-section (1) shall be made within a period of one hundred and twenty days from the date of issue of notice under sub-section (2): Provided that in case no order is made within the said period of one hundred and twenty days, the Central Government shall, after recording the reasons therefor, make an order under sub-section (1) within a period of sixty days from the expiry of the said period of one hundred and twenty days.

ORDER OF DECLARING POLITICAL NATURE TO BE LAID BEFORE PARLIAMENT

1.09 Under the section 49 of the Act provides that every order made under section 5 and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament. Such order or Rules shall become effective only after it is approved in both houses of the Parliament. **It may be noted that an order U/s. 5 is regarding notifying an organisation to be of political nature. In other words, an organisation cannot be deemed to be of political in nature unless it is passed by both houses of the Parliament.**

OVERALL SUMMARY

1.10 The FCRA 2010 has amended the provision pertaining to organisation of political nature. Earlier such organisations were entitled to receive foreign contribution with prior approval. The new law has totally prohibited such organisations from receiving foreign contribution.

1.11 Under the new law, even a non political organisation could be declared as an organisation of political nature. In other words, even if an NGO is not engaged in any political activity, certain Actions may be deemed as political activity.

1.12 NGOs should not have avowed political objectives in its Memorandum of Association or bylaws;

1.13 Any NGO, which **habitually** engages itself in or employs common methods of political action like 'bandh' or 'hartal', 'rasta roko', 'rail roko' or 'jail bharo' **in support of public causes** may be declared as an organisation of political nature. **However an organisation can be declared to be an organisation of political nature only if such order is approved in both houses of the parliament.**

1.14 It may be noted that once an organisation is declared as an organisation of political nature, it will be debarred from receiving foreign contribution for any purpose.

1.15 It may be noted that a 'Panchayat' has been included in the definition of legislature. NGOs should be careful about their PRI activities particularly related with Panchayat Election and Governance.

1.16 Working in rural area for development and other permissible activity is not prohibited. However, if an organisation sets up candidates for Panchayat election or tries to determine/constitute the panchayat, then it may be treated as an activity of political nature. Collaborating with Panchayat in activities for the village development should not be construed as a violation.

1.17 The Central Government may, under section 5 of FCRA, 2010 read with Rule 3, initiate proceedings of notifying an organisation of a political nature. The following steps will be involved.

- A notice in writing shall be issued to the organisation which is proposed to be notified as an organisation of political nature.
- The grounds on which the organisation is proposed to be notified as an organisation of a political nature shall be provided in writing.
- Such organisation will have an opportunity to make a representation to the Central Government giving reasons in its defence. Such representation should be made within 30 days from the date of notice.
- If there is a delay in making representation within 30 days, then the Central Government may condone the delay if legitimate reasons are furnished.
- The Central Government may withdraw the proceedings or notify the organisation as an organisation of political nature within 120 days from the date of issue of notice.
- If no order is passed within 120 days, then Central Government can pass the order within a further period of 60 days after recording the reasons for the delay.

Standards & Norms aims to provide relevant informations and guidance on NGO governance, Financial Management and Legal Regulations. The informations provided are correct and relevant to the best of the knowledge of the author and contributor. It is suggested that the reader should cross check all the facts, law and contents before using them. The author or the publisher will not be responsible for any loss or damage to any one, in any manner.



Published by **Mr. Sanjay Patra** on behalf of
FINANCIAL MANAGEMENT SERVICE FOUNDATION
Accountability House, A-5, Sector 26, Noida - 201 301,
website : fmsfindia.org, e-mail : fmsf@fmsfindia.org



Voluntary Action Network India (VANI)
BB-5, Greater Kailash Enclave Part - II,
New Delhi - 110048
www.vaniindia.org

