REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 566 OF 2021

NOEL HARPER & ORS. ...PETITIONERS

VERSUS

UNION OF INDIA & ANR. ...RESPONDENTS

WITH

WRIT PETITION (CIVIL) NO. 634 OF 2021

AND

WRIT PETITION (CIVIL) NO. 751 OF 2021

J U D G M E N T

A.M. KHANWILKAR, J.

1. These petitions under Article 32 of the Constitution of India primarily assail the constitutional validity of the amendments to the provisions of the Foreign Contribution (Regulation) Act, 2010[1] vide the Foreign Contribution (Regulation) Amendment Act, 2020[2], which has come into effect on 29.9.2020, in particular, Sections 7, 12(1A),

[1] for short, "the 2010 Act" or "the Principal Act", as the case may be
[2] for short, "the 2020 Act" or "the Amendment Act", as the case may be

12A and 17(1), being manifestly arbitrary, unreasonable and impinging upon the fundamental rights guaranteed to the petitioners under Articles 14, 19 and 21 of the Constitution.

2. <u>Re: Writ Petition (Civil) No. 566 of 2021</u>

(a) Petitioner No. 1 in this petition along with Carol Faison founded a trust in the name of "The Care and Share Charitable Trust" in Vijayawada, India (bearing Registration No. 242/1997), in the year 1997. It is the case of the petitioners that the Trust is also registered with the Income Tax authorities and Ministry of Home Affairs, Government of India including under the Foreign Contribution (Regulation) Act, 1976[3] for receipt of foreign funds (FCRA No. 010260151 dated 8.12.1998 and renewed on 10.8.2016 under the 2010 Act). Petitioner No. 1 is serving as one of the trustees of the said Trust and petitioner No. 2 (Nigel Mills) is a social worker and one of the trustees of the stated Trust. The Trust is engaged in the social upliftment activity such as helping children below the poverty line in Vijayawada (Andhra Pradesh, India), street children, children of sex workers, physically challenged kids, shelter orphans, abandoned babies and assisting juveniles detained in the

[3] for short, "the 1976 Act"

observation home (local reformatory). The Trust has built and is running nine schools in different slums. It has rescued over 1000 street children, 165 infants, HIV positive and AIDS orphans of Vijayawada. The Trust also engages in daily milk program for 500 kindergarten children since year 2000. The Trust has been awarded National Award for Child Welfare by the Government of India, Ministry of Women and Child Development in the year 2007, for its exceptional work and contribution in the field of child welfare.

(b) The petitioner Nos. 3 and 4 are also trustees of National Worker Welfare Trust (NWWT), which is registered under the Indian Trusts Act, 1882[4] in Secunderabad, Telangana on 17.5.2016. Even this trust is registered with Ministry of Home Affairs, Government of India under the 2010 Act for receipt of foreign funds (FCRA Registration No. 010230883). It is engaged in rehabilitation of migrant workers, with International Labour Organisation (ILO) and addresses the concerns of women workers from the marginalised communities and prospective migrant workers (interstate and oversees), families of migrants, communities, leaders of communities, returnees, women organisations, trade unions, local

[4] for short, "the 1882 Act"

panchayats, Mandal, district and State department connected with labour and administration and governance related to these workers. Both these trusts, it is urged, are dependent upon foreign contributions to meet their day-to-day expenses. However, with the amendments effected in year 2020 to the provisions of the 2010 Act, a new dispensation has been set forth, which in their opinion, is manifestly arbitrary. For, it entails in cancellation of certificate[5] of the trust permitting receipt of foreign contributions for being utilised towards the activities of the concerned trust. Similarly, the operational "FCRA account" will be barred from receiving foreign contribution. The petitioner-Trusts and similarly placed persons[6] (individuals/non-profit organisations) shall mandatorily have to

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[5] The expression "certificate" as defined in Section 2(1)(e) of the 2010 Act as amended, reads thus:

"**2. Definitions.**—(1) In this Act, unless the context otherwise requires,—

(a) to (e) xxx xxx xxx

(e) "certificate" means certificate of registration granted under sub-section (3) of section 12;"

[6] The expression "person" as defined in Section 2(1)(m) of the 2010 Act as amended, reads thus:

"**2. Definitions.**—(1) In this Act, unless the context otherwise requires,—

(a) to (l) xxx xxx xxx

(m) "person" includes—

(i) an individual;
(ii) a Hindu undivided family;
(iii) an association;
(iv) a company registered under section 25 of the Companies Act, 1956 (1 of 1956);"

shift to new regime and open FCRA account(s) in the specified branch on or before the designated date. There is no tangible justification forthcoming for introducing such a change in the dispensation.

(c) The petitioners have referred to the Circular issued by the Reserve Bank of India (RBI) dated 6.2.2012 in exercise of its power under Section 36(1)(a) of the Banking Regulation Act, 1949, containing detailed guidelines for implementation of the provisions of the 2010 Act including the opening of FCRA accounts in all scheduled commercial banks (excluding Regional Rural Banks/RRBs) throughout India. Public notice dated 3.10.2020 issued by the respondent No. 2 after advent of the changed dispensation owing to the amendment of the provisions of the 2010 Act in the year 2020 is, therefore, excessive and without jurisdiction and, thus, unenforceable in law. Further, the amendment of Section 7 of the 2010 Act prohibits the registered person from transferring any foreign contribution irrespective of whether such person is duly registered or not, which was otherwise permitted under the unamended provision. This change is also arbitrary and directly affects the implementation of the social upliftment schemes of the

Trusts through foreign contribution. It is a blanket ban on transfer of foreign contributions, thus affecting the collaborations in developing eco-system(s), especially for smaller and less visible grassroot organisations that may not meet the criteria or be able to submit detailed proposals to get access to grants from foreign countries. The grassroot organisations, in some cases, may not have the track record or meet the eligibility criteria to obtain registration under the Act and are entirely dependent on the funding/transfer by foundations, such as the petitioner-Trusts. The intermediary organisations, which provide the necessary identification, monitoring and capability building of the smaller non-profit organisations, which would be completely jeopardised because of the changed dispensation. Resultantly, Section 7 read with Section 17(1), as amended, is violative of the rights guaranteed under Articles 19(1)(c) and 19(1)(a) of the Constitution of India. These provisions also suffer from the vice of ambiguity and overbreadth or over-governance, thereby violating Article 14 as well.

(d) The petitioners have also assailed the validity of Section 12A, whereby it is made mandatory to produce Aadhaar card details of the office bearers/functionaries/directors of the societies/trusts as

identification document for the purpose of seeking registration, even though they are expected to file application for grant of certificate under Section 12 or get their certificate renewed under Section 16. To buttress this assail, petitioners have relied upon the dictum of Constitution Bench of this Court in ***K.S. Puttaswamy (Retired) & Anr. (AADHAAR) vs. Union of India & Anr.***[7].

(e) The petitioners have also challenged the validity of Sections 17(1) and 12(1A) on the ground that the same suffer from the vice of manifest unreasonableness, ambiguity, overbreadth and impose unreasonable restrictions. Section 17(1) is also discriminatory, as it mandates opening of "FCRA account" and receiving of foreign contribution only at one bank at New Delhi, i.e., New Delhi Main Branch[8] of the State Bank of India[9], 11, Sansad Marg, New Delhi-110001 on specious ground of logistical issues for verification of accounts at different locations. Broadly on these assertions, the petitioners have prayed for the following reliefs: -

> "a. To hold and declare that the impugned Sections 7, 12A, 12(1A) and 17 as inserted in the FCRA, 2010 by the Foreign Contribution (Regulation) Amendment Act, 2020

[7] (2019) 1 SCC 1 (paras 490 and 494)
[8] for short, "NDMB"
[9] for short, "SBI"

are ultra vires Articles 14, 19 & 21 of the Constitution of India and the same be struck down as unconstitutional.

b. A writ in the nature of certiorari and/or any other writ, order or direction of like nature setting aside and quashing the impugned public notice dated 13th October, 2020 issued by the Respondent No. 2 as illegal and unconstitutional.

c. To direct the Respondents not to interfere with the acceptance and utilisation of foreign contribution, operation of the existing bank accounts in the scheduled banks and function of the petitioners and its bonafide members, and

d. Pass such other order/orders as Your Lordships may deem fit and proper in the facts and circumstances of the case."

3. Re: Writ Petition (Civil) No. 751 of 2021

(a) Petitioner Nos. 1 to 4 in this petition claim to be non-profit organisations/Trusts from all over the country having registration under the 2010 Act and petitioner No. 5 is an individual. The petitioner-Trusts are voluntary organisations, duly registered under the unamended 2010 Act. They are engaged in carrying out social, educational and/or religious charitable activities for persons across communities. Their activities range from providing educational and vocational training and food, clothing and medicine for the destitute, to support the disabled and the aged, conducting AIDS awareness camps and taking care of the needs of widows and orphaned

children. They claim to have played pivotal role in COVID-19 relief efforts. Reliance is placed on the dictum of this Court in ***Public Union for Civil Liberties vs. State of T.N. & Ors.***[10], as to the recognition by this Court regarding indispensable role played by non-profit organisations.

(b) Even these petitioners have assailed amended provisions of the 2010 Act, in particular, Section 17 of the Act being violative of Articles 14, 19(1)(c), 19(1)(g) and 21 of the Constitution of India insofar as it requires opening of primary FCRA account in SBI, NDMB only. It is their case that non-profit organisations and voluntary organisations such as the petitioner organisations contribute enormously to India's GDP and provide livelihood to millions of people through direct employment and social welfare activities undertaken by them. Their role ranges from service delivery and welfare activities and welfare works for community development, promoting democracy, human rights, equitable governance and citizens' participation. They focus their activities particularly in low social sector spending in India by tapping into

[10] (2004) 12 SCC 381 (para 5)

global philanthropy. It is stated that foreign contributions have increased from Rs.10,282 crore in 2009-2010 to Rs.16,343 crore in 2018-2019, which is a significant contribution through foreign funds. The amended provisions of the 2010 Act, however, have altered the compliance procedure including the registration of the Trusts receiving foreign contributions. That change, however, is manifestly arbitrary, irrational and unreasonable. The purpose of provisions such as Section 17 (unamended) and the relevant Rules framed under the Act served the cause of effective monitoring of foreign contribution received, in order to prevent misutilisation of such funds. However, the amended provision is excessive, irrational, arbitrary and falls foul of test of proportionality. It suffers from the vice of disproportionate restrictions and failure to provide fair procedure. To buttress the grounds of challenge, reliance is placed on ***K.C. Gajapati Narayan Deo & Ors. vs. State of Orissa***[11]***; Maneka Gandhi vs. Union of India & Anr.***[12]***; Ajay Hasia & Ors. vs. Khalid Mujib Sehravardi & Ors.***[13]***; Indra Sawhney & Ors. vs. Union of India & Ors.***[14]***; T.M.A. Pai***

[11] AIR 1953 SC 375
[12] (1978) 1 SCC 248
[13] (1981) 1 SCC 722 (para 16)
[14] 1992 Supp (3) SCC 217

Foundation & Ors. vs. State of Karnataka & Ors.[15]***; Natural Resources Allocation, In Re, Special Reference No.1 of 2012***[16]***; Modern Dental College and Research Centre & Ors. vs. State of Madhya Pradesh & Ors.***[17]***; Shayara Bano vs. Union of India & Ors.***[18]***; Navtej Singh Johar & Ors. vs. Union of India***[19]***; K.S. Puttaswamy***[20]***; Anuradha Bhasin vs. Union of India & Ors.***[21]***;*** and ***Indian Social Action Forum (INSAF) vs. Union of India***[22].

(c) On such assertion, the petitioners have prayed for the following reliefs: -

> "a. A writ of mandamus or any other writ/order declaring that Section 17 of the FCRA is violative of Articles 14, 19(1)(c), 19(1)(g) and 21 of the Constitution, in so far as it requires that the primary FCRA account is to be opened exclusively in a branch of the State Bank of India, New Delhi, as notified by the Respondent No. 1;
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> b. A writ of certiorari or any other writ/order quashing the MHA Notification No. S.O. 3479(E) dated 7 October 2020 issued by Respondent No. 1 as being violative of Articles 14, 19(1)(c), 19(1)(g) and 21 of the Constitution;
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> c. A writ of certiorari or any other writ/order quashing the public notice bearing F.No. II/21022/23/(35)/2019-FCRA-III dated 13 October 2020 as being violative of Articles 14, 19(1)(c), 19(1)(g) and 21 of the Constitution;

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[15] (2002) 8 SCC 481 (para 25)
[16] (2012) 10 SCC 1 (para 107)
[17] (2016) 7 SCC 353 (paras 60)
[18] (2017) 9 SCC 1 (para 101)
[19] (2018) 10 SCC 1
[20] supra at Footnote No.7 (para 157)
[21] (2020) 3 SCC 637 (paras 78 to 80)
[22] AIR 2020 SC 1363 (for short, "INSAF") (para 15)

d. A writ of certiorari or any other writ/order quashing the public notice bearing II/21022/36/(58)/2021-FCRA-III dated 18 May 2021 as being violative of Articles 14, 19(1)(c), 19(1)(g) and 21 of the Constitution.

e. Any other orders as deemed fit in the interests of justice."

4. Re: Writ Petition (Civil) No. 634 of 2021

(a) This petition is filed as public interest litigation under Article 32 of the Constitution, challenging the decision of the competent authority in extending the timeline for registration and compliance as per the amended provisions of the 2010 Act being unnecessary and in excess of the authority. It is a counter action filed by an individual for issuing direction and peremptory writ of mandamus against the respondent No. 1 (Union of India) to desist from granting further extension to Non-Governmental Organisations[23] for complying with the provisions of the 2020 Act; and to maintain register of all NGOs receiving funds from the foreign countries strictly as per the provisions of amended 2010 Act. This petitioner is also relying upon the dictum in ***INSAF[24];*** adverting to the objective of the 2010 Act. Reliance is also placed on the elucidation of this Court in ***In Re: Distribution of Essential Supplies and***

[23] for short, "NGOs"
[24] supra at Footnote No.22 (para 18)

Services During Pandemic[25], for issuing a peremptory writ. Also, reliance is placed on the decision in ***Teesta Atul Setalvad vs. State of Gujarat***[26], to urge that in the past instances have come to the fore regarding misappropriation of funds by NGOs. Lastly, reliance is placed on ***Rev. Stainislaus vs. State of Madhya Pradesh & Ors.***[27].

(b) The principal relief claimed in this petition, however, does not survive for consideration. For, the date of last extension granted by the competent authority has expired; and no further extension had been granted thereafter during the pendency of this writ petition. Nevertheless, we reproduce the reliefs claimed in this writ petition, which read thus: -

> "A. Issue a Peremptory Writ of Mandamus directing Respondent No. 1 not to grant any further extension to the NGOs from complying with the mandate of the FCRA (Amendment) Act, 2020.
>
> B. Direct Respondent No. 1 and Respondent No. 2 to maintain a register of all NGOs who are involved in the receiving of funds received under FCRA, particularly during Covid times.
>
> C. Direct the Respondent No. 3 to place on record all information about the steps taken by it with regard to the FCRA violation by NGOs, in the context of Child Rights?

[25] 2021 SCC OnLine SC 339 (Suo Moto Writ Petition (C) No.3 of 2021)
[26] (2018) 2 SCC 372
[27] (1977) 1 SCC 677

D. Pass such other Order or directions as this Hon'ble Court may deem fit in the facts and circumstances of the case for doing complete justice in the matter."

5. Common reply of Respondent-Union of India

(a) Respondents have filed a common affidavit in response to the averments made in the three writ petitions. The thrust of their plea is that the amendment does not bar any person to transact in foreign contribution provided it is compliant with the parameters predicated in the 2010 Act including concerning FCRA registration or prior permission. The amendments were necessitated owing to past experience of the executive and is a matter of legislative wisdom. The amendments are intended to ensure effective regulatory measures regarding inflow and utilisation of foreign funds. These are uniformly applicable and do not discriminate any NGO receiving foreign contribution from foreign donors and its utilisation. It is stated that the amendments, in no manner, impact the fundamental rights, much less under Articles 14, 19(1)(c), 19(1)(g) and 21 of the Constitution, as contended.

(b) The 2010 Act lays down a clear legislative policy of strict control in respect of foreign contributions and its utilisation for specified

activities in the country. This is so because the inputs from concerned stakeholders and duty-holders made it evident that the foreign contribution owing to its nature and vast expanse was being abused by some registered organisations. Indisputably, no absolute right inheres in any one, much less to receive foreign contribution outside the framework delineated by the Parliament and implemented by the executive. Every person receiving foreign contribution is obliged to comply with the regulatory and procedural preconditions. The regulatory and procedural preconditions have been specified by law in the form of the 2010 Act and amendments made thereto vide the 2020 Act. The same being quintessence are required to be fulfilled for acceptance of foreign contribution and its utilisation.

(c) Notably, in these petitions, no challenge is set forth in respect of amended provisions, as obtained prior to coming into force of the 2020 Act. The same were complied with by all concerned without any demur.

(d) The purpose behind the amendment of 2020, is to make meaningful and effective regulatory arrangement and real-time reporting of utilisation of the foreign contribution for the activity for

which it has been earmarked and permitted to be so used in terms of the registration certificate or prior permission of the competent authority.

(e) The permission to receive foreign contribution is granted to persons for a definite cultural, economic, educational or social programme meant for the benefit of the society, as mandated in Sections 11 and 12 of the 2010 Act. The dispensation envisaged in the Act is to seek registration or prior permission of the competent authority to receive and utilise foreign contribution. The person having obtained such certificate of registration or prior permission, cannot complain about the regulatory provisions regarding utilisation thereof for the prescribed activities. For, the legislative intent behind enactment of the 2010 Act is that foreign contribution cannot be allowed unless it is tightly regulated and controlled.

(f) The implementation of the 2010 Act increasingly revealed that certain NGOs were involved primarily in routing of foreign contributions only. They received and utilised foreign contribution by transferring it to other NGOs, thereby establishing a principal-client relationship. To overcome this mischief, it became necessary to amend the provisions for effective regulatory and control

measures in respect of receipt and utilisation of foreign contribution. These amendments were necessitated because of large-scale transfers of foreign contribution and sudden rise in the inflow thereof in the recent past creating several operational difficulties and malpractices, that threatened to defeat the very purpose of the 2010 Act. The regulatory agencies were finding it difficult to monitor the ultimate utilisation of foreign contribution by the transferee. To stop such violations and malpractices and to fix accountability, it was considered necessary to stop the transfer of foreign contribution and thus ensure that the recipient of the foreign contribution itself utilises the same.

(g) The need to mandate the utilisation of foreign contribution by the recipient NGO itself, is also on account of the purport of Sections 11 and 12 of the Act. The same predicate that FCRA registration be offered to an association[28] having definite programme to spend the foreign contribution on purposes useful to society. The NGOs merely

[28] The expression "association" as defined in Section 2(1)(a) of the 2010 Act as amended, reads thus:

> "**2. Definitions.**—(1) In this Act, unless the context otherwise requires,—
>
> (a) "association" means an association of individuals, whether incorporated or not, having an office in India and includes a society, whether registered under the Societies Registration Act, 1860 (21 of 1860), or not, and any other organisation, by whatever name called;"

indulging in transfer of foreign contribution to other NGOs *albeit* registered or persons having prior permission, is not the scheme of the 2010 Act. In order to ensure that the purported legitimate activities of NGOs do not result in foreign contribution being diverted from one area of activity to other area leading to its misuse including threatening the sovereignty and integrity of the country, the Parliament opted the strict dispensation of restricted utilisation of foreign contribution by the recipient NGOs itself for the permitted activities. The amended provisions are intended to remedy the mischief of endless chain of transfers of foreign contribution from the recipient NGOs to other registered NGOs creating layered trail of money making it difficult to trace the flow and legitimate utilisation thereof.

(h) The successive multiple chain of transfers not only create a layered trail of money, but also lead to substantive portion of foreign contribution being utilised as administrative expenditure by the concerned entity by claiming it as its own allowance for administrative expenditure to the extent of 50 per cent of the receipt. The aggregate of such administrative expenditure, if reckoned with the aggregate quantum of inflow of funds by the original recipient,

would, in a given situation, far exceed the statutory bar of 50 per cent of total contribution received by the NGO from abroad. Further, the wisdom of the Parliament was also in favour of reducing the permissibility of administrative expenditure by limiting it to 20 per cent, so that maximum benefit is reaped by the society at large due to its utilisation for permissible activities of the NGO.

(i) The subject amendment became necessary also to obliterate the mischief of foreign powers and foreign State and non-State actors indulging in activities resulting in interference in the internal polity of the country with ulterior designs. Resultantly, sub-Section (1A) has been inserted in Section 12 of the 2010 Act, making it essential to furnish details of FCRA account. This is in consonance with the manner specified in Section 17 of the Act. In other words, insertion of sub-Section (1A) was to infuse compatibility with other provisions of the 2010 Act. To that end, a new section – Section 12A has also been inserted requiring furnishing of Aadhaar card details in lieu of identification document. It is urged that the petitioners have misapplied the exposition of the Constitution Bench in ***K.S. Puttaswamy***[29]. The said decision does not completely rule out the

[29] supra at Footnote No.7

possibility of intrusion into the privacy of a person, which is backed by a just law.

(j) The core intent behind the provisions such as Section 12A is to facilitate proper identification of person and associations with which the persons are connected and also purposeful real-time monitoring of activities for ensuring that the same are not detrimental to the national interest. As a matter of fact, the 2010 Act (unamended) itself mandates that *benami* and fictitious activities are prohibited under the Act. Thus, proper identification of person at the time of registration would ensure proper identification of functionaries of FCRA/NGOs. Such a provision ought to stand the test of legitimate aim and also proportionality test.

(k) The amended Section 17(1) specifies receipt of foreign contribution in designated FCRA account in the SBI, NDMB. An NGO is required to open such account for the purpose of remittances of foreign contribution. The proviso to Section 17(1) envisages that the FCRA account holder is free to add any FCRA account in any of the scheduled bank of his choice for the purpose of receipt and utilisation of foreign funds received in his FCRA account with the specified branch of the SBI at New Delhi i.e., SBI, NDMB. The

operation of the FCRA account would be controlled by the account holder itself. The stipulation only requires the inflow of foreign contribution through designated channel which is to ensure effective implementation of proper regulatory and controlled measures. Sufficient time was given to the FCRA account holder to comply with the formalities as per the new dispensation.

(l) Initially, a public notice was issued on 13.10.2020 providing for procedure and operation of the designated FCRA account, giving time till 31.3.2021, which came to be extended from time to time until December, 2021. It is stated that the respondent No. 1 also informed all the FCRA registered associations/organisations through SMS and e-mail on their registered mobile number and e-mail address about the public notice dated 13.10.2020. The competent authority also amended the Foreign Contribution (Regulation) Rules, 2011[30]. It is urged that some individual hardship may be caused to the registered associations on account of the change, but that cannot be the basis to declare the law made by the Parliament, vide the 2020 Act, invalid. Reliance is placed on ***M/s.***

[30] for short, "the 2011 Rules"

Laxmi Khandsari & Ors. vs. State of U.P. & Ors.[31] and ***All India Council for Technical Education vs. Surinder Kumar Dhawan & Ors.***[32], wherein this Court held that the Court must refrain from interfering with policy matters on the specious ground of individual hardship to some persons.

(m) It is further stated that the 2010 Act mandates Ministry of Home Affairs[33] to regulate the receipt and utilisation of foreign contributions in the country. That process involves multiple steps including audit, inspection and filing of annual return and monitoring of fund flow. Accordingly, a systematic monitoring of FCRA bank account is imperative part of the regulatory measures provided in the Act and the rules made thereunder. It is elaborated that presently there are about 22,600 NGOs holding registration or prior permission for specific project/programme. These NGOs used to receive foreign contribution in an exclusive bank account of their choice in any bank in India. That resulted in opening of multiple accounts in hundreds of branches spread across the country. This inevitably caused enormous difficulty in monitoring of inflow or

[31] (1981) 2 SCC 600
[32] (2009) 11 SCC 726
[33] for short, "the MHA"

outflow of amount from the respective accounts and also during audit process. Even though the mandate of law obliges the NGOs to file periodical annual return, however, the inflow and outflow details at a particular point of time or on real-time basis, association-wise, as well as, cumulatively, for all such organisations was not forthcoming and monitoring thereof due to scattered distribution of the FCRA accounts across the country seriously affected the monitoring process. Notably, keeping in mind the convenience of the registered associations, they have been given choice to open another FCRA account in any scheduled bank/branch of their choice after opening of FCRA account in SBI, NDMB, for receiving foreign contribution from any foreign source. It is urged that the legislative intent behind the 2010 Act and the object sought to be achieved is to curb misuse of foreign contribution threatening the sovereignty and integrity of the nation including impacting the polity. As aforesaid, the amendments were necessitated on account of past experience and to curb the mischief which was prevalent despite the tight regulatory measures under the 2010 Act.

(n) The legislative history has also been highlighted in the common reply filed by respondents. To address the scourge of foreign

contribution impacting the national interest was taken note of by way of the 1976 Act. Certain changes were brought about to that Act in the year 1985, making it more effective. The 2010 Act had been the outcome of a bill drafted in 2006. The Statement of Objects and Reasons, as mentioned in the said Bill titled as "Foreign Contribution (Regulation) Bill, 2006" recognised that significant developments had taken place since 1984, such as change in internal security scenario, an increased influence of voluntary organisations, spread of use of communication and information technology, quantum jump in the amount of foreign contribution being received and large-scale growth in the number of registered organisations, necessitating comprehensive legislative approach. The Bill was referred to the Department–related Parliamentary Standing Committee on Home Affairs. Eventually, the 2010 Act was perceived. This legislative history has been taken note of in the case of ***INSAF***[34]. The amendments effected in the year 2020 had become necessary to ensure that the object of the Act is achieved efficiently.

(o) It is urged that the 2010 Act cannot be equated with any other general legislation. The object behind this Act is to insulate the

[34] supra at Footnote No.22

democratic polity and public institutions and individuals working in the national democratic space from being unduly influenced with the aid of foreign contribution or foreign hospitality received from foreign source. The object behind the Act is to secure the sovereignty and integrity of India including public order and public interests. This wisdom of the Parliament cannot be lightly brushed aside being a legislative policy. Reliance is placed on ***Rajeev Suri vs. Delhi Development Authority & Ors.***[35] to buttress this argument. Reliance is also placed on ***Joseph Lochner vs. People of the State of New York***[36]***; New State Ice Company vs. Ernest A. Liebmann***[37]***; West Coast Hotel Company vs. Ernest Parrish***[38]***; United States of America vs. Carolene Products Company***[39]***; American Federation of Labor, Arizona State Federation of Labor et al. vs. American Sash & Door Company et al.***[40]; and ***Ferguson vs. Skrupa***[41]. It is urged that the doctrine that prevailed in ***Joseph Lochner***[42] that due process authorises Courts to hold laws

[35] 2021 SCC Online 7 (paras 570 and 571)
[36] 198 U.S. 45 (1905)
[37] 285 U.S. 262 (1932)
[38] 300 U.S. 379 (1937)
[39] 304 U.S. 144 (1938)
[40] 335 U.S. 538 (1949)
[41] 372 U.S. 726 (1963)
[42] supra at Footnote No.36

unconstitutional whenever they believe the legislature has acted unwisely - has long since been discarded.

(p) After having said so, reliance is also placed on the decision of this Court in ***State of Himachal Pradesh & Ors. vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh***[43]***; Ravindra Ramachandra Waghmare vs. Indore Municipal Corporation & Ors.***[44]; ***State of Himachal Pradesh & Ors. vs. Satpal Saini***[45]*;* and ***Union of India vs. Indian Radiological & Imaging Association & Ors.***[46], in support of the argument that Court should be loath in interfering with the wisdom of the legislature adopting a particular policy. Further, the Court cannot substitute such wisdom in the guise of exercise of the power of judicial review. Reliance is also placed on the enunciation in ***Dr. Ashwani Kumar vs. Union of India & Anr.***[47] to contend that the Constitution predicates that legislature is supreme and has a final say in matters of legislation when it reflects on alternatives and choices with inputs from different quarters, with a check in the form of democratic

[43] (2011) 6 SCC 597 (para 21)
[44] (2017) 1 SCC 667 (para 46)
[45] (2017) 11 SCC 42 (para 6)
[46] (2018) 5 SCC 773 (para 16)
[47] (2020) 13 SCC 585 (paras 25-27)

accountability and a further check by the Courts which exercise the power of judicial review. It is further held in this decision that it is not for the Judges to seek to develop new all-embracing principles of law in a way that reflects the stance and opinion of the individual judges when the society/legislature as a whole are unclear and substantially divided on the relevant issues.

(q) Reliance is also placed on ***Rustom Cavasjee Cooper vs. Union of India***[48], restating the above principle and observing that the Court will not sit in appeal over the policy of Parliament in enacting a law. Reliance is also placed on ***R.K. Garg vs. Union of India & Ors.***[49], wherein it has been observed that the Courts have only the power of destroying and not to reconstruct. Further, in respect of economic regulation being replete with complexity, self-limitation needs to be exercised by the Courts, thereby following the path of judicial wisdom. Reliance is also placed on ***Peerless General Finance and Investment Co. Limited & Anr. vs. Reserve Bank of India***[50]***; Premium Granites & Anr. vs. State of T.N. & Ors.***[51]***;***

[48] (1970) 1 SCC 248 (para 63, 70)
[49] (1981) 4 SCC 675 (para 8)
[50] (1992) 2 SCC 343 (para 31)
[51] (1994) 2 SCC 691 (para 54)

Delhi Science Forum & Ors. vs. Union of India & Anr.[52]*;* ***BALCO Employees' Union (Regd.) vs. Union of India & Ors.***[53]*;* and ***State of Madhya Pradesh vs. Narmada Bachao Andolan & Anr.***[54]. Relying on said decisions, it is urged that the gravamen of grievance of the writ petitioners is essentially about the operational inconvenience being caused to them. That cannot be the basis to declare the amended provisions being violative of fundamental rights and more so, because the same are necessitated to overcome the misuse of foreign contribution from foreign sources threatening the sovereignty of the nation.

(r) Dealing with the plea regarding amended provisions being violative of Article 14 of the Constitution, it is urged that the Constitution does not predicate that all laws must be general in character and universal in application. On the other hand, it is open to the legislature to distinguish and classify persons or things for the purposes of legislation. Indeed, such discrimination and classification should not be arbitrary and ought to be in conformity with the intelligible differentia having a reasonable relation to the

[52] (1996) 2 SCC 405 (para 7)
[53] (2002) 2 SCC 333 (para 38)
[54] (2011) 7 SCC 639 (para 36)

object sought to be achieved by the law in question. The impugned amendments of 2020 are fully compliant. The amendments fulfil the "twin test of classification" founded on the factum of classification between Indian citizens and foreigners, so much so, Indian contribution and foreign contribution. The amendments fulfil the permissible classification principle and are founded on intelligible differentia and distinguish contributions to be received by the NGO. In other words, if an NGO intends to receive foreign contribution, it must fulfil the necessary conditions and comply with the formalities specified therefor. Thus understood, the exposition in ***Shayara Bano***[55], pressed into service by the writ petitioners, will be of no avail. Whereas, classification by law is not forbidden. It is not open to belittle the legislative intent behind the amendments by giving it the colour of manifest arbitrariness. The argument that the law suffers from the vice of manifest arbitrariness, must be examined on the touchstone of the enunciation by this Court in series of judgments. Reliance is placed on ***Charanjit Lal Chowdhury vs. The Union of India & Ors.***[56]***; The State of Bombay & Anr. vs.***

[55] supra at Footnote No.18
[56] AIR 1951 SC 41 (paras 8-10, 18, 27-29, 61-65)

F.N. Balsara[57]; Kathi Raning Rawat vs. State of Saurashtra[58]; Gurbachan Singh vs. State of Bombay & Anr.[59]; The State of Punjab vs. Ajaib Singh & Anr.[60]; Habeeb Mohamed vs. The State of Hyderabad[61]; Kedar Nath Bajoria vs. The State of West Bengal[62]; Baburao Shantaram More vs. Bombay Housing Board & Anr.[63]; Harman Singh & Ors. vs. Regional Transport Authority, Calcutta Region & Ors.[64]; Sakhawant Ali vs. State of Orissa[65]; Budhan Choudhry & Ors. vs. State of Bihar[66]; D.P. Joshi vs. State of Madhya Bharat & Anr.[67]; Hans Muller of Nurenburg vs. Superintendent, Presidency Jail, Calcutta & Ors.[68]; Kishan Singh & Ors. vs. State of Rajasthan & Ors.[69]; P. Balakotaiah vs. Union of India & Ors.[70]; Shri Ram Krishna Dalmia vs. Shri Justice S.R. Tendolkar & Ors.[71]; Express Newspaper (Private) Ltd., & Anr. vs. Union of India & Ors.[72];

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[57] AIR 1951 SC 318 (paras 37-42, 47, 62)
[58] AIR 1952 SC 123 (paras 7, 19, 32-36, 45-48)
[59] AIR 1952 SC 221 (paras 3-6, 8)
[60] AIR 1953 SC 10 (para 22)
[61] AIR 1953 SC 287 (paras 4-6)
[62] AIR 1953 SC 404 (paras 6-16)
[63] AIR 1954 SC 153 (para 6)
[64] AIR 1954 SC 190 (para 7)
[65] AIR 1955 SC 166 (paras 9-10)
[66] AIR 1955 SC 191 (paras 5, 7, 9)
[67] AIR 1955 SC 334 (paras 14-16)
[68] AIR 1955 SC 367 (paras 14, 24-25)
[69] AIR 1955 SC 795 (paras 3-5)
[70] AIR 1958 SC 232 (para 13(IIa), 14-16)
[71] AIR 1958 SC 538 (paras 11-17)
[72] AIR 1958 SC 578 (paras 210-218)

Khandige Sham Bhat vs. Agricultural Income-tax Officer, Kasaragod & Anr.[73]; Raja Bira Kishore Deb, hereditary Superintendent, Jagannath Temple vs. The State of Orissa[74]; Ganga Ram & Ors. vs. Union of India & Ors.[75] ; Anant Mills Co. Ltd. vs. State of Gujarat & Ors.[76]; Mohan Kumar Singhania & Ors. vs. Union of India & Ors.[77]; Venkateshwara Theatre vs. State of Andhra Pradesh & Ors.[78]; Ombalika Das vs. Hulisa Shaw[79]; Dharam Dutt & Ors. vs. Union of India & Ors.[80]; and Basheer @ N.P. Basheer vs. State of Kerala[81].

(s) In substance, it is the case of the respondents that during implementation of the 2010 Act, it was experienced that there was need to streamline the provisions, so as to achieve the desired objective of the Act by improving the compliance mechanism, enhancing transparency and accountability in the receipt and utilisation of foreign contribution through effective monitoring and facilitating genuine NGOs or associations working for the welfare of

[73] AIR 1963 SC 591 (paras 7-9)
[74] AIR 1964 SC 1501 (para 5)
[75] (1970) 1 SCC 377 (para 2)
[76] (1975) 2 SCC 175 (paras 24-25)
[77] 1992 Supp. (1) SCC 594 (paras 127, 130)
[78] (1993) 3 SCC 677 (paras 20-23, 29)
[79] (2002) 4 SCC 539 (para 11)
[80] (2004) 1 SCC 712 (para 56)
[81] (2004) 3 SCC 609 (paras 20, 23)

the society in ensuring maximum benefit to the intended population. Indisputably, all the registered associations have been treated equally in respect of receipt of foreign contribution and its utilisation for the purpose for which it is so received. The law permits utilisation of foreign contribution by the recipient NGO itself and ensures that the spending of administrative expenses should not exceed 20 per cent of such receipts, so that substantial portion of the foreign contribution is spent on the activities for which it has been so received and benefits the targeted population. The amendment mandating receipt of foreign contribution only in a designated FCRA account with the SBI, NDMB is to facilitate access of data of foreign contribution from one source for effective monitoring of fund flow received through foreign contribution. This legislative intent, by no means, can be said to be in conflict with the object of the Principal Act and in any case, cannot be labelled as manifestly arbitrary as well. This is also because Section 17(1) of the 2010 Act would permit the registered NGOs to open and operate another FCRA account in any scheduled bank/branch of their choice in the country. Accordingly, it is urged that the argument

regarding amended provisions being violative of Article 14, is devoid of merits.

(t) While countering the challenge on the ground of Article 19(1)(c) and 19(1)(g), it is stated that there exists no right to seek a foreign contribution without regulation. Further, the 2010 Act does not prohibit the foreign contributions or the right to form the associations itself or the right to practice any profession. Rather, it merely seeks to provide efficacious regulatory regime regarding foreign contributions to be received by such associations. The rights under Article 19(1)(c) and 19(1)(g), therefore, remain unaffected. It is urged that right to form an association and right to freedom of trade and profession do not include right to receive unbridled and unregulated foreign contributions and more so its utilisation for activities other than permissible activities. In other words, the law in question is squarely covered by the exceptions provided for within the meaning of Article 19(4) and 19(6) of the Constitution.

(u) The challenge to the amendments made on the touchstone of Article 19(1)(c), needs to be considered in light of the object of the Principal Act. It is an Act to protect umbrella terms of "sovereignty and integrity of India" and "public order". Reliance is placed on ***O.K.***

Ghosh & Anr. vs. E.X. Joseph[82], wherein it has been noted that clause (4) of Article 19 refers to the restriction imposed in the interests of public order. The restriction, proximate and direct, must have causal connection with public order.

(v) Reliance is also placed on exposition in following decisions: - ***Saghir Ahmad & Anr. vs. State of U.P. & Ors.***[83]***; Babulal Parate vs. The State of Maharashtra & Ors.***[84]***; Daya vs. Joint Chief Controller of Imports & Exports & Anr.***[85]***; Akadasi Padhan vs. State of Orissa & Ors.***[86]***; Municipal Committee, Amritsar & Ors. vs. State of Punjab & Ors.***[87]***; Madhu Limaye vs. Sub-Divisional Magistrate, Monghyr & Ors.***[88]***; Daruka & Co vs. Union of India & Ors.***[89]***; Md. Serajuddin & Ors. vs. State of Orissa***[90]***; Municipal Corporation of the City of Ahmedabad & Ors. vs. Jan Mohammed Usmanbhai and Anr.***[91]***; Sushila Saw Mil vs. State of Orissa and Ors.***[92]***; Laxmikant vs. Union of India & Ors.***[93]***;*

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[82] AIR 1963 SC 812 (paras 9-10)
[83] AIR 1954 SC 728 (para 23)
[84] AIR 1961 SC 884 (paras 26, 28-32)
[85] AIR 1962 SC 1796 (paras 14-19)
[86] AIR 1963 SC 1047 (paras 1, 14-15)
[87] (1969) 1 SCC 475 (paras 10, 14)
[88] (1970) 3 SCC 746 (paras 12-16, 24, 26-28, 46)
[89] (1973) 2 SCC 617 (paras 16-20, 24-25)
[90] (1975) 2 SCC 47 (para 28)
[91] (1986) 3 SCC 20 (paras 15-24)
[92] (1995) 5 SCC 615 (para 4)
[93] (1997) 4 SCC 739 (para 10)

Krishnan Kakkanth vs. Government of Kerala & Ors.[94]***; Indian Handicrafts Emporium & Ors. vs. Union of India & Ors.***[95]***; Om Prakash & Ors. vs. State of U.P. & Ors.***[96]***; People's Union for Civil Liberties & Anr. vs. Union of India***[97]***; State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat & Ors.***[98]***; Kerala Bar Hotels Association & Anr. vs. State of Kerala & Ors.***[99]*; and ***Anuradha Bhasin***[100].

(w) It is urged that the impugned amendments are directly related to the object sought to be achieved by the 2010 Act. The object behind the Principal Act is to secure the interests of sovereignty and integrity of the country, public order and interests of general public. That objective being consistent part of the legislative policy of the country for the past five decades, is beyond judicial review. As the impugned amendments have a direct and proximate relationship with the stated object of the Principal Act, they are fully protected within the meaning of Article 19(4) and 19(6).

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[94] (1997) 9 SCC 495 (paras 27-29)
[95] (2003) 7 SCC 589 (paras 31-41)
[96] (2004) 3 SCC 402 (paras 31-40)
[97] (2004) 9 SCC 580 (paras 40-45)
[98] (2005) 8 SCC 534 (paras 73-79, 135-137)
[99] (2015) 16 SCC 421 (paras 30-38)
[100] supra at Footnote No.21 (paras 154-159)

(x) It is further contended that right to life and liberty within the meaning of Article 21 of the Constitution, cannot and does not include the right to receive unregulated funds and contributions; misuse of which inevitably threatens the polity and sovereignty and integrity of the country. The amended provisions, by no stretch of imagination, prohibit the inflow of foreign contributions or the right to form associations itself or the right to practice any profession. The same merely provide for tight regulatory mechanism to ensure that the foreign contribution received from foreign source is utilised only for the purpose by the recipient itself for which it has been so permitted, and that restriction is only to secure the sovereignty and integrity of the nation and public order. In any case, it (regulatory mechanism) being procedural matter, would come within the purview of procedure established by law. Being a reasonable restriction for accomplishing the objectives of the Principal Act and founded on intelligible differentia, it must be regarded as rational and proportionate, and as furthering the State interests.

(y) The respondents have also placed reliance on ***K.S. Puttaswamy & Anr. vs. Union of India & Ors.***[101] in support of the

[101] (2017) 10 SCC 1 (paras 310-311, 377, 380, 526, 558, 582 and 639)

argument that the amended provisions are in furtherance of the legitimate State interests encompassed in the regulatory measures provided for in the Principal Act. Reliance is also placed on ***Gobind vs. State of Madhya Pradesh & Anr.***[102], wherein this Court had observed that even though privacy and dignity claims must receive scrutiny with due care, but that claims will necessarily have to go through a process of case-by-case developments. Reliance is also placed on ***Chintamanrao & Anr. vs. The State of Madhya Pradesh***[103]***; The State of Madras vs. V.G. Row***[104]***; Teri Oat Estates (P) Ltd. vs. U.T., Chandigarh & Ors.***[105]***; Ramlila Maidan Incident, In re***[106]***; Sahara India Real Estate Corporation Limited & Ors. vs. Securities and Exchange Board of India & Anr.***[107]*;* and ***Excel Crop Care Limited vs. Competition Commission of India & Anr.***[108] to contend that Article 21 is extremely wide. Whereas, the prohibition on transfer of foreign contribution and receipt of foreign contribution in the manner specified in the amended provisions are intended to improve

[102] (1975) 2 SCC 148 (paras 22-23, 28)
[103] AIR 1951 SC 118 (para 7)
[104] AIR 1952 SC 196 (para 15)
[105] (2004) 2 SCC 130 (paras 40, 44-46, 49)
[106] (2012) 5 SCC 1
[107] (2012) 10 SCC 603
[108] (2017) 8 SCC 47 (paras 29, 92, 94-95)

compliance mechanism, enhance transparency and accountability in the receipt and utilisation thereof. In that sense, it does not impinge upon the fundamental rights of the petitioners, much less Article 21 of the Constitution. The regulation and control are directly relatable to activities/programmes detrimental to the sovereignty and integrity of India, public order and interests of general public and for matters connected therewith or incidental thereto. It being a reasonable and proportionate restriction having clear nexus with the object of the Principal Act without impacting the right of the registered associations to continue to receive foreign contribution from foreign donors and also utilise the same by opening accounts in different scheduled banks/branches of their choice in the country, by no stretch of imagination, can be said to impinge upon the fundamental rights of the registered associations or persons having prior permission of the competent authority.

(z) As regards the grievance of the writ petitioners being forced to open and operate account in the designated bank and branch i.e., SBI, NDMB, it is stated in the reply affidavit that for outstation FCRA organisations located in remote areas and for operational ease of any FCRA organisation, MHA and SBI have put in place a system to

enable the associations/FCRA organisations/NGOs to open main bank account in SBI, NDMB without any need to physically come to Delhi. It certainly dispels and redresses the principal grievance of the writ petitioners about they being forced to visit Delhi to open account in the designated branch coupled with the enabling provision allowing the registered associations to utilise and transact from any scheduled bank/branch of their choice in the country. The fundamental basis of assail to the amended provisions, therefore, falls to the ground.

(aa) The respondents have relied on the Standard Operating Procedure (SOP) issued by the appropriate authority in regard to the opening of FCRA account in the designated branch (SBI, NDMB) to receive the inflow of foreign contribution including to permit the registered associations to open FCRA account in other scheduled banks/branches of their choice across the country. Further, it is asserted that until the filing of the common response in October, 2021, around 19,000 accounts were already opened in the designated branch at New Delhi. That was possible even without physical visit of the authorised persons of the concerned associations to New Delhi. This facility of opening account in the

designated bank and branch is provided on free/gratis basis without any bank charge on real-time basis by the SBI on the instructions of the recipient organisations through digital or internet banking. As aforesaid, these arrangements are necessitated for the purposes of effective enforcement and operational angle and to monitor the flow of foreign contributions and information concerning the same on real-time basis from one centralised location. This has reasonable nexus and proximate relationship with the object sought to be achieved by the Act and to ensure transparency and accountability of all concerned. The registered associations/NGOs are not put to any undue hardship or extra financial costs/compliance burden. The challenge to the amended provisions, therefore, is based on tenuous assertions.

(bb) It is also asserted that application for effecting any change of details furnished while opening the main account in the designated branch (i.e., SBI, NDMB) is to be submitted only through online mode on the FCRA web portal i.e., fcraonline@nic.in. It is highlighted that the assertion made by the writ petitioners that there are close to 50,000 persons registered under FCRA, is false and misleading. In fact, the FCRA website itself would reveal that out of

close to 50,000 persons registered under FCRA, registration certificates of less than 23,000 are active. Further, registration of 20,600 non-compliant persons has already been cancelled. Furthermore, following the changed dispensation as per the amended provisions (of 2020 Act), over 19,000 accounts have already been opened in the designated branch (i.e., SBI, NDMB) until October, 2021. It is, thus, urged that the amended provisions are intended to further the object of the Principal Act and are regulatory in nature concerning the receipt and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and incidental matters; and are consistent with the underlying principles expounded in the Principal Act.

(cc) After having said as above, the affidavit goes on to highlight that none of the amended provisions even remotely permit or attempt to oversee the banking functions. The amended provisions of the Act, as well as, the Regulations, are intended to only bring out clarity on crucial role assigned to the banks in respect of the implementation of the Principal Act of 2010. Similarly, the stated

circular is only an administrative guidance for better implementation of the provisions of the 2010 Act.

(dd) The respondents have, thus, prayed for dismissal of the writ petitions[109] filed by the registered associations, consequently leaving nothing for consideration in the writ petition filed by Vinay Vinayak Joshi[110].

6. Counter affidavit filed by respondent No. 3-SBI[111]

(a) SBI has also filed counter affidavit dated 20.10.2021 in Writ Petition (C) No.751 of 2021 sworn by one Anjana Tandon, Dy. General Manager, SBI, New Delhi Main Branch. This affidavit essentially deals with the issues concerning SBI. It is stated that SBI is the largest public sector bank in India with network of 22,219 branches in India and spread across the length and breadth of the country, including rural and urban areas/branches. SBI also has 223 foreign offices and about 230 overseas branches in around 40 countries.

[109] W.P. (C) No.566 of 2021 and W.P. (C) No.751 of 2021
[110] W.P. (C) No.634 of 2021
[111] in W.P. (C) No.751 of 2021

(b) It is stated that FCRA account is not a normal current/savings account. The transactions effected in this account ought to be strictly regulated, as predicated in the 2010 Act. SBI works in tandem with the instructions issued by the Government of India in that regard. The Government of India has issued a Standard Operating Procedure (SOP) with regard to opening and operation of FCRA account. The information in that regard has been disseminated to account holders and is in public domain, including by conducting Webinars from time to time. The main Branch of SBI has created a dedicated cell having over forty officials to deal with all the FCRA accounts at SBI, NDMB. They exclusively deal with FCRA accounts and have been provided with requisite infrastructure. SBI has made internal arrangements regarding sharing of details of 23,000 entities with branches of SBI all over India; liaising with foreign offices of SBI for credential verification of the overseas stakeholders; and have designated Nodal Officer up to the rank of Assistant General Manager in 17 local Head Offices, spread all over India for operating FCRA accounts. By this affidavit, SBI has refuted the grievance of the writ petitioners/registered associations about operational and other difficulties being faced by them in

transacting/opening account in the designated Branch at New Delhi.

(c) It is emphatically stated that the entities, desirous of opening FCRA account or for accessing funds, are not required to visit Delhi as has been clearly indicated in the communication dated 9.6.2021. This is also duly notified on the official website of the MHA. SBI has streamlined the entire process for the convenience of the organizations to open/operationalize FCRA accounts. It is stated that the entities can do banking activities including internet banking activity anywhere and anytime, aided with the power and convenience of the internet. The entities can avail CINB and may customize their authority matrix for making any financial transactions. It is also open to the entities to open and operate FCRA account (utilization account) at one or more branches of scheduled banks of their choice. Alternatively, they are free to use their previous accounts as utilization accounts, to which funds can be transferred from the designated FCRA account at SBI, NDMB.

(d) It is also asserted that the entities are not required to maintain minimum balance in FCRA accounts. Further, they are free to operate their account without physically approaching SBI Branch on

regular basis as in the case of any other normal account holder, if they intend to access internet banking facility. It is denied that the registered associations/concerned entities are required to appoint a designated person in New Delhi and make frequent trips for offline KYC verification as alleged. Instead, they can approach the nearest SBI Branch and get the offline verification of document done at the said Branch itself. In other words, the argument of inconvenience put forth by the writ petitioners and similarly placed persons have not only been refuted, but information regarding sufficient logistical arrangements made by the respondent-Bank (SBI) to facilitate opening as well as operating of FCRA account by authorised persons has been delineated in the response filed before this Court. The same is indicative of the fact that the services are offered to the concerned entities at the local level itself without requiring the FCRA account holders to visit the main Branch at New Delhi.

(e) This affidavit also reveals that SBI has more than two lakh employees working in branches in different parts of the country with network all over the country as well as abroad. It is stated that for the purposes of operating 23,000 FCRA accounts, there is no need to incur high administrative expenses. Instead, the Bank has

augmented additional infrastructure required for that purpose in the designated Branch at New Delhi.

(f) It is further stated that by the time the affidavit was filed, about 20,000 FCRA accounts have already been opened, out of approximately 23,000 active organizations, and that the remaining registered associations were in the process of getting their accounts opened by approaching the main Branch at New Delhi. It is urged that the respondent-Bank (SBI) is offering all banking facilities as requested/demanded by the concerned account holder. SBI has denied that there is any delay in the process of opening of account and receiving of foreign remittances due to the volume of transactions or that it does not have necessary infrastructural capacity to handle queries from thousands of organizations, as alleged by the writ petitioners. At the same time, it has been fairly accepted that during the second phase of COVID-19, due to extraordinary situation, there may have been delay in some cases, but all the accounts have been made operational and are being accessed by the concerned FCRA account holders. The affidavit also mentions about the steps taken to streamline the operational issues in respect of FCRA accounts. The substance of this affidavit is to

demonstrate that no inconvenience is being caused to the FCRA account holders, in any manner; and the Bank is fully equipped to handle the logistical issues concerning FCRA accounts in the main Branch as well as other branches across the country.

7. Rejoinder affidavit filed by the writ petitioners

(a) The writ petitioners have filed rejoinder affidavit whereby assertions made in the writ petitions are reiterated. The emphasis is essentially in respect of grounds to assail the validity of the amended provisions of the 2010 Act, in particular Sections 7, 12(1A), 12A and 17(1). The rejoinder affidavit also points out the reason for rejection of application for registration and opening of bank account. Those matters, however, cannot be the basis to test the validity of the provisions. Hence, it is not necessary to elaborate the same. They are more in the nature of inconvenience caused in respect of process of registration and of operating the FCRA accounts.

8. Submissions of the writ petitioners[112]

(a) The registered associations/writ petitioners would urge that the argument of legislative policy being inviolable cannot be

[112] in Writ Petition (C) Nos.566 and 751 of 2021

countenanced. For, this Court in ***A.K. Gopalan vs. State of Madras***[113], noted that the Court is obliged to consider the effect of the law on the citizens and whether the same impacts the fundamental rights guaranteed under Part III of the Constitution.

(b) It is urged that this Court in ***INSAF***[114] has already recognised the right to receive foreign contribution. Thus, it is not open to contend that no fundamental right exists to receive foreign contribution. The amended provisions are arbitrary and overbroad restrictions on the right to receive foreign funding, thus, it is violative of Article 14 of the Constitution. Further, this Court in the case of ***INSAF***[115] did not examine the effect of the impugned provisions on the fundamental rights under Article 19 of the Constitution as there was no petitioner in individual capacity before the Court. The amendments effected vide the 2020 Act are not only hit by the vice of Article 14 of the Constitution, but also Article 19(1)(a), 19(1)(c) and 19(1)(g) as well as Article 21 of the Constitution.

(c) As regards Section 7 of the Act, it is submitted that pre-amendment, transfer of foreign contribution to other person

[113] AIR 1950 SC 27
[114] supra at Footnote No.22 (paras 18 to 22)
[115] supra at Footnote No.22

duly registered and had been granted the certificate or obtained the prior permission under the 2010 Act was permissible. The proviso permitted the transfer of foreign contribution by the recipient registered association. This has been completely prohibited by the amended provision, which is overbroad restriction. For, this prohibition would inevitably impact the funding of the entities who were otherwise allowed to receive foreign contribution. Having so permitted, the regulatory measures at best can be to ensure that the foreign contribution is eventually utilised for the purpose for which it has been so permitted. The total prohibition in terms of the amended Section 7 is manifestly arbitrary and has no causal connection with the object sought to be achieved by the Principal Act or the Amendment Act. In support of this contention, reliance is placed on ***K.S. Puttaswamy***[116]. In that, being a case of total prohibition, it impacts the very utilisation of foreign contribution by any organisation. The expression "person" in Section 2(1)(m) of the Act posits an expansive meaning. Thus, post amendment transfer of foreign contribution to individual or organisation will be affected. Significantly, the word "transfer" has not been defined. In other

[116] supra at Footnote No.7 (paras 105 and 106)

words, there is no clarity about the manner of utilisation of foreign contribution by the registered entities who had been allowed to receive the same for utilisation for specified purposes. The ordinary meaning of expression "utilisation" would include transfer of foreign contribution to another entity; and, thus, there is apparent conflict between Section 7 and Section 8 of the Act. As a result, amended Section 7 is not only absurd, but defeat the very object of the Principal Act, which allows regulated use of foreign contribution. In absence of any definition of expressions "transfer" and "utilisation", use of foreign contribution by the entity would be risking violation of the provisions of the Act.

(d) It is urged that Section 7 is overbroad and vague. There is ambiguity as to what constitutes various social or educational or cultural or economic or religious purpose under Section 11(1) of the Act and at the same time, Section 35 of the Act invites punishment for contravention of any provision of the Act. For that reason, Section 7 suffers from the vice of manifest arbitrariness and hit by Article 14 of the Constitution. To buttress this argument, reliance is placed on the enunciation of this Court in ***Shreya Singhal vs.***

Union of India[117]. Further, the amended Section 7 would not permit collaboration between registered non-profit organisations to serve larger social needs across the country with any other entity or person. That is bound to hamper work of grassroot organisations which receive sub-grants in India from a consortium lead partner in international development projects. Those projects will be affected at the grassroot level where the registered organisations may not be able to cater on its own.

(e) It is then urged that even if the purpose of Section 7 is to prevent misutilisation of funds, it violates the fundamental rights guaranteed in Article 19(1)(a), 19(1)(c) and 19(1)(g) under Part III of the Constitution, being an unreasonable restriction. Such restriction serves no legitimate Government purpose. It has no rational nexus with the object of the enactment, including the Principal Act. The unamended provision was less restrictive and was working very well, serving the objective of the Principal Act. Furthermore, being a case of complete prohibition, the registered organisations would not be able to continue collaboration with other entities at the grassroot level, even if those entities are also duly

[117] (2015) 5 SCC 1

registered under the Act. This is bound to denude the recipient (registered organisation) of foreign contribution from reaching out and undertaking specified activities at the grassroot level through such entity. Such onerous restriction does not stand the test of proportionality or being reasonable restriction as held in the case of ***K.S. Puttaswamy***[118]. Reliance is also placed upon a recent decision of this Court in ***Manohar Lal Sharma vs. Union of India & Ors.***[119], to contend that the State had failed to specifically establish national security issues to justify the amendments to the 2010 Act. In absence thereof, no omnibus prohibition can be validated by the Court. It is urged that Section 7, being manifestly arbitrary and lacking any determining principle, is wholly unreasonable and, therefore, violative of Article 21 of the Constitution.

(f) On similar lines, Section 12(1A) read with Section 17(1) has been assailed, being manifestly arbitrary and unreasonable. The challenge is limited to the stipulation of opening a bank account only at one specific branch of SBI at New Delhi for all organisations across the country receiving foreign contribution. Such a

[118] supra at Footnote No.7 (paras 157 and 158)
[119] W.P. (Crl.) No.314 of 2021 etc., decided on 27.10.2021 (paras 49 and 50)

requirement is absurd, irrational and serves no legitimate purpose under the 2010 Act or any other law. It is urged that the challenge is not to the amended sub-Section (2) of Section 17 requiring reporting to the authority. That being a Bank's obligation can be taken forward by the Bank. No tangible logic is forthcoming to justify the need for Section 12(1A) read with Section 17(1), as to how national interest would be jeopardised by not adhering to that regime especially when all the scheduled banks are regulated by the Reserve Bank of India, including other Government owned public sector banks or even local branches of SBI. Each one of them is obliged to report all such transactions within 48 hours to the MHA. Such a provision, therefore, is simply absurd and irrational.

(g) It is argued that the impact of amended provisions is to denude the registered associations to have physical access to their primary account at Delhi along with a host of other restrictions. It is further urged that the amended provision does not stand the test of legitimate goal for which such dispensation is necessary nor spells out the causal connection for compelling the persons seeking foreign contribution to open bank accounts only in specified branch at New Delhi and how it would further the cause of the State interests.

Even, the principle of necessity has not been substantiated by the State, especially when there are already existing restrictions and proper mechanism to achieve the object of the Principal Act whereunder each organisation is mandated to open a FCRA account in a scheduled bank of its choice, which account details were required to be reported to the MHA and linked to the FCRA registration number of the organisations. All the registered organisations were already complying with that requirement and have been registered on an electronic portal known as 'DARPAN' having unique ID provided to them. Further, the registered organisations were also obliged to submit regular returns as specified in Section 18 read with Rule 17 of the 2011 Rules. The said dispensation requires furnishing of necessary details and reporting within 48 hours to the appropriate authority. The specious plea of national security cannot be countenanced. The same has not been substantiated and there can be no presumption in that regard in favour of the legislation.

(h) Further, respondent No.3-SBI has admitted that only 40 personnel are assigned with the work of operating FCRA accounts at the main Branch. It is unfathomable as to how such a low number of personnel would be able to handle the workload of transaction of

thousands of persons for 23,000 registered organisations. Relying on the expositions in ***Anuradha Bhasin***[120] and ***Maneka Gandhi***[121], it is urged that Section 12(1A) read with Section 17(1) is unconstitutional, being manifestly arbitrary and irrational.

(i) Even, the provision in the form of Section 12A is violative of fundamental rights guaranteed to the office bearers of the registered organisations as it requires mandatory disclosure of Aadhaar number as an identity document for grant of FCRA certificate under Section 12, or renewal under Section 16 or to open a bank account under Section 17. Such a provision clearly falls foul of the test of proportionality as held in ***K.S. Puttaswamy***[122]. Inasmuch as, overseas citizens of India or foreign nationals serving as office bearers can provide an identity alternate to the Aadhaar card for the same purposes. There is no legitimate goal set forth for inserting Section 12A in the Principal Act. It is urged that even this provision has no nexus with the object sought to be achieved under the Principal Act and suffers from the vice of violation of Article 19 of the Constitution.

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[120] supra at Footnote No.21
[121] supra at Footnote No.12
[122] supra at Footnote No.7

9. We have heard Mr. Gopal Sankaranarayanan, learned senior counsel and Mr. Gautam Jha, learned counsel for the petitioners and Mr. Tushar Mehta, learned Solicitor General and Mr. Sanjay Jain, learned Additional Solicitor General for the respondents.

Legislative History

10. In the first place, we must advert to the legislative history culminating with the 2010 Act, as amended in 2020. A Bill was introduced in the Rajya Sabha in the year 1973 titled as "the Foreign Contribution (Regulation) Bill, 1973". The Statement of Objects and Reasons appended to the said Bill read thus: -

> "STATEMENT OF OBJECTS AND REASONS
>
> **There has been widespread concern about the unregulated receipt of funds from foreign agencies by individuals and organisations in the country**. The Bill seeks to regulate the acceptance and utilisation of foreign contribution or hospitality with a view to ensuring that our parliamentary institutions, political associations, academic and other voluntary organisations 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."
>
> (emphasis supplied)

On 19.2.1974, the House referred the Bill to a Joint Committee of the Houses consisting of 60 members, of whom 20 were to be nominated from Rajya Sabha. While introducing the Bill, the Minister outlined the contours of the regulatory measures felt

essential in respect of the foreign contributions. He adverted to three options. The first of outright prohibition; the second being acceptance subject to prior permission of Government; and the third of acceptance subject to intimation being given to Government. He expressed that the Government felt that it was an important measure and believed that the deliberations in the Joint Committee of both the Houses would enable formulation of a well-conceived Bill, on the basis of informed representative public opinion desirous of securing the objectives, as stated in the Bill. There was broad unanimity between the members that the issue needed in-depth examination.

11. The then Minister of Home Affairs presented the recommendation of the Rajya Sabha before the Lok Sabha on 25.3.1974. The motion was duly adopted by the Lok Sabha and 40 members of the said House were nominated to the Joint Committee of the Houses.

12. The report of the Joint Committee on the Bill to regulate the acceptance and utilisation of foreign contribution or hospitality by certain persons or associations and for matters connected therewith

or incidental thereto, was presented before the Lok Sabha on 6.1.1976. Similarly, the report of the Joint Committee of the Houses on the Bill was presented in the Rajya Sabha on 6.1.1976.

13. The deliberations regarding the proposed Bill and the report of the Joint Committee took place in the Lok Sabha on 29.3.1976. During the discussion, there was unanimity amongst all members cutting across party lines that the penetration of foreign money into country is a serious threat and danger to the sovereignty of the country. The members variously expressed concern about the unregulated inflow of foreign contribution. It was noted that its penetration was so widespread that generally, anyone interested in the sovereignty of our country and in democracy was bound to feel concerned about the same. The experience of other countries was also discussed by the members. The members mentioned about the inflow of foreign contribution from many countries and noted that some times it was being received directly and some times indirectly, through other countries. It was coming in many forms including receipt by religious organisations. It was agreed that the foreign contribution can be permitted in regulated manner without completely prohibiting the inflow thereof. Eventually, to address the

mischief of growing foreign influence owing to influx of foreign donations in our country, the Bill was passed which took the form of the Act i.e., the Foreign Contribution (Regulation) Act, 1976. This Act came into force on 5.8.1976[123] as a shield in our legislative armoury. The preamble of the 1976 Act reads as under:

> "An Act to regulate the acceptance and utilization of **foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic**, and for matters connected therewith or incidental thereto."
>
> (emphasis supplied)

Over the course of time, this Act came to be amended. One such amendment was in 1985. The Statement of Objects and Reasons of the stated amendment read thus:

> "STATEMENT OF OBJECTS AND REASONS
>
> The Foreign Contribution (Regulation) Act, 1976, seeks to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain categories of persons or associations. To remove certain inadequacies and practical difficulties in the administration of the Act, a Bill to amend the Act was introduced in the Rajya Sabha in May, 1984. The Bill was passed by the Rajya Sabha with certain amendments. But it could not be passed by the Lok Sabha before it adjourned at the end of its Monsoon Session and the Bill has now lapsed. As it was considered necessary to give effect to the provisions of the Bill as passed by the Rajya Sabha urgently, the Foreign Contribution (Regulation) Amendment Ordinance, 1984, was promulgated by the President on the

[123] Vide notification No. GSR 755(E), dated 5.8.1976 published in the Gazette of India, Extraordinary, Part-II, section 3(i)

20th October, 1984. The said Ordinance, *inter alia*, made the following amendments in the Act, namely:—

(i) The definition of "foreign contribution", as contained in the Act, included only the donation, delivery or transfer made by any foreign source. It did not include donation or contribution received by an organisation from another organisation from out of foreign contribution received by the latter organisation. The definition was enlarged to include such contributions also for the purpose of tracing the utilisation of foreign contribution down the line.

(ii) The definition of "political party", as contained in the Act, did not include political parties in the State of Jammu and Kashmir and political parties which are not covered by the Election Symbols (Reservation and Allotment) Order, 1968. The Ordinance amended this definition to include such political parties also.

(iii) Section 6(1) of the Act provided that every association having a definite cultural, economic, educational, religious or social programmes, may receive foreign contribution, but was required to send intimation regarding such receipt to the Central Government within such time and such manner to be prescribed by the rules made under the Act. It had been observed that a number of associations had not sent such intimation. In order to effectively monitor the receipt of foreign contribution, this sub-section was amended to provide that associations referred to therein shall accept foreign contribution only after they are registered with the Central Government specifically for the purpose and accept such contributions only through a specified branch of a bank. They would, however, be required to give, within such time and in such manner as may be prescribed, intimation to the Central Government as to the amount of foreign contribution received by them, the source from which and the manner in which such foreign contribution was received by them, etc. Where any registered association does not accept foreign contribution through the specified branch of a specified bank or does not submit intimations, etc., in time, the Central Government has been empowered to direct that such association shall not accept foreign contribution without the prior permission of the

Central Government. A new sub-section (1A) had also been included in this section to provide that an association not so registered with the Central Government shall obtain prior permission of the Central Government before accepting any foreign contribution and also give intimation to the Central Government as to the amount of contribution received by it.

(iv) The Act only enabled the Central Government to inspect the accounts of certain persons or associations. It did not provide for any power to audit the accounts of any organisation if it is considered necessary to do so. The Ordinance amended the Act by inserting a new section 15A, to take specific power to audit the accounts of certain persons, organisations or associations, if the prescribed returns are not furnished in time by such persons, organisations or associations or the returns so furnished by them are not in accordance with law or their scrutiny gives room for suspicion that the provisions of the Act have been contravened.

(v) A new section 25A had also been inserted in the Act to provide that where any person is convicted of an offence relating to the acceptance or utilisation of foreign contribution for a second time, he shall be prohibited from accepting any foreign contribution for a period of three years from the date of the second conviction.

2. The Bill seeks to replace the aforesaid Ordinance."

(emphasis supplied)

14. After the coming into force of the 1976 Act including the subsequent amendments thereto, the experience gained and the significant developments having taken place since 1984 such as change in internal security scenario, an increased influence of voluntary organisations, spread of use of communication and information technology, quantum jump in the amount of foreign

contribution being received and large-scale growth in the number of registered organisations, a Bill known as "the Foreign Contribution (Regulation) Bill, 2006" came to be introduced. The proposal in the Bill was to repeal the 1976 Act and replace it with the provisions of the proposed Bill. The Statement of Objects and Reasons for the Bill are as under:

"STATEMENT OF OBJECTS AND REASONS

The Foreign Contribution (Regulation) Act, 1976 was enacted to regulate the acceptance and utilisation of foreign contribution or hospitality with a view to ensuring that our parliamentary institutions, political associations, academic and other voluntary organisations 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 the provisions of the Act 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. Significant developments have taken place since 1984 such as change in internal security scenario, an increased influence of voluntary organisations, spread of use of communication and information technology, quantum jump in the amount of foreign contribution being received, and large scale growth in the number of registered organisations. This has necessitated large scale changes in the existing Act. Therefore, it has been thought appropriate to replace the present Act by a new legislation to regulate the acceptance, utilisation and accounting of foreign contribution and acceptance of foreign hospitality by a person or an association.

3. The Foreign Contribution (Regulation) Bill, 2006 provides, *inter alia*, to —

(i) consolidate the law to regulate, acceptance and utilisation of foreign contribution or foreign hospitality and prohibit the same for any activities detrimental to the national interests;

(ii) prohibit organisations of political nature, not being political parties from receiving foreign contribution;

(iii) bring associations engaged in production or broadcast of audio news or audio visual news or current affairs through any electronic mode 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 under the Bill;

(viii) provide arrangement for sharing of information on receipt of foreign remittances by the concerned agencies to strengthen monitoring;

(ix) make registration to be valid for five years with a provision for renewal thereof, and also to provide for cancellation or suspension of registration;

(x) make provision for compounding of certain offences.

4. The Bill seeks to achieve the above objects."

(emphasis supplied)

Finally, the Bill after being scrutinised by the Committee appointed by the House, presented it in the Lok Sabha on 27.8.2010, titled as "Foreign Contribution (Regulation) Act, 2010". The members expressed that India is an emerging economic power and the Bill, as

propounded, was a welcome step towards prohibiting organisations with political agenda from destabilising the country through foreign funding. The members shared their experience and finally accepted the Bill which became the 2010 Act. This Act repealed the 1976 Act. The introduction for the 2010 Act recognised that some of the foreign countries were funding individuals, associations, political parties, candidates for elections, correspondents, columnists, editors, owners, printers or publishers of newspapers. They were also extending hospitality. The introduction of the Act reads thus: -

> "**It had been noticed that some of the foreign countries were funding individuals, associations, political parties, candidates for elections, correspondents, columnists, editors, owners, printers or publishers of newspapers. They were also extending hospitality. The effects of such funding and hospitality were quite noticeable and to have some control over such funding and hospitality and to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that Parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life may function in a manner consistent with the values of a sovereign democratic republic the Foreign Contribution (Regulation) Act, 1976 (49 of 1976) was enacted**. Since its enactment in 1976 several deficiencies had been found and it was proposed to enact a fresh law on the subject by repealing the Act 49 of 1976. Accordingly the Foreign Contribution (Regulation) Bill was introduced in the Parliament."
>
> (emphasis supplied)

It will be useful to advert to the preamble of the 2010 Act. The same reads thus: -

> "An Act to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto."

The underlying reason discernible from the Statement of Objects and Reasons and the concerns expressed by the members during the debate in the concerned Houses, make it amply clear that there was need to strictly regulate the inflow of foreign contribution in the manner specified by the Act. Intrinsic in the regulatory provisions of the 2010 Act is to permit inflow of foreign contribution only in the manner specified in the Act including its utilisation; and any activity inconsistent with the 2010 Act was to visit with penal consequences. The preamble of the 2010 Act restates the need to strictly regulate the inflow of foreign contribution, as lack of it would inevitably affect the national interests including the sovereignty and integrity of the country.

15. The 2010 Act came to be amended on two occasions until recently, vide Finance Act, 2016 (28 of 2016) and Finance Act, 2018 (13 of 2018).

16. The Central Government in exercise of powers conferred by Section 48 of the 2010 Act framed the 2011 Rules, which came into force on 1.5.2011. Further, the Central Government also framed rules known as "The Foreign Contribution (Acceptance or Retention of Gifts or Presentations) Rules, 2012", which came into force on 17.6.2012. The 2011 Rules were amended by (Amendment) Rules, 2020. We shall advert to these Rules including the amended provisions at the appropriate place.

17. In the present cases, we are concerned with the challenge to the latest amendment effected vide the Foreign Contribution (Regulation) Amendment Act, 2020, which has come into effect from 29.9.2020. Vide the 2020 Act, clause (c) in Section 3(1) came to be amended. The amendment has been effected also to Sections 7, 8, 11, 12, 13, 15, 16 and 17 of the 2010 Act. The assail is limited to the amended provisions (vide Amendment Act of 2020) on the ground of abridgement of fundamental rights of the petitioners

guaranteed under Articles 14, 19(1)(a), 19(1)(c), 19(1)(g) and 21 of the Constitution of India.

18. Notably, we are called upon to deal with the validity only of amendment concerning Sections 7, 12(1A), 17 and insertion of Section 12A in the Act. The unamended Sections 7, 12 and 17 read thus: -

> "**7. Prohibition to transfer foreign contribution to other person**.- No person who — (a) is registered and granted a certificate or has obtained prior permission under this Act; and
>
> (b) receives any foreign contribution,
>
> shall transfer such foreign contribution to any other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act:
>
> Provided that such person may transfer, with the prior approval of the Central Government, a part of such foreign contribution to any other person who has not been granted a certificate or obtained permission under this Act in accordance with the rules made by the Central Government.
>
> ***
>
> **12. Grant of certificate of registration**.- (1) An application by a person, referred to in section 11 for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.
>
> (2) On receipt of an application under sub-section (1), the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application.

(3) If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within ninety days from the date of receipt of application under sub-section (1), register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed:

Provided that in case the Central Government does not grant, within the said period of ninety days, a certificate or give prior permission, it shall communicate the reasons therefor to the applicant:

Provided further that a person shall not be eligible for grant of certificate or giving prior permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.

(4) The following shall be the conditions for the purposes of sub-section (3), namely: —

(a) the person making an application for registration or grant of prior permission under sub-section (1),—

(i) is not fictitious or benami;

(ii) has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;

(iii) has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;

(iv) has not been found guilty or diversion or mis-utilisation of its funds;

(v) is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;

(vi) is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;

(vii) has not contravened any of the provisions of this Act;

(viii) has not been prohibited from accepting foreign contribution;

(b) the person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen filed for the benefit of the society for which the foreign contribution is proposed to be utilised;

(c) the person making an application for giving prior permission under sub-section (1) has prepared a reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;

(d) in case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;

(e) in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;

(f) the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially—

(i) the sovereignty and integrity of India; or

(ii) the security, strategic, scientific or economic interest of the State; or

(iii) the public interest; or

(iv) freedom or fairness of election to any Legislature; or

(v) friendly relation with any foreign State; or

(vi) harmony between religious, racial, social, linguistic, regional groups, castes or communities;

(g) the acceptance of foreign contribution referred to in sub-section (1),—

(i) shall not lead to incitement of an offence;

(ii) shall not endanger the life or physical safety of any person.

(5) Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in

its order the reasons therefor and furnish a copy thereof to the applicant:

Provided that the Central Government may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the applicant under this section in cases where is no obligation to give any information or documents or records or papers under the Right to Information Act, 2005.

(6) The certificate granted under sub-section (3) shall be valid for a period of five years and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received, as the case may be.

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

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

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

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

(a) prescribed amount of foreign remittance;

(b) the source and manner in which the foreign remittance was received; and

(c) other particulars,

in such form and manner as may be prescribed."

19. As aforementioned, the need to amend certain provisions of the 2010 Act was felt necessary, as is discernible from the Statement of

Objects and Reasons appended to Bill No. 123/2020, which finally culminated in the Amendment Act of 2020. The same reads thus: -

"STATEMENT OF OBJECTS AND REASONS

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

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

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

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

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

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

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

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

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

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

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

6. The Bill seeks to achieve the above objects."

(emphasis supplied)

When the Bill proposed for amendment to the said provisions was being considered, the members expressed their concern about the volume of inflow of foreign contribution. It was noted that NGOs have been formed, who in turn receive foreign contribution and spend the funds as per their own desire and the same is being

misused, threatening the security apparatus and sovereignty of the country.

20. Consequent to the 2020 Act, the relevant provisions including the newly inserted clauses read thus: -

> "**7. Prohibition to transfer foreign contribution to other person**.- No person who —
>
> (a) is registered and granted a certificate or has obtained prior permission under this Act; and
>
> (b) receives any foreign contribution,
>
> shall transfer such foreign contribution to any other person.
>
> ***
>
> **12. Grant of certificate of registration**.- (1) An application by a person, referred to in section 11 for grant of certificate or giving prior permission, shall be made to the Central Government in such form and manner and along with such fee, as may be prescribed.
>
> (1A) Every person who makes an application under sub-section (1) shall be required to open "FCRA Account" in the manner specified in section 17 and mention details of such account in his application.
>
> (2) On receipt of an application under sub-section (1), the Central Government shall, by an order, if the application is not in the prescribed form or does not contain any of the particulars specified in that form, reject the application.
>
> (3) If on receipt of an application for grant of certificate or giving prior permission and after making such inquiry as the Central Government deems fit, it is of the opinion that the conditions specified in sub-section (4) are satisfied, it may, ordinarily within ninety days from the date of receipt of application under sub-section (1), register such person and grant him a certificate or give him prior permission, as the case may be, subject to such terms and conditions as may be prescribed:

Provided that in case the Central Government does not grant, within the said period of ninety days, a certificate or give prior permission, it shall communicate the reasons therefor to the applicant:

Provided further that a person shall not be eligible for grant of certificate or giving prior permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.

(4) The following shall be the conditions for the purposes of sub-section (3), namely: —

(a) the person making an application for registration or grant of prior permission under sub-section (1),—

(i) is not fictitious or benami;

(ii) has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;

(iii) has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;

(iv) has not been found guilty or diversion or mis-utilisation of its funds;

(v) is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;

(vi) is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;

(vii) has not contravened any of the provisions of this Act;

(viii) has not been prohibited from accepting foreign contribution;

(b) the person making an application for registration under sub-section (1) has undertaken reasonable activity in its chosen filed for the benefit of the society for which the foreign contribution is proposed to be utilised;

(c) the person making an application for giving prior permission under sub-section (1) has prepared a

reasonable project for the benefit of the society for which the foreign contribution is proposed to be utilised;

(d) in case the person being an individual, such individual has neither been convicted under any law for the time being in force nor any prosecution for any offence pending against him;

(e) in case the person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor any prosecution for any offence is pending against him;

(f) the acceptance of foreign contribution by the person referred to in sub-section (1) is not likely to affect prejudicially—

(i) the sovereignty and integrity of India; or

(ii) the security, strategic, scientific or economic interest of the State; or

(iii) the public interest; or

(iv) freedom or fairness of election to any Legislature; or

(v) friendly relation with any foreign State; or

(vi) harmony between religious, racial, social, linguistic, regional groups, castes or communities;

(g) the acceptance of foreign contribution referred to in sub-section (1),—

(i) shall not lead to incitement of an offence;

(ii) shall not endanger the life or physical safety of any person.

(5) Where the Central Government refuses the grant of certificate or does not give prior permission, it shall record in its order the reasons therefor and furnish a copy thereof to the applicant:

Provided that the Central Government may not communicate the reasons for refusal for grant of certificate or for not giving prior permission to the applicant under this section in cases where is no obligation to give any information or documents or records or papers under the Right to Information Act, 2005.

(6) The certificate granted under sub-section (3) shall be valid for a period of five years and the prior permission shall be valid for the specific purpose or specific amount of foreign contribution proposed to be received, as the case may be.

***

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

***

17. Foreign contribution through scheduled bank.- (1) Every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf:

Provided that such person may also open another “FCRA Account” in any of the scheduled bank of his choice for the purpose of keeping or utilising the foreign contribution which has been received from his “FCRA Account” in the specified branch of State Bank of India at New Delhi:

Provided further that such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his “FCRA Account” in the specified branch of the State Bank of India at New Delhi or kept by him in another “FCRA Account” in a scheduled bank of his choice:

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

(2) The specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person referred to in sub-section (1) has opened his foreign contribution account or the authorised person in foreign exchange, shall report to such authority as may be specified,—

(a) the prescribed amount of foreign remittance;

(b) the source and manner in which the foreign remittance was received; and

(c) other particulars,

in such form and manner as may be prescribed."

21. It is well-established that rights guaranteed under Part III of the Constitution and Article 19 in particular, are not absolute rights. The same are subject to reasonable restrictions, as predicated in clauses (2) and (6) of Article 19. For, it is open to the State to make a law, so as to impose reasonable restrictions on the exercise of such right [under Article 19(1)(a)] in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence; in case of Article 19(1)(c) - in the interests of the sovereignty and integrity of India, public order or morality; and in case of Article 19(1)(g) - in the interests of the general public. It is rightly urged by the respondents that whenever the challenge is to the amended provisions, the scope of enquiry, *inter alia,* ought to be as to whether the same is in

consonance with the Principal Act, achieve the object and purpose of the Principal Act and are otherwise just, rational and reasonable. Further, there is no fundamental right vested in anyone to receive foreign contribution (donation) or foreign exchange; and that the purport of the Principal Act and the impugned amendments are only to provide a regulatory framework and not one of complete prohibition.

22. Indisputably, serious concern about the impact of widespread inflow of foreign contribution on the values of a sovereign democratic republic had been repeatedly expressed at different levels including in the Parliament. To that end, the Bill was introduced in the Parliament in 1973. The legislative intent behind the enactment of the 1976 Act has remained unchanged even to this day — nay it has become more relevant now. In that, the experience gained aftermath implementation of the 1976 Act revealed that more stringent dispensation was needed to minimise the negative impact owing to the surge in the inflow of foreign donation and for upholding the values of a sovereign democratic republic, for which the 2010 Act came to be enacted. In that, even the amendment effected in 1985 to the 1976 Act was found to be insufficient to deal with the

shortcomings in the law in force, for regulating the inflow and sustained moderate utilisation of foreign contribution. For that reason, the Parliament eventually decided to replace the regulatory dispensation by enacting a new law (the 2010 Act) to address the mischief.

23. In due course of time, however, it was realised that the dispensation enunciated in the 2010 Act was also not yielding the desired result. This impelled the Parliament to amend the 2010 Act (vide 2020 Act) to make it more stringent and effective to subserve the cause and intent of the Principal Act — not only in regard to the modality of acceptance of foreign contribution in the prescribed manner but also making it imperative for the recipient of foreign contribution to utilise the same "itself" for the designated or specified purposes for which it was so permitted.

24. Philosophically, foreign contribution (donation) is akin to gratifying intoxicant replete with medicinal properties and may work like a nectar. However, it serves as a medicine so long as it is consumed (utilised) moderately and discreetly, for serving the larger cause of humanity. Otherwise, this artifice has the capability of

inflicting pain, suffering and turmoil as being caused by the toxic substance (potent tool) — across the nation. In that, free and uncontrolled flow of foreign contribution has the potentials of impacting the sovereignty and integrity of the nation, its public order and also working against the interests of the general public.

25. To eradicate misuse and abuse of foreign contribution in the past, despite the firm regime in place in terms of the 2010 Act, the Parliament in its wisdom has now (vide Amendment Act of 2020) adopted the path of moderation by making it mandatory for all to accept foreign contribution only through one channel and to utilise the same "itself" for the purposes for which permission has been accorded. Undeniably, the sovereignty and integrity of India ought to prevail and the rights enshrined in Part III of the Constitution must give way to the interests of general public much less public order and the sovereignty and integrity of the nation. It must be borne in mind that the legislation under consideration must be understood in the context of the underlying intent of insulating the democratic polity from the adverse influence of foreign contribution remitted by foreign sources.

26. The Statement of Objects and Reasons for the Amendment Act of 2020 makes it amply clear that the annual inflow of foreign contribution had almost doubled between the years 2010 and 2019 and many recipients of foreign contribution had not utilised the same for the purposes for which they were registered or granted prior permission under the Act. Further, many recipients had also failed to adhere to and fulfil the statutory compliances — which resulted in cancellation of as many as 19,000 certificates of concerned persons/organisations during the stated period, including initiation of criminal investigation concerning outright misappropriation or misutilisation of foreign contribution. It was increasingly reported that some of the NGOs were primarily involved in routing of foreign contribution accepted by them and not utilising the same itself for the purposes for which certificate of registration was issued. Such transfer created several operational issues bordering on malpractices impacting the very intent of the Principal Act. For, routing of foreign contribution entails in diverting it to another area of activity including misuse thereof. There had been cases of successive transfers and creation of a layered trail of money making it difficult to trace the flow and final utilisation. In this backdrop, to

strengthen the compliance mechanism and enhancing transparency and accountability in the matter of acceptance and utilisation of foreign contribution, the Parliament had to once again step in to restructure the dispensation, making it more meaningful and effective, so as to deal with the increasing impact of foreign contribution.

27. It is unnecessary to underscore the distinction between foreign contribution and foreign investment. By its very nature, foreign contribution is a donation accepted from a foreign source purportedly for definite cultural, economic, educational, religious or social programme and to serve the cause of humanity. The expression "foreign contribution" has been defined in Section 2(1)(h) of the 2010 Act to mean donation, which can be in the form of delivery or transfer made by any foreign source of any article, currency, security, etc.

28. It is open to a sovereign democratic nation to completely prohibit acceptance of foreign donation on the ground that it undermines the constitutional morality of the nation, as it is indicative of the nation being incapable of looking after its own

affairs and needs of its citizens. The third world countries may welcome foreign donation, but it is open to a nation, which is committed and enduring to be self-reliant and variously capable of shouldering its own needs, to opt for a policy of complete prohibition of inflow/acceptance of foreign contribution (donation) from foreign source. This was the first option noted by the Parliament while considering the Bill concerning the 1976 Act.

29. When the 1976 Act was enacted, the Parliament had discussed about three options. The first was of outright prohibition; the second being acceptance subject to prior permission of Government; and the third — acceptance subject to intimation being given to Government. The Parliament opted for the second option and that continues to this day in the form of 2010 Act, as amended in 2020. At the same time, from the experience gained aftermath implementation of the dispensation predicated for regulating the inflow of foreign contribution from foreign source and its utilisation, the need to make it more stringent was felt. The amendments vide the 2020 Act, are the product of that experience and the Parliament, for accomplishing the objectives of the Principal Act and to uphold the sovereignty and integrity of the nation as well as public order and in

the interests of the general public, introduced the regime requiring acceptance of foreign contribution from foreign source only through one channel and utilising the same by the recipient itself for the activities for which prior permission has been granted to him in that regard. The permission to be granted by the Central Government can be a general permission for definite cultural, economic, educational, religious or social programme or a special permission in respect of particular activity in that regard. In either case, it has to be a prior permission in the form of obtaining certificate of registration from the Central Government or obtaining prior permission of the Central Government for the specific purpose by person not so registered.

30. Suffice it to observe that considering the legislative history and the need for the Parliament to periodically intervene to arrest the increasing influence on the polity of the nation due to the high volume of inflow of foreign contribution and large-scale improper utilisation and misappropriation thereof, as noticed by the authorities and keeping in mind the objective of the principal enactment being to uphold the values of sovereign democratic republic, the dispensation as altered to make it more strict

compliance mechanism for ensuring that the foreign funds are accepted in the prescribed manner and utilised by the recipient itself and more so, for the purposes for which it was allowed to be received by that person, the amended provisions ought to pass the muster of reasonable restriction. Certainly, such a change cannot be labelled as irrational much less manifestly arbitrary, especially when it applies uniformly to a class of persons without any discrimination. We need to remind ourselves the dictum of this Court in ***Rustom Cavasjee Cooper***[124] and also ***R.K. Garg***[125] – that it is not for the Court to consider relative merits of the different political theories or economic policies including that an economic legislation may be troubled with crudities, inequities, uncertainties or the possibility of abuse cannot be the basis for striking it down.

31. It must follow that acceptance of foreign contribution is otherwise prohibited by law and violation of such restriction has been made an offence under Chapter VIII of the 2010 Act. Nothing prevents the organisations interested in doing charitable work in raising contribution within the country. In that sense, the 2010 Act

[124] supra at Footnote No.48
[125] supra at Footnote No.49

deals with a class of persons accepting foreign contribution from foreign source. All such persons are treated equally and without any discrimination.

Relevant provisions of the 2010 Act as amended

32. We may now broadly delineate the contours of the provisions of the 2010 Act before we proceed to examine the challenge specific to the amended provisions vide the 2020 Act. Chapter I of the 2010 Act deals with short title, extent, application and commencement of the Act as well as definitions of certain expressions referred to therein.

33. Chapter II is about regulation of foreign contribution and foreign hospitality. Section 3[126] deals with prohibition to accept

[126] **3. Prohibition to accept foreign contribution**.—(1) No foreign contribution shall be accepted by any—

(a) candidate for election;

(b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;

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

(d) member of any Legislature;

(e) political party or office-bearer thereof;

(f) organisation of a political nature as may be specified under sub-section (1) of section 5 by the Central Government;

(g) association or company engaged in the production or broadcast of audio news or audio visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in clause (r) of sub-section (1) of section 2 of the

foreign contribution by specified persons. Section 4[127] is to declare that nothing in Section 3 shall apply to the acceptance, by any

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Information Technology Act, 2000 (21 of 2000) or any other mode of mass communication;

(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

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

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

(2) (a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to—

(i) any political party or any person referred to in sub-section (1), or both; or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

(3) No person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency—

(a) to any person other than a person for which it was received, or

(b) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received.

[127] **4. Persons to whom section 3 shall not apply**.—Nothing contained in section 3 shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of section 10,—

(a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or

(b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or

person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of Section 10 in respect of matters provided therein. Section 5 is about the procedure to notify an organisation of a political nature. Section 6 deals with restriction on acceptance of foreign hospitality. Section 7 is about prohibition on transfer of foreign contribution to other persons. Section 8[128] is about restriction to utilise foreign

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(c) as an agent of a foreign source in relation to any transaction made by such foreign source with the Central Government or State Government; or

(d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or

(e) from his relative; or

(f) by way of remittance received, in the ordinary course of business through any official channel, post-office, or any authorised person in foreign exchange under the Foreign Exchange Management Act, 1999 (42 of 1999); or

(g) by way of any scholarship, stipend or any payment of like nature:

Provided that in case any foreign contribution received by any person specified under section 3, for any of the purposes other than those specified under this section, such contribution shall be deemed to have been accepted in contravention of the provisions of section 3.

[128] **8. Restriction to utilise foreign contribution for administrative purpose**.—(1) Every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution,—

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

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

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

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

contribution for administrative purpose. Section 9[129] speaks about power of Central Government to prohibit receipt of foreign

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

(2) The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses referred to in sub-section (1) shall be calculated.

[129] **9. Power of Central Government to prohibit receipt of foreign contribution, etc., in certain cases.**—The Central Government may—

(a) prohibit any person or organisation, not specified in section 3, from accepting any foreign contribution;

(b) require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;

(c) require any person or class of persons not specified in section 11, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;

(d) without prejudice to the provisions of sub-section (1) of section 11, require any person or class of persons specified in that sub-section to obtain prior permission of the Central Government before accepting any foreign contribution;

(e) require any person or class of persons, not specified in section 6, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received:

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially—

(i) the sovereignty and integrity of India; or

(ii) public interest; or

(iii) freedom or fairness of election to any Legislature; or

(iv) friendly relations with any foreign State; or

(v) harmony between religious, racial, social, linguistic or regional groups, castes or communities.

contribution and matters connected therewith. Section 10[130] is about the power of the Central Government to prohibit payment of currency received in contravention of the Act.

34. The provisions of Chapter III deal with the subject of registration. Section 11[131] is about registration of certain persons

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[130] **10. Power to prohibit payment of currency received in contravention of the Act**.—Where the Central Government is satisfied, after making such inquiry as it may deem fit, that any person has in his custody or control any article or currency or security, whether Indian or foreign, which has been accepted by such person in contravention of any of the provisions of this Act, it may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing with, in any manner whatsoever, such article or currency or security save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the prescribed manner, and thereupon the provisions of sub-sections (2), (3), (4) and (5) of section 7 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) shall, so far as may be, apply to, or in relation to, such article or currency or security and references in the said sub-sections to monies, securities or credits shall be construed as references to such article or currency or security.

[131] **11. Registration of certain persons with Central Government.**— (1) Save as otherwise provided in this Act, no person having a definite cultural, economic, educational, religious or social programme shall accept foreign contribution unless such person obtains a certificate of registration from the Central Government:

Provided that any association registered with the Central Government under section 6 or granted prior permission under that section of the Foreign Contribution (Regulation) Act, 1976 (49 of 1976), as it stood immediately before the commencement of this Act, shall be deemed to have been registered or granted prior permission, as the case may be, under this Act and such registration shall be valid for a period of five years from the date on which this section comes into force.

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

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

with Central Government. Section 12 is about grant of certificate of registration and the procedure therefor. Section 12A has been inserted vide the 2020 Act providing for power of Central Government to require Aadhaar number etc., as identification document at the time of registration or for renewal of certificate. Section 13 deals with situations where certificate of registration can be suspended and Section 14[132] is about cancellation of such

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

(3) Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, specify—

(i) the person or class of persons who shall obtain its prior permission before accepting the foreign contribution; or

(ii) the area or areas in which the foreign contribution shall be accepted and utilised with the prior permission of the Central Government; or

(iii) the purpose or purposes for which the foreign contribution shall be utilised with the prior permission of the Central Government; or

(iv) the source or sources from which the foreign contribution shall be accepted with the prior permission of the Central Government.

[132] **14. Cancellation of certificate**.—(1) The Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if—

(a) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or

(b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or

(c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or

(d) the holder of certificate has violated any of the provisions of this Act or rules or order made thereunder; or

certificate. Section 15 deals with issues of management of foreign contribution of person whose certificate has been cancelled and Section 16[133] is about the process of renewal of certificate of registration.

35. We are not so much concerned with the other Chapters, namely, Chapters IV to IX of the 2010 Act, except Section 17 (in Chapter IV) which deals with foreign contribution through scheduled

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(e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

(2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

(3) Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant or prior permission for a period of three years from the date of cancellation of such certificate.

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

Provided that the Central Government may, before renewing the certificate, make such inquiry, as it deems fit, to satisfy itself that such person has fulfilled all conditions specified in sub-section (4) of section 12.

(2) The application for renewal of the certificate shall be made to the Central Government in such form and manner and accompanied by such fee as may be prescribed.

(3) The Central Government shall renew the certificate, ordinarily within ninety days from the date of receipt of application for renewal of certificate subject to such terms and conditions as it may deem fit and grant a certificate of renewal for a period of five years:

Provided that in case the Central Government does not renew the certificate within the said period of ninety days, it shall communicate the reasons therefor to the applicant:

Provided further that the Central Government may refuse to renew the certificate in case where a person has violated any of the provisions of this Act or rules made thereunder.

bank. The other provisions in Chapter IV are about accounts, intimation, audit and disposal of assets, etc.

36. As aforesaid, the 2010 Act is to regulate foreign contribution as defined in Section 2(1)(h). As the petitioners are desirous of engaging in definite cultural, economic, educational, religious or social programme and for doing so accept foreign contribution, they had to seek certificate of registration from the Central Government in terms Section 11. The certificate of registration refers to definite activities which will be undertaken by the concerned organisation/trust for utilisation of foreign contribution. Having shown interest in obtaining such certificate of registration or for renewal thereof, it is obligatory for the organisation to comply with the formalities, including as specified in Sections 7, 12(1A) read with Section 17 or Section 12A. We shall deal with this aspect in detail a little later.

37. Besides complying with the formalities for registration under Section 11, the persons interested in receipt/acceptance of foreign contribution from foreign source after grant of such certificate of registration, are obliged to do so only through the FCRA account which is required to be opened under Section 17 being a precondition for grant of certificate of registration or renewal thereof,

in terms of Section 12(1A) read with Section 17 of the 2010 Act. That apart, after grant of certificate of registration and acceptance of foreign contribution from foreign source through the specified account, the same is required to be utilised by the recipient itself only for the purposes for which such permission had been granted, with prohibition to transfer such foreign contribution to any other person by virtue of Section 7 of the 2010 Act.

Validity of Section 7

38. Having said this, now we may revert to the grounds on which Section 7, as amended vide the 2020 Act, has been challenged. It is urged that the unamended provision though restricted the transfer of foreign contribution, yet it did not completely prohibit the same unlike the amended Section 7. The amended Section 7 postulates complete prohibition on the transfer of foreign contribution to other person — not even to a person having certificate of registration under the Act. In other words, a person who is registered and granted a certificate or has obtained prior permission under the Act to receive foreign contribution will henceforth be required to utilise the amount "itself" and not through any other person.

39. Be it noted that the proviso to the unamended Section 7 envisaged that if a part of foreign contribution was to be transferred to some other person who had not been granted a certificate or obtained prior permission under the 2010 Act, that could be made possible by obtaining prior approval of the Central Government. Even that option is done away with on account of the amended Section 7.

40. This plea has been countered by the respondents on the argument that the Parliament in its wisdom has decided to introduce a strict regime in the backdrop of the experience gained from the implementation of the unamended Section 7 of the 2010 Act; and to eradicate the mischief which had unfolded. Hence, the new dispensation became necessary to introduce a stricter regime (amended Section 7). Indisputably, the new regime does not completely prohibit the inflow of foreign contribution as such. Whereas, it is a firm dispensation regarding utilisation of the funds so accepted/received from foreign source only for the purposes for which the recipient is registered and granted a certificate or had been given prior permission under the Act in that regard.

41. The expressions "foreign contribution"[134] and "foreign source"[135] have been defined in Sections 2(1)(h) and 2(1)(j) of the 2010 Act as amended.

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[134] **2. Definitions**.—(1) In this Act, unless the context otherwise requires,—
(a) to (g) xxx xxx xxx

(h) "foreign contribution" means the donation, delivery or transfer made by any foreign source,—
(i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time-to-time, by the Central Government by the rules made by it in this behalf;

(ii) of any currency, whether Indian or foreign;

(iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

Explanation 1.—A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 2.—The interest accrued on the foreign contribution deposited in any bank referred to in sub-section (1) of section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 3.—Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause;

[135] **2. Definitions**.—(1) In this Act, unless the context otherwise requires,—
(a) to (i) xxx xxx xxx

(j) "foreign source" includes,—

(i) the Government of any foreign country or territory and any agency of such Government;

(ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification, specify in this behalf;

(iii) a foreign company;

(iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;

42. Section 11 of the Act, as applicable vide the Amendment Act of 2020, is in one sense complete prohibition to receive foreign contribution unless have obtained certificate of registration or prior permission from the Central Government in that regard. Further, Section 11 allows receipt or acceptance of foreign contribution only for definite purposes such as cultural, economic, educational, religious or social programme.

(v) a multi-national corporation referred to in sub-clause (iv) of clause (g);

(vi) a company within the meaning of the Companies Act, 1956 (1 of 1956), and more than one-half of the nominal value of its share capital is held, either singly or in the aggregate, by one or more of the following, namely:—

(A) the Government of a foreign country or territory;

(B) the citizens of a foreign country or territory;

(C) corporations incorporated in a foreign country or territory;

(D) trusts, societies or other associations of individuals (whether incorporated or not), formed or registered in a foreign country or territory;

(E) foreign company;

Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999 (42 of 1999), or the rules or regulations made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source;

(vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;

(viii) a foreign trust or a foreign foundation, by whatever name called, or such trust or foundation mainly financed by a foreign country or territory;

(ix) a society, club or other association of individuals formed or registered outside India;

(x) a citizen of a foreign country;

43. A person desirous of receiving/accepting foreign contribution for such definite purposes had to seek a certificate of registration from the Central Government even under the unamended provision. After obtaining such certificate of registration, the recipient of foreign contribution could transfer it to another person who is also registered and had been granted a certificate or obtained prior permission under the 2010 Act. However, that is not permissible under the new dispensation (amended Section 7). For, the legislative intent is now one of complete prohibition regarding transfer of foreign contribution to third party.

44. Significantly, as per the scheme of the 2010 Act, a certificate of registration is not granted for acting as an intermediary between the donor (foreign source) and the grassroot level organisation. The amended provision, therefore, completely rules out such transfer of foreign contribution by the person who has received/accepted the same in the first place. That does not prevent the recipient from utilising the foreign contribution "itself" for the purposes for which he has been granted a certificate of registration or obtained prior permission under the Act.

45. The expression "transfer" has not been defined in the Act. The meaning of expression "transfer" in the subject enactment would presuppose giving away of the foreign contribution in whole or in part to third person without retaining any control thereon; and such change of hands is obviously without offering any services in return, namely, free of costs. The third person would then be free to deal with such transferred foreign contribution in the manner he chooses to do so, whilst adhering to the conditions specified in his certificate of registration or the conditions specified in the prior permission under the Act, as the case may be. In this scenario, it had been possible that the transferor (who had accepted the foreign contribution) may have persuaded the foreign source to donate for one permitted purpose, but without consulting the donor (foreign source) could transfer the whole or part amount (foreign donation) to third person (transferee) for being utilised for altogether another purpose, which in a given case may not be acceptable to the donor. It, thus, paved way for misutilisation of foreign contribution and the possibility of abuse thereof.

46. There is no restriction regarding utilisation of foreign contribution, leave alone complete prohibition. The rationale of

Section 7 as amended, *inter alia*, is that the donor (foreign source) is made fully aware of the definite purposes already declared by the recipient and permitted by the competent authority and corresponding obligation upon the recipient regarding utilisation of the funds itself for stated purposes and none else.

47. Indeed, even the expression "utilisation" has not been defined in the Act. The ordinary meaning of expression "utilisation" must be understood in the context of the purpose for which a certificate of registration or prior permission under the Act has been granted by the Central Government. If the foreign contribution is utilised for such definite purposes[136], including administrative expenses

[136] Illustrative list of activities permitted as mentioned in the Annual Report (2004-2005) prepared by Ministry of Home Affairs, Foreigners' Division, FCRA Wing read thus:

"**1. Religious**

• Celebrations of religious functions/festivals etc.; • Construction/repair/maintenance of places of worship, religious schools.; • Education of priests and preachers (dissemination of the message of good will etc. from the holy books).; • Publication and distribution of religious books/ literature.; • Maintenance of priests / preachers / other religious functionaries.; • Any other activities related to the above.

2. Educational

• Construction and maintenance of schools/colleges.; • Construction and running of hostels for poor students.; • Grant of stipends/ scholarships/ assistances in cash or kind to poor/deserving children.; • Purchase and supply of educational material-books, notebooks etc.; • Conducting adult literacy programs.; • Conducting research.; • Non-formal education/schools for the mentally challenged.; • Non-formal education projects/coaching classes.; • Any other activities related to the above.

3. Economic

• Following but not being commercial or profit making activities: • Micro-finance projects, including setting up banking co-operatives and self-help groups.; • Self-sustaining income generation projects/schemes. • Agricultural activities.; • Rural development programmes/schemes.; • Animal husbandry projects.; • Setting up and running handicraft

permissible under Section 8, even though it may theoretically entail in transfer of foreign contribution, it would not be a case attracting the rigors of Section 7. In other words, Section 7 may be attracted if the utilisation is not for the definite or permitted purposes for which the certificate of registration or permission under the Act has been granted by the competent authority. Indeed, if the recipient of foreign contribution engages services of some third party or

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centres/cottages and khadi industry/social forestry projects.; • Vocational training, tailoring, motor repairs, computers etc.; • Projects for income generation activities or any other developmental projects for urban slum development.; • Any other activities related to the above, not being commercial activities.

4. **Social**

• Construction/running of hospitals/dispensaries/clinics.; • Construction of community halls etc.; • Construction and management of old age homes.; • Welfare of the old aged persons or widows.; • Construction and management of orphanage.; • Welfare of the orphans.; • Construction and management of dharamshalas/shelters.; • Holding of free medical/health/family welfare/immunisation camps.; • Supply of free medicine, and medical aids, including hearing aids, visual aids, family planning aids etc.; • Provision of aids such as tricycles, callipers etc. to the handicapped.; • Treatment/rehabilitation of drug addicts.; • Welfare/empowerment projects/schemes for women.; • Welfare of children.; • Provision of free clothing/food to the poor, needy and destitutes.; • Relief/rehabilitation of victims of natural calamities.; • Help to the victims of riots/other social disturbances.; • Digging of bore wells.; • Sanitation including community toilets etc.; • Awareness camps/ seminars/ workshops / meetings / conferences.; • Providing free legal aids/running legal aid centres.; • Holding sports meet.; • Promoting awareness about Acquired Immune Deficiency Syndrome (AIDS)/treatment and rehabilitation of persons affected by AIDS.; • Welfare of the physically and mentally challenged.; • Welfare of the Schedules Castes.; • Welfare of the Scheduled Tribes.; • Welfare of the Backward Classes.; • Environmental programs.; • Survey for socio-economic and other welfare programs.; • Preservation and maintenance of wild life.; • Preservation of natural resources.; • Awareness against social evils.; • Rehabilitation of victims of heinous crimes.; • Rehabilitation of beggars, bootleggers, child labour etc.; • Creating awareness of Government schemes & laws to general public.; • Any other activities related to the above.

5. **Cultural**

• Celebration of national events (Independence/Republic day/festivals).; • Theatre/films/puppet show/road show etc.; • Maintenance of places of historical and cultural importance.; • Preservation of ancient/tribal art forms.; • Preservation and promotion of cultural heritage or literature of India.; • Cultural shows.; • Any other activities related to the above."

outsources its certain activities to third person, whilst undertaking definite activities itself and had to pay therefor, it would be a case of utilisation. The transfer within the meaning of Section 7, therefore, would be a case of per se (simplicitor) transfer by the recipient of foreign contribution to third party without requiring to engage in the definite activities of cultural, economic, educational or social programme of the recipient of foreign contribution, for which the recipient had obtained a certificate of registration from the Central Government. On this interpretation, it must follow that the argument regarding amended Section 7, being *ultra vires*, must fail.

48. Concededly, Section 8 permits the recipient of foreign contribution to utilise only specified portion thereof for administrative purposes, to the extent permissible. As per Section 8, the administrative expenses *qua* foreign contribution received by the registered person ought not to exceed twenty per cent (instead of fifty per cent under the unamended provision) of such contribution in the concerned financial year. The proviso to Section 8(1), however, enables spending beyond twenty per cent towards administrative expenses with prior approval of the Central

Government. Be it noted, the validity of amended Section 8 is not put in issue in these petitions.

49. On conjoint reading of Sections 7 and 8, as amended, the legislative intent of mandating utilisation of foreign contribution by the recipient itself for the purposes for which it had been permitted gets reinforced. Additionally, Sections 12(4)(b) and 18 of the 2010 Act also reinforce such a view — which predicates that the person who has been granted certificate of registration or given prior approval under the Act, is obliged to give intimation to the Central Government and such other authorities as may be specified by the Central Government as to the amount of each foreign contribution received by it, the source from which and the manner in which such foreign contribution was received, and the purposes for which, and the manner in which such foreign contribution was utilised by him. This information may facilitate inquiry mechanism and to reassure that the foreign contribution accepted by the person has been utilised for definite purposes permitted by the competent authority. Any breach of this stipulation may entail in penal action under the Act.

50. It was vehemently urged before us that since the transferee would also possess certificate of registration and bound by the provisions of the 2010 Act, it would serve no legitimate purpose by prohibiting transfer of foreign contribution to such person. Accepting this argument would be completely glossing over the legislative intent for which the amendment has been effected. The legislative intent is to introduce strict dispensation *qua* the recipient of foreign contribution to utilise the same "itself" for the purposes for which it has been permitted as per the certificate of registration or permission granted under the Act by the Central Government. In addition, by the same Amendment Act, utilisation of foreign contribution for administrative purpose by the recipient has been lowered to twenty per cent only with a view to ensure maximum spending on the purposes for which the foreign contribution has been accepted by the recipient having certificate of registration.

51. Absent such stringent provision, some of the recipient organisations were reportedly indulging in successive chain of transfers to other organisations, thereby creating a layered trail of money and also utilisation of funds towards administrative costs of successive transfers upto fifty per cent leaving very little funds for

spending on the purposes for which it was permitted. Hence, providing complete restriction on transfer simplicitor, was the just option to fix accountability of the recipient organisation and maximise utilisation for the permitted purposes. Such being the avowed objective and purpose of the amendment, the challenge to the amended Section 7 must fail.

52. Be that as it may, the fact that earlier transfer of foreign contribution was permitted as per the unamended provision, that by itself cannot be the basis to challenge the validity of the amended provision. For, it is open to the Parliament to change the benchmark of restriction from higher standard to lower standard or *vice versa* on the basis of the exigencies and experience gained during the implementation of the applicable provision at the relevant time.

53. Indubitably, foreign contribution is qualitatively different from foreign investment. Receiving foreign donation cannot be an absolute or even a vested right. By its very expression, it is a reflection on the constitutional morality of the nation as a whole being incapable of looking after its own needs and problems. The question to be asked is: "in normal times", why developing or

developed countries would need foreign contribution to cater to their own needs and aspirations? Indisputably, the aspirations of any country cannot be fulfilled on the hope (basis) of foreign donation, but by firm and resolute approach of its own citizens to achieve the goal by sheer dint of their hard work and industry. Indeed, charitable activity is a business. Receiving contribution within India to do charitable activity can be and is being regulated differently. It is not possible to have a similar approach relating to foreign contribution from foreign source. In short, no one can be heard to claim a vested right to accept foreign donation, much less an absolute right.

54. We say so because the theory of possibility of national polity being influenced by foreign contribution is globally recognised. For, foreign contribution can have material impact in the matter of socio-economic structure and polity of the country. The foreign aid can create presence of a foreign contributor and influence the policies of the country. It may tend to influence or impose political ideology. Such being the expanse of the effect of foreign contribution coupled with the tenet of constitutional morality of the nation, the presence/inflow of foreign contribution in the country ought to be at

the minimum level, if not completely eschewed. The influence may manifest in different ways, including in destabilising the social order within the country. The charitable associations may instead focus on donors within the country, to obviate influence of foreign country owing to foreign contribution. There is no dearth of donors within our country.

55. Pertinently, the 1976 Act came to be repealed by the 2010 Act, as it had become necessary to do so because of the experience gained that in the name of foreign contribution, attempts were made by unscrupulous entities to disturb the economy and sovereignty of our country. That being the underlying reason, it must follow that the legislative intent behind the Act and constant effort of the Government and of the Parliament is to discourage foreign contribution generally, but allow it for specific definite purposes mentioned in Section 11 of the Act; and for which, the person receiving or accepting foreign contribution is obliged to obtain a certificate of registration under the Act or prior permission, as the case may be. Further, such person is obligated to comply all the stipulations attached to the certificate of registration or prior permission, without any exception.

56. Apparently, receiving "foreign exchange" is itself completely prohibited and made subject to exceptions provided for in terms of the Foreign Exchange Management Act, 1999[137]. On conjoint reading of the provisions of the 1999 Act and the regulatory mechanism provided for in the 2010 Act, it is a clear pointer to the strict regime to be followed by all concerned for allowing inflow of "foreign contribution" (donation) in the manner prescribed and its utilisation only for definite purposes permitted by the competent authority.

57. We fail to understand as to how such a provision (amended Section 7) can be regarded as discriminatory or so to say vague or irrational much less manifestly arbitrary. The restriction therein applies to a class of persons who are permitted to accept foreign donation for being utilised by themselves for the definite purposes, without any discrimination and it is so done to uphold the objective of the Principal Act. Thus, there is clear intelligible differentia with a direct nexus sought to be achieved with the intent of the Principal Act. Such strict regime had become inevitable because of the

[137] for short, "the 1999 Act"

experience gained by the concerned authorities over a period of time, including about the abuse of the earlier dispensation under the unamended provision.

58. The change not only completely prohibits transfer, but also enhances the efficacy of the foreign contribution by mandating utilisation thereof by the person granted certificate of registration itself, for the purposes for which it had been accepted in terms of the certificate of registration or prior permission granted under the Act, as the case may be, including upto prescribed administrative expenses. This restriction inevitably fixes the accountability of the recipient organisation and mandating maximum utilisation by itself for permitted purposes. This is the procedure established by law. It can neither be said to be arbitrary nor discriminatory much less manifestly arbitrary — within the meaning of Article 14 or impinging upon Article 21 of the Constitution. As a matter of law, since the subject Act deals with a distinct class of persons (accepting/receiving foreign contribution) and it is founded on an intelligible differentia having object sought to be achieved by the

Principal Act, it fulfils the test predicated in ***Shayara Bano***[138]. For the same reason, the amended provision under challenge is neither capricious, irrational or lacking determining principle, nor suffers from the vice of excessiveness and being disproportionate.

59. We need to bear in mind that there is presumption that the Parliament understands and reacts to the needs of its own people as per the exigencies and experience gained in the implementation of the law. Mere plea of inconvenience is not enough to attract the constitutional inhibition. The Courts ought not to adopt a doctrinaire approach in construing the amended provisions and undermine the legislative intent of strengthening the regulatory mechanism concerning foreign contribution. The legislature enjoys considerable latitude while exercising its wisdom on the basis of inputs collated from different quarters[139]. There is intrinsic evidence to indicate that the change effected by the amendments is to serve the legitimate Government purpose and has a rational nexus to the object of the Principal Act and the amendments, and that the pre-amendment dispensation (unamended Section 7) was not sufficient

[138] supra at Footnote No.18
[139] *see* ***Ombalika Das vs. Hulisa Shaw*** (supra at Footnote No.79)

to effectively regulate the acceptance and utilisation of foreign contribution as predicated by the Principal Act.

60. Reliance placed by the petitioners on the dictum in ***Shreya Singhal***[140] and ***K.S. Puttaswamy***[141] to urge that it is open to the Court to test the amendment on the touchstone of manifestly arbitrary, need not detain us in light of the conclusion noted hitherto, keeping in mind the legislative history and the compelling necessity to adopt strict regime for prohibiting "transfer" of foreign contribution and insistence of "utilisation" thereof by the recipient himself/itself. For the same reasons, the dictum in ***Anuradha Bhasin***[142] that the underlying consideration of appropriateness, necessity and the least restrictive measure compliant law, will also be of no avail.

61. The argument that this Court in the case of ***INSAF***[143], while dealing with the provisions of the 1976 Act had recognised the absolute right to receive foreign contribution is misplaced and misreading of that decision. For, the said decision examined the

[140] supra at Footnote No.117
[141] supra at Footnote No.7
[142] supra at Footnote No.21 (paras 154-159)
[143] supra at Footnote No.22

arguments pursued before the Court in the context of challenge to the validity of Section 5(1) and 5(4) of the 2010 Act and Rule 3(i), 3(v) and 3(vi) of the 2011 Rules as being violative of Articles 14, 19(1)(a), 19(1)(c) and 21 of the Constitution. The provisions in Rule 3(v) and 3(vi) were read down to mean that the expression "political interests" occurring therein be construed to mean that it would apply only to those organisations which have connection with active politics or take part in party politics. Strikingly, even in this decision the Court noted the object sought to be achieved by the 2010 Act. To wit, to ensure that Parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life should function in a manner consistent with the values of a sovereign democratic republic without being influenced by foreign contributions or foreign hospitality. The Court went on to observe that long title of the Act makes it clear that the regulation of acceptance and utilisation of foreign contribution is for the purpose of protecting "national interests" and to prohibit organisations of a political nature from receiving foreign contributions.

62. That being the underlying purpose for which the Act has been enacted, whilst interpretating the amended provisions, we cannot be oblivious to the concern expressed by the Parliament, about the state of affairs and the fallout of the implementation of the dispensation enunciated under the unamended Act. As the Parliament took a well informed and conscious decision to alter that position — to make it a strict regulatory regime of not permitting the recipient of foreign contribution to transfer the funds to third party for the reasons weighed with it, it must follow that the provision is in the interests of the sovereignty and integrity of the country, public order and in the interests of the general public.

63. The question posed to us was: whether such restriction can be said to be reasonable restriction or impinges upon the right of any person? While examining the issue as to whether the amended provision is a reasonable restriction, the Court cannot be oblivious to the concern of the Parliament/Legislature backed by the past experiences including cancellation of registration of substantial number of registration certificates after due inquiry and for tangible reasons owing to abuse and misutilisation of foreign contribution (donation); and especially when receipt or acceptance of foreign

exchange or be it foreign contribution, is otherwise understood to be ordinarily prohibited. For, the "foreign exchange" and more so "foreign contribution" can be received or brought within the territory of India only as per the dispensation provided for in the municipal law. There can be no absolute right in that regard. The fact that transfer was permitted under the unamended Section 7, it does not follow that the Parliament is not competent to amend that dispensation to make it more stringent, including to completely prohibit the inflow of foreign contribution. The amended provision is not to completely prohibit inflow of foreign contribution, but is a regulatory measure to permit acceptance by registered persons or persons having prior permission to do so with condition that they must themselves utilise the entire contribution including for administrative expenses within the limits provided under Section 8 of the Act. The subject enactment is essentially conceived in the interests of public order and also general public as the intent is to prevent misuse and misutilisation of foreign contribution coming from foreign sources to safeguard the values of a sovereign democratic republic.

64. Thus understood, it is a reasonable restriction as it does not hinder with the right of forming associations as well as to engage in business of charity. Being a regulatory measure necessitated because of past experience and to uphold the intent of the Principal Act, insisting for utilisation, spending of foreign contribution by the recipient itself cannot be said to be irrational, arbitrary, discriminatory, or unreasonable restriction as such.

65. The restriction or complete prohibition on transfer to third party, by no standards deprive acceptance of foreign contribution and utilisation thereof in the manner permitted for definite purposes, such as cultural, economic, educational or social programme. Such a provision must be understood as being procedure established by law in the interests of the general public and in the interests of sovereignty and integrity of the country, including public order. Resultantly, there is no infraction even of Article 19(1)(c) or 19(1)(g) of the Constitution as urged by the writ petitioners before us, including Articles 14 and 21 of the Constitution. Consistent with this view, we must reject the challenge to the amended Section 7 on all counts.

66. For the same reason, the argument of the writ petitioners about lack of rational nexus with the object sought to be achieved by the Principal Act much less the Amendment Act, must also fail. The rationale is of larger public interests and more particularly to obviate adverse impact on the economy, public order, sovereignty and integrity of the country. Such amendment has been necessitated because of the past experience consequent to implementation of the unamended Section 7 of the 2010 Act. It is so highlighted in the objects and reasons and the introduction of the Amendment Act. It can also be culled out from the debates in the Parliament whilst considering the Amendment Bill in the respective Houses. To overcome the mischief and to enhance transparency and accountability regarding acceptance and also utilisation of foreign contribution which is quite substantial every financial year having proliferating effect on the economy of the nation, it had become necessary to enact amended Section 7. In other words, there is a clear rationale behind the amendment which is consistent with the purpose of the Principal Act and the object sought to be achieved under the enactments. The fact that unamended provision was less restrictive, cannot be the basis to test the constitutional validity of

the provision on the touchstone of Article 19(1)(c) or 19(1)(g) or Articles 14 and 21 of the Constitution. The amended Section 7, being plain and clear and having nexus with the object sought to be achieved and is necessitated because of sovereignty and integrity of India or security of the State, public order and in the interests of the general public. It is unfathomable as to how the amended provision can be regarded as unconstitutional on any parameter.

67. It is urged that Rule 24 of the 2011 Rules came to be deleted with effect from 10.11.2020. This rule enabled the registered organisations to transfer foreign contribution to any unregistered person in the manner provided therein. However, in light of amendment to Section 7 prohibiting transfer of foreign contribution to any person, the need for the dispensation predicated in Rule 24 had become non-existent. In other words, as per amended Section 7, there is no need to continue Rule 24 on the statute book and its continuance for some time would also make no difference in the wake of express prohibition in amended Section 7 of the 2010 Act.

Validity of Section 12(1A) and Section 17(1)

68. Section 12(1A) has been inserted by Act 33 of 2020, which envisages that every person who makes an application under sub-Section (1) of Section 12 is obliged/required to open FCRA account in the manner specified in Section 17 and mention details of such account in his application. Section 17, in particular sub-Section (1) as amended, mandates that every person who had been granted certificate or prior permission under Section 12 shall receive foreign contribution only in an account designated as FCRA account in the specified bank. The unamended Sections 12 and 17 did not impose such restriction. Notably, as per the new regime foreign remittances are being received through SWIFT platform by international banking wherein certain mandatory fields are required to be captured apart from other details transaction wise. Further, foreign remittances do not have structured framework, including disclosures regarding purposes. All these deficiencies will stand resolved thereby enhancing the monitoring mechanism in real-time basis, remittance wise by adopting the new dispensation predicated in the amended provisions.

69. Once again, the need to strictly regulate the inflow of foreign funds and to oversee utilisation thereof for the purposes for which it

has been received having been recognised and being the rationale behind the Amendment Act, including owing to the experience regarding abuse of the regime under the unamended provision, the challenge to such amendment cannot be taken forward.

70. There is force in the argument of the respondents that Section 17 came to be amended aftermath realisation of clear and discernible lacunae had cropped in due to the presence of FCRA accounts of scores of registered organisations, in different scheduled banks across the country. The challenge became more pronounced due to doubling of foreign contribution inflow in the last decade which had impacted the efficiency of monitoring and achieving the object of the Principal Act. The amended provision now mandates that FCRA accounts of all the registered persons/organisations are required to be opened in one particular branch in the country providing for essential information and fields, thereby ensuring a complete and transparent check on the inflow and utilisation of foreign contribution towards a single point source on real-time basis.

71. The fact that earlier FCRA account could be opened in any scheduled bank, cannot preclude the Parliament from legislating a law which requires inflow of foreign contribution in some other manner specified by law. Merely because the framework of

acceptance of foreign contribution had been changed cannot be the basis to question the validity of the amended provisions. Introducing change for the betterment of governance is the prerogative and wisdom of the Parliament. The FCRA account operators cannot claim right of continuity of a deficient and flawed framework. Ordinarily, convenience of business and persons engaged in doing business must be uppermost in the mind of the Parliament/Legislature — to effectuate the goal of ease of doing business. However, the strict regime had become essential because of the past experience of abuse and misutilisation of the "foreign contribution" and cancellation of certificates of as many as 19,000 registered organisations on the ground of being grossly non-compliant. Despite such cancellation of large number of certificates of registration, until December 2021 there were reportedly 22,762 FCRA registered organisations presumably compliant with new dispensation. Further, as many as 12,989 organisations have applied for the renewal of the FCRA licence between 30.09.2020 and 31.12.2021. And as many as 5,789 organisations had not applied for renewal of FCRA licence, whose FCRA licence has ceased to be valid. A *fortiori*, it would certainly justify the need to have a holistic

approach to ensure that the objective of the Principal Act is fulfilled, namely, of strict regulation of the inflow and utilisation of foreign contribution for the purposes for which it is so permitted, such as only cultural, economic, educational or social programme.

72. In fact, the Parliament must be credited with for having taken recourse to corrective dispensation for eradicating the mischief, which any sovereign country can ill-afford. The Parliament is supreme and has a final say in matters of legislation when it reflects on alternatives and choices with inputs from different quarters, with a check in the form of democratic accountability and a further check by the Courts which exercise the power of judicial review[144]. We find force in the argument that it had become necessary for the Parliament to step in and provide a stringent regime for effectively regulating the inflow and utilisation of foreign contribution. Hence, there had been legitimate goal for amending the subject provisions of acceptance of funds through one channel. Concededly, despite the requirement of opening FCRA account in the designated bank, it is open to the organisation to utilise the amount so received in the

[144] ***Dr. Ashwani Kumar*** (supra at Footnote No.47)

FCRA account through multiple accounts in the scheduled branches. In that sense, it is a balanced approach.

73. A *priori, o*pening of main FCRA account in the designated bank as per the law made by the Parliament in that regard, cannot be brushed aside on the specious argument of some inconvenience being caused to the registered associations[145]. Assuming that some inconvenience is likely to be caused to few applicants, but the constitutionality of a statute cannot be assailed on the basis of fortuitous circumstances and more so when it being only a one-time exercise to ensure inflow of foreign contribution through one channel only, being a precondition for grant of permission. There is no restriction regarding utilisation of the funds only through that (primary) FCRA account. For, it is open to the recipient to operate multiple accounts in other scheduled banks for its utilisation.

74. As a matter of law, the validity of the amendments must be tested on the touchstone of tenets underlying Articles 14, 19 and 21 of the Constitution. The permission is a precondition for acceptance

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[145] In ***Laxmi Khandsari*** (supra at Footnote No.31) and ***All India Council for Technical Education*** (supra at Footnote No.32), this Court had expounded that on the plea of individual hardships, Court cannot interfere with policy matters (and in present cases a just law made by Parliament).

and utilisation of foreign contribution. Such persons are a separate class and engage in specified activity. It cannot be a usual or ordinary business for everyone and anyone wanting to accept foreign contribution. Permitting inflow of foreign contribution, which is a donation, is a matter of policy of the State backed by law. In this case, it is governed by the 2010 Act as amended. It is open to the State to have a regime which may completely prohibit receipt of foreign donation, as no right inheres in the citizen to receive foreign contribution (donation).

75. The provision such as Section 12(1A) and Section 17(1) introduced by the Amendment Act, is a holistic approach adopted by the Parliament to provide for strict regulatory measure and for ensuring transparency and accountability in the matter of foreign contribution. Notably, there was unanimity amongst the members of both the Houses cutting across party lines to have such a strict regime as indiscriminate receipt/inflow and more so utilisation of foreign contribution had been threatening the sovereignty and integrity of the country itself. Being a matter of security of the State, public order and in the interests of the general public, it is not open to question the validity of such a law on the touchstone of Article

19(1)(c) or 19(1)(g) of the Constitution. It is not a provision to completely prohibit forming of the associations or engaging in business of charity as such. It is a provision for regulating the manner of doing business more importantly, concerning foreign contribution.

76. Opening of main FCRA account in the designated bank, as has been rightly contended by the respondents, is only a one-time exercise and for which instructions and protocols have been issued by the competent authority, not to insist for physical presence for complying with the formalities. It can be organised even at the local branches of the designated bank in the manner specified in the instructions issued in that regard. Moreover, the provision does not prohibit the person/registered association from opening multiple accounts in other scheduled banks, wherein the amount received in (primary) FCRA account in NDMB can be transferred; and from where day-to-day activities can be then carried on by them. In any case, the designated bank being conscious of its banking obligations and to provide best services to the registered associations, have issued instructions (Standard Operating Procedure) for making it convenient to open FCRA account in NDMB as also to operate the

foreign contribution received in such an account. If any further improvement in the operational convenience is required, it is open to the petitioners and all other interested persons to request the designated bank to improve upon such facility. However, merely because the registered association has been compelled to open FCRA account in the designated bank at the centralised location for receipt/inflow of foreign contribution from foreign source, it does not follow that such a requirement would be manifestly arbitrary or unreasonable. It is only a one-time exercise to be complied with for availing the permission accorded by the Central Government under the Act to be a certified association or person given permission to receive foreign contribution as a precondition.

77. The need to have only one entry point for the inflow of foreign contribution had been viewed by the Parliament as the best option for regulating the inflow of foreign contribution. This process is expected to increase the efficiency in continual supervision of the inflow of foreign contribution on real-time basis by the concerned Authorities and to enable them to take immediate corrective measures to deal with and pre-empt the impending threat perceived because of its volume including undesirable source of remittance. It

is not open to the Court to have a second-guess approach in that regard.

78. In the context of the law made by the Parliament in the interests of the sovereignty and integrity of the country and security of the State, public order, as also in the interests of the general public, such a provision cannot be lightly viewed much less on the specious plea of manifestly arbitrary. The Parliament in its wisdom had deemed it essential to have such a provision because of the prevalent discernible circumstances referred to in the introduction of the Bill.

79. It was vehemently urged that there is lack of infrastructure at the designated bank and that the bank branch is manned only by 40 odd personnel. To buttress this plea, reference is made to the observation made by the Reserve Bank of India — that voluminous data on Foreign Remittances will put an extra financial burden on the Bank and increase its costs including divert focus on monitoring of suspicious transactions. This argument does not commend to us at all. In digital banking operations, it is not the head count dispensing physical services that would matter, but the effectiveness

of the software is important. We are also not impressed by the plea that for organisations located in remote parts of the country, there would be impediments and for that reason, Section 7 violates test of fairness and reasonableness. In any case, respondent No.3 (SBI) has on affidavit explained as to the extent of measures taken for ensuring efficient servicing of FCRA accounts of all the registered associations/account holders. Respondent No.3 has also assured that if need arises, suitable corrective measures including to upgrade the facilities/services would be taken at its end. Suffice it to observe that the argument under consideration cannot be the basis to doubt the constitutional validity of the provisions in the form of Section 12(1A) and Section 17(1), as amended vide the Amendment Act. Needless to underscore that respondent No.3 has stated on affidavit before this Court that FCRA accounts opened in its designated branch can be operated online on real-time basis without the need for physical presence of the account holder or its officials.

80. Having noted that the provision became necessary for efficient regulation of foreign contribution on real-time basis, it can neither be said to be manifestly arbitrary nor irrational much less without

legitimate objective of the State. Accordingly, we have no hesitation in negating the challenge to these provisions as being violative of Articles 14, 19 and 21 of the Constitution.

81. The fact that the registered associations were already complying with the statutory formalities of furnishing of accounts, intimation, audit and disposal of assets to the satisfaction of the concerned Authorities, it would not follow that the Parliament/Legislature is denuded of its power of changing the regulatory mechanism or framework to make it more effective and to make it real-time regarding the inflow or receipt of foreign contribution and utilisation thereof for the purposes for which it has been so permitted. Accepting the argument of the registered associations would not only be undermining the legislative intent, but also disregarding the object sought to be achieved by the Principal Act.

82. The argument of compelling necessity may have arisen for our consideration only if we were to find that the dispensation provided in the amended provisions is in the nature of complete prohibition to form association or to engage in business. As mentioned earlier,

these provisions are only for effective regulatory measures concerning and limited to foreign contribution, in the larger public interests, public order, and more particularly for safeguarding the sovereignty and integrity of the country. Taking any other view would entail in undermining the legislative intent and cannot be countenanced.

Validity of Section 12A

83. Reverting to the challenge to the insertion of Section 12A vide the Amendment Act of 2020, it mandates that the person concerned who seeks prior permission or prior approval under Section 11, or makes an application for grant of certificate under Section 12, including for renewal of certificate under Section 16, to provide as identification document, the Aadhaar number of all its office bearers or Directors or other key functionaries. The Statement of Objects and Reasons of the Amendment Act are testimony about the past experience of abuse of foreign contribution receipts and spending on activities not connected with the purposes for which it was so permitted. It had been noticed that the inflow of foreign contribution had almost doubled between the years 2010 and 2019 and many of the registered associations had failed to comply with basic statutory

formalities necessitating cancellation of certificates of registration of more than 19,000 registered organisations. This is a staggering (substantial) number indicative of gross violations by large number of registered associations. More so, this amendment had been necessitated to safeguard the sovereignty and integrity of the country, and public order, including in the interests of the security of the State and of the general public. It is a law made by the Parliament which is competent to make such a law concerning the activities related to foreign donations and more particularly about its acceptance in prescribed manner and utilisation for the purposes defined in the certificate/permission granted by the competent authority. It has a legitimate purpose and nexus sought to be achieved with the objective underlying the Principal Act and the subject amendment. It is not open to argue that associations desirous of obtaining certificate of registration under this Act need not furnish official identification document pertaining to its key functionaries.

84. Regardless of the above, the provision (Section 12A) envisages that a copy of the Passport can also be provided as identification document of all its office bearers or Directors or other key

functionaries or Overseas Citizen of India Card, in case of a foreigner. The underlying purpose of this provision is merely to identify the key functionaries of the registered association so that they can be made accountable for violations, if any. We are of the view that as the Passport in case of a foreigner is accepted as sufficient identification document, there is no reason why such Passport of Indian national cannot be relied upon for the same purpose. Thus understood, the challenge to this provision being unreasonable need not detain us nor is required to be taken any further. Whereas, we hold that the provision needs to be construed as permitting furnishing of the Indian Passport of the key functionaries of the applicant who are Indian nationals, for the purpose of their identification.

85. Having said this, it is not necessary to dilate on other arguments pressed into service dealing with matters of privacy or the provisions under consideration being manifestly arbitrary.

86. For the view that we have taken, we do not wish to dilate on every single authority cited across the Bar as the view taken by us is in no way different than the principle expounded therein.

Conclusion

87. To sum up, we declare that the amended provisions vide the 2020 Act, namely, Sections 7, 12(1A), 12A and 17 of the 2010 Act are *intra vires* the Constitution and the Principal Act, for the reasons noted hitherto. As regards Section 12A, we have read down the said provision and construed it as permitting the key functionaries/office bearers of the applicant (associations/NGOs) who are Indian nationals, to produce Indian Passport for the purpose of their identification. That shall be regarded as substantial compliance of the mandate in Section 12A concerning identification.

88. Accordingly, Writ Petition (Civil) Nos. 566 and 751 of 2021 are disposed of in the aforementioned terms. Writ Petition (Civil) No.634 of 2021 also stands disposed of. No order as to costs.

Pending application(s), if any, are also disposed of.

.....J.
(A.M. Khanwilkar)

.....J.
(Dinesh Maheshwari)

.....J.
(C.T. Ravikumar)

New Delhi;
April 08, 2022.