

Foreign Funding Of Indian NGOs

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The Foreign Currency Regulation Act (FCRA) governs the funding of activities in India by foreign agencies, including funding of Indian NGOs. An NGO, before it can accept a donation or grant in foreign currency, is required to register itself with the Ministry of Home Affairs as per the provisions of the FCRA. One of the provisions of the Act is that money so received will not be used for political purpose or for any purpose which might undermine the sovereignty, security or national interests of the country. However, the funds can be used for approved development projects, creating and promoting awareness of issues of public interest which relates to development and welfare, for empowerment of disempowered groups and for research and training. The money cannot be used for propaganda against the Indian State or creating a hostile political environment against the Central or State Governments. Under Article 19 of the Constitution freedom of speech and expression is the fundamental right of every Indian citizen or organisation, but it is subject to laws which protect the sovereignty and integrity of India, strengthen and protect the judicial system and ensure that public order, morality, etc., are not breached. FCRA is one such Act which legitimately restricts unbridled freedom of speech. This Act stands judicial scrutiny and is framed within the provisions of the Constitution. The restrictions under the Act are, therefore, reasonable.

Teesta Setalvad is a highly controversial figure in the NGO universe of India, who is trenchantly critical of the establishment and specially of BJP, claims to fight for the maintenance of the secular nature of our Constitution and since 2002 has virtually led a crusade against Narendra Modi and the post Godhra happenings in Gujarat. Her campaign has led to intervention by the Supreme Court which has brought several accused persons in the Gujarat riots to trial and whereas there have been acquittals, there have also been convictions, most notably that of Mrs. Mayaben Kodnani, a former minister who has been found guilty of conspiracy to murder in the Naroda Patiya case. Teesta Setalvad has also campaigned consistently for the prosecution of Narendra Modi and naturally she and the present establishment in Gujarat are at daggers drawn. The latest battle in this fight is a report by the Gujarat Government to the Home Ministry that Teesta Setalvad, her NGO and a publication company connected with her have received funds from Ford Foundation and these funds have been used for political purpose against BJP and have also been used to defame the Judiciary. Apparently the Home Ministry has ordered an investigation into the complaints, drawing considerable flak from activists who are largely anti establishment, from persons claiming to be secularists and from political parties hostile to BJP. A section of the Muslim community which allies itself with Teesta Setalvad is also critical of government for targeting Teesta.

This is not the correct forum to discuss the 2002 riots in Gujarat. Both the burning of the railway carriage carrying Ram Sevaks at Godhra and the subsequent riots in which Muslims were the main target were wrong and inexcusable. There was murder, rape, arson and worse and no civilised country or government can ever condone such acts. The number of persons murdered is irrelevant because even one murder is one too many. Regardless of provocation this country and our government must create an environment in which every breach of law is taken seriously, efforts made to prevent such breaches and if an offence has taken place, then to bring the accused to book speedily. To the extent that this did not happen in Gujarat does raise a question mark about the efficacy of government, but here the question is not one of sitting in judgement over the Gujarat Government but rather one of whether any Indian individual or institution can receive foreign fund which are then used for political activity. It is one thing

to agitate against Gujarat Government or to make legal efforts to force the government into accountability. It is another matter altogether to use foreign funds for this purpose because no foreign funding organisation can possibly be given the right to interfere with the internal affairs of India. This includes political and social activism aimed against government.

Part III of the Constitution which gives the Fundamental Rights does not confer the right to obtain foreign funds for anti government activity and, therefore, if government uses FCRA to inquire into the source of funding of Teesta Setalvad and her NGO, as also the use to which the funds are put, then this is legal and within the Constitution and the law.

Article 51A of the Constitution makes it the Fundamental Duty of every citizen of India to abide by the Constitution and to uphold and protect the sovereignty, unity and integrity of India. Using foreign funds to attack a State Government would be violative of the Fundamental Duties of the citizens of India. A point could be made that Teesta Setalvad, moved by the secular spirit of our Constitution, was deeply concerned about what she considers the violation of human rights of a particular community, with the State turning a blind eye to such gross violation. She has every right to do so under the Constitution. But was Harsh Mander justified in going around the United States and condemning before US audiences the Government of Gujarat? Is this conducive to upholding the sovereignty of India? What did Harsh Mander expect? Was it that he wanted an outraged public opinion in the United States to bring pressure on India? Did he expect American intervention in Gujarat because the Government of the State had erred? By breast beating abroad that Indians are communal, biased against the minorities and ready to murder them, what Harsh Mander was doing was to undermine the dignity of India in the United States. Should such activities be allowed to be funded by foreign agencies? India is and must remain an open society in which, if government has done wrong or has been ineffective, the people should have the right to discuss this, to express their opinions on the subject and even organise themselves to ensure that government is forced to improve. Teesta Setalvad is also covered by this right which an open society has conferred on her. She is free to criticise, to have recourse to legal action, even to adopt an agitational approach. What she is not free to do is to obtain assistance from a foreign agency and then use the funds for a political agitation against the duly elected Government of Gujarat. The Government of India must be strict in implementing the laws relating to accepting foreign funds and then must carefully monitor how the funds have been used so that they cannot be used for anti government propaganda or for any other political purpose. If on enquiry it is found that Teesta and her NGO have indeed misused foreign funds for political purpose, or that the Ford Foundation deliberately gave financial assistance which was meant to be used for illegal purpose, then both must face the consequences of this. If the more radical activists do not like they will just have to lump it
