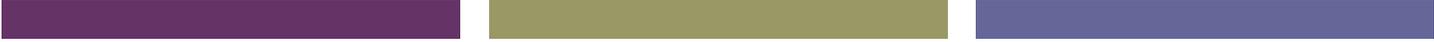


# RGICS



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## RGICS ISSUE BRIEF

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### **FCRA: A Regressive Tool to Suppress Dissent, Curtail Freedom and Deny Justice**

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## FCRA: A Regressive Tool to Suppress Dissent, Curtail Freedom and Deny Justice

### PART: I Key Messages

- 1.1 The government has selectively targeted organizations working with Dalits, Adivasis, victims of riots, women and labourers to stop mobilization of people from these communities for justice, equality, democratic order and better life conditions.
- 1.2 To stop mobilization and assertion for democratic order by above mentioned disadvantaged communities, the government not only misused FCRA law but also went against the spirit and provisions of the Indian Constitution and the globally accepted Human Rights of people.
- 1.3 Nationally and globally acknowledged, awarded and celebrated hard work of selected targeted organizations has been misinterpreted as 'anti-national' by the current regime to justify its arbitrary action.
- 1.4 The main purpose behind these actions is to promote corporate driven loot and plundering in the name of development at the cost of constitutional and human rights of common people.
- 1.5 Global human rights communities have criticized the draconian use of FCRA law by the government and termed it as an attempt to intimidate and silence democratic dissenting voices and mobilization of people.

## FCRA: A Regressive Tool to Suppress Dissent, Curtail Freedom and Deny Justice

### PART: II Introduction and Background

In November 2016, it was reported that the Union Ministry of Home Affairs has denied renewal of FCRA license for 25 NGOs. It was alleged that the investigation of MHA has found them engaging in ‘anti-national’ activities<sup>1</sup>. Though the list of all the 25 organizations denied the FCRA license are not available but it is known that it includes several Human Rights organizations.

#### **2.1 What is FCRA?**

The FCRA (Foreign Contribution Regulation Act) license allows legally registered groups, associations and institutes to receive financial aids from foreign sources. The Foreign Contribution (Regulation) Act was enacted in 1976 to monitor funds flow from abroad and its use in India. The law explains funds with foreign sources and frames a guideline for its acceptance in India and purposes for which that can be used. For the first time in 2010 the then government amended this law and brought various new provisions. At that time various civil society organizations had argued that the amendments to foreign contribution law are influenced by global business interest. It was argued that the corporate friendly Financial Action Task Force (FATF) has forced government to amend the law. Furthermore, various civil society organizations in India objected on number of provisions of the Foreign Contribution (Regulation) Act, 2010. They argued that there are number of provisions, which are prone to be misused by authorities to suppress dissent, freedom of voice and freedom of association. For instance, the Act makes civil society organizations to renew their FCRA registration in every five years. In this process, the government holds all power to accept and refuse their application for renewal. Voluntary Action Network of India (VANI) an apex body of civil society organization based in Delhi reads this proviso as follows. “The law mentions no grounds on which registration and renewal may be denied. The law mentions that the government will give reasons in writing but leaves an ambiguity as to what reasons are acceptable as valid and what evidences will be a base to them.” This is what exactly happened with above-mentioned civil society organizations. The government decided arbitrarily on applications of these organizations and refused their FCRA renewal without explaining reasons to them and giving them any opportunity to defend.

#### **2.2 Organizations Denied License:**

According to the annual report of FCRA division of MHA in 2011-12 there were 43,527 organizations registered with the Ministry entitled for receipt of foreign funding. After amendments in the law in 2010, all registered organizations need to renew their license in every five years. By June 2016, more than twenty five thousand such organizations were required to apply for renewal of their registration under Rule no. 12(2) of Foreign Contribution Regulation Rule, 2011. According to the information available on the website of Ministry of Home Affairs, 11,265 NGOs did not apply for renewal of their registration hence the government ceased their license for receiving funds from foreign sources. However, it has granted renewal of FCRA license for

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<sup>1</sup> The Tribune, November 04, 2016: <http://www.tribuneindia.com/news/nation/no-fcra-registration-renewal-to-25-ngos-for-anti-national-acts/318751.html>

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14,730 NGO who applied for the same<sup>2</sup>. The renewal of the FCRA is a normal procedure but turned controversial due to the selective manner in which certain organizations were denied renewal. Many of the organizations denied renewal are well known human rights organizations headed by nationally and internationally recognized human rights activists. Most of these organizations have been engaged in fighting for marginalized communities, mobilization of poor and under privileged and working as a pressure group on authorities for better implementation of policies and program meant for betterment of weaker sections of the society. These groups have also been dissenting against government's anti-people policies- be it the current NDA government or previous governments.

We mention here some of the nationally and internationally acclaimed Human rights organization denied renewal of FCRA registration:

- 1- **Citizen for Justice and Peace (CJP), Mumbai:** led by Teesta Sitalwad working for victims of 2002 Gujarat riots.
- 2- **ANHAD, Delhi:** headed by Sbabnam Hashmi working to combat communalism and strengthening democracy.
- 3- **Navsaran Trust Ahmadabad:** headed by leading Dalit right activist Mr. Martin Macwan, working for rights and empowerment of Dalit communities in Gujarat
- 4- **Sabrang Trust, Mumbai:** headed by Teesta Sitalwad and Javed Anand working on issues of communalism and civil rights.
- 5- **Greenpeace India, Chennai** is an environmental organization leading voices of Adivasi, Dalits and other marginalized communities against their forceful eviction in the name of development.
- 6- Rural Development Research Centre, Ahmedabad
- 7- **Lawyers Collective, Mumbai,** headed by Padmashree Indira Jaising working on issues of justice, women rights and HIV/AIDS.
- 8- **People's Watch, Madurai:** headed by Human Right defender Heneri raising voices of victims of human rights violations by state and non state actors.
- 9- **INSAF: Delhi** a coalition of hundreds of people's movement and civil society organization working against communalism and globalization.
- 10- **Institute of Public Health, Bangalore:** engaged in public health research
- 11- **Sanchal Foundation (Hazards Centre): Delhi** headed by Duno Roy has been providing professional services to civil society organizations working on environment, ecology and people.

Right from the beginning, this government indicated that they are not tolerant to dissenting voices. It has been suppressing dissenting organized voices in various ways such as promoting media trial of human rights activists, misuse of police and investigating agencies to frame them as anti-national. It has also been criticized for being tolerant towards religious fanatics belonging to a particular religion. The cancelation of FCRA license of selected dissenting organizations seems to be part of method strategy. Arbitrary refusing renewal of FCRA license to selected human rights organization in the end of 2016 is the culmination of government's various efforts in last two and half year to suppress dissenting voices from these organization and thereby from poor and

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<sup>2</sup> New Indian Express, November 04, 2016: <http://www.newindianexpress.com/nation/2016/nov/04/centre-refuses-renewal-of-fcra-licence-to-25-ngos-dubbed-to-be-anti-national-1535060.html>

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marginalized people with whom they were working. It started in June 2014, hardly a month after the NDA government came in power, when the government leaked a report of Intelligence Bureau (IB). The IB, reportedly produced a report, which was beyond its prerogative and expertise. It was reported in the media that the IB informed to the PMO that the activities of some NGOs working with people affected from development projects such as hydro power project, acquisition of agriculture and common forest land and mining are a hindrance in the development of the nation. It further concluded that negative impact on GDP through their activities is somewhere between 2-3 per cent per annum<sup>3</sup>. An unusual economic calculation by the crime investigating agency - IB was clear signal that organizations working with poor and marginalized are on the radar.

The Union Home Ministry went on to target such NGOs and activists by maligning their credibility and defaming them as 'anti-national'. In a very authoritative manner, the government first de-planed an activist of Green Peace India in 2014, Ms. Priya Pillai from a flight to United Kingdom. Later it also de-planed tribal human right activist Mr. Gladson in 2016 from a flight to London. Both of these activists were supposed to attend meetings in United Kingdom on various issues of human rights violations. It further stopped functioning of major international funding agencies such as Ford Foundation. It has also maligned human right activist Teesta Sitalwad and Jawed Anand who have been providing free legal aid to victims of 2002 Gujarat riots. These all incidents indicate that the government has been systematically brushing aside not only freedom of speech and association but also restricting mobilization of masses demanding for justice.

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<sup>3</sup> Indian Express, June 07, 2014: <http://indianexpress.com/article/india/india-others/foreign-aided-ngos-are-actively-stalling-development-ib-tells-pmo-in-a-report/>

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### PART: III

### Reasons for Cancellation of FCRA Registration for Selected 25 Organizations

Most of these organizations have stated that they have been abiding with FCRA law and rules. Their transactions from foreign sources are transparent and known to the government. All of these organizations were informed about the refusal to renew their FCRA registration via emails from FCRA division of the Ministry of Home Affairs. Most of them have claimed that these emails do not contain any reason behind seizure of their license to receive funds from international humanitarian organizations. For example, the Institute of Public Health (IPH), Bangaluru claims that the e-mail from the Ministry does not state any reason. In fact, the IPH wrote back several emails and formal letters to the ministry asking reasons for such refusal but they did not receive any response from the authority<sup>4</sup>. Similarly, the ministry refused FCRA renewal application of ‘Centre for Promotion of Social Concern’ (People’s Watch) without any explanation. According to the People’s Watch, the one line communication regarding refusal of FCRA renewal from the ministry read, “On the basis of field agency report, the competent authority has decided to refuse [People’s Watch’s] application for renewal.”<sup>5</sup> The government had also decided to not explain refusal of FCRA renewal application of Indian Social Action Forum (INSAF). However, INSAF approached the Delhi Court against the arbitrary refusal from the government. Due to which the government in one of its affidavit in the court explained reasons behind refusal of FCRA renewal application of INSAF. Among various allegation of violation of FCRA rules, the MHA has also targeted INSAF for its involvement in people’s mobilization against GM food and nuclear power plant<sup>6</sup>. The affidavit in the court admits that the government refused to renew FCRA license of INSAF because of its involvement in people’s movement along with other reasons.

In the case of organizations such as ANHAD, Navsarjan Trust and Lawyers Collective, it seems that the government has misinterpreted their programs and activities as anti-national. All of these organizations are known for their activities in helping and mobilizing people from underprivileged sections. For example, Ahmedabad based well-known Dalit organization ‘Navsarjan Trust’ has been fighting for dalit human rights in Gujarat. However, refusal for renewal of FCRA registration by the Ministry to the Trust reads, “Navsarjan Trust has come to adverse notice for its undesirable activities aimed to affect prejudicially harmony between religious, racial, social, linguistic, regional groups, caste or communities.”<sup>7</sup>

<sup>4</sup> Institute of Public Health, Bangaluru: <http://iphindia.org/category/latest-updates/>, Accessed on 30.03.2017

<sup>5</sup> People’s Watch: <http://peopleswatch.org/dm-documents/India-Foreign%20Funding%20Law%20Used%20to%20Harass%2025%20Groups.pdf>, Accessed on 28.03.2017

<sup>6</sup> INSAF: <http://www.mediafire.com/file/35wqsu3jn8jpbtb/mhaCOUNTERdec16.pdf>, Accessed on 25.03.2017

<sup>7</sup> Indian Express, December 27, 2016: <http://indianexpress.com/article/cities/ahmedabad/fcra-licence-cancelled-ngo-navsarjan-lays-off-all-staffers-4440969/>

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According to the Government, Indra Jaising's organization- Lawyers Collective and its program for women empowerment, helping people with HIV/AIDS and legal assistance to poor and disadvantaged in not in public interest. The Ministry went a step further where Lawyer's Collective was concerned and passed the FCRA cancelation order on 27<sup>th</sup> November which was a Sunday (weekly off). The order of the ministry refused renewal application of Lawyer's Collective alleging that the organization "acted against public interest."<sup>8</sup> Apart from these ambiguous reasons for refusal of FCRA for leading human rights organizations, the government has also attempted to malign the credibility of social workers running these organizations. For example, it has framed Ms. Teesta Sitalwad, Mr. Jawed Anand and Ms. Indra Jaising for misuse of funds received from foreign sources for personal gain.

### 3.1 Why These Organizations:

The government has not given any concrete reasons for its refusal to renew FCRA license of leading human rights organizations. There is no doubt that the current government is authoritarian and has lost no opportunity to stifle opposing views. .. There are following two major challenges that the government is facing from activities of these organizations.

#### 3.1.1 Rising Democratic Voices for Justice, Rights and Entitlements:

Organizations working with disadvantaged people such as Dalit, Adivasi, women, poor and other underprivileged sections engaging with their rights have been challenging authoritative and exploitative ecosystem. . These organizations not only provide resource and ideas at the grass root level, they also empower people to stand for their rights. This process empowers people to question social elites, exploiters as well as government's inefficacy in securing their rights as citizen. It is worth mentioning here that despite several difficulties, efforts of several such organizations had forced governments to bring number of pro-people policies. In the current list of the organizations, Navsarjan Trust, People's Watch, ANHAD, Sabrang Trust and INSAF are such organizations for whom the government has denied renewal of their FCRA registration.

Navsarjan Trust in Gujarat has been fighting for rights of Dalits while engaging lakhs of people from the Dalit communities. Over the years, it has yielded a strong mass support for its idea, approach and activities. Its efforts to eliminate caste discrimination and realization of civil rights for people from Dalit communities have been challenging exploitation, casteist feudal structures and government authorities. Recent state wide revolt of Dalits in Gujarat against caste based harassment by feudal elites and political goons shook the state politics. This revolt of Dalits shaped after physical assault on few young people from Dalit communities for skinning a dead cow by some politically affiliated goons. The anger spread all across the State where people from Dalit communities protested against discrimination and atrocities. This is what Navsarjan Trust has been preparing people for in Gujarat. And this is exactly what bothers exploiters. An activity of the organization which helped victims of caste atrocities and developed people's consciousness

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<sup>8</sup>Lawyers Collective: <http://www.lawyerscollective.org/wp-content/uploads/2016/12/LCs-response-Dec-2016.pdf>, Accessed on 22.03.2017

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against untouchability and caste based discrimination has now been declared as ‘antinational’<sup>9</sup> by the government.

Organizations such as ANHAD, Peoples Watch, Sabrang Trust and INSAF have also been engaged in similar activities, which empower people to speak for themselves. They mobilize people around their rights and help them to demand their rightful dues. People’s watch has been working with victims of atrocities in Tamil Nadu. It has been providing support to individual victim to fight for justice. Sabrang Trust and ANHAD have been working to debunk communal agenda of religious fundamentalists be it of any religion. INSAF has a wide network of organizations, people’s movement and NGOs fighting for rights of people in different parts of India. These organizations among various others in India have been instrumental in mobilizing poor and disadvantaged people to exercise their right of free speech and association.

### 3.1.2 Questioning Plundering and Loot in the Name of Development:

People from Scheduled Caste, Scheduled Tribe and other forest dwelling communities in India have been paying huge price of ‘developmental’ projects such as mining, industries, power projects, highways and real estate. Most of the time, private industrialists and corporate bodies lead these projects and use all sorts of techniques to forcefully displace people living on project sites. Based on available data from government sources, the High Level Committee on Tribal Communities in 2014 calculated that in 13 selected states around 2.04 crore people were displaced and affected from various developmental projects. The report further acknowledges that these figures are based on highly conservative calculations and number of actually affected people is much more than this. Of the total number of displaced people, more than 46% belong to SCs and STs. The displacement uprooted them from their ancestral properties and deprived them of community, livelihood, food and shelter. Despite this, successive governments ignored rehabilitation of displaced people. According to the Committee report, only 21% of displaced tribal people from 1952 to 1990 were actually rehabilitated (MoTA, 2014).

The continuing gross injustice with these people in the name of development has forced them to fight back. Millions of such people in different parts of the country are resting and opposing so called development at the cost of their life and livelihood. People have been opposing new projects in their area and also fighting against already executed projects which forced displacement on them. These people are struggling because they know the pain of displacement and the way they were robbed of their homes for the benefit of others. Moreover, some civil society organizations are also providing them support with information, knowledge and solidarity. For example, Delhi based Sanchal Foundation under its activity Hazard’s Centre helps groups of affected people by supplying analysis of scientific and statutory information related to controversial projects. Such information helps them to strengthen their fight against injustice. Indian Social Action Forum is a network of more than 4000 such people’s group struggling in different parts of country. It gives them a national voice and helps them in many ways to strengthen their struggles at grass root. Similarly, Greenpeace India is also involved with several tribal groups affected by mining and other projects and have been fighting for their rights.

<sup>9</sup>NDTV India, February 11, 2017: <http://www.ndtv.com/india-news/is-working-for-dalit-rights-anti-national-ask-protesters-in-gujarat-1658249>

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Corporate lobby and industrialists looking for projects in India have been lobbying against such civil society organizations. This anti-human rights organization lobbying also comes from business friendly influential international networks such as FATF. The Financial Action Task Force (FATF) recommends policies to its member nations in order to ensure hurdle free investment by global investors. FATF gives rating to its member countries based on its recommendations and with this, it determines whether a country is credible/good place for doing business. The FATF recommendation No. 8 is for non-profit organizations. In its assessment in 2010, the FATF concluded that India needs to develop more mechanism and legal framework to monitor and control civil societies working in India (VANI, 2014). In order to score well in these evaluations by FATF and thereby attract global investment, the then government of India amended FCRA Act with stringent provisions to monitor and control them. Those amendments to FCRA were criticized for giving discrete power to authorities, which can easily be misused to suppress dissenting voices. That is what exactly happening now. The unrealistic report by Intelligence Bureau in 2014, crackdown on Green Peace India and restricting mobility and free speech of various Adivasi and environmental activists such as Mr. Gladson Dungdung, Ms. Damyanti Barla, Dr. Bela Bhatia and Priya Pillai are few such examples, which shows that the government is under pressure from global corporate, business and industrialists. All of these activists have been resisting development projects which have been coming up at the cost of the life of people.

Mobilization of vulnerable and exploited people in different parts of country has been challenging government's anti-people policies and injustice with or without support of civil society organizations. These are the voices, which threaten authoritarianism and assert the need for democratic order. It seems that government has selectively targeted organizations to stop mobilization of poor and disadvantaged people for their rights and justice. Therefore, it must be noticed that the refusal of FCRA registration for select organizations is aimed at suppressing voices of common people fighting for justice, basic rights, equality, dignity of life and democratic order.

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### PART: IV

### National and International Criticism of FCRA Misuse

#### 4.1 Governments Failed to Pass Judicial Review:

Soon after the enactment of the Foreign Contribution (Regulation) Act, 2010, authorities started misusing it. Various organizations approached courts against arbitrary action and misuse of FCRA law by the union government in last five year. Here are four examples of cases in various courts where the government is struggling to defend its action against targeted organizations. In most of the cases courts have found government guilty of misusing the law. These examples are as follows:

##### 4.1.1 UPA Government and Misuse of FCRA:

The FCRA law in current form has been misused to monitor and control activities of civil society organizations. This is not the first time when organizations with reputation, credibility and integrity were selectively targeted. In 2013 for the first time using this law, the then UPA government suspended FCRA registration of Indian Social Action Forum (INSAF). Earlier in 2012, the organization challenged the constitutional validity of the FCRA, 2010 and FCRA Rules, 2011 in the Supreme Court<sup>10</sup>. While suspending FCRA license of INSAF in 2013, the Ministry of Home Affairs alleged that the organization is involved in activities which as against public interest. INSAF challenged the order of MHA in Delhi High Court and in its landmark judgment in September 2013 the court quashed the FCRA suspension order of MHA. In its order, the court found that the ministry had jumped into a conclusion without any evidences. The court order reads, “If the government decides to suspend an organization’s certificate, it can only do so for reasons recorded in writing, which need to be incorporated in the suspension order itself<sup>11</sup>”. The then government also suspended FCRA license of Centre for Promotion of Social Concern (People’s Watch) for 540 days in 2012. The CPSC (People’s Watch) had also challenged suspension order of the government in Delhi High Court. According to CPSC, the Court has now disposed the case. CPSC statement on this issue reads, “Recently on 2 February 2016, the writ petition filed by CPSC was disposed of as infructuous by the Delhi High Court as the period of suspension of registration had lapsed and thereby allowing CPSC to receive fresh funds from abroad and utilise it for its activities and programs.<sup>12</sup>” However, few months after this court decision, the government refused to renew their FCRA application.

<sup>10</sup>INSAF: <https://insaffc.blogspot.in/>, Accessed on 30.03.2017

<sup>11</sup> VANI India: <http://www.vaniindia.org/fcravani.pdf>, Accessed on 31.03.2017

<sup>12</sup> People’s Watch: <http://www.peopleswatch.org/dm-documents/Strict%20legal%20restrictions%20on%20foreign%20funding%20hit%20India's%20NGO.pdf>, Accessed on 30.03.2017

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### 4.1.2 NDA Government and Misuse of FCRA:

Similarly, the current NDA government has been using similar techniques to cancel FCRA registration of various organizations. For example, Green Peace India has also been facing similar treatment for taking sides of people and opposing environmental and social destruction caused by various corporate projects. The MHA cancelled FCRA license of the organization in April 2015. The organization approached court and the Madras High Court in November 2015 found MHA guilty of not following principles of natural justice.<sup>13</sup> The Court in its order also stayed arbitrary decision of the government. Despite this, in 2016 the government denied renewal of their FCRA license. In another case, the MHA refused to renew FCRA license of Lawyers Collective. Last year in November 2016 the MHA alleged that the organization has misused foreign funds and order for cancellation of FCRA license. Further, the MHA directed that all bank accounts of the NGO be frozen and that its assets be attached<sup>14</sup>. Hearing an appeal of Lawyer's Collective against cancellation of their FCRA license, the Bombay High court observed that the MHA itself has violated FCRA law. The interim order of Bombay High Court in January 2017 reads, "While the Union government had powers under the Foreign Contribution Regulation Act (FCRA) to "regulate or, even prevent the acceptance of foreign funds by an association, the Act did not provide for a government to stifle the very functioning of individuals or associations."<sup>15</sup> The Court has stayed process of attaching assets of organization and order for de-freezing of non-FC bank accounts. Above-mentioned four cases are classic examples of misuse of FCRA law by successive union governments using vague provisions and arbitrary mechanisms under the law.

## 4.2 Global Criticism:

### 4.2.1 Global Criticism of FCRA Misuse

Last year in April 2016, the United Nations Special Rapporteur Mr. Maina Kiai published a legal analysis arguing that the India's Foreign Contribution Regulation Act is not in conformity with international law, principles and standards. He further argues that the FCRA "appears to give the government broad discretionary powers that could be applied in an arbitrary and capricious manner<sup>16</sup>." Mr. Maina Kiai submitted his report to Government of India with a request of repealing the law. The crackdown on selected human rights organization in India as political vendetta has also been criticized by globally known human right defending organization namely Amnesty International. In its recent annual report, Amnesty International criticized the Indian Government for misusing the FCRA law. The report highlights that Indian human rights activists and journalists are facing intimidation and attack from both state and non-

<sup>13</sup> NDTV, November 20, 2015: <http://www.ndtv.com/india-news/greenpeace-indias-shutdown-put-on-hold-by-madras-high-court-1245635>

<sup>14</sup>New Indian Express, January 31, 2017: <http://www.newindianexpress.com/nation/2017/jan/31/bombay-high-court-orders-to-defreeze-accounts-of-indira-jaisinghs-ngo-1565457.html>

<sup>15</sup> New Indian Express, January 31, 2017: <http://www.newindianexpress.com/nation/2017/jan/31/bombay-high-court-orders-to-defreeze-accounts-of-indira-jaisinghs-ngo-1565457.html>

<sup>16</sup> United Nations Special Rapporteur: <http://freeassembly.net/news/india-fcra-info-note/>, Accessed on 31.03.2017

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state actor. Referring to open violation of FCRA law by the government, it said the law is being repeatedly invoked to harass organizations that receive foreign funding<sup>17</sup>.

In June 2016, three UN special rapporteurs namely Michel Forst (UN Rapporteur on human rights defenders), David Kaya (UN special rapporteur on Freedom of Expression) and Maina Kiai (UN special Rapporteur on Freedom of Association) jointly urged the Government of India to stop the misuse of FCRA law for silencing dissenting voices in the country. The joint press release of three human right experts reads, “We are alarmed that FCRA provisions are being used more and more to silence organisations involved in advocating civil, political, economic, social, environmental or cultural priorities, which may differ from those backed by the Government<sup>18</sup>.” Moreover, more than 400 human rights experts and civil society representatives from over 50 countries have also wrote joint letter to Prime Minister Mr. Narendra Modi on the issue of misuse of FCRA law by his government<sup>19</sup>.

### 4.2.2 De-Accreditation of National Human Right Commission

The United Nations High Commissioner for Human Rights (OHCHR) has barred the Indian Human Right Commission (NHRC) from representing India in the UN’s Human Right Council and UN General Assembly till November 2017. In one of its recent reports, the OHCHR has raised several issues related to NHRC’s autonomy, activities and efficiency. Based on its observations it has deferred NHRC’s application of re-accreditation till November, 2017. In its observation, the OHCHR has found that the NHRC of India has failed to recruit its board member as per internationally agreed standards. The report found that the recruitment in higher posts in NHRC failed to represents pluralism of nation (by not appointing people from socially and ethnically deprived background), autonomy of institution (by placing retired bureaucrats and political leaders) and efficiency of NHRC (By not appointing people from judicial and human rights background).

The OHCHR in its report has also highlighted that the channels within National Human Right Commission of India for engagement and cooperation with civil society organizations and other human rights defenders are not functional. While suggesting NHRC to improve these channels the OHCHR underlined its importance. The report reads, “regular and constructive engagement with all relevant stakeholders is essential for NHRIs (National Human Rights Institutions) to effectively fulfill their mandates.<sup>20</sup>” It is evident from NHRC’s silence on the issue of harassment of human rights activists and organizations. However, the NHRC in November 2016, issued notice to the Central Government after it was approached by some organizations alleging draconian approach over renewal of FCRA license by the government<sup>21</sup>.

<sup>17</sup> Hindustan Times, January 31, 2017: <http://www.hindustantimes.com/india-news/amnesty-international-criticises-india-s-sedition-law/story-JMLjF3mCfsdSduD112MEoL.html>

<sup>18</sup> United Nations Special Rapporteur, June 16, 2016: <http://freeassembly.net/news/india-repeal-fcra/>

<sup>19</sup> Lawyers Collective: <http://www.lawyerscollective.org/wp-content/uploads/2016/07/LC-Letter-to-PM-050716.pdf>, Accessed on 22.03.2016

<sup>20</sup> GLOBAL ALLIANCE OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS, November 2016: <https://drive.google.com/file/d/0BzXilfcxe7yubExCbm5GcEhNSlk/view>, Accessed on 30.03.2017

<sup>21</sup> National Human Rights Commission, November 16, 2016: <http://nhrc.nic.in/disparchive.asp?fno=34140>, Accessed on 25.03.2017

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Apart from this the NHRC has kept itself away from rampant violation of human rights violation by the government while misusing FCRA law.

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### PART: V

### What is at Stake?

Various criticisms of government's draconian use of the FCRA law across the globe have highlighted government's illegal, immoral, unconstitutional and unethical intentions. The hostile environment created by the government for human rights organizations and activists is not an isolated activity under the NDA government. The harassment of organizations and activists is much more planned and complex in nature. It seems that the government is not just targeting few organizations but also attempting to discredit various national and global efforts for realization of human rights to all people. The government is directing its hostility towards various national and international established mechanisms and processes for protecting human rights and fundamental freedom. Some of them are as follows:

**5.1 The Constitution of India:** The Constitution of India protects right of people to form an association and speak out of one's own mind. The Article 19 of the constitution reads, "All citizen shall have the right- (a) to freedom of speech and expression, (b) to assemble peaceable and without arms, (c) to form association or unions." All of these are fundamental rights given to citizens of India. Formation of civil society organizations by any Indian citizen is a way to exercise these rights enshrined in our Constitution. All of these selected organizations have also been complying with the only conditions of these rights i-e peaceful association without any arms. The recent crackdown on selected civil society organizations intended to restrict these organizations from exercising their rights of free speech and peaceful association. Therefore, it is an attack on the Constitution and Fundamental rights of people.

**5.2 The Rule of Law:** In some of the cases, the government not only denied renewal of FCRA license to organizations but also ordered freezing of non-FC bank accounts and attaching assets. For example, in the case of 'Lawyers Collective' the government ensured complete shutdown of the organization by freezing its non-FCRA bank accounts and attaching their assets. It was challenged by the organization in Bombay High Court and the court found government's action illegal and inappropriate. Such actions show that the government is misusing law of the land specially to target these organizations.

**5.3 The Idea of Civil Society:** The National Policy on the Voluntary Sector- 2007 framed by the government of India is relatively a progressive document, which recognizes autonomy and diverse nature of civil society organization in the process of moving towards better future for India. The Section 3.1.1 of the policy commit for creating enabling environment for voluntary organization so that they can stimulate their enterprise and effectiveness and safeguard their autonomy. It also reiterates the government's commitment for allowing voluntary organization to legitimately mobilize necessary financial resources from India and abroad<sup>22</sup>. The current crackdown on selected human rights organization goes exactly against these policy

<sup>22</sup> National Policy on the Voluntary Sector, Planning Commission:  
<http://planningcommission.nic.in/data/ngo/npvol07.pdf>, Accessed on 22.03.2017

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principles adopted by the government. Instead of creating enabling environment, the government is keen to create a hostile environment for organizations working on diverse issues.

**5.4 Civil and Political Rights:** The International Covenant on Civil and Political Rights (ICCPR) adopted by the United Nations general assembly in 1966 describes formation of association as a human right. The Article 22 of the covenant reads, “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.<sup>23</sup>” India acceded to the convention in 1979 with minor reservation in reference to this particular section. The Government of India in its reservation stated that the Article 22 of ICCPR shall be so applied as to be in conformity with provisions of article 19 of the Constitution of India<sup>24</sup>. The Article of 19 as mentioned above provides the right to freedom of association, which is covered by the Article 22 of the ICCPR. The UN Special Rapporteur on the Rights of Freedom of Peaceful Assembly and of Association Mr. Maina Kiai in his recent report observes that despite this minor reservation while acceding ICCPR the government agreed to abide with Article 22 of ICCPR. He further argues that the authoritative misuse of FCRA law not only violates provision of Indian Constitution but also violates ICCPR.

**5.5 Global Solidarity for Protecting Human Rights:** The United Nation General Assembly adopted the declaration in Human Right Defenders in 1998 to promote and protect human rights and fundamental freedom for all persons in all countries of the world. The declaration recognizes rights of individual and association to promote and to strive for the protection and realization of human rights and fundamental freedom at national and international level. Human rights organization selectively targeted in the shadow of FCRA by Indian government have been working towards realization of the declaration through their activities. In order to carry out such activities the declaration also allows people and association to mobilize funds even from abroad. The declaration reads, “everyone has the right, individually and in association with others, to solicit, receive, and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means.<sup>25</sup>” These international policy agreements ratified by the government of India are there to strengthen efforts towards realization of human rights to all. Selectively targeting human rights organizations goes against India’s international commitment towards ensuring human rights and fundamental freedom to its own citizen.

The government in the process of denying FCRA license to number of eligible human rights organizations violated number of national and internal laws and policies. These actions of the Government have invited criticisms both from India and other parts of the world. These violations by the government not only obstructs human rights organizations but also destroys various system and mechanisms carefully founded

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<sup>23</sup> International Covenant on Civil and Political Rights (ICCPR), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>, Accessed on 01.04.2017

<sup>24</sup> Office of the High Commissioner for Human Rights, United Nations, April 20, 2016: <http://freeassembly.net/wp-content/uploads/2016/04/UNSR-FOAA-info-note-India.pdf>, Accessed on 23.03.2017

<sup>25</sup> United Nations General Assembly, 53<sup>rd</sup> Session, March 08, 1999: <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>

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to work towards protection and realization of human rights to all. In fact, such an action of the government seems to be denying civil rights and fundamental freedom to its own citizen.

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### PART: VI Conclusion

More than a dozen, out of 25 organizations branded as ‘anti-national’ by the government in 2016 are known for their activities towards promotion and protection of human rights in India. These organizations have been working with various types of disadvantaged communities such as women, Dalit, Adivasis, Land less Labourers, Un-organized workers, victims of communal riots and caste based atrocities and forcefully evicted people in the name of development. These organizations are also known for amplifying voices of masses and challenging authoritarianism of society and of governments. In other words these organizations have been assisting range of people who have been fighting against injustice, inequality and lack of bare minimum freedom and human dignity. An attempt to shutdown these organizations by draconian use of Foreign Contribution (Regulation) Act, 2010 solves two major purposes of authoritarian segments within government. One, it wanted to stop the mobilization of people against unjust and anti-people policies of the government and powerful corporate. Thereby, muzzling democratic dissenting voices, prohibiting assertion for justice and democratic order and quash critical thinking. By achieving this goal, the authoritative segment in governments looks for realization of their second purpose. And the second purpose is to allow expansion of economic elites at the cost of Constitutional and human rights of common people. In this entire process, this government is trying best to intimidate all mechanisms and system working for protection and promotion of human rights.

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### Annexure

#### Arbitrary Cancellation of FCRA License by the Government Brief Introduction of Affected NGOs

##### Navsarjan Trust

The Navsarjan Trust was founded in 1988 by few committed Dalit activists in Gujarat with ultimate aim of eradicating caste based discrimination. The founding director of the Navsarjan Trust Mr. Martin Macwan, comes from a poor dalit family who worked as child labourer for many years and faced social discrimination. The Trust believes that the war against injustice due to rampant caste based discrimination is more psychological than physical and therefore it needs mass awareness programmes on continuous basis along with action-oriented programs. One of its prime focuses is to develop community based Dalit leadership to fight against injustice. It has set up three boarding primary schools (grade 5 to 8) in different rural locations in Gujarat. Most of the children studying in these schools are from poor and disadvantaged Dalit communities. The Trust describes the purpose of these three schools as, “While children in these schools learn to act as equal citizens, without discrimination, the long-term goals include making them leaders in the Dalit movement in India, and demystify myths based on caste and gender discrimination.” Ever since the Trust was founded, it played important role in mobilizing dalit communities, resisting caste based violence, supporting victims of caste based discrimination and empowering them. Founder of the Trust Mr. Macwan is one who led dalit contingent to the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) in Durban in 2001. In his leadership dalit organizations advocated for recognition of caste based discrimination as a form of racial discrimination. Despite strong opposition from the then Union Government of India, dalit organization’s effort drew worldwide attention on the state of caste based discrimination in India.

Foreign Donors of the Trust in last one year

- 1- ASHA for Education, USA: ASHA for Education is USA based organization founded and managed by socially committed Indian nationals working and studying in USA. They have been mobilizing funds in USA to support various social causes in India. It has been supporting Navsarjan trust to run three boarding schools for poor and disadvantaged rural communities in Gujarat since 2007.
- 2- Global Education Fund, USA
- 3- MISEREOR, GERMANY

The union government has barred Navsarjan trust from receiving foreign fund in December 2016 without explaining to them the basis of this restriction. Martin Macwan told to DNA that nearly 85% of its fund comes from foreign sources and therefore this restriction would affect all of their activities. The trust after denial of FCRA license is forced to relieve its staff and planning to shut its schools due to financial crunch.

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### Centre for Promotion of Social Concerns

The Centre for Promotion of Social Concerns (CPSC) is a Madurai (Tamil Nadu) based civil society organization founded in 1981. The CPSC is better known through its program called 'People's Watch'. The CPSC started People's Watch program in Tamil Nadu in 1995 to monitor human rights violations in the state. Over a period of time CPSC extend scope of its program and currently it pursues a "holistic approach to championing human rights through everything from pursuing legal remedies on behalf of victims to sheltering victims in a rehabilitation center, to teaching future generations a human rights curriculum and building a citizen's movement for Human Rights.<sup>26</sup>" The people's watch has more than 1500 grass root level units in Tamil Nadu for promotion and protection of Human rights. It also offers training for teachers as well as mentoring around schools human rights education programmes. So far, they have managed to reach out to around 5 lakh children in 18 different states of India.<sup>27</sup> The founder and executive director of People's watch Mr. Henri Tiphagne is a criminal lawyer and has international presence in the area of human right promotion and protection. The Amnesty International in 2016 honored Mr. Henri Tiphagne with prestigious Human Rights Award for his contribution through People's Watch.

Activities of People's Watch have been supported by various international humanitarian aid organizations. The FCRA license to the organization played crucial role in helping thousands of victims of human right violation. In recent it has been receiving funds from leading global human rights organizations such as amnesty International, Germany, MISEREOR, Germany, Forum Asia, Thailand, Bread for the World and the Norwegian Human Rights Fund, Norway. Government's refusal to renew its FCRA registration has adversely affected activities of the organization. Restriction on fund mobilization from foreign sources is not new for the organization, according to a press release of People's Watch previous central government had also suspended FCRA of CPCSC in 2012 and 2013 for a total time of 18 months.

### Institute of Public Health, Bangaluru

Institute of Public Health (IPH) is another victim of FCRA misuse of by the government. The IPH was founded in 2007 and registered under FCRA in 2010. It has been focusing on issues related to health research, policy advocacy and training in the sector of public health. In October 2016, the FCRA wing of Union Ministry of Home Affairs wrote an email to the organization informing them about its refusal to renew their registration under FCRA. IPH is well known civil society organization working in the field of public health and engaging with various issues related to public health in rural and urban areas. It has been collaborating not only with research institutions, donor agencies and universities abroad but also closely working with various ministries and departments of central and state governments in India. According to the information published on their website, the IPH in last 10 years has provided training to more than 1800 government officials. It has also played important role in facilitating public health policies such as ban on gutka, chewing tobacco, e-cigarettes

<sup>26</sup> Peoples Watch: [http://www.peopleswatch.org/about\\_us.php](http://www.peopleswatch.org/about_us.php), Accessed on 24.03.2017

<sup>27</sup> Huffington Post, July 15, 2016: [http://www.huffingtonpost.in/2016/01/28/award-human-rights-henri-n\\_9095044.html](http://www.huffingtonpost.in/2016/01/28/award-human-rights-henri-n_9095044.html), Accessed on 05.04.2017

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and hookah in Karnataka. Various faculty members of IPH have been nominated as members of in national and state level committees of governments in issues of public health. Its faculty members have been nominated in National Health System Resource Centre (NHSRC), Karnataka State Anti Tobacco Cell and an Official Delegation of government of India for the Seventh Session of Conference of Parties under the WHO Framework Convention on Tobacco Control.

The IPH has been proactively campaigning against tobacco use in last few years. For its various activities it has been receiving funds from well known international humanitarian organizations such as Tobacco Free Kids Action Fund, USA, Institute of Tropical Medicine, USA, MISEREOR, Germany and the Red Cross, Switzerland. Most of these foreign donors of IPH have also been collaborating with central and state governments. For example Red Cross is integral part of government of India, the Institute of Tropical Medicine has been collaborating with government agencies such Public Health Institute of India. Similarly, the Tobacco Free Kids Action Fund has been financially supporting governments such as government of Gujarat, government of Karnataka, Union Ministry of Health and Family Welfare and PHFI. According to the IPH, they requested the MHA several time to explain them reasons behind denial for renewing their FCRA registration. However, the MHA has not responded any of their queries. The IPH had now finally challenged the government's decision in Karnataka High Court.

### Sanchal Foundation

Sanchal foundation is a delhi based organization and has been conducting research, evaluations, training and communication through its program called 'Hazards Centre'. It was founded in 1997 for the specific purpose of providing professional services to community and labour organization. It has been closely working with various civil society organizations working with poor and marginalized sections of the society. It has been assisting various people's campaigns across the country with its professional services. According to the Hazards centre it has been supporting following major peoples campaigns:

- **Urban Right to Work Campaign:** A national campaign for legislation for protecting employment opportunities in urban areas
- **People's Housing Policy:** A draft policy providing details of how communities can build their own shelter with minimal but critical assistance from government
- **Solid Waste Management:** An approach to economic and ecological waste management by waste pickers
- **Bus Rapid Transit System:** Promotion of BRT as a cheap and sustainable public transport
- **Climate Change:** A national campaign towards creating a new model of development in relation to adaptation, where one can learn from the lifestyle and knowledge of the lower classes
- **Occupational Health & Safety:** A campaign to promote safety at work place

For its various activities the Sanchal foundation had been receiving funds from number of international organizations. Some of them are American India Foundation, DFID, UK, Ford Foundation, HiVOS, Action Aid India and Water Aid. Interestingly many of these international donors have also been financially supporting government of India and other state governments.

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### INSAF

Indian Social Action Forum (INSAF) claims to be a forum of over 700 people's movement and NGOs in India registered as society in 2004. According to the information available on their website INSAF is committed to resist globalization, combat communalism and defend democracy and strives to join efforts in creating an economically equitable, socially just and ecologically sustainable democratic society. As a member based organization based in Delhi, it provides support to various grass root organizations and people movements in their causes. It is a platform of thousands of social activists across the country fighting for rights of poor and disadvantaged communities. Grass root activists such as Mrs. Damyanti Barla and Dr. Bela Bhatia fighting for rights of tribal and Mr. Uday Kumar fighting for rights of people affected from Kudankulam nuclear power projects are associated with it. Apart from supporting grass root struggles of people, it has also been leading campaigns against unplanned expansion of nuclear energy, displacement of tribals through various industrial projects, privatizations of public services and forceful introduction of GM crops. INSAF registered itself under FCRA regulation in 2008, but in 2013 the then government suspended its FCRA license. After intervention of Delhi High Court, government had to restore its license under FCRA. Now the NDA government has denied renewal of its license, INSAF has challenged this decision of the government in Delhi High Court. Leading humanitarian organizations such Bread for the World, Germany and International Dalit Solidarity Network, Germany were financially supporting efforts of INSAF.

### Citizen for Justice and Peace

Citizen for Justice and Peace (CJP) is a well known civil society organization headed by human right activist Ms. Teesta Sitalwad based in Gujarat. It has been engaged with victims of communal riots of 2002 in Gujarat. Among its major activities, the organization provides free legal services to the victims of that communal riot. According to the information available on their website, their efforts contributed towards sentencing of around 120 culprits of communal riot by the judiciary. Some of these culprits comes from political and economically powerful backgrounds. For its various activities related to rehabilitation and reconciliation, the organization was receiving financial aids from various international organizations. The government has recently denied renewal of their FCRA registration as it happened with various other leading civil society organization working on human rights issues.

### Sabrang Trust

Sabrang Trust is another human right organization founded by various activists such as Javed Anand and Teesta Sitalwad. It has been writing and documenting facts to resist communalism in India. The trust publishes well-known journal called 'Combat Communalism'. It has also been publishing reports, books and articles on various issues related to communalism in India. Teesta Sitalwad's service to humanity has been recognized by various national and international platforms. She has several prestigious awards to her credit. Some of them are

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– Padmashree by Government of India, Defenders of Democracy Award, 2014 by Parliamentarians for Global Action and Human Rights Award, 2000 by Dalit Liberation Education Trust.

### Lawyers Collective

Lawyers Collective is a Mumbai based civil society organization founded by senior lawyers Indira Jaising and Anand Grover in 1981. Lawyers Collective has been providing expert legal assistance to the underprivileged, such as women, children and unorganized workers. It also runs funded program on issues of HIV-AIDS and women's rights. Recognizing her services through Lawyers Collective, Indira Jaising awarded with Padmashree by the government of India. However, the government of India, has recently barred the LC from receiving any funds from foreign sources. The LC in last one year had been receiving foreign fund from organizations such as World Health Organizations (WHO), British High Commission in India (BHC), Foundation to Promote Open Society, USA, and Levis Strauss Foundation, USA. Funding agencies such as WHO and BHC have also been financing various projects runs by the central and state governments in India.