

US Congress – House Foreign Affairs Committee  
Hearing on Harassment of Non-Governmental Organizations in India  
December 6, 2016

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Thank you for providing me the opportunity to testify today. It may be a moment of transition here in Washington, but this hearing is extremely well timed.

A troubling new crackdown on civil society is underway in India, especially in the last few months. A large number of non-governmental organizations (NGOs) have faced increasing governmental harassment including intrusive and politically motivated legal scrutiny, and the US government—a close ally—needs to respond. The incoming Congress and administration need to give this issue more attention in the coming year.

Let me start by outlining how the government is creating trouble for NGOs that question or criticize the government or its policies.

The most powerful tool for Indian government harassment of NGOs is the Foreign Contribution Regulation Act (FCRA), an overbroad and poorly drafted law that contains provisions that can be used to block foreign funding for groups and stymie their activities. First, the FCRA is overly intrusive: it makes regulation a matter under the jurisdiction of the Home Ministry instead of being vested with authorities responsible for compliance with tax laws; other provisions give authorities too much power to scrutinize organizations' specific programming on a project-by-project basis. Second, its provisions are both overbroad and overreaching: the law gives the government the power to cut funding to organizations with programming or projects on vague grounds that they are "likely to affect prejudicially. . . the economic interest of the State" or its "public interest."

The FCRA has been used and abused by successive Indian governments. But its use has increased significantly in the current Bharatiya Janata Party (BJP) government. Last year, the government used FCRA provisions to harass several NGOs, including Greenpeace India, as well as an organization, run by activist Teesta Setalvad, that had brought legal cases seeking justice for victims of the 2002 communal violence in Gujarat. As you know, Prime Minister Narendra Modi was then the chief minister there, and there are numerous allegations about his complicity in the violence.

This May, the government suspended for apparently politically motivated reasons the FCRA status of the Lawyers Collective, founded by prominent lawyers Anand Grover and Indira

Jaising, that has represented Setalvad and a Greenpeace activist, among others. In November, the government canceled the group's registration under FCRA.

Abuse of FCRA has intensified in recent months. In October the government refused to renew the FCRA of at least 25 NGOs without valid reasons, including several human rights groups. The media quoted Ministry of Home Affairs officials as saying that the NGOs were denied permission under the FCRA because their activities were not in the "national interest." India's National Human Rights Commission has questioned the recent decisions and said that, "[p]rima-facie it appears FCRA license non-renewal is neither legal nor objective and thereby impinging on the rights of the human rights defenders both in access to funding including foreign funding."

One of these groups is the Centre for Promotion of Social Concerns, a prominent Indian human rights organization better known by its program unit People's Watch. The only reason the government offered in denying its FCRA renewal was that its decision was based "on the basis of field agency report." Civil society leaders generally assume this refers to reports of intelligence agencies or law enforcement personnel.

Similarly, the Indian NGO Hazards Centre, a unit of the Sanchal Foundation working on community and labor rights programming, was also told that its FCRA renewal application was denied "on the basis of field agency report." In October the FCRA renewal for the Indian Social Action Forum (INSAF), a network of NGOs and people's movements, was also denied.

People's Watch, for their part, challenged the government's decision in court; a government lawyer told the court that the decision was taken in the "public interest," but argued that the government was exempt from giving specific reasons.

Indian rights advocates as well as Human Rights Watch have long argued that the FCRA's provisions are incompatible with India's constitution and international legal obligations. India's courts have generally ruled against the government when NGOs have contested the use of FCRA to cut their funding.

In April, the United Nations special rapporteur on peaceful assembly and association, Maina Kiai, issued a [report](#) analyzing the FCRA that concluded that the law's restrictions and rules "are not in conformity with international law, principles and standards."

NGOs' problems with the FCRA come as attacks generally on freedom of expression and association in India have been on the rise. Indian authorities have increasingly used the country's sedition law against peaceful critics including activists, artists, and students for alleged "anti-national" speech. Other overbroad and vaguely worded laws, including India's criminal defamation and hate speech laws, are used to harass and prosecute those expressing dissenting, unpopular, or minority views.

In several cases, when interest groups claiming to be offended by books, movies, or works of art pushed for censorship or harassed the authors, the government has allowed them a "heckler's veto" rather than protecting those under attack.

This harassment of NGOs is taking place in a context in which religious minority groups, in particular Muslim and Christians, are at increased risk. Since the BJP came to power in 2014, militant Hindu groups have increasingly threatened and sometimes physically assaulted Christians and Muslims. Several BJP leaders have made inflammatory remarks against minorities. Prime Minister Modi has spoken out at times against attacks and inflammatory remarks, but too little and too rarely, and local authorities typically fail to properly investigate or prosecute persons responsible for attacks.

The consequences of these tensions go beyond human rights concerns and affect the totality of India's situation—even its economy. Economists and business leaders have warned that India's stability and economy are at risk if Modi fails to control Hindu extremism and the growing restrictions on freedom of expression.

In 2015, Moody's Analytics warned that Modi risked losing domestic and global credibility if he didn't rein in the more extremist members of his administration who had engaged in "belligerent provocations" of India's religious minorities.

Human Rights Watch makes the following recommendations to members of Congress, and urges this committee to work with the incoming administration to act on them.

The US government should:

- Raise concerns about the FCRA more publicly. When US officials speak with Prime Minister Modi, they should raise concerns about the FCRA directly and mention publicly that they did so. US officials should also urge Modi to end government harassment of NGOs, while encouraging him to ask parliament to amend the FCRA to only regulate corruption and deprive the Home Ministry authority to block funding for NGOs. Existing legislation applicable to both the private and non-profit sector, [such as the Unlawful Activities (Prevention) Act 1967 and the Prevention of Money Laundering Act,] are far more effective in dealing with issues like terrorism financing and money laundering.
- Enlist the support of US corporations and other private sector actors in India whose charitable activities are impacted by the FCRA to raise concerns with relevant Indian government officials that cracking down on funding of NGOs is inconsistent with the Modi government's focus on opening India to foreign investment.
- Speak out about the rise in violent attacks by Hindu nationalists on Christians, Muslims and other minority groups.

Thank you for allowing me to testify today and I would be glad to answer any questions you may have.