



Centre for
Social Impact
and Philanthropy



Advocacy, Rights & Civil Society:

The Opportunity for Indian Philanthropy



Centre for Social Impact and Philanthropy

The Centre for Social Impact and Philanthropy at Ashoka University works to enable a strategic and robust philanthropic ecosystem geared towards greater social impact. It informs sector strategy through credible research and data, convenes platforms for norm-setting and collaborative learning, and offers programmes that strengthen civil society capability and sustainability. It is South Asia's first academic centre focused on such topics.

Research Partner



Lumen Consulting aspires to make it easier for the development community in India to translate vision into reality. Lumen works with social organisations, funders and intermediaries to provide the insights, solutions and support necessary to advance social change.

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Foreword



“I bear the wounds of all the battles I avoided.” – Fernando Pessoa

This research comes at an extremely crucial moment, when the role of civil society is increasingly being contested by powerful interests. While civil society is hailed as the ‘social basis of democracy’ encompassing diverse groups, networks and movements that play myriad roles in strengthening the common good, the space for democratic dissent is shrinking, especially for those who work to promote, protect and strengthen human rights and advocate for policies that challenge exclusion.

Forward looking governments and businesses alike recognise the value of civil society in getting citizens more engaged, involved and responsible for their communities; for improving and delivering better, more responsive public services; in empowering communities to access and defend their rights and freedoms; and in ensuring that rights of future generations, the species we share our planet with, and the global commons are protected.

Beyond resources for programmes, civil society in India faces multiple challenges — from incoherent legal frameworks and arbitrary implementation of regulations to insufficient infrastructure in the form of networks, platforms and channels to fully participate in policy discourse. The sector lacks adequate norms, visibility and a coherent narrative around the value it adds to the lives of citizens and to the democratic foundations of our society. Lack of well-defined policies allow for intrusive monitoring, arbitrary constraints, and onerous procedures, increasing the burden on these organisations in accessing the limited resources available. While the need for civil society to comply with existing regulatory frameworks is unquestionable, we need to also ensure that these laws are relevant, proportionate, transparent and permit accountability and redress and that they are framed through inclusive, participatory processes. Access to international resources – financial and non-financial – has also been challenging for civil society organisations in the recent past, with heightened scrutiny leading to a ‘chilling effect’ on NGOs, donors and service providers alike.

The severe lack of reliable data on the sector impedes analysis and discourse. Even such quantitative data as are available can obscure nuance. For instance, while data suggest that international funding of the social sector in India remains relatively constant over the past several years, one needs to delve deeper to uncover the changes in composition, and in the impact of those changes. If, for instance, one sought to deter certain kinds of civil society activity, it would be sufficient to target a few dozen donors and recipients to send a broader message to the sector. As this report points out, however, this context presents great opportunities for philanthropy to contribute to the cause of strengthening civil society in India. Indian philanthropists have been at the forefront of giving to the freedom struggle as well as to movements for social justice throughout history. Today philanthropy in India needs to go beyond financial support to active championing of freedoms of expression, assembly and association, and to forging the cross-sectoral partnerships necessary to confront contemporary societal challenges. Civil society too needs to address the gaps – real and perceived – that diminish its credibility and effectiveness.

We hope that this report will provide guidance to our readers in mapping the current landscape of support to rights and advocacy based organisations in India, their challenges and coping mechanisms, and the particular role that Indian philanthropy can play in collectively working with civil society and government, to ensure a robust, resilient, enabling space for civic action.

We are deeply grateful to all who gave so generously of their time and expertise as respondents, researchers and advisors in the course of this study and to the Azim Premji Philanthropic Initiatives for their financial support.

Ingrid Srinath

Director

Centre for Social Impact and Philanthropy, Ashoka University

Introduction

The Centre for Social Impact and Philanthropy (CSIP) was established at Ashoka University in 2016 to enable strategic and robust philanthropy for social impact. One of CSIP's goals is to inform decision-making through credible research. Understanding the sources of development funding is an area of focus because it has a far-reaching impact on the strategies adopted by philanthropists.

This report was commissioned to understand the changing trends in the funding of the non-profit sector in India, especially given the recent context of the Government of India's heightened attention on inflows from international donors. The report examines the impact of these trends on local civil society organisations in India, on organisations that focus on rights and advocacy work as well as those that enable service delivery. Finally, opportunities have been identified for Indian philanthropists to play a larger enabling role in the non-profit sector, particularly by supporting certain kinds of rights and advocacy work that have a structural, longer-term impact.

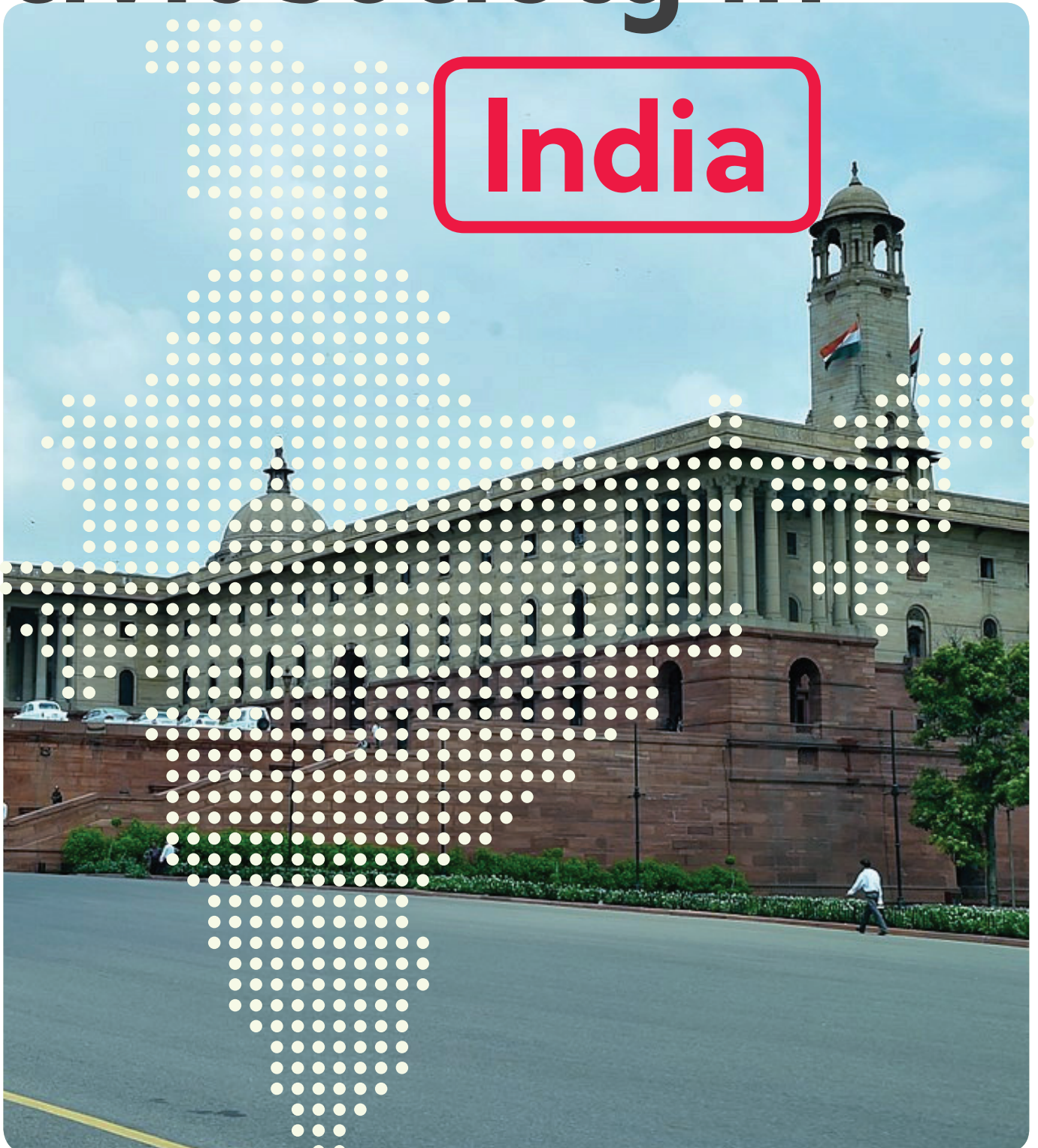
This research is a qualitative exercise which complements the quantitative analysis conducted by CSIP and How India Lives on foreign funding flows. The relevant data points from the analysis have been referenced throughout this report. Over 30 interviews were conducted with Indian philanthropists, foreign funders (those currently active in India as well as those that have withdrawn), social organisations (those with FCRA registrations as well as those that have lost their registrations), and legal, financial and technical experts. The interviews aimed to understand both personal experiences as well as the broader trends in the sector. All interviews were conducted with an agreement of confidentiality, and therefore direct attributions are not made in the report. A list of interviewees is attached in the appendix but it omits names of three individuals or organisations that did not want to be listed. Some insights were shared by interviewees off the record, and have not been included in the report.

It must be highlighted that there is a significant paucity of data in the Indian social sector, especially on the work that is being funded by the different types of donors, as well as on the reasons for withdrawal of FCRA registrations from social organisations and international donors. The research has thus had to rely more on narratives and anecdotes, rather than databases.

As the funding landscape continues to evolve, it is essential that philanthropists take informed and strategic decisions on the issues and organisations to support. This report aims to support decision making by providing perspectives from multiple stakeholders on what lies ahead for the Indian social sector, as well as their hopes and expectations for the future of Indian philanthropy.

The role of civil society in

India



Source: Wikimedia Commons



Civil society is often referred to as the “social basis of democracy” as it serves as a check against the power of the state. It holds the state accountable, promotes political participation of citizens, protects against populism, and preserves the values of tolerance, moderation, and accommodation.³

The World Bank defines civil society as: “the wide array of non-governmental and not-for-profit organisations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.” Civil society organisations therefore refer to a range of organisations: community groups, NGOs, labour unions, charitable organisations/foundations, academic institutions, professional associations, and foundations. These are also referred to as social organisations or social impact organisations. India’s diverse and robust civil society has been critical to the story of the country’s development – from 19th century reformation movements such as the sati ban, to the more recent Right to Information campaign.

Democratic countries are marked by an active civil society. The Central Bureau of Investigation (CBI) revealed in 2015 that India has 3.1 million registered social organisations – one for every 400 people.¹ While this seems like a large number of organisations, it must be read in context of other democracies which have far more social organisations per capita. For instance, in the United States, there are 1.2 million non-profits² which works out to one for just over 200 people.

India is a large, diverse democracy and the 6th largest economy in the world.⁴ While its economic growth has been formidable over the past few decades, social indicators have lagged, and inequality has deepened, as indicated by its ranking of 131 out of 188 countries in the Human Development Index (HDI).⁵ To add to this, Press Freedom Index places India at 138 out of 180 countries,⁶ and extensive reports by Human Rights Watch and others have highlighted concerns about the rights of minorities, women, children, Dalits and Adivasis.⁷ Thus, a significant amount of work is needed for India to achieve its vision of inclusive development, and civil society has a key role to play.

Work done by social organisations in India

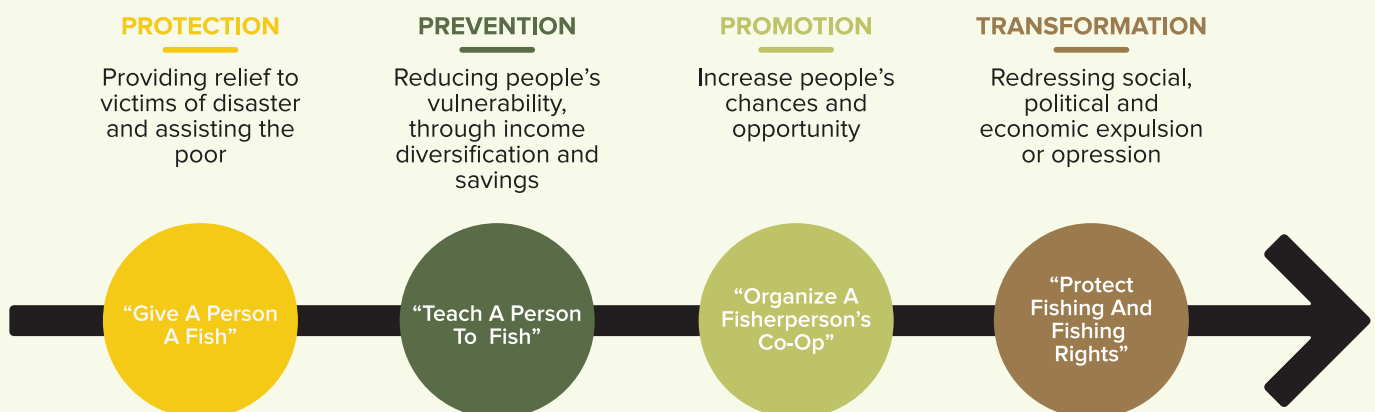
There are a variety of approaches to bringing about social change. These can be mapped on a continuum between service delivery at one end, and rights and advocacy at the other. An organisation would typically use a combination of approaches to achieve its objectives. The following is based on a framework developed by Dochas (The Irish Association of Non-Governmental Development Organisations).

Service Delivery

Work to improve the life of citizens on the ground, often through government schemes and programmes. Step in to fill gaps in welfare created by a lack of government focus, inefficiencies, or negligence.

Rights and Advocacy

Work to make the government more accountable and transparent, and to uphold the rights of citizens.



- Provide services to meet societal needs such as health, education, food security: **Pratham**
- Serve as experts in bringing knowledge and learning from the ground for policy and strategy: **Centre for Advocacy and Research**
- Provide capacity building support: **STIR Education**
- Incubate development solutions: **Consortium for DEWATs Dissemination Society**

- Serve as watchdogs and hold institutions accountable to promote transparency: **Association for Democratic Reforms**
- Advocate to raise awareness on societal issues: **Human Rights Law Network**
- Represent marginalized communities and people: **NAZ Foundation**
- Encourage citizens' engagement while supporting the rights of citizens: **Greenpeace**

Who funds social organisations in India?

The interviews revealed that organisations that do service delivery work often attract different sources of funding than those that do rights and advocacy work. The divergence represents different views of how to bring about change.

> Characteristics	> Service Delivery Organisations	> Rights and Advocacy Organisations
Funding required per person impacted	Larger	Smaller
Measurability of impact	Easier to demonstrate a causal relationship between funding and the resultant social outcomes	Harder to demonstrate a causal relationship between funding and social outcomes because the outcomes are fundamental (changes in societal norms, transparency of govt, etc.)
Time frame	Often possible to see some short-term results	Results will usually only be seen in the medium or long-term
Risk to the funders	Often considered less risky because the work can complement the priorities of the government	Often considered more risky because the work involves holding powerful stakeholders accountable
Common sources of funding	<ul style="list-style-type: none"> • Government • CSR • Indian philanthropists • Foreign philanthropists • Foreign bilateral and multilateral institutions • Foreign social organisations (INGOs) • Individual small donations • Crowdfunding 	<ul style="list-style-type: none"> • Foreign philanthropists • Foreign social organisations (INGOs) • Indian philanthropists • Individual small donations

Rights and advocacy work is almost always supported through Indian or foreign private wealth – philanthropists, family foundations or individuals – because

- Private funding has fewer legal restrictions on how it can be used, unlike government or CSR funding
- The funder has the ability to take a long-term view, unlike an elected official or a company that has to regularly report to shareholders about CSR
- Ideally, the funders' giving can be viewed as separate from their business or professional interests, thus enabling the funder to support "riskier" work



Rights and advocacy organisations in India are heavily dependent on foreign funding

While some Indian philanthropists have systematically built institutions such as universities, think tanks and social organisations which do rights and advocacy work, the bulk of such funding comes from foreign sources, as mentioned by multiple stakeholders during the interviews.

While the majority of foreign funding appears to be directed towards service delivery work, foreign donors have been at the forefront of funding rights and advocacy work such as governance, democracy, human rights, LGBTQ rights, etc. For example, large portions of the budget of many reputed organisations such as Housing and Land Rights Network, Centre for Promotion of Social Concerns, Lawyers Collective, etc., were coming from foreign donors.



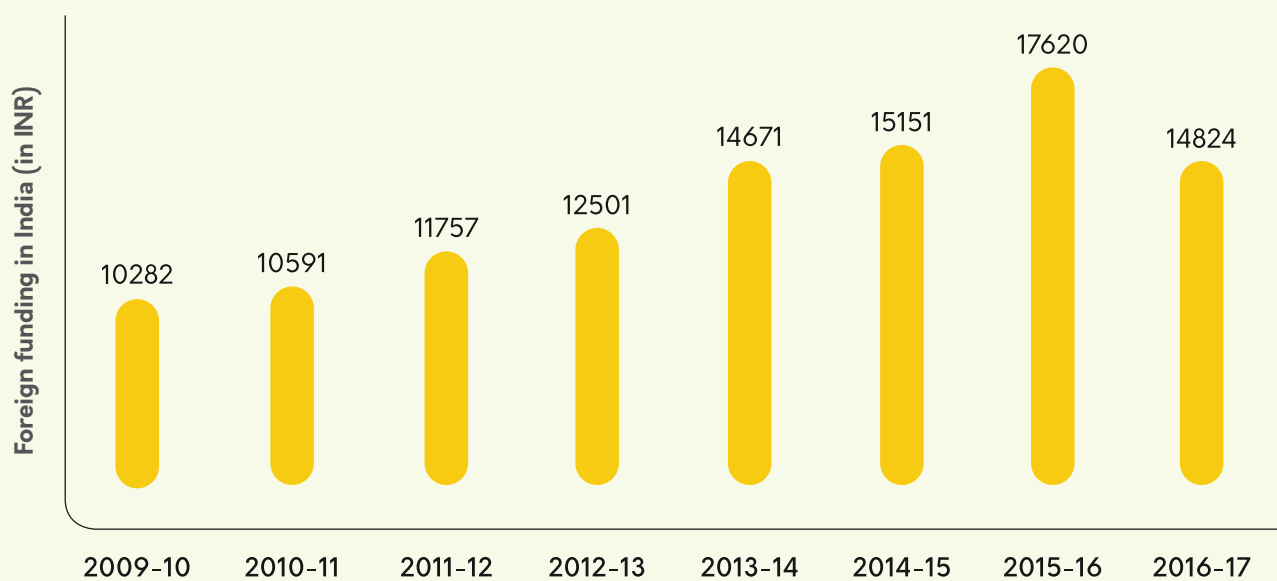
Indian philanthropists have been complacent about funding social justice work, because they know that foreign donors exist to make grants on that issue.

- Foreign funder

Funding to the Social Sector: Trends



Foreign philanthropic funding had been growing but then declined in 2016-17



Government-reported data:

Private foreign funding was reported to have dropped to INR 6,499 crore in 2016-17⁸ from INR 17,773 crore in 2014-15. However, a subsequent press release by the government revised the 2016-17 number to INR 18,065 crore.⁹

Independent analysis from How India Lives:

Foreign funding has declined but not as significantly as reported by the government. The number for 2016-17 is INR 14,824 crore.¹⁰ If this number is regarded to be correct, it points to a decline in foreign funding to India. If the upward trend of the past few years had continued, the funding in 2016-17 would have been INR 19,734 crore.

Upon bringing up this discrepancy with the government, How India Lives was directed to the public FCRA database. Re-checking the numbers revealed the same discrepancy.

➤ Even as domestic funding has continued to increase

- According to the Bain-Dasra report (2017), individual philanthropic contribution grew six fold between 2011 to and 2016 and private donations made up 32% of total contributions to the development sector in 2016, up from a mere 15% in 2011.¹¹
- The CSR clauses of the Companies Act, 2013, have contributed significantly to giving in India by mandating profitable companies to spend 2% of their three-year average profits towards activities which can include health, nutrition, livelihoods, rural development, women's empowerment etc.
- Retail funding has also increased, with Charities Aid Foundation claiming that over 100 million donors have been added in India since 2009 (these include all adult givers not excluding HNIs).¹²
- There is a growing interest in channelling the power of businesses to social issues and investment in social impact-focused entrepreneurs has increased. Between 2010-16, India received USD 5.2 billion in impact investment.¹³ The funds have largely gone towards clean energy and financial inclusion, with healthcare, education and agriculture now emerging as areas of focus.

Impact of these trends on social organisations

A.

Service Delivery organisations

These organisations have benefitted substantially from the increase in domestic funding, as per several interviewees. This has been in some part because of a global trend towards measurability of impact:

- Corporate funding through CSR seeks impact numbers to be reported to shareholders and therefore depends on being able to easily measure results.
- Even Indian philanthropists, especially the new generation, are focused on measurability which impacts how funding decisions are made and due diligence is conducted.

B.

Rights and Advocacy organisations

Interviewees across the board identified these organisations as receiving funding that was tiny compared to the total funding to the sector. These organisations were also described as having suffered disproportionately on account of:

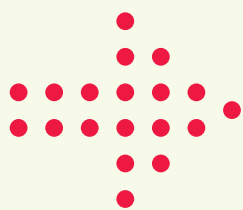
- Foreign funding for rights and advocacy work having declined because of actions against the organisations and their donors.
- Very little of the increase in domestic funding going towards rights and advocacy work, because of the perceived risk of the work, longer timeframe for results, and challenges in measuring impact.

FCRA:

Actions & Impact



Source: Wikimedia Commons



What is FCRA?

The Foreign Contribution (Regulation) Act (FCRA)

is an act of the Indian Parliament “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 national interest and matters connected therewith or incidental thereto”. In summary, FCRA is an internal security act officiated by the Ministry of Home Affairs, focused on receipt of foreign funding in the social sector. Every social organisation requires an FCRA registration to receive foreign funding.

Key changes made to the FCRA in 2011¹⁴

These changes were significant, and altered the nature of the Act in different ways, making it far more stringent in its requirements.



In the 1976 Act, FCRA registration was given for life. However, since 2010-11, social organisations are required to renew their FCRA licences every five years.



The 2010-11 Act also puts a limit of 50% on FCRA funds used for administrative purposes. This means that 50% or more of the funds have to be used for direct project expenses.



The 2010-11 Act does not allow foreign donors to fund any organisations of “political nature” which engage in political action such as bandhs, hartals, raasta roko, and jail bharo thus limiting the kinds of activities funded.



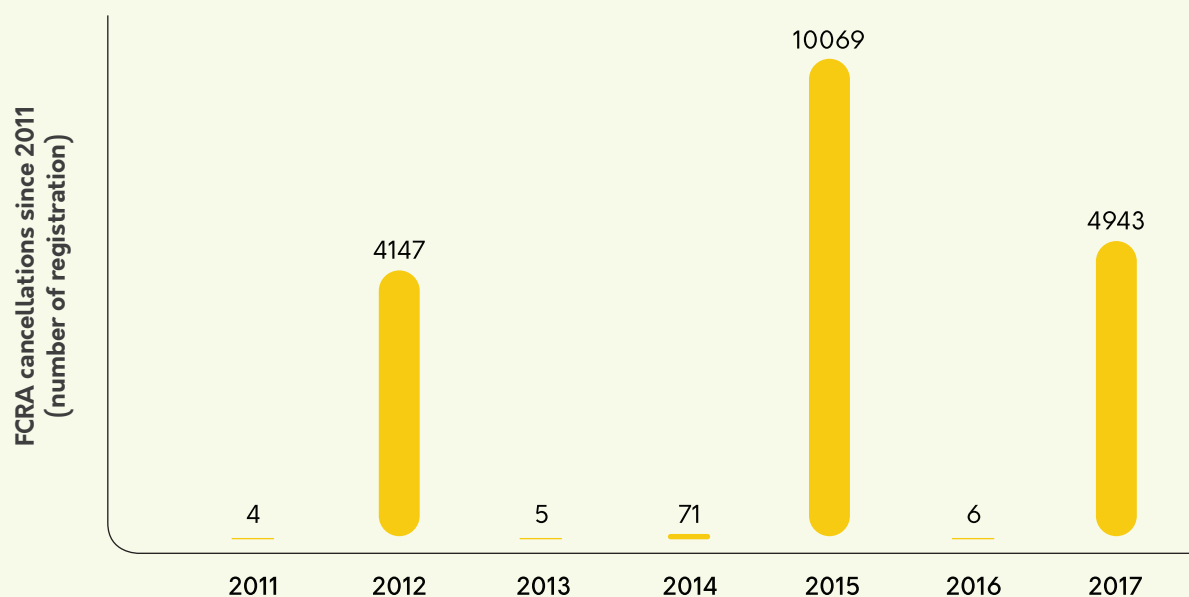
The Act also mentions that the Central government can prohibit the acceptance of foreign funding where it feels that it is likely to affect public interest.



“Reporting and accounting are fundamental for civil society organisations that handle money and therefore any law or any move made that requires you to account for or report for money should be accepted as part and parcel of your functioning.”

- P. Chidambaram, Minister of Home Affairs (2008-12), Government of India

Since 2011, the government has cancelled, revoked, or denied renewal for approximately 20,000 FCRA registrations.¹⁵



The government claims that in the FCRA database, there are thousands of organisations that are defunct, have multiple FCRA licences, or are non-compliant under FCRA law for reasons such as clubbing of foreign and domestic accounts, non-filing of accounts, transfer to non-FCRA organisations, utilisation of more than 50% of FCRA funds for administrative purposes, and registration of assets in the name of individuals as opposed to organisations.

Reasons for FCRA denials



The government does not release data on the specific reasons for FCRA denials, which was mentioned in a few interviews as a cause for concern.



“Why is there such lack of clarity on this number of NGOs who have lost their licences? Why can’t the government just tell us that these are defunct, and these have lost their licences for compliance reasons and the others are for political reasons?”

- Expert



The government has justified its action against social organisations funded by foreign donors as a means to ensure compliance under the FCRA law. A number of interviewees agreed that greater transparency from social organisations would build trust and confidence in their work.



“When we started monitoring their works, they started accusing us of harassing them. But we made it clear that the NGOs must end the casual approach. They must fall on line and follow law.”

- Kiren Rijiju, Minister of State, Ministry of Home Affairs,
Government of India¹⁶

“Cleaning house is important, it needs to happen. NGOs were complacent and non-compliant.”

- Expert



However, several interviewees also believed that some genuine organisations had been denied licences due to their rights and advocacy work. Estimates of the number of such organisations range from 200 to 1000.



“It is possible that out of the 20,000 lost FCRA licences, about 18,000-19,000 were defunct, or NGOs had multiple licences or had genuine compliance related issues. The rest were targeted because of other reasons such as the work they do.”

- Expert

“The current FCRA registration refusals are the most immediate example of this escalating problem, whereby the government maligns and criminalizes those very organisations and individuals that stand for human rights and liberal values. Those who have worked for the most marginalized and disempowered sections of society, while holding the government to account are being persecuted by the State”.

- Public Statement by civil society organisations against
FCRA cancellations and non-renewals¹⁷

What kind of work has been affected by FCRA denials?

While some of the interviews brought out the perception that there seemed to be no real pattern to the cancellation of FCRA registrations beyond non-compliance, there were others who believed that the cancellations singled out organisations that had questioned the government in some way. These included organisations working on human rights, faith-based donors and organisations, and organisations that are working to reduce tobacco consumption.

Further, some social organisations were mandated to seek prior permission before receiving foreign funds. Although the list of such organisations was never made public, it is said to have as many as 25 organisations, including Lawyers Collective, Indian Social Action Forum, and Hazard Center.



“Anyone supporting human rights, social justice, democratic reforms, governance issues has been hit. These are things that make a democracy stronger and hold the government accountable but have been under duress.”

- Expert



“The government doesn’t want NGOs to ask questions about policies and programmes. If you do, there is likely to be a certain backlash”

- Leader of a Social Organisation that was denied FCRA registration



“As per the law of the country, you cannot accept foreign funding, while opposing the policies of the government. Agitation is a democratic right. However, FCRA does not permit NPAs to agitate against government policies or criticise the government using foreign contribution. Object all you want, but find an alternative source of revenue.”

- J.K Chattopadhyay, former Deputy Secretary, Ministry of Home Affairs, in 2014¹⁸

CASESTUDY > Protests against the Kudankulam nuclear power plant, Tamil Nadu (2012)

There were large-scale protests against the construction of a nuclear power plant in Kudankulam, Tamil Nadu. The government of the day believed that foreign funders¹⁹ and social organisations were behind these protests and

- Cancelled the FCRA licences of the three main organisations²⁰ involved in the protests despite claims by some that they had not received any funds from abroad.
- Froze banks accounts of several organisations, such as Indian Social Action Forum (INSAF), citing that their work was against public interest, as specified in the FCRA.²¹

CASESTUDY > Navsarjan Trust, Gujarat (2015)

Navsarjan Trust, Gujarat's oldest Dalit-rights organisation believes that its protest in Una may have been the 'immediate provocation' for the government to cancel its FCRA license.²² Navsarjan had to let go of its 80-member strong staff²³ and shut down the three primary schools it ran. Its work in over 3,000 villages of Gujarat is currently under stress. The government claimed, "Navsarjan Trust has come to adverse notice for its undesirable activities aimed to affect prejudicially harmony between religious, racial, social, linguistic, regional groups, castes or communities," as mentioned in a statement issued by the MHA. Navsarjan maintains that no evidence of prejudicial activities has been provided by the government, and believes that the organisation is a victim of selective targeting.

CASESTUDY > Research and advocacy work to reduce tobacco consumption (2016)

A public health organisation that was working with a state government on anti-tobacco campaigns had its FCRA registration cancelled despite supporting the state health ministry's own policies on reducing tobacco consumption. In the words of the leader of the organisation, "Despite doing work with the entire state machinery, our FCRA account was frozen. The Union Ministry of Health said that many farmers had shown concerns about our work, and that the MHA had to act because we were taking away livelihoods at the behest of foreign interests. However, it isn't a genuine concern because the tobacco lobby is behind this FCRA action, not farmers."



Action against foreign funders



“There are NGOs, often funded from the United States and the Scandinavian countries, which are not fully appreciative of the development challenges that our country faces.”

- Prime Minister Manmohan Singh, when asked about the role of foreign donors in India in 2012²⁴

In the middle of 2014, an Intelligence Bureau (IB) report was leaked that claimed that social organisations funded by foreign donors were trying to undermine India's growth story and should be curbed. It named several “anti-development” activities such as agitations against nuclear infrastructure, coal-fired plants, mining in Orissa, extractive agencies in the North East among others. The report asserted that the activities of such social organisations had reduced India's GDP by 2–3%.

The government of India maintains a “prior permission” list of foreign donors in India. Every single financial transaction from such a donor to a grantee in India has to be approved by the Union Ministry of Home Affairs (MHA). The onus is on the grantee to write to the MHA and obtain permission before being able to access the funds. The cumbersome nature of this process has led to most of the donors on the list either stopping or scaling back their work in India.

By 2017, over 20 foreign donors including Open Society Foundation, Compassion International, HIVOS and Greenpeace International had been placed on the list.

While data on all funding to rights and advocacy organisations is unavailable, an analysis of contributions from donors on the “prior permission” list suggests that the peak of their funding to rights and advocacy-based organisations would have totalled less than INR 150 crores.²⁵ This number had dropped to INR 9 crore by 2016–17, while the number of social organisations funded had come down from a peak of 300 to 25 in 2016–17. It is possible to deduce from these numbers that the funding requirements of rights and advocacy organisations are relatively small compared to the total amount of development funding in India, and that these organisations have experienced a significant decline in foreign funding.



“No one knows how you get on and off this list, there is no information anywhere.”

- Foreign funder



“We didn't even get a notice from the government, but just realised that our accounts were frozen.”

- Foreign funder



Source: Wikimedia Commons

CASESTUDY > Ford Foundation

While the donor “prior permission” list had existed for a few years, the inclusion of Ford Foundation brought significant attention to the list.²⁶ In 2013–14 and 2014–15, the Foundation had granted ~ INR 60.1 crores, and ~INR 30 crores²⁷ respectively to organisations in India. However, in 2015 it was put on the list by the government which claimed that Ford was funding organisations that were not registered with FCRA, and that Ford Foundation itself had not registered with Foreign Exchange Management Act (FEMA). This response from the government came soon after allegations against Ford for disturbing India’s internal peace.²⁹ In 2016, however, Ford Foundation was taken off the donor “prior permission” list, the only organisation so far to have come off the list.²⁸

CASESTUDY > Compassion International

Compassion International is a faith-based organisation and was one of the largest donors operating in India.²⁹ It had worked in India for 48 years and by 2015, was funding 161 organisations with over INR 280 crore annually for health, education and food-support activities, some of which involved rights and advocacy work. The government suspected Compassion of engaging in religious conversions and placed it on the “prior permission” list.³⁰ Compassion states that it did not have any official channels for communication with the government and was not given the opportunity to repudiate the allegations. Compassion has since decided to wrap up its operations in India.³¹



Reduction of programmes due to loss of foreign funding

The interviewees revealed that social organisations had struggled to deal with losing foreign funding. The impact often included scaling back or shutting down programmes, laying off staff, and even ceasing operations. Some organisations have been described as collateral damage, i.e., they are unrelated to rights and advocacy but have been impacted because their donors have been put on the watchlist and are unable to operate in India. These organisations still have their FCRA licences but do not have donors.



“Because of the loss of foreign donors, who were the main funders for research, we had to let go of 30 out of 40 researchers.”

- Leader of a Social Organisation

“We have had to shut down our assistance centres for women who have suffered from domestic violence and have reduced our staff to only those who can afford to work voluntarily.”

- Leader of a Social Organisation

“We were funding one organisation that the government was uncomfortable with. However, we had over 25 other grantees that were doing regular work, such as in areas of mental health, who could not be paid anymore.”

- Foreign funder that was placed on the “prior permission” list



Trust deficit with government officials

Given the lack of clarity and limited instructions from the Ministry of Home Affairs, institutions on the ground have interpreted the FCRA in ways they deem fit. Leaders of social organisations spoke of a growing trust deficit between organisations and institutions on the ground which often take unilateral and arbitrary decisions. The trust deficit ultimately affects the nature and quality of work that social organisations can perform.



“Many local IB officers or policemen or tax authorities take arbitrary unauthorised action against NGOs because they feel that that’s what they are supposed to do.”

- Expert



The “Chilling Effect”

Funders and social sector leaders also spoke of a growing fear in the social sector that has impacted the way social organisations, donors and institutions engage with each other. Several interviewees used the phrase “chilling effect” to describe how the use of FCRA by the government was leading to self-censorship among social organisations. Importantly, funders and organisations had redesigned programmes to drop certain critical interventions, rather than risk facing an FCRA denial.



“In this environment of self-censorship and fear, NGOs are unwilling to support each other on even issues they think might be contentious.”

- Leader of a Social Organisation

“Many NGOs, even those who still have their FCRA, have also begun to change the way they describe their projects and programmes”

- Leader of a Social Organisation that is concerned about losing FCRA



Difficult relationship with banks

Relationships between banks and social organisations were spoken of as a major casualty, as financial scrutiny is at the centre of the FCRA law. However, the issue was described as being broader than access to foreign funds. There was an increased reluctance on the part of banks to even want social organisations as their customers, which places a significant hurdle in their functioning.



“Even NGOs who have legitimate FCRA accounts, and are receiving money from donors not on the watchlist have difficulties accessing their money. Banks feel like they should hold on to these funds and don’t release them to the local branch unless they have seen the grant agreement and all sorts of other paperwork.”

- Foreign funder

“Banks consider NGOs high-risk customers now and do not want their business.”

- Expert





Change in the strategies of foreign funders

Several interviewees spoke about how foreign funders have had to reframe their strategies, programmes and the kinds of organisations they fund due to the actions under the FCRA. A few were described as having dropped “daring” issues such as social justice, advocacy, human rights, and governance from their India portfolio in order to continue working in India. Due to the stringent interpretation of the FCRA, foreign donors are being forced to change their approach across sectors, geographies and types of support



“We are trying to frame all our grants so that they cannot be misinterpreted in any way under the FCRA and have told our grantees to ensure that no project we fund has the word “rights” associated with it.”

- Foreign funder

“We were advised by our counsellors and in our diagnostics to not work in Jammu & Kashmir and the North East because these are sensitive areas, and the government doesn’t like organisations or donors working there.”

- Foreign funder

The donors that decided to exit India because of difficulty complying with the requirements of being on the “prior permission” list have had to let go of local staff and find them opportunities in other organisations. The corresponding loss of reputation in terms of being unable to fulfil their commitments to their grantees is significant, and a major concern for these donors.



Disruption in government programmes and initiatives

The government at the central and state levels have also been impacted by the change in FCRA laws. Many organisations work to support government capacities and serve as experts for the government, helping them frame and implement programmes that work for the citizens. However, FCRA has interrupted this relationship in some cases.



“We were working on a state government programme but even the state government could not intervene on our behalf. Once the Union MHA decides, there is nothing to be done”

- Leader of a Social Organisation

This is even true at the Central government level where the line ministries work closely with social organisations that have eventually lost their FCRA through directives of the MHA.

How social organisations have coped

In the absence of a clear and time-bound grievance redressal system, social organisations have had to develop their own methods to deal with the unfolding actions under FCRA.

Legal Recourse

FCRA does not provide for a grievance redressal system or appellate authority. Approaching a High Court and asking for the MHA's decision to be struck down is a social organisation's only legal option. By one estimate, there are over 100 pending cases in High Courts across the country. Thus far, the decisions of the courts have been favourable to social organisations. For example:

- In the Delhi High Court, several NGOs, such as INSAF, have successfully had their foreign funding accounts unfrozen, though they have been unable to receive new foreign funding.³²
- The Bombay High Court has stated, "A citizen may conduct social activities and may have a different point of view, which may not be liked by the government. However, in a democratic state, a citizen may have his or her own point of view."³³



"We have been in and out of the court since 2012, our license has been cancelled and restored several times and we are still battling it out."

- Leader of a Social Organisation

"My board wanted me to find a different mechanism to challenge our FCRA cancellation. They felt that the legal route was too long and complicated. It took me a long time to convince them and allow me to register a case."

- Leader of a Social Organisation

However, it must be pointed out that organisations that choose the legal route are often tagged as high-risk, which makes it difficult for them to raise funding, hire staff and conduct their projects. Their reputation is potentially compromised because of a public battle against the government.

Doing for-profit work

Some organisations have thought about the aspects of their work that could be done for profit and set up for-profit companies. While there is a tax implication, these companies can access domestic and foreign capital under the Companies Act.

Role of Indian

Philanthropists



Source: www.mumbaipaused.blogspot.in

Indian philanthropists can play a major role in strengthening civil society

However, challenges abound

Research shows that private domestic philanthropy has grown significantly over the past few years and now provides significant resources for development issues in India.³⁴



contributed by India's top 25 philanthropists in 2016



increase in quantity of private philanthropy (2011-16)



increase in number of donors (2009-15)

At the forefront of this surge have been influential philanthropists who have not only given individually from their personal wealth, but also through the corporate and family foundations that they control.

Indian philanthropy is critical for supporting rights and advocacy work as it comes with the least strings attached, unlike CSR or foreign funding, both of which are highly regulated. The freedom to donate to organisations, sectors, and causes without regulatory restrictions positions the Indian philanthropist well to support rights and

advocacy organisations. As demonstrated in this report, a group of prominent foreign donors were giving ~INR 150 crores to rights and advocacy work at the peak of their giving, which indicates that this work is not expensive to fund. If Indian philanthropists were to allocate a small percentage of their funding to issues such as democracy, social justice and governance then they could create significant impact while also improving the perceived legitimacy of the social organisations that work on these issues.

Factors in Indian Philanthropists not supporting rights and advocacy work



Lack of visibility of social organisations

The supply side of philanthropic giving has been well taken care of, with many philanthropists engaging teams of professionals and consultants to help them identify and give to non-profits that work on causes and issues that they consider important. However, on the demand side, the most pressing challenge for non-profits seeking to raise money has been visibility, with most lamenting a lack of capability to get onto the radar of Indian philanthropists. To add to this issue, social organisations have found that engaging Indian philanthropists requires a greater investment of time and effort than engaging foreign funders who have a history of supporting rights and advocacy work. This encourages non-profits to continue to seek traditional, foreign sources of funding rather than new Indian ones.



“We do not know how to get in touch with Indian donors. We think most are accessed through networks and connections”

- Leader of a Social Organisation



“Indian funders need to be brought up to speed on rights-based work in critical areas. The more marginalised populations is where Indian philanthropists should be focusing”

- Leader of a Social Organisation



Reluctance to be seen funding organisations that are on the government's radar

Some philanthropists hesitate to step up and fill the funding gaps created by FCRA de-registration; possibly because of the widespread apprehension about being seen as supporting organisations against which the government has taken action. The few philanthropists who do pitch in to help are often loath to publicise their efforts, because of similar apprehensions.



“Indian philanthropists have been happy for foreign donors to work on ‘daring’ issues while they invest in more conservative work. Indian philanthropists have been complacent because of the presence of foreign funders but now they need to step up.”

- Foreign funder



“Some Indian philanthropists and private individuals have funded organisations that either lost their FCRA licences or lost their donors to the watchlist, but this isn’t something that is openly discussed in order to avoid government attention.”

- Foreign funder



Root causes of issues are not apparent

Leaders of social organisations, leaders and experts voiced that domestic philanthropic grant making often reflected “a certain arrogance, as though they already know the answer.” Multiple interviewees believed that Indian philanthropists should look at ‘first degree issues’ to understand root causes, use research to uncover innovative solutions, and only then put a strategy in place.



“An Indian philanthropist working with railway children would address the issue by making sure that the children are not on the tracks but in school or in boarding, they do not investigate why the children are on the tracks in the first place, and if they did, they’d realise that the problems are of social justice and equality.”

- Leader of a Social Organisation



Source: Janpath Network



Rights and advocacy work is harder to measure

A concern about measurability of impact keeps Indian philanthropists away from investing in organisations that do more long term work, but with criteria of measurement that are hard to quantify.



“I worked on getting the Right to Information (RTI) for 15 years, but how do I quantify my efforts which involved sensitising various stakeholders to the need for this Act for over a decade? This is important work, but who would fund it because it is almost impossible to measure?”

- Expert



Early stage of philanthropic journey

Some interviewees believed that the Indian philanthropy sector was new and needed time to build its own trajectory to arrive at a point where it could fund work that would serve to keep the government and industry accountable and transparent.



“Even the old foreign philanthropies such as Ford and Rockefeller took time to get to a point where they prioritised social justice work; they all began with service delivery.”

- Expert



Risk appetite of the philanthropist

Several interviewees mentioned that Indian philanthropists have a low risk appetite. The tendency to give 'safe' grants is speculated to be governed by how closely businesses are still linked to philanthropy, by reputational risk, the possibility of legal backlash, as well as the risk to other grantees or partners.



"in the West, a philanthropist could be funding a case against the government, but their business interests would not be impacted. In India, ideas that are not politically acceptable are discarded."

- Foreign funder



"The government can come after you in various ways if it has a problem with you. This has been seen in the past."

- Foreign funder



Lack of effective philanthropic collaboratives

Collaboratives have been considered a means to reduce the risk undertaken by an individual philanthropist. Even though some of these philanthropic collaboratives have been formed, such as the Independent and Public-Spirited Media Foundation (IPSMF), they are few in number. Some philanthropists are also sceptical about whether the merits of collaboration outweigh the drawbacks.



"Co-funding projects or organisations or efforts can bring down the risk but the collective always has a lesser risk appetite than some individuals. There is more flexibility in doing things alone."

- Indian Funder

Other domestic funders also face challenges in supporting rights and advocacy work



CSR Funders

CSR giving in India falls under the ambit of the Companies Act, 2013. While schedule VII of the act suggests 11 areas that companies can give to, ranging from eradicating hunger and empowering women to protecting national heritage and promoting sports, the majority of funding has gone towards education, skill development, healthcare, sanitation, rural development and the environment. Neither does the Act nor does actual CSR giving reveal any substantial emphasis on rights and advocacy.

The Companies Act itself implicitly prioritises project-oriented grants with strict measurability criteria over institutional grants (which are restricted to only 5% of the total CSR corpus), by mandating that grant impacts have to be communicated to the company's Board and shareholders periodically. The result is that a lot of CSR grants come with extensive reporting and compliance requirements.

These reasons hobble CSR giving to rights and advocacy work as companies, in order to ensure compliance with the letter of the law, balk at giving to issues that are not explicitly covered in the Companies Act, as well as at making institutional grants that may not result in short-term, quantifiable results.



"We have been in conversation with some CSR organisations for funding. Some have come through but it is largely focused on projects as opposed to institutional or research grants."

- Leader of a Social Organisation



"CSR grants have multiple reporting requirements and limitations which can be hard for organisations to comply with."

- Foreign funder



Crowdfunding

Theoretically, the idea of crowdfunding has a lot of appeal for the social sector, as retail funding can help social organisations maintain their independence from the government as well as from foreign donors. However, it has remained nascent in India for multiple reasons.



“Retail funding happens for movements or events but not for NGOs and their work because it is hard to explain to the individual donors what NGOs actually do with that money. No one wants to pay for the salaries of a field worker, they want to pay for something more tangible.”

- Expert



“To access crowdfunding, we have to make a pitch through a platform to an audience we don’t know. We’d much rather seek funds from people who have a certain sensitivity to the work organisations like ours do.”

- Leader of a Social Organisation



“To receive regular funding from individuals, a special regulation to auto-debit from accounts is required by the RBI. Only then can one expect regular monthly giving. This is a major hurdle in NGOs accessing retail funding.”

- Expert



Family, friends and informal networks

Organisations without access to Indian funders have had to rely on informal funding networks to survive once their FCRA licences were cancelled or their donors were no longer allowed to function in India. The quantum and sustainability of such funding is likely to remain low.



“We have largely relied on help from friends and family - some small donations to make sure that our doors are not shut. People stepped up once they realised that we had been struggling with funds because they valued the work we were doing.”

- Leader of a Social Organisation



How Indian philanthropists believe they can overcome the barriers to supporting rights and advocacy work

During interviews with Indian funders, they emphasised the need for support to help make decisions on whether and how they should step in and fund issues that have traditionally been the domain of foreign funders. Indian funders asked for:

1.

Insights on the areas of work and types of organisations that had been affected by the decline in foreign funding to rights and advocacy issues.

2.

A risk assessment framework to help philanthropists identify the kinds of work they could support, with an acceptable level of risk to their business and personal interests.

3.

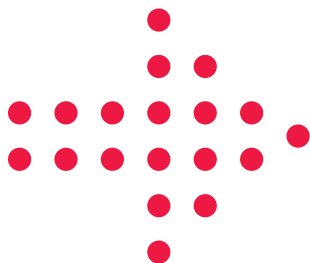
Recommendations for short and long-term actions they could take, keeping in mind their risk appetite.

4.

Opportunities to reduce risk through measures such as funding ecosystem-level work instead of programmes, and working collaboratively to offset the risk of ‘going solo’.



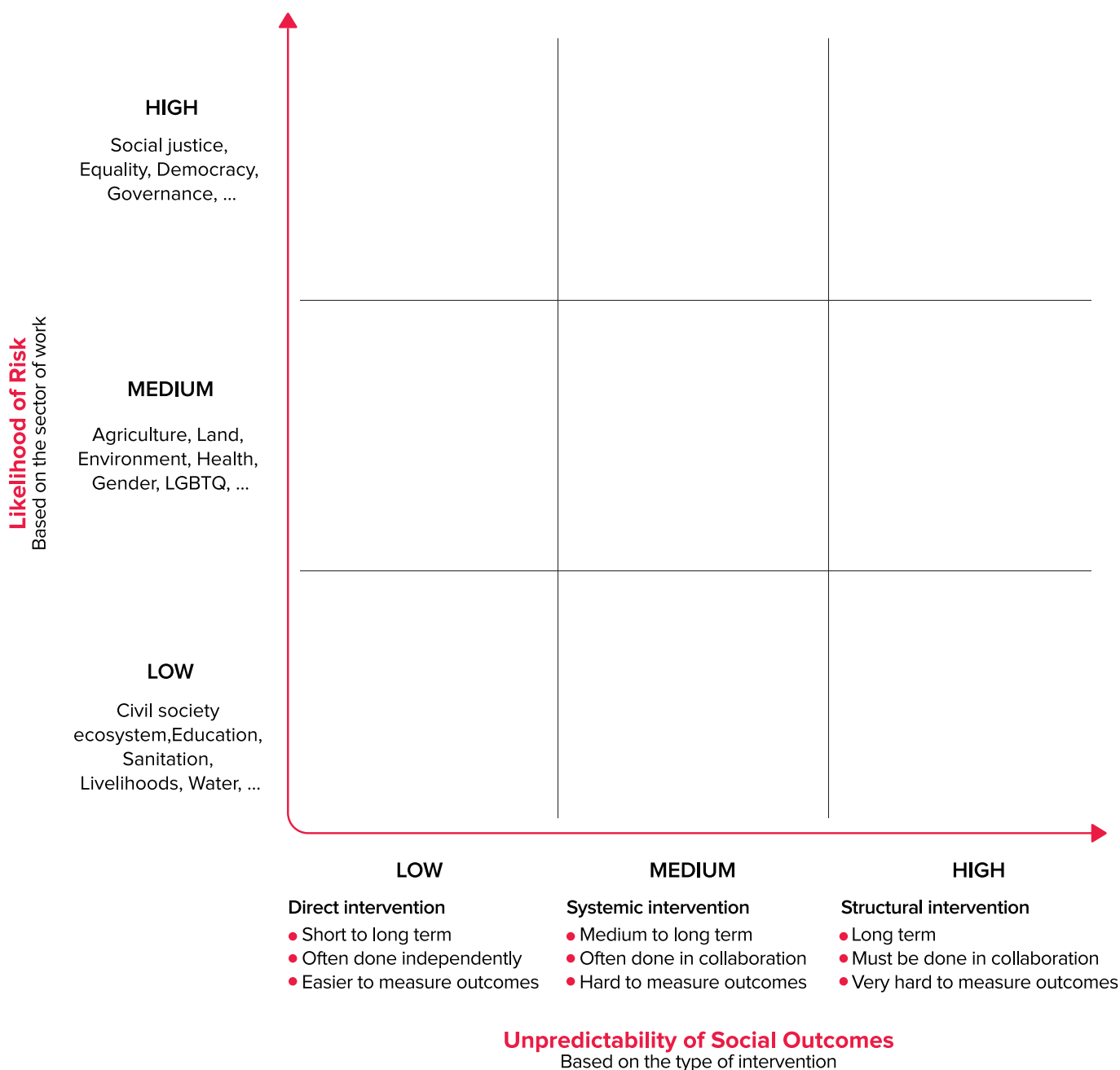
Source: Janpath Network



RISK- INTERVENTION MATRIX

Philanthropists can use the following matrix to map the needs of development work in India. They can then select the work that matches their preferred sectors, interventions, timeframe and risk appetite, especially in the context of reduced foreign funding to sectors such as human rights, democracy, etc. which are considered to be high risk. On the other hand, sectors such as education are low risk for the most part but may have some high-risk components such as curriculum design. Similarly, there are various types of interventions, ranging from direct community work which often uses proven models and leads to predictable outcomes, to higher-level policy work which could have wide-ranging benefits but where success is inherently more unpredictable.

At present, the majority of Indian philanthropic grants may be found in the low-risk, low-unpredictability space. However, unlike CSR or foreign funders, Indian philanthropists have the opportunity to support work in any part of the matrix, including issues that are of fundamental importance to democracy and society in India.

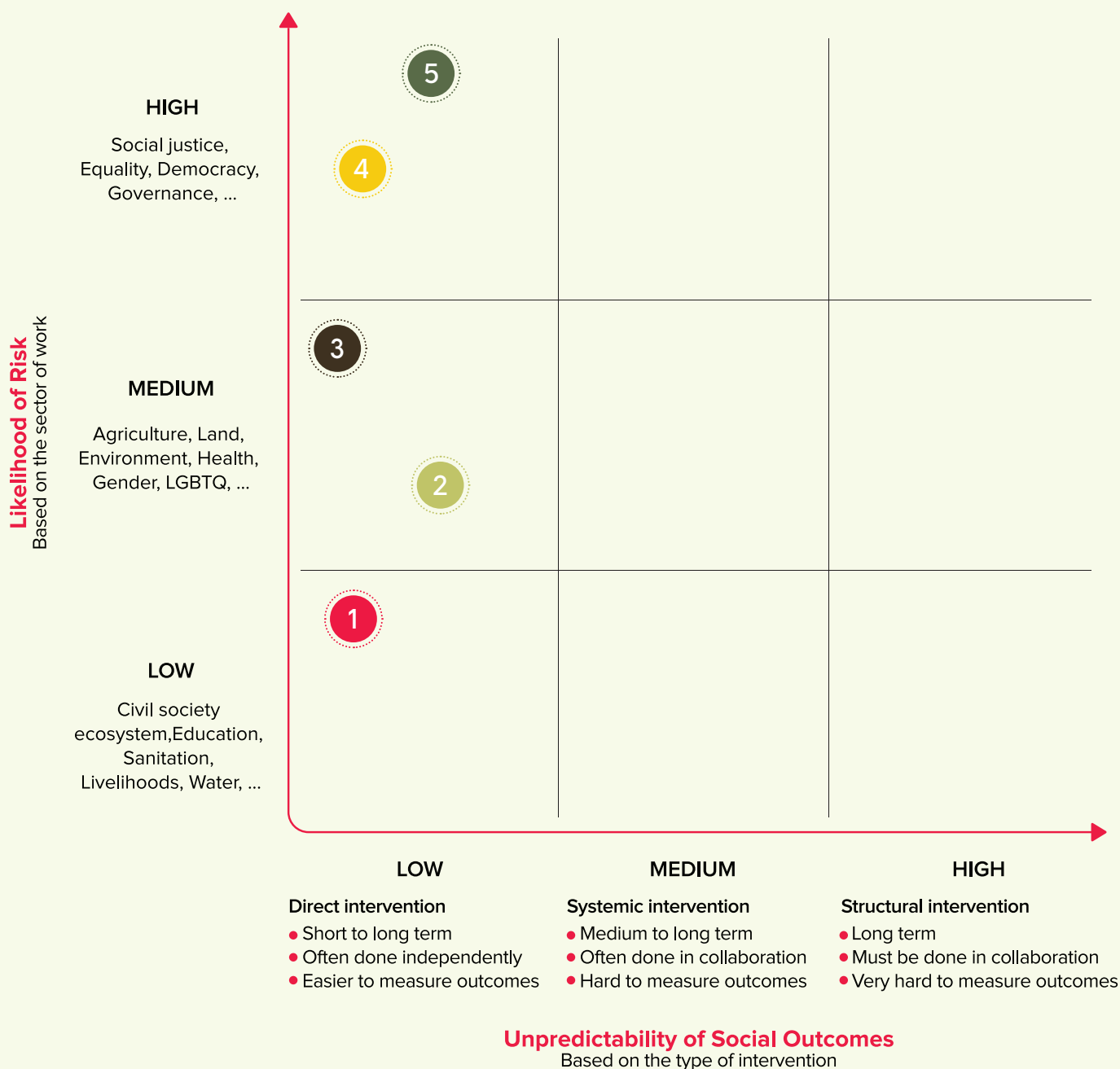


(Risk can be perceived as business or reputational, including potential legal backlash as well as impact on existing partners)

What Indian philanthropists can do in the next 6-18 months to provide relief to rights and advocacy organisations

Interviewees strongly recommended that Indian philanthropists take some time to do research on rights and advocacy issues and reimagine their grant-giving strategies. However, immediate (within 6 month) and short-term (6-18 month) measures could be implemented to provide relief to rights and advocacy organisations that have lost foreign funding.

Suggested solutions from interviewees have been plotted on the matrix.



(Risk can be perceived as business or reputational, including potential legal backlash as well as impact on existing partners)

1

Assist organisations to improve compliance through investments in accountants and other service providers

Provide organisations with support services to improve/deal with compliance, including with FCRA norms. An investment in accountants and other service providers who specialise in dealing with social organisations would fulfil a major need.

2

Organise legal support fund for organisations appealing against FCRA

A legal support fund can be used to support organisations that are currently in court for FCRA issues as well as for organisations that have been issued notices but do not have the resources to appeal effectively.

3

Support organisations supported by foreign funders who have withdrawn from India

Fund organisations that have been collateral damage to government actions under FCRA. These are “slam dunk” grants because the organisations have been working on issues that are not sensitive to the government but have been affected because their donors have been forced to stop operations in India. These organisations and their programmes have already been vetted by other donors and are therefore reliable investments.

4

Lend voice to issues of equality, social justice etc.

It was believed uniformly that Indian philanthropists would have to take a more proactive role not just through their grants but also through their voice, platforms, and influence. Many interviewees spoke about the far-reaching effect that this would have on the sector.

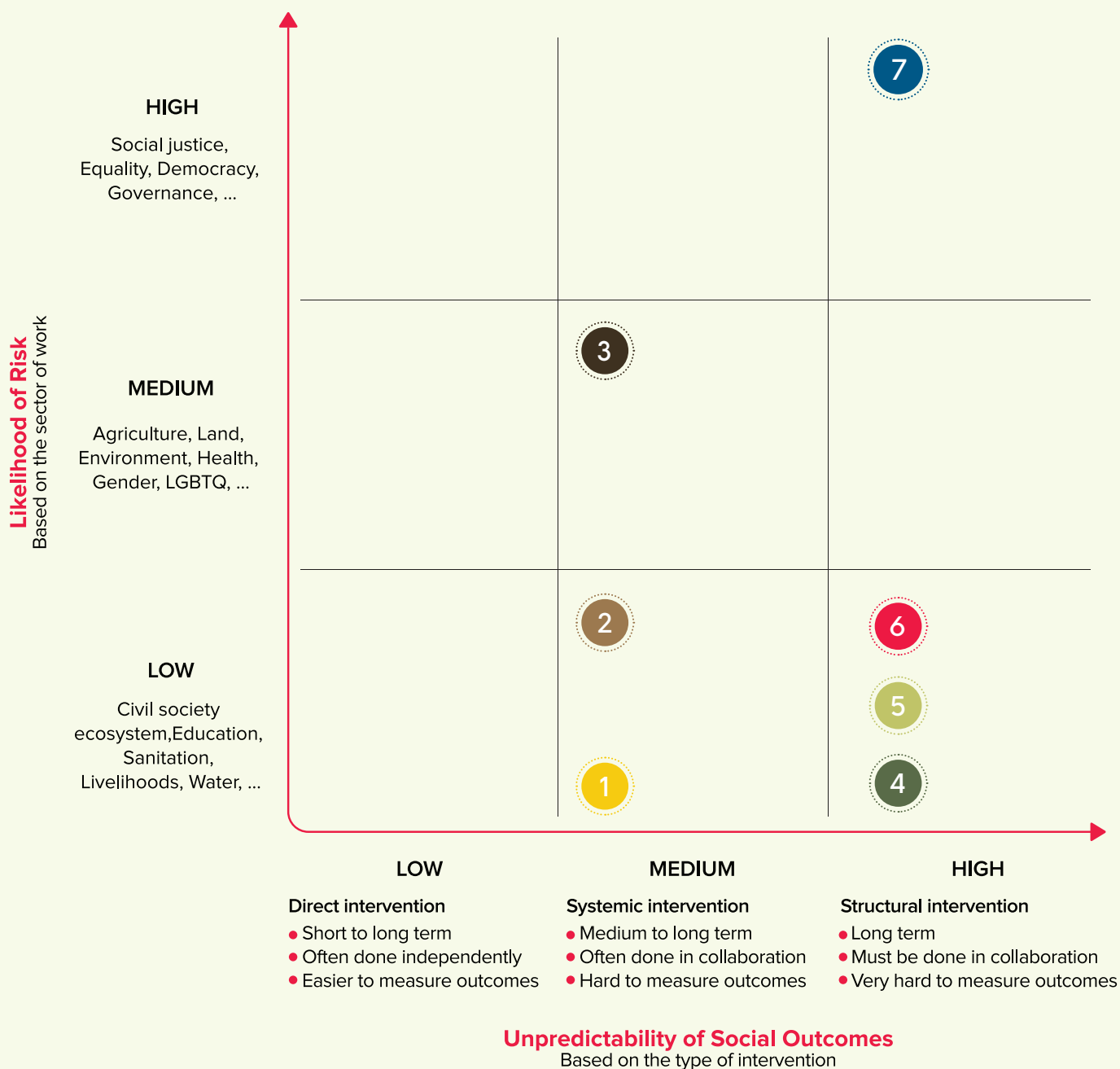
5

Emergency pool funds for organisations that have lost FCRA registration

Set up an emergency fund, either independently or with other philanthropies to support organisations that have been impacted by FCRA. The emergency fund can support organisations through untethered grants in the immediate (6 months) to short term (6-18 months) to continue their projects while new sources of funding are found.

What Indian philanthropists can do over the next few years to effectively support rights and advocacy organisations

Over the medium and long term, philanthropists have a critical role in helping build the civil society space so that organisations of all kinds can flourish, find support and have the flexibility and freedom to do their work. Interviewees also felt that there was a need to focus on structural change, which would require a greater investment of time and money from Indian philanthropists, thus reflecting a fundamental change in strategies for some funders.



(Risk can be perceived as business or reputational, including potential legal backlash as well as impact on existing partners)

1

Develop mechanisms to better measure rights-based work

Support the creation of frameworks and tools to better measure the progress and impact of rights and advocacy work.

2

Build capacities of social organisations

Invest in grantees so that they can develop strategic plans, build stronger teams, and raise funds from multiple domestic sources.

3

Develop a media strategy to emphasise the value of civil society

Inform the public of the value of civil society, highlight important work, and emphasise why social organisations need to be supported.

4

Fund advocacy with the government to make giving more attractive in India

Encourage more philanthropy by supporting taxation policies that make it more attractive for individuals in India to donate money.

5

Build the civil society ecosystem

Build an ecosystem for rights and advocacy work by supporting re-grantors who can help bridge the trust deficit between donors and social organisations, think-tanks who can regularly create knowledge on the sector, and platforms that can provide opportunities for collaboration and crowdfunding.

6

Add rights-based approaches to grant portfolios

In addition to service delivery interventions in sectors of interest, expand grant portfolios to include some rights and advocacy work.

7

Fund research and advocacy for an improved FCRA

Provide support to policy reform efforts to ensure that civil society operates in a fair, just and open environment, with access to legal recourse.

Collaboration

Indian philanthropists need to work collaboratively to effectively support social organisations that are doing critical work. Besides the sharing of expertise and funding, philanthropic collaboration came up repeatedly as a means to reduce risk. Globally, philanthropic collaborations are being discussed as a means of reducing risk for investments in advocacy work³⁵. Furthermore,

A.

Indian funders who are unable to take on more risk, could pledge to take over the low-risk grants from the portfolios of their peers who have a higher risk appetite. This would free up the latter's capital for more rights and advocacy work.

B.

Similarly, foreign funders who are susceptible to actions under FCRA could take up low-risk grants from Indian funders and hand over the rights and advocacy work that Indian funders could support without the restrictions of FCRA.



Appendix

NAME	Organisation
Aakar Patel	Amnesty International
Aditya Srivastava, Anamika Mishra	CSO Support Cell
Ajay Sud	CIDS
Amit Chandra	Bain Capital
Amitabh Behar	OXFAM
Ananthapadmanabhan G	Azim Premji Philanthropic Initiatives
Anu Aga	Thermax Foundation
Ashish Dhawan	Central Square Foundation
Biraj Patnaik	Amnesty International
Debasish Mitter	Michael and Susan Dell Foundation
Dunu Roy	Hazard Center
Edwin Huizing	Hivos
Gagan Sethi	Jan Vikas
Gautam John	Nilekani Philanthropies
Harsh Jaitli	VANI
Henri Tiphagne	People's Watch
Maja Daruwala	Commonwealth Human Rights Initiative
Moutushi Sengupta	MacArthur Foundation
N Devadasan	Institute for Public Health
Noshir Dadrawala	Centre for Advancement of Philanthropy
Pradeep Nair	Ford Foundation
Puja Marwaha	CRY
Rajesh Srinivasan	Sangama
Ramesh Singh	Greenpeace
Rishabh Lalani	Independent Consultant
Sanjay Agarwal	Sanjay Aditya Associates
Sanjay Patra	Financial Management Services Foundation
Shireen Vakil	Tata Trusts
Sunil Abraham	Center for Internet and Society
Vinay Viswanatha	Open Society Foundation
Willy	Indian Social Action Forum

Note: Three of the people interviewed did not want their names to be mentioned in this report.

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