

SHADOW  
REPORT:  
CIVIL SOCIETY  
PERSPECTIVES  
FOR THE FATF MUTUAL  
EVALUATION REVIEW  
OF INDIA

October 2023

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## Glossary

FATF	Financial Action Task Force
MER	Mutual Evaluation Report
FCRA	Foreign Contribution (Regulation) Act
UAPA	Unlawful Activities (Prevention) Act
PMLA	Prevention of Money Laundering Act
NIA	National Investigation Agency
ED	Enforcement Directorate
CBI	Central Bureau of Investigation
NPO	Non-Profit Organization
UN	United Nations
APG	Asia Pacific Group
NRA	National Risk Assessment
CSR	Corporate Social Responsibility
IT	Income Tax
UNICEF	United Nations International Children's Emergency Fund
ICCPR	International Covenant on Civil and Political Rights
GoI	Government of India
MHA	Ministry of Home Affairs
ECIR	Enforcement Case Information Report
IHRL	International Human Rights Law

## Foreword by Global NPO Coalition

This shadow report has been drafted for the consideration of the Financial Action Task Force (FATF). It highlights the fact that FATF's Recommendation 8 (R8) is being misused by the Government of India to prevent Indian civil society from discharging its duty for the benefit of the most vulnerable and marginalized people of India. The report brings to FATF's attention the truth that Indian laws and agencies meant to tackle money laundering and terrorist activities are in fact being misdirected by the state to curb legitimate and essential work undertaken by Indian civil society.

### **No evidence of a risk-based approach**

A terrorist financing risk assessment of the NPO sector is a necessary precondition of compliance with R8 in order to ensure that measures are targeted and proportionate. However, there is no evidence that the authorities have undertaken a risk assessment, as required by 8.1(a), (b) and (c) of the FATF Methodology. We recognize that it is possible that a risk assessment has been completed but not made public. However, if a risk assessment has been undertaken, there have been no efforts to communicate the nature of that risk to NPOs (8.1(b)); or to work with NPOs to identify measures to mitigate those risks (8.2(c)).

In the absence of any direction from the authorities, we undertook our own analysis of the Terrorist Financing (TF) and Money Laundering (ML) risks. This included a survey of 748 NPOs; one-to-one interviews with not-for-profit sector experts, including the head of NPOs, program managers overseeing the day-to-day functioning of NPOs, international and domestic donors, and civil servants and bureaucrats who served in the government; and a review of publicly available newspaper articles, human rights reports, academic literature, and other studies on the existing legal and regulatory frameworks governing NPOs in India.

The survey revealed that a clear majority of NPOs (58.5%) were unaware that the country was undertaking an NRA, and an overwhelming 96.38% indicated that they were not contacted by the government to participate in the NRA. 98.79% indicated that the government had never contacted them for advice or guidance on how to reduce risk. When asked for their assessment of the risk, there was a very strong consensus that the ML/TF risks to NPOs are low. A clear majority (86.3%) of NPOs do not see their NPOs as being at risk for terrorist financing activities. Only 6.1% perceived their NPO to be at some risk (high or medium). Similarly, a clear majority (84.5%) of NPOs do not see their NPOs as being at risk for money laundering activities. Only 4.2% perceived their NPO to be at some risk (high or medium).

### **Indiscriminate application of measures, hampering legitimate NPO activity**

The authorities are indiscriminate in their application of restrictive measures on NPOs for AML/CFT purposes. The following laws were significantly amended in response to India's Mutual Evaluation of 2010, and are now being applied in ways that significantly limit the activities of India's NPOs.

- Since 2010, the Prevention of Money-Laundering Act, 2002 has been used for politically motivated prosecutions of critical civil society organizations, including Amnesty International, religious institutions and Churches, and prominent human rights defenders.
- The Foreign Contribution (Regulation) Act, 2010 has been expanded exponentially, with the number of refused licenses rocketing from 41 in 2010 to 20,693 NGOs in 2023 (56% of the total) – this represents an increase of refusals of 50,000%.

The requirements of FATF R8 only apply to those NPOs that are at-risk of terrorist financing. It follows that either this determination has not been made, or India has concluded that the at-risk NPOs consist of the majority of foreign-funded NPOs and international human rights organizations. Despite extensive research, we have found no evidence to support this proposition.

Further, such a suggestion is at best inconsistent with the findings of other published risk assessments and FATF's own conclusions. The Typologies Report of 2014, the Best Practices Paper of 2015, and the draft Best Practices Paper of 2023 all conclude that expressive NPOs (including human rights organizations) present no terrorist financing risk. Indeed, the 2023 draft of the Best Practices Paper states that such NPOs should not even be considered as being within the FATF definition of NPO.

Furthermore, it is simply not credible that 56% of applicants for an FCRA license are so at risk as to justify such a significant constraint on their activities.

### **Conclusion: a disproportionate approach of global significance**

As noted above, the AML/CFT measures taken by the government of India are applied in ways that significantly inhibit legitimate NPO activity, and cannot therefore be considered compliant with R8 or Immediate Outcome (IO)10. It is recognized that the requirements of FATF are broad and complex and that authorities can sometimes inadvertently 'over comply' in an effort to ensure that the minimum standards are met. Whilst such an approach is not compliant with R8 or IO.10, it would at least represent an honest mistake.

However, when placed within the context of India's wide and sustained campaign to stifle the civil society sector, a benign interpretation of India's actions is not possible. We have attached as an annex to this document a shadow risk assessment report which includes further analysis of the information above, as well as examples of the broader repression of civil society on spurious security grounds.

The considerable efforts by civil society in India to educate itself on the FATF requirements reflect our recognition of the importance of FATF's work. We whole-heartedly support FATF's commitment to risk-based measures which reduce terrorist financing risks whilst protecting the legitimate and vital work of the civil society.

We therefore conclude with regret that the disproportionate and excessive measures adopted by the government of India in the name of meeting FATF requirements may undermine the legitimacy of FATF. This is compounded by India's status as a full member of FATF and as the self-proclaimed leader of the global South.

## Executive Summary

This report aims to apprise the evaluators conducting India’s Mutual Evaluation Review (MER), scheduled in November 2023, of the nefarious ways the Indian government has adopted to misuse the Financial Action Task Force (FATF) requirements and standards to stifle civic space in India. Over the last decade, the Indian government has crafted or made more stringent several regulatory frameworks and laws to comply with its responsibilities as a member of FATF.<sup>1</sup> These include the Foreign Contribution (Regulation) Act (FCRA), the Prevention of Money Laundering Act (PMLA), the Unlawful Activities (Prevention) Act (UAPA), and investigating agencies like the Enforcement Directorate (ED), the National Investigation Agency (NIA) and Central Bureau of Investigation (CBI), which have often been used to criminalize NPOs. Each of these laws and regulatory agencies has been deployed in bad faith and used to crush free speech, curb, hinder, and reduce the ability of NPOs to provide much-needed services, especially for the most vulnerable sections of the Indian citizenry. For example, the Indian government canceled the license of more than 20,000 NPOs using the provisions of the FCRA, which barred them from receiving foreign funds, and effectively destroyed their ability to deliver services.<sup>2</sup> Similarly, the draconian provisions of the UAPA and PMLA have been used to arrest and detain civil society actors and human rights defenders who are critical of the policies of the government, prompting the (now) Chief Justice of India to note that “UAPA should not be misused for stifling dissent.”<sup>3</sup> The devastating impact of the misuse of these laws on Indian NPOs is fully within the ambit of “unintended consequences resulting from the FATF standards and their implementation.” It specifically runs contrary to the mandate of Recommendation 8, which requires countries to avoid taking measures that disrupt or discourage legitimate charitable activities of NPOs. Unfortunately, India remains one of the most glaring examples of misusing FATF regulations to disrupt legitimate NPO activity.

This report finds multiple counts on which India is non-compliant with FATF standards and has failed to act upon the recommendations made by FATF in the 2010 Mutual Evaluation Report (MER) of India.

- a) *No Sectoral Risk Assessment of NPOs*: India’s 2010 MER report noted that there was no comprehensive assessment of all financial institutions in India.”<sup>4</sup> It also specifically recommended India undertake a detailed risk assessment of the NPO sector for terrorist financing.<sup>5</sup> However, to date, there is no publicly available report or study carried out by the Indian government identifying such risk in the NPO sector. Instead, the Indian government does not follow targeted risk-based monitoring of NPOs, as recommended by FATF. It follows a one-size-fits-all approach that targets the entire NPO sector based on unproven or frivolous

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<sup>1</sup> Chapter 2 of this report discusses in detail how FATF played a significant role in the formulation and amendment of the laws in India.

<sup>2</sup> While 38,591 NPOs were registered under FCRA as per the 2010 MER, the current number is less than half i.e 16,547 as per the GoI data, available at [https://fcraonline.nic.in/fc\\_dashboard.aspx](https://fcraonline.nic.in/fc_dashboard.aspx). See also, The Wire Staff, *As Three More NGOs Lose FCRA Licence, a Relook at the Govt’s Funding Restrictions*, The Wire, 3 July 2023, <https://thewire.in/rights/as-three-more-ngos-lose-fcra-licence-a-relook-at-the-govts-funding-restrictions>

<sup>3</sup> Gautam Doshi, *Data Dive: In Last 7 Years, 10,552 People Arrested Under UAPA, 253 Convicted*, Factchecker, 12 November 2021, <https://www.factchecker.in/data-dive/seven-years-uapa-cases-arrests-786935>

<sup>4</sup> FATF, Mutual Evaluation Report India, June 2010 (hereinafter 2010 MER), p.95

<sup>5</sup> *Ibid.*, p.254

claims.<sup>6</sup> Such targeting of NPOs runs contrary to the claims of the Indian officials, who during 2010 MER said that the risk of terrorist financing among NPOs in India is small.<sup>7</sup> This report based on the survey of a representative sample of registered NPOs in India shows that NPOs perceive the risk of money laundering and financing of terror as low, both for their own organizations as well as for NPOs all over India (section 3.1.1). This is also highlighted in section 3.2, where a senior executive working in the child rights sector put it succinctly, “*What risk of terror financing are they talking about?! The NGOs are constantly working with senior bureaucrats and law and order officials. With such close cooperation and interweaving with the government, how can there be any question of money laundering or terror financing?*” It has also remained non-transparent in its dealing with NPOs.<sup>8</sup>

- b) *None or Minimal Government Outreach to NPOs about risk:* The 2010 MER noted the government of India’s NPO sector review program was “perfunctory (3.5 pages), lacking sufficient detail to meet the requirements of criterion VIII.1.”<sup>9</sup> The report shows that only 3.61% of NPOs indicated that they were approached by the government for a risk assessment (section 3.1.2). The Indian government has also not conducted effective awareness programs for the NPO sector on how to prevent misuse of funds for terrorist financing. Consequently, not a single respondent in the survey was aware of any law or regulation that prevents the misuse of funds in the NPO sector.
- c) *Disproportionate regulation and arbitrary curbing of NPOs:* This report shows that the measures taken by the Indian government to regulate the NPO sector in India citing FATF recommendations are in bad faith as well as disproportionate resulting in a non-enabling environment for NPOs in India. As noted in Chapter 3, the government of India uses laws to justify extreme measures such as shutting down the NPOs, canceling their FCRA license, suspending/freezing bank accounts, registering false cases against civil society actors, etc. One prime example of the disproportionate measure taken by the Indian government is the 2020 amendment to FCRA law where “sub-granting” by FCRA-cleared organizations has been prohibited, which had damaging impact on grassroots NPOs.<sup>10</sup> This has had a severe impact on the access to resources for many smaller grassroots NPOs who relied on grants from FCRA organizations. The 2021 FATF stocktaking of unintended consequences of the FATF Standards has also acknowledged access to funds as a major constraint faced by the NPO.<sup>11</sup>

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<sup>6</sup> See for instance the claim by the Prime Minister that he is a victim of a conspiracy by NGOs in India, Meera Mohanty, *PM Narendra Modi says he is victim of NGOs’ conspiracy*, The Economic Times, 21 February 2016, <https://economictimes.indiatimes.com/news/politics-and-nation/pm-narendra-modi-says-he-is-victim-of-ngos-conspiracy/articleshow/51081446.cms?from=mdr>. Also, see the case of a leading NPO (Save the Children) which was targeted due to its services not being liked by the government. India CSR, *Save The Children’s Indian wing Bal Raksha Bharat Loses FCRA Permit*, IndiaCSR, 5 August 2023, <https://indiacsr.in/bal-raksha-bharat-loses-fcra-permit/>

<sup>7</sup> 2010 MER, p.217

<sup>8</sup> Zafar Aafaq, *Home ministry dodges query on cancelling foreign contribution licences of non-profits*, Scroll.in, 8 July 2023, <https://scroll.in/article/1052020/home-ministry-dodges-query-on-cancelling-foreign-contribution-licences-of-non-profits>

<sup>9</sup> 2010 MER, p.215

<sup>10</sup> ICNL, *Briefer: India Foreign Contribution (Regulation) Act (FCRA)*, 7 July 2021, p. 8, <https://www.icnl.org/wp-content/uploads/FCRA-Amendments-Briefer-7-7-21.pdf>

<sup>11</sup> FATF, *High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards*, 27 October 2021, p.4

This is also highlighted in Chapter 3, particularly how during the COVID-19 pandemic, the Indian government blocked access to funds for NPOs which restricted them from supplying essential services like oxygen cylinders and medical kits to those in need, ultimately causing deaths of thousands of people. This is only one of the many examples of how the disproportionate measures of the Indian government have adversely impacted India's vast NPO sector which has been providing a wide range of important services, especially for the vulnerable, for decades.

- d) *Ineffective risk mitigation efforts*: Additionally, the report finds the measures taken by the Indian government are ineffective in preventing the risk of terrorist financing and money laundering within NPOs. It is pertinent to note that during the 2010 MER, the government acknowledged there was a significantly small risk of terrorist financing within NPOs in India.<sup>12</sup> The 2010 MER also noted between 2005 to 2010, the CBI, India's top investigation agency, registered cases against only 16 NPOs.<sup>13</sup> The outcome of these cases remains unknown to date. The survey findings (section 3.1.1) also indicate that NPOs believe there is a low risk of terrorist financing in India. Further, the recent surge in cases of cancellation of FCRA licenses of Indian NPOs is also on account of vague, technical, and administrative reasons.<sup>14</sup> Despite a significantly low risk of terror financing and money laundering within NPOs the Indian government has disproportionately allocated its resources to target NPOs. On the other hand, the government ignores friendly corporate actors, accused of money laundering and causing the largest economic scandals in the history of modern India.<sup>15</sup> Such misallocation of resources is also an important reason for the ineffectiveness of the legal framework for preventing money laundering and terrorist financing risk in India. This report establishes that the Indian NPO sector is vigilant and takes effective measures to prevent money laundering and terrorist financing risks. The survey findings show an overwhelming majority of NPOs (81.55%) indicate that they do due diligence to prevent the misuse of funds, and close to two-thirds of NPOs (64.39%) do due diligence because they think it is a good practice (as opposed to complying with donors, banks, or the government's demands). Thus, the recent changes in laws like FCRA, PMLA, and UAPA under the pretext of ensuring the effectiveness of the FATF standards have not only failed to prevent the risk of terror financing but have been used as a tool by the Indian government to stifle civil society space in India.

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<sup>12</sup> 2010 MER, p.217

<sup>13</sup> Ibid., p.216

<sup>14</sup> Mani Chander, *An Arbitrary Crackdown On Foreign Donations Cripples NGOs At A Time When India Needs Them Most*, 27 January 2022, <https://article-14.com/post/an-arbitrary-crackdown-on-foreign-donations-cripples-ngos-at-a-time-when-india-needs-them-most-61f20bac480a9>. Also see, Scroll, *Commonwealth Human Rights Initiative says Centre's allegations on FCRA violation were vague*, Scroll.in, 28 April 2022, <https://scroll.in/latest/1022863/commonwealth-human-rights-initiative-says-centres-allegations-on-fcra-violation-were-vague>

<sup>15</sup> Anand Mangnale, Ravi Nair, and NBR Arcadio, *Documents Provide Fresh Insight Into Allegations of Stock Manipulation That Rocked India's Powerful Adani Group*, OCCPR, 31 August 2023, <https://www.occrp.org/en/investigations/documents-provide-fresh-insight-into-allegations-of-stock-manipulation-that-rocked-indias-powerful-adani-group>



Therefore, we demand from the FATF to:

- i. Call upon India to stop misusing FATF standards to target legitimate NPOs.
- ii. Direct India to revise restrictive provisions of the FCRA, PMLA, and UAPA that violate the mandate of Recommendation 8 in consultation with NPO actors.
- iii. Direct India to immediately publish the National Risk Assessment Report.
- iv. Direct India to conduct a thorough sectoral risk assessment of the NPO sector and publish such a report online.
- v. Direct India to undertake a comprehensive outreach with the NPO sector explaining the risk of terror financing and money laundering and suggesting ways to address it.

# 1 Overview of Report

## 1.1 Objectives and Scope of Report

This report has been prepared as a shadow report to assess the Indian government's compliance with FATF Recommendations, especially Recommendation 8, in view of the upcoming Mutual Evaluation Review in November 2023. The report presents the perspective of Indian NPOs and their understanding of FATF's Anti-Money Laundering / Combatting the Financing of Terrorism (AML/CFT) framework. It highlights the unintended consequences of FATF recommendations for Indian NPOs and how they have led to the disruption of legitimate charitable activity. The report will apprise the MER team of the prevailing situation in India and will also provide insights into how the Indian government has stifled civic space in India under the pretext of complying with FATF standards.

The report's scope is limited to Indian NPOs and the AML/CFT framework in India. It begins by laying out the legal and regulatory framework that governs NPOs in India and the role of FATF in bringing about changes in the laws governing NPOs. It then presents the findings of a survey examining NPOs' own assessment of the risk of money laundering and financing of terrorism, the extent of the due diligence they undertake to mitigate these risks, and their awareness of government outreach and education regarding these risks. This is followed by case studies of three areas of NPO work in India—child rights, the environment, and COVID-19 relief. The cases reinforce the survey's findings that there has been little to no outreach to NPOs by the government to inform them about the regulations or solicit their involvement in self-regulation. They further provide compelling evidence of the unintended consequences of the FATF recommendations through the use of regulatory laws and mechanisms to complicate and hinder the legitimate work of NPOs, target entire groups of NPOs, and create a deep sense of fear within Indian civil society as a whole. The outcomes of this include the destruction of services vital to the protection of the most vulnerable members of Indian society such as children, the silencing of watchdog NPOs in crucial areas such as environmental destruction, and the criminal imposition of barriers preventing NPOs, with their wide reach across Indian society, from accessing funds that could have saved thousands of lives during the second wave of COVID-19, a time of extreme national tragedy in the country. Other unintended consequences, such as the impact on the NPO sector as a large source of employment in a country where unemployment and economic precarity is one of the central challenges, while not a direct finding of this report, should also be considered.<sup>16</sup> The report concludes with recommendations for FATF and for the Government of India regarding changes to the AML/CFT regulatory framework in India.

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<sup>16</sup> Rajika Seth & Smarinita Shetty, *Who loses when FCRA licences get cancelled?*, IDR, 11 August 2023, <https://idronline.org/article/fundraising-and-communications/who-loses-when-fcra-licences-get-cancelled/>

## 1.2 Methodology

The report is based on three sets of data:

- i. A survey of India's NPOs to gather data on the self-assessment, awareness, and mitigation efforts of Indian NPOs with regard to the risk of money laundering and financing of terrorist activities, as well as an assessment of the extent of outreach by the Indian government on these topics. The survey was based on a large, randomized sample of more than 150,000 NPOs who had officially registered on the government site NGO Darpan. The survey was administered to a representative sample of 748 NPOs. The respondents ranged in size from small and medium to large NPOs, from almost every state of India, and were overwhelmingly involved in providing services or advocacy to marginalized and vulnerable populations. The survey questions can be found in Appendix 1.
- ii. One-on-one interviews with NPO sector experts, including the heads of NPOs; project and program managers overseeing the day-to-day functioning of NPOs; international and domestic donors; and current and retired civil servants, to explore the unintended consequence of FATF standards on the functioning of NPOs. These interviews form the basis of case studies examining the impact of FATF-influenced regulatory regimes on child rights, environmental NPOs, and access to resources during the COVID-19 pandemic. Respondents reported significant fears of being targeted by authorities for participation in this study. In order to address their security concerns, respondents have been anonymized.
- iii. Publicly available newspaper articles, human rights reports, academic literature, and other studies on the existing legal and regulatory frameworks governing NPOs in India.

## 2 Background

The Financial Action Task Force is an intergovernmental organization established in 1989 by the Group of Seven (G-7) countries to combat money laundering and financing of terrorism. Though its initial mandate was limited to controlling money laundering through the drug business, post 9/11, its ambit has widened to include combatting the financing of terrorism (CFT). Anti-money laundering (AML) and CFT remain the core focus of FATF today. FATF's main contribution is its set of "40 Recommendations," which provide a comprehensive framework for countries to strengthen their legal, regulatory, and operational framework against money laundering and terrorist financing. Another important role of FATF is its listing criteria, which play a crucial role in identifying jurisdictions with deficiencies in their AML and CFT regimes. Based on these criteria, countries are assessed to determine if they pose a risk for money laundering and terrorist financing, and put on a grey or black list. The grey list, formally known as the "list of jurisdictions under increased monitoring," serves as a warning to countries, with recommendations that they address the deficiencies identified. Similarly, the black list, formally known as the "list of high-risk jurisdictions subject to a call for action," indicates non-compliance with FATF standards and severe deficiencies in their AML/CFT regimes. The listing of countries by FATF has severe financial repercussions, as the international community, including banks and financial institutions, apply enhanced due diligence measures. It has the potential to adversely impact foreign investments in a country. Therefore, countries have followed FATF standards to make necessary changes in their legal, regulatory, and operational measures to become fully compliant.

FATF currently has 38 members, which include 36 countries including India, the European Union, and the Gulf Cooperation Council.<sup>17</sup> India was granted FATF membership in 2013 after it made significant changes to its legal and regulatory framework as suggested in its 2010 MER conducted by FATF.

### 2.1 FATF and Non-Profit Organizations

Post 9/11, FATF revised its recommendations, and nine special recommendations were added to the initial forty. Out of the newly added nine, Special Recommendation VIII specifically dealt with NPOs. It noted that NPOs were "particularly vulnerable to terrorist financing abuse" and recommended a review of the laws and regulatory framework governing NPOs.<sup>18</sup> In 2008, FATF published a typology report focusing on the funding pattern of terrorist organizations, noting that "charities are attractive to terrorist networks as a means to move funds."<sup>19</sup> Further in 2014, FATF published another comprehensive typology report on the risk of terrorist abuse in the NPO sector.

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<sup>17</sup> Russia was suspended as a member country in February 2023.

<sup>18</sup> Text of the SR VIII reads: Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organizations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organizations posing as legitimate entities;
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organizations.

<sup>19</sup> FATF, *Terrorist Financing Typologies Report*, 29 February 2008, p.25,

[https://eurasiangroup.org/files/FATF\\_docs/FATF\\_Terrorist\\_Financing\\_Typologies\\_Report.pdf](https://eurasiangroup.org/files/FATF_docs/FATF_Terrorist_Financing_Typologies_Report.pdf)

This report found that the diversion of NPO funds by terrorist entities was a dominant method of abuse.<sup>20</sup> However, such generalizations and the one-size-fits-all approach were criticized and it was noted that SR VIII was a danger to civil society organizations because it enabled governments to bring in repressive laws under the garb of regulating NPOs.<sup>21</sup> After a sustained campaign by civil society organizations, FATF amended what had by now become Recommendation 8, stating in an Interpretive Note in 2016 that not all NPOs inherently posed a risk of terror financing.<sup>22</sup> It called upon countries to follow a targeted and risk-based approach while regulating NPOs.<sup>23</sup> Unfortunately, FATF's clarification and recommendations through its Interpretive Note have fallen through the cracks. The Government of India continues to misuse laws like the FCRA, PMLA, and UAPA to subject NPOs to excessive scrutiny, criminalize NPO activity, embroil NPO leaders in court cases and lengthy investigations, and incarcerate human rights activists without recourse to bail.

## 2.2 Legal Framework regulating NPOs in India

The primary legislation regulating cross-border funding for NPOs in India is the FCRA. The objective of this law is to regulate the utilization of foreign contributions by individuals or associations and prohibit its use for any activity which is detrimental to the national interest. The parliamentary debate during the passage of this Act was focused on the regulation of NPOs. The Minister, while introducing this Act in Parliament, said it was being done to provide a framework for the transparent regulation of foreign contributions, given that one-half of NPOs did not report their foreign contributions.<sup>24</sup> For this reason, the Minister advocated for a stricter law. At that time, this was conceived of as a temporary measure, with the potential of a more liberal law once most organizations started reporting foreign contributions.<sup>25</sup> The 2010 Act provides for the mandatory registration of NPOs in order to receive foreign contributions.<sup>26</sup> The Act limits the validity of the registration certificate issued to NPOs to five years, after which they must apply for a renewal of the license.<sup>27</sup> Chapter IV of the Act lays down provisions relating to management of accounts and finances by NPOs and chapter V includes provisions for inspection, search, and seizure when any malpractice is reported.

The focus on NPOs under the 2010 Act is noteworthy because when the FCRA was enacted in 1976 for the first time, there was no restriction on NPOs receiving foreign contributions and the main focus of the Act remained on the prohibition of foreign funds in domestic elections.<sup>28</sup>

<sup>20</sup> FATF, *Risk of Terrorist Abuse in Non-Profit Organisations*, June 2014, p.1,

[https://eurasiangroup.org/files/FATF\\_docs/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf](https://eurasiangroup.org/files/FATF_docs/Risk-of-terrorist-abuse-in-non-profit-organisations.pdf)

<sup>21</sup> Ben Hayes, *Counter-terrorism, 'policy laundering' and the FATF: legalizing surveillance, regulating civil society*, Transnational Institute / Statewatch, 2012, p.36,

<sup>22</sup> The FATF Recommendations: International Standards on Combating Money Laundering and The Financing of Terrorism & Proliferation. Updated March 2022, p.60

<sup>23</sup> Ibid.

<sup>24</sup> See Parliamentary Debates on Introduction of Foreign Contribution Regulation Bill, 2010 in Sanjay Agarwal, *AccountAble Handbook FCRA 2010: Theory and Practice* (AccountAid India, 2nd ed. 2012), p. 274/275, available at <https://sanjayaditya.com/wp-content/uploads/AccountAble-Handbook-FCRA-2010.pdf>

<sup>25</sup> Ibid.

<sup>26</sup> See Section 11 of the FCRA, 2010

<sup>27</sup> See Section 12 (6) and Section 16 of the FCRA, 2010

<sup>28</sup> Sanjay Agarwal, *AccountAble Handbook FCRA 2010: Theory and Practice* (AccountAid India, 2nd ed. 2012), p.22

Ironically, in March 2018, political parties were made explicitly exempt from scrutiny of funds they received from abroad through the passage of the Finance Bill 2018, which was passed without debate.<sup>29</sup> This shift—from prohibiting the use of foreign contributions in elections to regulating NPOs—can be well understood by looking into how the Indian government perceives NPOs. Former Prime Minister Manmohan Singh accused NPOs of blocking the building of a nuclear power plant in India.<sup>30</sup> Just over a year later, the government used its new FCRA law to target six NPOs involved in organizing protests against the then-proposed Koodankulam nuclear plant. The Ministry of Home Affairs moved the Intelligence Bureau to investigate these NPOs<sup>31</sup> and cancelled the FCRA licenses of three of the NPOs.<sup>32</sup> The attack on NPOs in India has intensified since the Modi government has come to power.<sup>33</sup> Prime Minister Narendra Modi has even accused NPOs of conspiring to remove him from office.<sup>34</sup>

In this backdrop in 2020, the law was further amended to prohibit organizations from sub-granting to other organizations, reduce the cap on any administrative expense to 20%, and mandate organizations to open a bank account in a specific branch of the State Bank of India, in New Delhi.<sup>35</sup> This amendment, which came into force amidst the COVID-19 pandemic, has been criticized by civil society organizations for posing a threat to freedom of association and restricting NPOs from accessing and utilizing resources.<sup>36</sup>

International concern about the use of the FCRA to obstruct civil society's access to foreign funding in ways that violate international human rights norms and standards has been growing. In 2016, three United Nations human rights experts called on the Government of India to repeal the FCRA, saying, “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>37</sup> FATF recommendations

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<sup>29</sup> The Hindu, *Lok Sabha passes Bill to exempt political parties from scrutiny on foreign funds, without debate*, 18 March 2018, <https://www.thehindu.com/news/national/lok-sabha-passes-bill-to-exempt-political-parties-from-scrutiny-on-foreign-funds-without-debate/article23285764.ece>

<sup>30</sup> Reuters, *India's PM says American NGOs fund nuclear protests*, 24 February 2012, <https://www.reuters.com/article/india-politics/indias-pm-says-american-ngos-fund-nuclear-protests-idINL4E8DO65C20120224>

<sup>31</sup> India Today, *Koodankulam row: Suspecting foreign hand, govt launches probe into 6 NGOs*, 18 December 2011, <https://www.indiatoday.in/india/north/story/koodankulam-nuclear-plant-protests-foreign-hand-149097-2011-12-17>

<sup>32</sup> India Today, *Govt justifies PM's US NGOs barb over anti-Koodankulam protests*, 25 February 2012, <https://www.indiatoday.in/india/south/story/pm-us-ngos-anti-koodankulam-nuclear-protests-94155-2012-02-24>

<sup>33</sup> Aakar Patel, *Modi's Unceasing War on NGOs, Civil Society, Activists*, National Herald, 25 September 2022, <https://www.nationalheraldindia.com/opinion/modis-unceasing-war-on-ngos-civil-society-activists>

<sup>34</sup> Meera Mohanty, *PM Narendra Modi says he is victim of NGOs' conspiracy*, The Economic Times, 21 February 2016, <https://economictimes.indiatimes.com/news/politics-and-nation/pm-narendra-modi-says-he-is-victim-of-ngos-conspiracy/articleshow/51081446.cms?from=mdr>

<sup>35</sup> ICNL, *Briefer: India Foreign Contribution (Regulation) Act (FCRA)*, 7 July 2021, p. 8

<sup>36</sup> Ibid.

<sup>37</sup> United Nations Human Rights Office of the High Commissioner, *UN rights experts urge India to repeal law restricting NGO's access to crucial foreign funding*, 16 June 2016, <https://www.ohchr.org/en/press-releases/2016/06/un-rights-experts-urge-india-repeal-law-restricting-ngos-access-crucial#:~:text=%E2%80%9CWe%20are%20alarmed%20that%20FCRA,rights%20defenders%2C%20Michel%20Forst%2C%20on>

have also been invoked in amendments to other legislations (PMLA and UAPA) used to monitor and regulate the activity of NPOs, even if not concerned exclusively with them.

### 2.3 Role of FATF in amendment of laws regulating NPOs in India

The FATF has played a significant role in the amendment of laws regulating NPOs in India. In 2010 MER, FATF made several recommendations for the improvement of the AML/CFT system in India. The 2010 MER specifically found India non-compliant (NC) with Special Recommendation VIII relating to NPOs. It also found India partially compliant (PC) with Special Recommendation II relating to terrorist financing and Recommendation 3 relating to confiscation of property laundered. Consequently, it recommended India take measures to ensure compliance with FATF recommendations and specifically suggested amendments to UAPA and PMLA. In response, India developed a detailed Action Plan to improve and strengthen its AML/CFT regime and regularly update FATF on progress made. In 2013, satisfied with India's progress, FATF removed the country from its regular follow-up process.<sup>38</sup> The Indian government has strongly relied on FATF recommendations to bring about changes in laws and introduce stricter provisions, which are not risk-based. For instance, the Unlawful Activities (Prevention) Act's 2011 amendment bill states in its statement of objects and reasons:

*“On the basis of commitment made by India at the time of admission to the said Financial Action Task Force, various legislative and other legally binding measures were required to be taken on a medium-term basis, i.e., by 31st March 2012. These recommendations were examined and it is proposed to amend the Unlawful Activities (Prevention) Act, 1967 to make it more effective in prevention of unlawful activities and dealing with terrorist activities.”*

Similarly, PMLA was also amended in 2012 and 2018, and FCRA in 2020 to ensure compliance with FATF recommendations. These changes have often then been used by the Government to target and arm-twist political leaders from rival political parties, incarcerate human rights defenders, and restrict the functioning of NPOs in India. Any challenge to such changes in law before the Supreme Court of India has also been vehemently opposed by the Government of India citing its commitment to FATF standards.<sup>39</sup>

#### 2.3.1 FATF & FCRA

The Government of India has made explicit reference to FATF recommendations in its amendments to, and implementation of, the FCRA.<sup>40</sup> In 2010 MER, India was rated Non-

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<sup>38</sup> FATF, Mutual Evaluation of India, 8th FOLLOW-UP REPORT, June 2013, <https://www.fatf-gafi.org/en/publications/Mutualevaluations/India-fur-2013.html>

<sup>39</sup> See the Supreme Court Judgment on the constitutional challenge of certain provisions of PMLA, 2002 in *Vijay Madanlal Choudhary v Union of India*, Special Leave Petition (Cr.) No. 4634 of 2014

<sup>40</sup> See ICNL, Briefer: *India Foreign Contribution (Regulation) Act (FCRA)*, 7 July 2021, pg. 6. The sequence of events preceding the amendment to FCRA are as follows: “APG found India to be non-compliant in the area of non-profit regulation, with no effective outreach to or review of the non-profit organization (NPO) sector. FATF recommended that India undertake a comprehensive NPO sector review, as well as a detailed risk assessment of the sector for terrorist financing. The US government was also increasingly impatient with India's progress on AML/CT issues, adding

Compliant (NC) on the Special Recommendation VIII. The review raised concerns over the monitoring and supervision of the NPO sector in India because the monitoring was only limited to the small percentage of organizations registered under the FCRA and the Income Tax Act, leading the review to conclude that the financial resources of a significant portion of India's NPO sector were not being monitored.<sup>41</sup> Therefore, the 2010 MER recommended that the country, among other things, undertake a detailed risk assessment of the sector for terrorist financing, undertake measures to maintain information on the identity of the persons managing NPOs and extend monitoring of NPOs other than those registered under the Income Tax Act and the FCRA.<sup>42</sup> Further, in its 2013 MER, FATF noted that though India had made some progress, its level of compliance was not yet equivalent to a Largely Compliant (LC) rating.<sup>43</sup>

It is against this backdrop that the 2020 changes to the FCRA and the rising cases of attack on civil society organizations must be analyzed. Since 2014, such attacks have intensified and civil society groups have raised concerns over the government's approach of canceling NPO licenses.<sup>44</sup> As of July 3, 2023, FCRA licenses of at least 20,693 NGOs had been cancelled, which left 16,257 NPOs with active FCRA licenses.<sup>45</sup> Such a high rate of cancellation of licenses is noteworthy in contrast to the data in the 2010 MER, which showed a low rate of actions taken against NPOs in India—41 NPOs were prohibited from receiving foreign funds, accounts of 11 NPOs were frozen, and the Central Bureau of Investigation registered cases against 16 NPOs between 2005 and 2010.<sup>46</sup> The misuse of the FCRA to target civil society actors since 2014 has received global attention, and UN experts and prominent human rights organizations have appealed to the government of India to stop misusing the foreign funding law to stifle civil society in India.<sup>47</sup>

### 2.3.2 FATF & PMLA

Compliance with FATF standards played a pivotal role in the amendment of PMLA. In its 2010 MER, India was adjudged not to be fully compliant with the money laundering standards because the concealment, possession, disposition, and use of the proceeds of crime were not criminalized under the existing law.<sup>48</sup> Thus, with a view to addressing these legal deficiencies as pointed out by FATF, the Prevention of Money-Laundering (Amendment) Act, 2012 was introduced by the government. A significant change was made in Section 3, which was amended to cover all activities relating to concealment, possession, acquisition, or use of the proceeds of crime and

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pressure to FATF's recommendations and supporting the enactment of the 2010 FCRA. Following a March 2011 US report which mentioned India's slow progress in updating FCRA, the FCRA Rules went into force in May 2011."

<sup>41</sup> 2010 MER, p.216

<sup>42</sup> 2010 MER, p.217, 218.

<sup>43</sup> 2013 MER, p.42

<sup>44</sup> Vidhi Doshi, *India accused of muzzling NGOs by blocking foreign funding*, The Guardian, 24 November 2016, <https://www.theguardian.com/global-development/2016/nov/24/india-modi-government-accused-muzzling-ngos-by-blocking-foreign-funding>

<sup>45</sup> The Wire, *As Three More NGOs Lose FCRA Licence, a Relook at the Govt's Funding Restrictions*, 3 July 2023, <https://thewire.in/rights/as-three-more-ngos-lose-fcra-licence-a-relook-at-the-govts-funding-restrictions#:~:text=Cancellation%20of%20the%20FCRA%20licence,while%2016%2C257%20NGOs%20are%20a%20active>.

<sup>46</sup> 2010 MER, p.216

<sup>47</sup> Human Rights Watch, *India Should Stop Using Abusive Foreign Funding Law*, 18 January 2022, <https://www.hrw.org/news/2022/01/18/india-should-stop-using-abusive-foreign-funding-law>

<sup>48</sup> 2010 MER, p.45



projecting or claiming it as untainted property, within the offense of money laundering.<sup>49</sup> Other provisions of the Act were also amended to broaden the scope of this law, which is considered violative of constitutional principles and procedural safeguards under criminal law jurisprudence.<sup>50</sup> Unfortunately, a challenge to these legal changes broadening the scope of the law was dismissed by the Supreme Court of India in 2022.<sup>51</sup> The Supreme Court's order has been severely criticized for recasting its power of judicial review as judicial deference and failing to test the claims of the government by applying constitutional principles.<sup>52</sup> The Supreme Court order turning a blind eye to executive excesses is replete with reference to FATF recommendations and standards, and relies on them for upholding the harsh and stringent provisions under the PMLA.<sup>53</sup>

Another significant change in the PMLA prompted by the FATF recommendations was the empowering of the ED, a body entrusted with the investigation of economic offenses. Immediately after the 2010 MER, India tripled its resources to empower the ED and in the time since, the ED's power has grown exponentially.<sup>54</sup> A perfect example of the "unintended consequences of FATF recommendations" is the weaponization of the ED in India, which is being used as a political tool by the government to target opposition leaders and NPOs who are critical of the government.<sup>55</sup> While the ED has actively gone after prominent international NPOs like Amnesty International,<sup>56</sup> religious institutions and Churches,<sup>57</sup> and prominent human rights defenders,<sup>58</sup> it has avoided investigating corporate fraud and serious allegations of stock price manipulation by corporations close to the ruling party such as the Adani Group.<sup>59</sup>

The misuse of the ED is evident from the exponential increase in the number of cases being investigated by the ED, leading to the freezing and attachment of properties of those accused of money laundering offenses. The official data show there was an increase of 505% in the number of cases registered by the ED, from 195 cases in 2018–19 to 1180 in 2021–22.<sup>60</sup> Similarly, the

<sup>49</sup> See Section 3 of the PMLA.

<sup>50</sup> Suhrith Parthasarathy, *PMLA verdict, an erosion of constitutional buffers*, The Hindu, 1 August 2022, <https://www.thehindu.com/opinion/lead/the-pmla-verdict-overlooks-constitutional-safeguards/article65707726.ece>

<sup>51</sup> See the Supreme Court Judgment on the constitutional challenge of certain provisions of PMLA, 2002 in *Vijay Madanlal Choudhary v Union of India*, Special Leave Petition (Crl.) No. 4634 of 2014

<sup>52</sup> Stuti Rai & Harini Raghupathy, *In Deferring To Govt Over The Money Laundering Law, The Supreme Court Has Created A New Normal*, Article14, <https://article-14.com/post/in-deferring-to-govt-over-the-money-laundering-law-the-supreme-court-has-created-a-new-normal-62eb23b704b3c>

<sup>53</sup> See *Vijay Madanlal Choudhary v Union of India*, Special Leave Petition (Criminal) No. 4634 of 2014, paras xxviii, xxx, xxxi at page no. 124, 125, 126 and 127.

<sup>54</sup> ACAMS, *India—Committed to Combating Money Laundering*, 2 September 2011,

<https://www.acamstoday.org/india-%E2%80%93-committed-to-combating-money-laundering/>  
<sup>55</sup> Nileena MS, *The Enforcers: How the ED became a political tool*, The Caravan, 31 May 2023, <https://caravanmagazine.in/law/ed-political-tool>

<sup>56</sup> Reuters, *Enforcement Directorate raids Amnesty office*, 25 October 2018, <https://www.reuters.com/article/india-amnesty-regulation-idINKCN1MZ2OJ>

<sup>57</sup> The Hindu, *ED raids Believer's Church, seizes documents*, 18 July 2022, <https://www.thehindu.com/news/national/kerala/ed-raids-believers-church-seizes-documents/article65654811.ece>

<sup>58</sup> Hindustan Times, *ED raids office, home of activist Harsh Mander in money laundering probe*, 17 September 2021, <https://www.hindustantimes.com/cities/delhi-news/edraids-office-home-of-activist-harsh-mander-in-money-laundering-probe-101631781847302.html>

<sup>59</sup> Nileena MS, *The Enforcers: How the ED became a political tool*, The Caravan, 31 May 2023,

<sup>60</sup> Meetu Jain, *How the Enforcement Directorate Has Become an Excessive Directorate*, The Wire, 14 April 2023, <https://thewire.in/government/how-the-enforcement-directorate-has-become-an-excessive-directorate#:~:text=IANS%20quoting%20finance%20ministry%20sources,%2D14%20and%202014%2D22.>

searches conducted by the ED between 2004–14 and 2014–22 rose by a huge 2,555%.<sup>61</sup> Until July 2022, the ED was investigating 4700 cases.<sup>62</sup>

The increase in the number of cases being investigated and the attachment of properties can be directly attributed to the findings of the 2010 MER, which rated India Partially Compliant (PC) on SR II, particularly on the effectiveness issue, noting that there were a minimal number of convictions under the PMLA.<sup>63</sup> It recommended India take legal measures to allow for the confiscation of assets which is not contingent upon conviction in the predicate offense. However, while the recommendation to increase investigation may increase the effectiveness of the system, it can also provide a perverse incentive to increase such investigations even when they lack basis.

A scrutiny of the cases investigated by the ED would make it amply evident how the government has used the ED as a tool to stifle dissent in India. A May 2023 report in *The Caravan* points out how ED has become a political tool and is being misused to target opposition leaders and civil society in India.<sup>64</sup> The report notes over 6,000 Enforcement Case Information Reports (ECIRs) have been filed by the ED and of these, only 25 have gone to trial.<sup>65</sup> But the harassment of all the other victims of ECIRs continues unabated. This includes the attachment of properties pending trial. The report further quotes an Income Tax officer who has worked for the ED who said, the agency tends to file charge sheets running to thousands of pages “in a deliberate attempt to delay trial.” The same officer believes “ninety-five to ninety-eight percent cases currently being probed by the ED today will be dropped in the next ten to fifteen years because there is no investigation happening on the money trail.” The cases include the use of the ED to pressure opposition politicians into splitting their political parties. There has been a fourfold increase in ED cases against political leaders, with 115 of 121 politicians probed by the ED coming from opposition parties.<sup>66</sup>

These measures neither seem proportionate nor efficient, and there are many actual offenders who are going uninvestigated because resources are tied up in the glut of cases. Thus, to address the unintended consequences of its Recommendations, the FATF must review the implementation of the PMLA by the Indian government, and further ensure that the procedural safeguards under this law are being complied with, an argument long made by members of civil society in India.<sup>67</sup>

### 2.3.3 FATF & UAPA

Like with the FCRA and PMLA, the Indian government brought in significant changes to UAPA to ensure compliance with FATF Recommendations. The 2010 MER highlighted deficiencies in the UAPA, particularly its lack of provisions allowing for the confiscation of funds and related

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<sup>61</sup> Ibid.

<sup>62</sup> See *Vijay Madanlal Choudhary v Union of India*, Special Leave Petition (Criminal) No. 4634 of 2014, para 16 (i) at p.109

<sup>63</sup> 2010 MER, p. 248

<sup>64</sup> Nileena MS, *The Enforcers: How the ED became a political tool*, *The Caravan*, 31 May 2023

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

<sup>67</sup> The Wire, Stop Misuse of PMLA to Target Scholars and Activists': Citizens and Rights Groups in Open Letter, 23 May 2023, <https://thewire.in/rights/stop-misuse-pmla-target-scholars-activists-open-letter>

instrumentalities in terror cases.<sup>68</sup> In relation to Special Recommendation II on the criminalization of terrorist financing, India was rated Partially Complaint (PC), because not all Treaty offenses were included as terrorist acts under the UAPA, and the UAPA, at that time, did not criminalize sole (intentional or knowing) funding of terrorist individuals and terrorist organizations.<sup>69</sup> Therefore, it recommended the criminalization of sole financing of terrorist offenses without requiring the specific intention or knowledge of such funds being used for terrorist activities.<sup>70</sup> Consequently in 2012, India amended the UAPA, which broadened the definition of terrorist acts and gave wide meaning to “proceeds of terrorism,” which now included properties intended to be used for terrorist activities. Acting upon the FATF recommendation,<sup>71</sup> also criminalized the raising of funds for the likely commission of terrorist acts, notwithstanding whether such funds were actually utilized or not.<sup>72</sup>

FATF’s broad characterization of terrorist financing abuse<sup>73</sup> has allowed countries like India to include vague and overbroad provisions in the UAPA, which have often been misused, leading to serious human rights violations and targeting of civil society actors.<sup>74</sup> The harsh and stringent provisions relating to bail run afoul of the established principle of personal liberty and have wreaked havoc on the civil society space in India.<sup>75</sup> For example, the definition of “terrorist act” under section 15 includes vague terms like “likely to threaten” the unity, integrity, security, or sovereignty of India or “likely to strike terror” in the people, which has often been used to stifle dissent and target civil society members, students, and journalists. The growing misuse of these provisions has forced civil society members to challenge the constitutionality of these provisions before the Supreme Court of India.<sup>76</sup>

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<sup>68</sup> See Table 1, 2010 MER.

<sup>69</sup> Ibid.

<sup>70</sup> See Table 2, 2010 MER

<sup>71</sup> See Clause (6), Interpretive Note to Recommendation 5, The FATF Recommendations, International Standards On Combating Money Laundering and The Financing Of Terrorism & Proliferation, March 2022, p. 41

<sup>72</sup> Section 17 of UAP Amendment Act, 2012, available at

[https://megpolice.gov.in/sites/default/files/Unlawful\\_Activities\\_p\\_Amendment\\_Act-2012.pdf](https://megpolice.gov.in/sites/default/files/Unlawful_Activities_p_Amendment_Act-2012.pdf)

<sup>73</sup> See FATF’s Recommendation 5 which recommends countries to criminalize not only the financing of terrorist acts but also the financing of terrorist organizations and individual terrorists even in the absence of a link to a specific terrorist act or acts.

<sup>74</sup> Human Rights Watch, *Deteriorating human rights situation in India requires urgent attention, say rights groups at UN Human Rights Council*, 27 March 2023, <https://www.hrw.org/news/2023/03/27/deteriorating-human-rights-situation-india-requires-urgent-attention-say-rights#:~:text=The%20Indian%20government%20has%20also,Dalits%2C%20Muslims%2C%20and%20Adivasis.>

<sup>75</sup> Nitika Khaitan, *Silence and ‘Pragmatism’: Skirting bail conditions in the UAPA*, Indian Constitutional Law and Philosophy, 15 June 2020, <https://indconlawphil.wordpress.com/2020/06/15/guest-post-silence-and-pragmatism-skirting-bail-conditions-in-the-uapa/>

<sup>76</sup> Tanya Arora, *Petitions challenging stringent provisions of UAPA to be heard by the SC*, CJP, 28 September 2022, <https://cjp.org.in/petitions-challenging-stringent-provisions-of-uapa-to-be-heard-by-the-sc/>

## 2.4 India's Mutual Evaluation Review in 2023

India's second Mutual Evaluation Review is scheduled for 2023 with an onsite visit of assessors starting November 3, 2023.<sup>77</sup> This will be followed by a Plenary discussion in June 2024.<sup>78</sup> The MER is a peer review process, with assessors drawn from groups of which India is a member, including both FATF and FATF-styled regional bodies—the Asia Pacific Group (APG) and the Eurasian Group.<sup>79</sup> Members from each of these three groups may or may not serve on the assessment team. The MER analyzes the implementation and effectiveness of a country's measures to combat money laundering and terrorism financing.

India's first MER was conducted in 2010, where India was rated Non-Complaint (NC) with Special Recommendation VIII.<sup>80</sup> The MER noted that the NPO sector in India was subject to limited or no monitoring and supervision.<sup>81</sup> Some of the factors that led to India being put in NC list included—no review of the sector's vulnerabilities to terrorist activities, no outreach to the NPO sector and limited information on the identity of the persons running NPOs including board members and trustees.<sup>82</sup> Consequently, FATF recommended India do a comprehensive review of the adequacy of domestic laws in the NPO sector, undertake a detailed risk assessment of the NPO sector for terrorism financing, and conduct outreach to the NPO sector to prevent the risk of terror financing as well as enhance good governance and accountability.<sup>83</sup> The 2023 MER will, in part, assess the extent to which India has adopted these recommendations.

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<sup>77</sup> Padmakshi Sharma, *Supreme Court Extends ED Director SK Mishra's Term Till September 15 "In Larger National Interest"; Says No Further Extensions*, Livelaw, 27 July 2023, <https://www.livelaw.in/top-stories/supreme-court-extends-ed-director-sk-mishras-term-till-september-15-in-national-interest-233762#:~:text=The%20Supreme%20Court%20on%20Thursday,the%20officer%20to%20be%20illegal>

<sup>78</sup> FATF, India, <https://www.fatf-gafi.org/en/countries/detail/India.html>

<sup>79</sup> Ibid.

<sup>80</sup> 2010 MER, p. 218

<sup>81</sup> Ibid., p.215

<sup>82</sup> Ibid., p.218

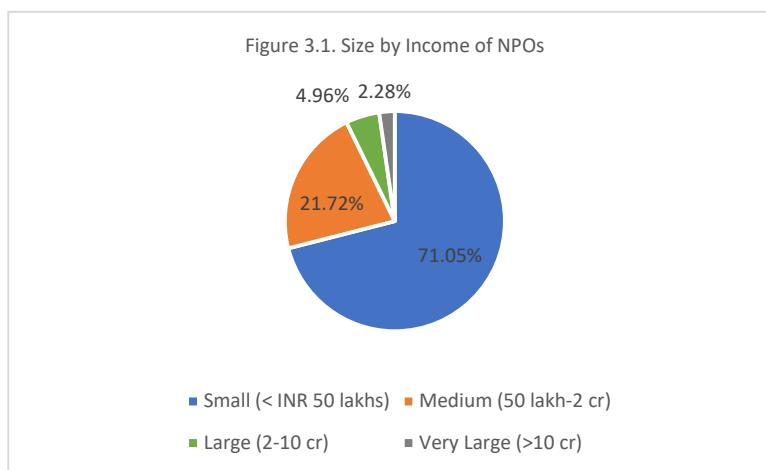
<sup>83</sup> Ibid., p.216, 217

### 3 Findings

#### 3.1 Survey Findings

While the Government of India is mandated with conducting its own official and comprehensive risk assessment of the NPO sector as part of its MER obligations under FATF recommendations, the authors of this report also conducted a “shadow risk assessment” to provide additional data and context to assessors. It was able to achieve a statistically significant sample (n=748) of the approximately 150,000 NPOs listed in the Government of India’s NGO Darpan database.

Most of the NPOs sampled were registered as a Society (59.52%) or as a Trust (34.18%). 71.05% of the NPOs sampled were small in size (annual budget of less than INR 50 lakhs), 21.72% were medium-sized (INR 50 lakhs to 2 crore), 4.96% were large (2 core to 10 crores), and 2.28% very large (more than 10 crores) (Figure 3.1). The sample had NPOs who worked in every major region of India (north, south, east, west) and almost all states of India, with an overwhelming majority (94.1%) engaged in service or advocacy with a number of vulnerable groups (e.g., Dalits, religious minorities, adivasis, women and children, sexual minorities).



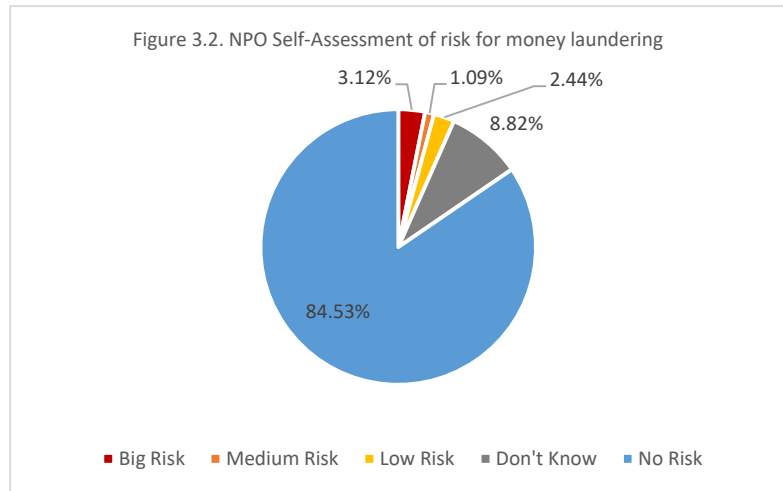
The survey had, as its goal, (i) an independent assessment of the risk of ML and FT in the sector; (ii) an independent assessment of the Government of India’s outreach and awareness-building efforts; as well as (iii) an assessment of existing due diligence practices in the NPO sector.

Analysis showed that the self-assessment of NPOs regarding the risk of money laundering and financing of terrorism posed by their own organizations and the NPO sector in India at large was low. It also showed that the outreach done by the Indian state regarding the risk posed by NPOs was minimal. It finally showed that a significant proportion of the Indian NPOs were already engaged of their own accord in practices of due diligence with respect to mitigating risks related to money laundering and the financing of terrorism.

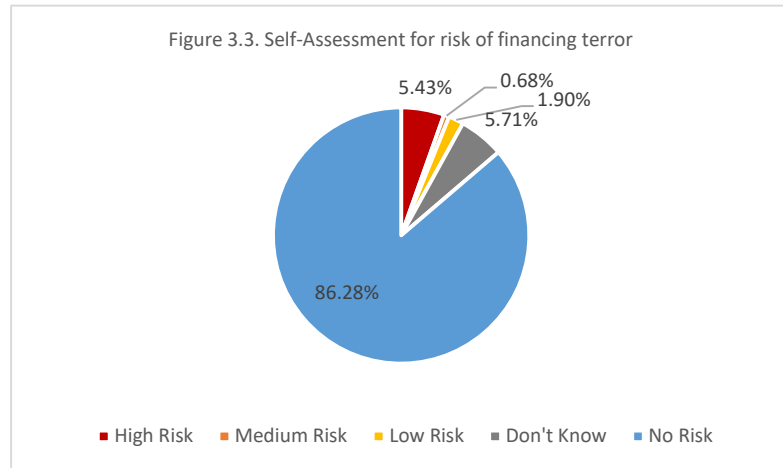
### 3.1.1 Assessments of Money Laundering / Financing of Terrorism Risk among NPOs

NPOs in India assess the risk of money laundering and financing of terrorism to be low, both for their own organizations as well as for NPOs all over India. Please note that the survey used the term “NGO,” which is more familiar to Indian organizations, but is equivalent in meaning and definition to the FATF-designated category of NPO.

When asked the question “In your perception what level of risk does your NGO pose for money laundering?” a clear majority (86.97%) said that they see their NPO as being at no or low risk for money laundering activities (Figure 3.2). Only 4.2% perceived their NPO to be at some risk (high or medium).

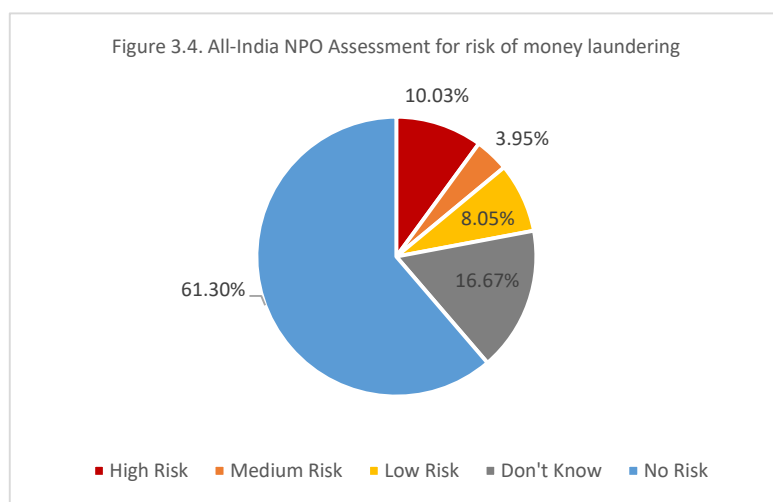


Similarly, when asked the question, “In your perception what level of risk does your NGO pose for terror financing?” a clear majority (88.18%) said that they see their NPO as being at no or low risk for financing of terrorism activities (Figure 3.3). Only 6.11% perceived their NPO to be at some risk (high or medium).

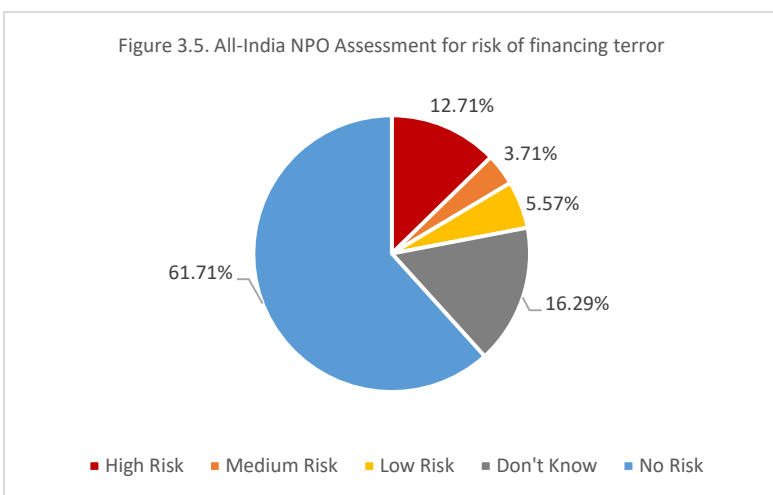


Moving away from self-assessment, the survey asked respondents about their assessment of the entire NPO sector in India.

Here, when asked the question “In your perception what level of risk do NGOs in India pose for money laundering?” a clear majority (69.35%) said that they see the NPO sector in India at no or low risk for money laundering, with another significant proportion (16.7%) indicating that they did not know (Figure 3.4). Only 13.98% indicated that they see some risk (high or medium) in the NPO sector for money laundering.



Similarly, when asked the question “In your perception what level of risk do NGOs in India pose for terror financing?” a clear majority (67.28%) said that they see the NPO sector in India at no or low risk for terror financing, with another significant proportion (16.29%) indicating that they did not know (Figure 3.5). Only 16.42% indicated that they see some risk (high or medium) in the NPO sector for terror financing.



The above results of the survey need to be viewed within the broader context in India of sustained actions by the state against NPOs. Official statements from the state justifying their actions paint civil society actors such as NPOs with broad brushstrokes as engaging in money laundering and the financing of terrorism. Reproduction of such official statements without comment in the national press and social media makes such a stereotype pernicious and factually misleading. This has included the targeting of civil society activists and NPOs as “Urban Naxals”—tying activists to an armed Maoist movement—by officials of the government, including the prime minister himself.<sup>84</sup> In one particularly egregious instance, the National Security Advisor, Ajit Doval, called

<sup>84</sup> Amarnath K Menon, *Who is an Urban Naxal*, India Today, 11 February 2022, <https://www.indiatoday.in/india-today-insight/story/who-is-an-urban-naxal-1911450-2022-02-10>

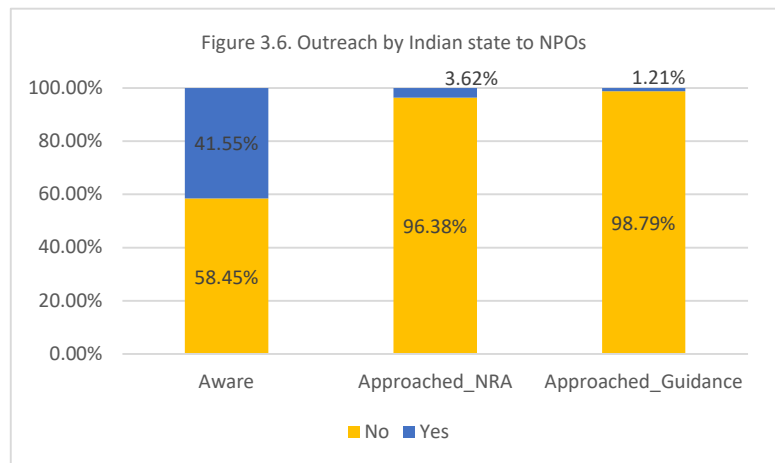
civil society the “new frontier for war.”<sup>85</sup> Given such a context, it is remarkable that less than a seventh of the NPOs surveyed (13.98% and 16.42%) perceives the NPO sector as posing any threat whatsoever in these domains.

### 3.1.2 Outreach by the State for Risk Assessment

FATF is very clear on requiring that governments do effective outreach with NPOs in their jurisdiction. The Interpretive Note to Recommendation 8 and the Methodology for Assessing Technical Compliance detail the need for such outreach. Four areas of governmental outreach and actions are particularly emphasized in the FATF Methodology—to have clear policies promoting accountability and probity in NPOs; to undertake outreach among NPOs to promote awareness of risks and measures for NPOs to mitigate them; to work with NPOs to develop best practices; and to encourage NPOs to conduct transactions via legal channels.

To explore the extent of the Indian state’s outreach with respect to risk of money laundering and financing of terrorism within the NPO sector, we posed three sequential questions to respondents in increasing degree of concreteness. Our survey first asked the question “Are you aware that the government is conducting a specific National Risk Assessment (NRA) on the misuse of funds in the NGO sector?” While 41.55% of the respondents answered in the affirmative, 58.45% answered in the negative. To explore whether respondents understood what the NRA meant, we continued by asking respondents, “Has the government contacted you to participate in this National Risk Assessment?” This time only 3.62% responded in the affirmative, and an overwhelming majority (96.38%) replied in the negative.

We then asked our third and final question of the sequence – “Has the government contacted you with advice or guidance on how to reduce the risk of potential misuse of funds?” The idea here was to see if there had been any attempt whatsoever by the state to reach out to NPOs regarding seeking their advice or guidance about how to reduce risk. The response was even more clear: only 1.21% of those sampled replied in the affirmative, while 98.79% replied in the negative. We reproduce these three sequential findings in Figure 3.6.



Our findings are that there is very poor outreach by the government for the National Risk Assessment process, and that there is almost no governmental effort to contact NPOs. This is further substantiated in our interview and focus group discussions reported in the next section. The

<sup>85</sup> India News, *Civil Society New Frontier Of War: National Security Advisor Ajit Doval*, 12 November 2021, <https://www.ndtv.com/india-news/civil-society-new-frontier-of-war-says-nsa-ajit-doval-can-be-manipulated-to-hurt-nations-interest-2608976>

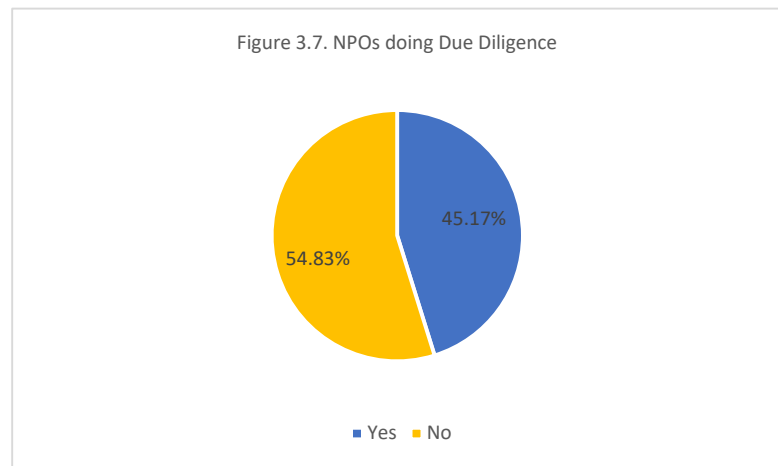


conclusion is stark: there is either very little effort or very ineffective outreach by the Government of India to NPOs in terms of assessing sectoral risk.

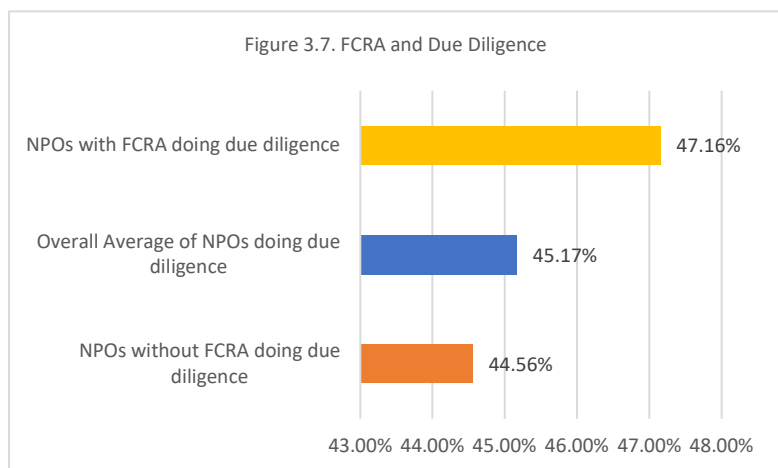
Further, when asked the question “Are you aware of any law or regulation which regulates the potential misuse of funds in the NGO sector?” only 20.48% responded in the affirmative. As the next question shows, awareness is most certainly much lower than this in reality. When those who claimed to know of particular laws were further asked to name any law, not a single respondent was able to name any of the key laws in this domain (FCRA, PMLA, UAPA, etc.). Such a low level of awareness of governmental laws is congruent with the low level of outreach done by the government of India on this issue.

### 3.1.3 Risk Mitigation Efforts by NPOs

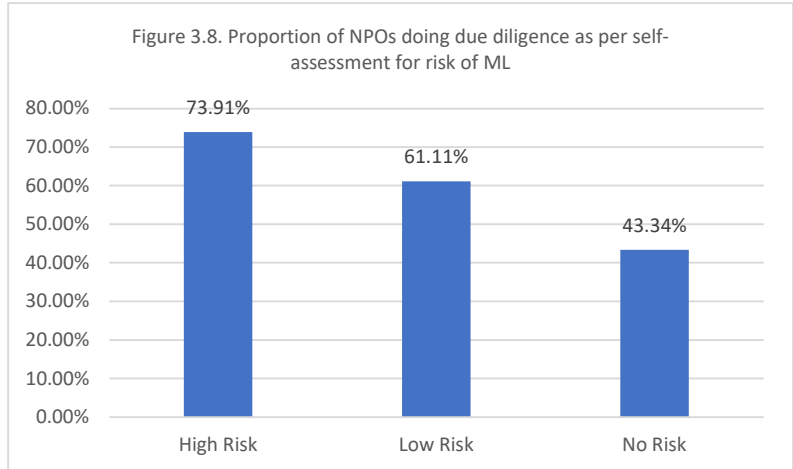
The above findings are supplemented by other findings that focused on existing practices of NPOs. When asked the survey question “Does your NGO do due diligence (background check) to prevent the misuse of funds?” 45.17% of respondents replied in the affirmative (Figure 3.7).



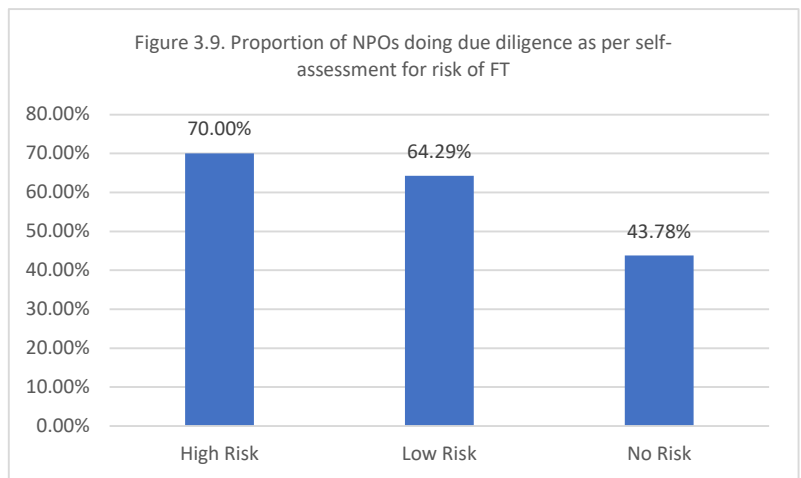
One of the principal targets of the Indian state are organizations with FCRA, indicating that they are a special set. Yet, our findings show that organizations with FCRA have rates of conducting due diligence that are as high as or even marginally higher than non-FCRA organizations. (Figure 3.7). This raises a question: Why has the government singled out FCRA organizations? Is the strategy of singling out FCRA organizations compatible with FATF's recommended risk-based approach?



More interestingly, we find that those NPOs who self-identified as being at higher risk of money laundering were far more likely to do due diligence than those assessing themselves to be at lower risk or no risk. Thus, 73.91% of NPOs who self-identified their NPOs to be at 'high' or 'medium' risk for money laundering, engaged in due diligence as compared to 43.34% of NPOs who assessed themselves to be at no risk (Figure 3.8).

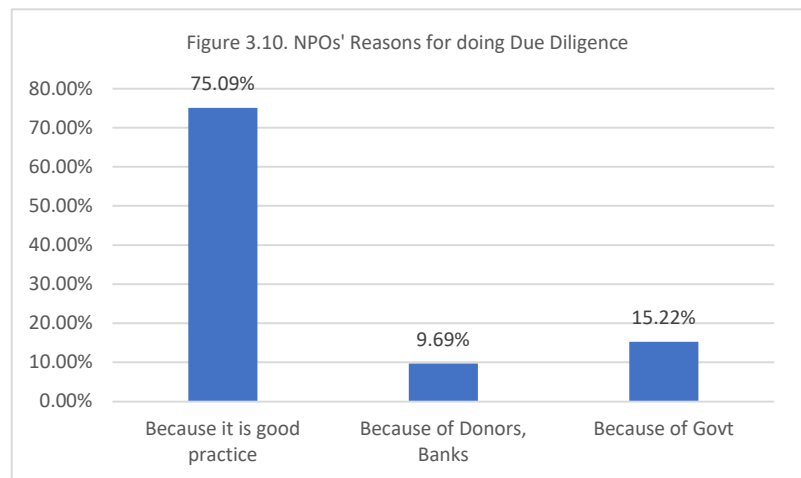


Similarly, those NPOs who self-identified as having a higher risk of financing of terrorism were far more likely to do due diligence than the average NPO or those not perceiving a risk. Thus, 70% of NPOs who self-identified their NPOs to be at 'high' or 'medium' risk for financing of terrorism engaged in due diligence as compared to 43.78% of NPOs who assessed themselves to be at no risk (Figure 3.9).



These figures point to a particularly diligent NPO sector that is significantly aware of the risks and self-regulates on a regular basis in order to mitigate the self-assessed risks within their NPOs.

Further, such significant self-regulation and self-mitigation of risks by NPOs is done largely of their own accord. When asked why they undertook due diligence, 75.09% of NPOs sampled indicate that they do so simply because it is a good practice (Figure 3.10). This is by far the single most frequently cited reason for doing due diligence, much more than any of



the others such as ‘required by government’ (15.22%) or ‘required by donors or banks’ (9.69%).

The NPO sector in India is thus able to self-regulate and mitigate risks to a very large extent through its own practices of due diligence. This is even more so for those NPOs who sense they are at risk of money laundering or financing of terrorism.

The findings of our survey about the risk mitigation practices already in place by Indian NPOs does not preclude the need for a governmental risk assessment as required by FATF. The survey findings and the rest of this report is aimed at being an independent evaluation of the risks of money laundering and financing of terrorism in the NPO sector, and as an independent evaluation of the Indian state’s outreach to and inclusion of NPOs in the process of risk assessment and risk mitigation.

## 3.2 Interviews and Focus Group Discussion Based Case Studies

### 3.2.1 Dismantling of the Child Rights Sector in India

The child rights sector is an illustrative case of destructive overreach by the government while using FATF as a cover. We interviewed 11 sectoral experts, including the leadership and management of leading child rights organizations across multiple states, funders, and serving and former bureaucrats involved in the regulation of this sector. We must note that all of the experts expressed significant fears of reprisal and therefore demanded anonymity as a condition for participating in this study. During the interview, the experts highlighted the dismal state of the Child Rights sector in India and the role of the Indian government in decimating this sector. Their responses also highlighted India's non-compliance with Recommendation 8. Both these aspects are discussed in detail in this section.

#### 3.2.1.1 Overview

Indian children face significant challenges and are at risk of malnutrition and child poverty, abandonment, abuse including sexual abuse, forced labor, and trafficking.<sup>86</sup> Since India has the largest number of children under the age of 18 years of any country, addressing this challenge has historically required a coordinated effort by the government and civil society.<sup>87</sup> This has resulted in a sophisticated and highly decentralized landscape of organizations. For the purposes of this case study, this landscape can be broken down into three categories of organizations. The first category is a state-supported child protection infrastructure, which is funded by the Government of India, as well as a wide variety of international agencies and donors. The exemplar of this category was Childline India Foundation, a government-supported nodal NGO that ran a toll-free helpline (1098) that focused on rescuing and assisting children in distress. Childline was supported by the Ministry of Women and Child Development and enabled its services through a vast and decentralized network of state functionaries, government agencies, and partner NGOs. The second category of organizations are large, multifunction NGOs that approach child rights work by impacting policy, conducting research, building grassroots capacity, and interfacing with state and central governments. This category has several well-known NGOs such as Oxfam, Child Rights and You (CRY), CARE, and Bal Raksha Bharat (the Indian branch of Save the Children). Several of these NGOs (CARE, Bal Raksha, etc.) are funded by international philanthropies and hence are under the purview of the FCRA law. A minority of organizations (such as CRY) in this category raise a vast majority of their funds within India. The third category of organizations is a vast network of grassroots/community-level organizations that work on the ground and embody the depth and capacity of this ecosystem. A few of these downstream organizations are FCRA-licensed, but a vast majority operate through the resources created by the first two tiers of the ecosystem.

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<sup>86</sup> Humanium, *Realizing Children's Rights in India*, <https://www.humanium.org/en/india/>

<sup>87</sup> UNICEF, *Empowering adolescent girls and boys in India*, <https://www.unicef.org/india/what-we-do/adolescent-development-participation>

Unfortunately, this robust mechanism created by a government and civil society partnership in the child rights sector has been decimated over the last decade largely through government action. An executive of one of India's child rights institutions put it succinctly:

*“It took nearly fifty years to build a well-coordinated child rights sector in India. We must remember we started paying attention to the problems of Indian children, including sexual abuse, in the 1970s. We experienced rapid expansion of capacity and the development of an ecosystem on the issue over the past twenty years. It has taken this government less than five years to destroy most of it. Childline is finished. The dus-nau-aath [1098, referring to the telephone hotline for child abuse] which was on the lips of street kids from Mumbai to Kolkata has been destroyed. Many of the large NGOs that had built this capacity have lost their FCRA license. Many others live in a state of constant panic as they are harassed by the government day to day, week to week.”*

### 3.2.1.2 Misuse of legal and regulatory framework to target child rights organizations

Over the last decade, many laws impacting this sector—FCRA, Income Tax Act, PMLA, and Companies Act and its provisions like the Corporate Social Responsibility (CSR) provisions—have all been amended. As a retired bureaucrat with two decades of experience in women and child welfare outlined in one of our focus group discussions:

*“The best-case scenario is that the government's amendments of the law were only meant to streamline the sector. The worst-case scenario is that the government is seeking to transform the sector. I would have remained neutral in my opinion but for the recent decision to shut down Childline. This makes clear that the intent is not streamlining and improving the sector.”*

Additionally, the recent changes in FCRA and other laws have presented significant challenges to the resource-scarce child rights sector. For example, now the government has mandated filing of digital returns and have introduced onerous compliance requirements.<sup>88</sup> An experienced child rights expert said,

*“There is dearth of competent professionals in the sector to guide NPOs correctly at each step of compliance, and with these new changes we find ourselves focusing more on administrative compliance than doing our actual work. Earlier NPOs got lifetime approval for tax exemption under Income Tax Act but now we have to renew every five years. Earlier all changes to our Board members were to be intimated to the MHA within 15 days of change, but now, we have to get prior approval of MHA before any change in the Board members becomes effective.”*

These increased compliance requirements have little to do with mitigating the risk of terror financing in the child rights sector. The survey findings show that less than 15% of the respondents

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<sup>88</sup> Mani Chander, *An Arbitrary Crackdown On Foreign Donations Cripples NGOs At A Time When India Needs Them Most*, 27 January 2022

perceived a credible risk of terror financing and money laundering in the Indian NPO sector, and child rights sector experts emphatically asserted that when it came to their sector, even 15% was too high and not applicable to their sector. Experts were unequivocal that this sector was particularly low risk when it came to risks of terror financing and/or money laundering. A high-ranked executive of an NPO that is historically perceived to be close to the government said:

*“What risk of terror financing are they talking about? The NGOs are constantly working with senior bureaucrats and law and order officials. With such close cooperation and interweaving with the government, how can there be any question of money laundering or terror financing?”*

Other participants of the focus group discussion and experts in the interviews emphasized that almost the entirety of the FCRA funds received by the sector came from reputed international NGOs that had well-structured accounting, reporting, and due diligence standards. A retired Chief Executive Officer of a child rights organization said,

*“The government has made it mandatory for every organization to obtain a unique ID by registering on its NGO Darpan portal for obtaining foreign contribution. Add to this very significant reporting requirements imposed on us by FCRA and other tax laws that this sector has complied with diligently for over two decades,”*

Executive officers of child rights NPOs were, without exception, emphatic that there was no risk of terror financing or money laundering in their NGO. When asked the same question in relation to the child rights sector as a whole, eight of the nine interviewed were unequivocal in their assertion that there was minimal to no risk of terror financing and money laundering in the sector. The one exception had the following to say:

*“After all we are human...so I cannot say there is no corruption in this sector. But if there is any money laundering, it will be very ordinary things like someone diverting funds to buy a two-wheeler... or using some downstream funds for some home improvement... There are no Adanis amongst us.”*

Additionally, the Indian government has brought these changes to laws severely impacting the functioning of child rights without involving them in the policy changes. The government has also failed to make meaningful outreach to the sector on questions of terror financing and money laundering. None of the experts in the study had been contacted by the government or were aware of any communication with senior management in their organizations to conduct a risk assessment or create a consultative process for amending laws. A senior officer of a child rights NGO said,

*“I can say with certainty that neither I nor any of my colleagues were ever contacted or consulted on best practices on money laundering or terror financing while the government was amending the FCRA, IT Act, and Companies Act which directly impacted us. Most of us heard about it through the newspapers or at best the rumor mill coming from government circles,”*

In our interviews, similar comments were expressed with a great deal of frustration and anger, in particular about the lack of access to the government and the stonewalling they experienced. A retired central government bureaucrat who had been privy to many women and child welfare discussions that led to the closure of Childline said,

*“Many of the NGOs stopped trying to contact us and engage us because they felt that if they did, they would be targeted. One Childline senior staff told me he had been accused of ‘barking too much.’ It happened after I left but I am not surprised that they shut Childline down.”*

### 3.2.1.3 Unintended Consequences

The above assessment on terror financing and money laundering in the Child Rights sector and the above responses by participants in the study make it amply clear that the government has not created a positive environment for NPOs functioning in the Child Rights sector and instead has misused FATF’s provisions in punitive and repressive ways to close down the sector. It has done nothing to encourage an accountable and collaborative climate to support NGOs in the sector. A common refrain that emerged from the panel of experts in the study is that the government’s actions had little to do with identifying bad actors. As a consultant who has worked with stakeholders in the sector, including funders, summed up:

*“It is difficult to say what exactly the government’s intentions are. We know that all of us are being attacked. We know that the NGOs in this sector have done commendable work for the last thirty years or so. So what is clear is that as long as the NGOs exist, the government cannot change this sector. So its first goal is to shut them down, dismantle the sector as a whole using FATF as a pretext.”*

The intention of the government can be surmised from official actions undertaken to target NGOs, including letters from the Ministry of Women and Child Development seeking to stop a fundraising drive by Save the Children requesting Indian citizens to donate INR 800 (US\$ 10) toward combating childhood malnutrition.<sup>89</sup> The letter from the ministry asserted that the campaign involved “false information” because childhood malnutrition was “already being vigorously pursued by the government.”<sup>90</sup> It asked state governments to “alert beneficiaries about false claims made by similar NGOs.”<sup>91</sup> These claims were made by the ministry in spite of the government’s own data showing rampant child malnutrition, and India’s rank in the Global Health Index being 107 out of 121 countries.<sup>92</sup> We can therefore infer the real reason for targeting child rights NGOs: the burying of inconvenient facts that the government does not want the public to be aware of, even if only through a fundraising drive by Save the Children. In terms of punitive action,

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<sup>89</sup> Catherine Davison, *How India has ramped up its crackdown on NGOs*, Devex, 28 April 2023, <https://www.devex.com/news/how-india-has-ramped-up-its-crackdown-on-ngos-105321>

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> The Economic Times, *Malnutrition in India: A comprehensive strategy to combat for better future*, 26 December 2022, <https://economictimes.indiatimes.com/news/new-updates/malnutrition-in-india-a-comprehensive-strategy-to-combat-for-better-future/articleshow/96518242.cms?from=mdr>

the government responded to Save the Children's fundraising drive by canceling its FCRA license.<sup>93</sup>

### 3.2.2 Impact on NPOs during COVID-19 pandemic

The COVID-19 pandemic crisis starkly presents, the ways in which FATF recommendations have hampered the legitimate functioning of NPOs. Through conversations with a range of international funders, as well as organizations working on the ground in India to address the COVID-19 crisis, we have established a consistent pattern of misuse of FATF-inspired laws in the regulation of nonprofits leading to critical supplies being denied to NPOs at a time when human lives were at stake. The case study focuses on how the Indian government misused legal (like FCRA) and regulatory mechanisms (particularly banks) to restrict the flow of funds to NPOs who were engaged in relief work during the pandemic. It also provides a striking example of the fear Indian civil society holds of being targeted by the government even for pursuing legitimate operations and the devastating consequence of that fear.

#### 3.2.2.1 Overview

India's experience with COVID-19 was harrowing, with the World Health Organization, relying on Indian government data, showing 532,023 deaths between January 2020 and June 2023.<sup>94</sup> However, experts show a massive underreporting of deaths and suggest that the actual number might fall between 3.5 and 5 million by the end of June 2021.<sup>95</sup> The second wave in 2021, where UNICEF reported 4,000 deaths daily, was the most brutal in its impact the world over and it hit India like a tsunami.<sup>96</sup> The impact of the crisis was severely felt because of the fractured Indian healthcare system, which lacked basics like oxygen supply and had a shortage of critical drugs.<sup>97</sup> Given the scale of the crisis, a variety of international funding agencies ramped up their donations to Indian nonprofits.<sup>98</sup>

<sup>93</sup> IndiaCSR, *Save The Children's Indian wing Bal Raksha Bharat Loses FCRA Permit*, 5 August 2023, <https://indiacsr.in/bal-raksha-bharat-loses-fcra-permit/>

<sup>94</sup> WHO, <https://covid19.who.int/region/searo/country/in>

<sup>95</sup> Abhishek Anand, Justin Sandefur and Arvind Subramanian, *Three New Estimates of India's All-Cause Excess Mortality during the COVID-19 Pandemic*, Center for Global Development, 20 July, 2021, [https://cgdev.org/publication/three-new-estimates-indias-all-cause-excess-mortality-during-covid-19-pandemic?\\_gl=1\\*191rzf5\\*\\_ga\\*MTk1OTQxMjkyLjE2OTQzNzA1MzU.\\*\\_ga\\_HRVpCL33QJ\\*MTY5NjA4MDY5NC4zLjAuMTY5NjA4MDY5NS41OS4wLjA](https://cgdev.org/publication/three-new-estimates-indias-all-cause-excess-mortality-during-covid-19-pandemic?_gl=1*191rzf5*_ga*MTk1OTQxMjkyLjE2OTQzNzA1MzU.*_ga_HRVpCL33QJ*MTY5NjA4MDY5NC4zLjAuMTY5NjA4MDY5NS41OS4wLjA).

<sup>96</sup> UNICEF, *Geneva Palais briefing note on the impact of the deadly COVID-19 surge on children in India, and increasingly in the region*, 7 May 2021, <https://www.unicef.org/press-releases/geneva-palais-briefing-note-impact-deadly-covid-19-surge-children-india-and>

<sup>97</sup> Paul, S. (2022). Analyzing the attitude of Indian citizens during the second wave of COVID-19: A text analytics study. *International Journal of Disaster Risk Reduction*, 79, 103161.

<sup>98</sup> Alex Daniels, *Donors race to aid India during COVID-19 surge*, PBS, 5 May 2021, <https://www.pbs.org/newshour/world/donors-race-to-aid-india-during-covid-19-surge>



### 3.2.2.2 Misuse of legal and regulatory framework for restricting access to funds to NPOs during a humanitarian crisis

Despite timely intervention by international donor agencies to provide resources, they quickly realized that India represented unique challenges when it came to receiving funds. Unfortunately, the challenges were artificially created by the government despite a severe need for relief work. An official from a donor agency told us,

*“Challenges faced in other countries were logistical: difficulties in transferring cash, or the inability to use transferred monies in the market because supply chains were cut. In India, the problem was different. The primary hurdle for getting funds to those in need was the Indian government's misuse of banking institutions, which did not release the money to the beneficiary organizations citing security concerns flagged by the government. The other reason was the deep fear of retribution by the government simply because of where the funds were coming from. Neither were the sources of the funds malicious—they were well-known international organizations with a long and proven track record of being legitimate civil society and funding organizations. Nor were the funds being put to any malicious use. The only problem was that these funds were coming from organizations that cared about democracy and human rights.”*

These hurdles were faced in spite of recipients having full regulatory clearance, including FCRA certification.<sup>99</sup> The difficulties faced by donors were listed in a July 2021 brief by the International Center for Nonprofit Law, which found that the overbroad restrictions on sub granting and administrative expenses, as well as other draconian provisions of the act like suspension of the FCRA for 360 days (which would lead to the closure of organizations) likely violated Article 22 of the International Covenant on Civil and Political Rights (ICCPR) requiring that restrictions on free association be necessary and proportionate to achieving the purported aim of the law.<sup>100</sup> The briefer also noted that these measures ran afoul of FATF’s call that governments must “ensure that legitimate NPO activity is not unnecessarily delayed, disrupted or discouraged” during the pandemic.<sup>101</sup>

These enhanced restrictions on foreign funds, with some being enacted specifically during the acute peak of the crisis, stand in sharp contrast to earlier responses to natural disasters. As stated in a 2005 news report, “After the [2004 Indian Ocean] tsunami and the [2001] Kutch earthquake, there was unrestricted flow of money. The FCRA rules were relaxed, enabling smaller NGOs to have access to money from abroad.”<sup>102</sup> In the context of the Tsunami, the official GoI report on FCRA in 2005 states that the government eased receipt of foreign contributions without prior approval for all organizations engaged in Tsunami relief work, and that organizations with FCRA clearance but under different aims and objectives were also permitted to receive foreign funds to

<sup>99</sup> India Today, *Covid-19: Why NGOs are demanding immediate suspension of FCRA rules*, 18 May 2021, <https://www.indiatoday.in/business/story/covid-19-why-ngos-are-demanding-immediate-suspension-of-fcra-rules-1804106-2021-05-18>

<sup>100</sup> ICNL, Briefer: *India Foreign Contribution (Regulation) Act (FCRA)*, 7 July 2021, p. 9

<sup>101</sup> Ibid.

<sup>102</sup> Vivek Bendre, *After the Deluge*, Frontline, 9 September 2005, <https://frontline.thehindu.com/other/article30206209.ece>

carry out Tsunami relief work.<sup>103</sup> The checks and balances involved opening a separate account called "Tsunami Relief Fund" and providing a full and separate audit for these funds. This permitted the flow of much-needed resources at a time of dire need while maintaining full government oversight of the fund flows. In the case of the COVID-19 crisis, we saw the government doing the exact opposite by further tightening access to foreign contributions.

Funders we spoke to were categorical about only donating to FCRA-cleared organizations. Even before the COVID-19 crisis, the changes to the FCRA had made funders wary of donating to any organization without explicit clearance, both to comply with Indian legal requirements and to prevent any adverse or retributory action against grantees. During the COVID-19 crisis, funders said, this was even more important because funds were needed immediately, and the most above-board channels and the most reputed NGOs were selected to allow for a smooth transfer of funds. A funder told us about this due diligence:

*“In the COVID-19 second wave, there was just massive humanitarian need for medicines and food to reach Indians through trusted organizations, with a proven track record and presence in the communities in need. We had an elaborate list of criteria to ensure we were only donating to trusted organizations that could be vetted, and whose work during COVID-19 could be independently audited and verified, including from local community sources. The first criterion was that organizations must have FCRA clearance.”*

### **The additional burden of opening a new bank account in New Delhi**

One additional regulatory hurdle, introduced explicitly in the 2020 amendment to the FCRA act, was that NGOs had to open an FCRA account at the government-owned State Bank of India's New Delhi Main Branch. The deadlines for the opening of these bank accounts coincided with the peak of India's devastating COVID-19 second wave, between May and July of 2021. An FCRA-cleared grantee organization we spoke to said

*“We have been receiving foreign funds in our Indian Overseas Bank account for years, but after the 2020 amendment, we applied for a new bank account in SBI, New Delhi. During the second wave, while our application for a new bank account was pending, our foreign donors sent money to our earlier account which was never credited to our account, and the funds were returned to the funding organization, without any explanation as to why the transfer had been denied. We do not know the actual reason why the funds were denied, but we believe they were denied because our application for the opening of an FCRA bank account in New Delhi had not been processed yet.”*

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<sup>103</sup> Receipt of Foreign Contributions by Voluntary Associations Annual Report 2004–05, Ministry of Home Affairs, Foreigners' Division, FCRA Wing, p. 12–13. [https://fcraonline.nic.in/home/PDF\\_Doc/annual/ar2004-05.pdf](https://fcraonline.nic.in/home/PDF_Doc/annual/ar2004-05.pdf)

## Opaqueness in the banking system

There was total opacity within the banking sector with regard to why fund transfers were denied. While the above grantee organization speculated that the reason for the denial of the transfer was that their New Delhi account was not open yet, there was no way to know for sure. Our other conversations with grantees indicated that even organizations that did have an FCRA account set up in New Delhi were denied funds. While in some cases this was done without any official communication at all, in some cases the only communication was a letter from the State Bank of India to the funding agency's bank that stated that the Ministry of Home Affairs of the central government had inquired about the identity of the donor. Even when all identifying details were duly supplied, multiple funders told us, the money was simply returned to the funding agencies (minus fees) without any explanation.

In our discussion with a charitable organization that was actively engaged in supplying oxygen cylinders and other medical supplies during the second wave, we specifically asked whether they thought their funds were not released because there was a risk of terrorist financing through NPOs, and they replied:

*“We have been receiving foreign funds for years and have diligently complied with the regulatory requirements like filing our tax returns, then how can suddenly there be a risk of terrorist financing in our organization? This is ridiculous. By restricting our access to funds, when people were dying in front of our doors, it is the government that has committed a criminal act.”*

### 3.2.2.3 Unintended Consequences

The Indian government's act of restricting access to funds to Indian NPOs during the COVID-19 pandemic by misusing banking institutions is a clear example of “de-risking and financial exclusion,” identified as unintended consequences of the FATF standards.<sup>104</sup> Indian banks at the behest of the Indian government followed an opaque system, and rather than engaging with their customers/clients (NPOs) and apprising them of the situation and difficulty in transferring funds, just returned the funds to the donors. FATF defines de-risking as “the phenomenon of financial institutions terminating or restricting business relationships with clients or categories of clients to avoid, rather than manage, risk in line with the FATF's risk-based approach.”<sup>105</sup> De-risking was identified as one of the main reasons for narrower access to banking services by NPOs.<sup>106</sup> FATF has, therefore, recommended a risk-based approach, where banks must take proportionate measures that are commensurate with the risks identified. Unfortunately, such an approach was not followed by the banks while processing foreign donations. This ultimately hindered charitable organizations from carrying out their charitable work, leading to thousands of deaths which could have been easily avoided.

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<sup>104</sup> FATF, *High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards*, 27 October 2021.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

Funders and grantees also told us about an abiding sense of fear and threat of retribution by the government around accepting much-needed funds. The chilling effect on NPOs, as noted in the 2013 FATF report, is the result of the misuse of AML/CFT measures by a few countries in the name of “FATF compliance,” both unintentionally, and in some cases intentionally. Our conversation with NPO representatives and donors clearly establishes that India falls in the latter category. Grantees told us that at the earliest sign of trouble, and even with a clear need for funds, they chose to return or refuse funds by any agency that may even remotely be seen as critical of the government. A senior NPO head, who has been part of several government committees, said

*“We just could not take the risk of our NGO being shut down. We knew we were doing important work, and we knew we desperately needed the funds to do our job better and more completely, but the consequence was too terrifying. My goal is to survive and do as much as I can with the limited resources. Though the funds would have allowed us to expand our work, expansion cannot happen if we don’t exist.”*

The prevailing sense of fear also led many grassroots organizations in need of resources during COVID-19 to refuse collaboration with FCRA-cleared organizations considered critical of the government. In India, many smaller grassroots organizations were dependent for their charitable work on sub-grants from FCRA-cleared organizations like Oxfam and Action Aid. As a result of such fearmongering, these grassroots organizations were not able to avail funds that were readily available and could potentially have saved thousands of lives and helped people tide over one of the worst humanitarian disasters India has faced.

### 3.2.3 Shutting down of Environmental Organizations in India

Environmental organizations in India have a rich history of successfully defending the environment against state-sponsored mega projects and multinational corporations. Unfortunately, FATF-inspired laws and regulations have emboldened the Indian government to attack environmental organizations.

#### 3.2.3.1 Overview

The use of FCRA, the Enforcement Directorate, and the Income Tax Department to stifle civil society and hamper the legitimate functioning of nonprofit organizations began with the targeting of environmental rights organizations. Under the 2004–2014 United Progressive Alliance government led by the Indian National Congress, FATF demanded stricter regulation of the NPO sector,<sup>107</sup> leading to the government passing the 2010 amendment to the FCRA. Just over a year later, the government used its new FCRA law to target NPOs involved in organizing protests against the then-proposed Koodankulam nuclear plant. The Ministry of Home Affairs alleged a “foreign hand” in funding these protests, and both initiated an inquiry itself and moved the Intelligence Bureau to investigate these NPOs.<sup>108</sup> Shortly after, the FCRA licenses of three of the NPOs were canceled.<sup>109</sup>

<sup>107</sup> 2010 MER rated India non-compliant with SR VIII and recommended stricter regulation of the NPO sector.

<sup>108</sup> Indiatoday, *Koodankulam row: Suspecting foreign hand, govt launches probe into 6 NGOs*, 18 December 2011

<sup>109</sup> Indiatoday, *Govt justifies PM's US NGOs barb over anti-Koodankulam protests*, 25 February 2012, <https://www.indiatoday.in/india/south/story/pm-us-ngos-anti-koodankulam-nuclear-protests-94155-2012-02-24>

While this was a targeted strike against NPOs in Tuticorin in Tamil Nadu near the site of the proposed nuclear plant, the playbook was expanded after the Intelligence Bureau submitted a report to the Prime Minister’s Office claiming “foreign-funded NGOs protesting coal and mining projects in the country had negatively impacted GDP growth by 2 to 3 percentage points.”<sup>110</sup> The report specifically targeted international environmental bellwether Greenpeace, calling it a “threat to national economic security” and accusing it of sponsoring agitations against coal and mining projects in different parts of India.<sup>111</sup> It was Greenpeace’s sustained campaign that led the Government of India to cancel its “Mahan coal mining project” which not only put the climate at risk but also threatened the livelihood of thousands of poor villagers in Central India.<sup>112</sup>

While the initial target was Greenpeace, by 2023, prominent environmental organizations including think tanks, law firms, and environmental groups have been targeted by way of tax raids, police cases, and their FCRA being canceled.<sup>113</sup>

### 3.2.3.2 Misuse of legal and regulatory framework to shut down environmental organizations

The key mechanisms of the attack were the misuse of the FCRA to suspend/cancel FCRA licenses, raids by the Income Tax Department, false police cases against environmental activists, and the use of investigating agencies like the CBI.

On September 7, 2022, three environmental organizations—Legal Initiative for Forest and Environment (LIFE), the Centre for Policy Research, and EnviroNics Trust—were simultaneously raided by the income tax authorities, and their FCRA licenses were canceled thereafter.<sup>114</sup> They were accused of blocking coal mining projects by misusing foreign funds.<sup>115</sup> Speaking of the case and the tax raids against the celebrated environmental lawyer Ritwick Dutta, whose law firm LIFE won The Right Livelihood Award, also known as the ‘alternative Nobel’ in 2021, an activist told us,

*“First, the police came and prevented anyone from coming and going. Within hours, income tax officials had arrived. As they ransacked the office and took away and cloned all our electronic devices, no staff was allowed to leave the premises, nor was anyone allowed to enter. You can imagine how this played out among the neighbors of this organization, who were all left wondering what was going on*

<sup>110</sup> Business and Human Rights Resource Center, *Foreign-funded NGOs stalling development: IB report [India]*, 12 June 2014, <https://www.business-humanrights.org/en/latest-news/foreign-funded-ngos-stalling-development-ib-report-india/>

<sup>111</sup> Ibid

<sup>112</sup> Greenpeace, *VICTORY: Coal Ministry confirms Mahan will not be auctioned!*, 21 May 2015, <https://wayback.archive-it.org/9650/20200404185033/http://p3-raw.greenpeace.org/india/en/Press/Coal-Ministry-confirms-Mahan-block-will-not-be-auctioned/>

<sup>113</sup> Gerry Shih, Karishma Mehrotra and Anant Gupta, *India cracks down on critics of coal*, The Washington Post, 5 June 2023, <https://www.washingtonpost.com/world/2023/06/05/india-coal-adani-modi-crackdown/>

<sup>114</sup> Ibid

<sup>115</sup> Rishika Pardikar, , *CBI Case Against Environmental Lawyer Has No Evidence To Back Allegations Made But Will Deter Litigation*, Article14, 17 May 2023, <https://article-14.com/post/cbi-case-against-environmental-lawyer-has-no-evidence-to-back-allegations-made-but-will-deter-litigation-646442c0bc566>

*within the premises to invite such strong presence of the police and other officials. The officials actually came carrying bed rolls: for three whole days, the staff was kept within the office, not allowed to leave, as the officials raided the offices by day and slept on their bedrolls at night.”*

Another activist with knowledge of the raids told us,

*“The remarkable thing was that many of the questions asked of climate change NGOs by income tax officials had nothing to do with either income or taxes. Officials kept asking about our campaigns and communications. When we raised objections, stating that the Income Tax department was exceeding its remit, one officer even threatened that they could always find income tax provisions to stop any work that the official and their bosses deemed opposed to the government of the day.”*

While the Indian government has often attacked environmental organizations, there seems to be a concerted effort to stifle organizations critical of projects led by corporations that are close to the ruling party. A *Washington Post* report<sup>116</sup> highlights how the abovementioned three organizations were attacked for their opposition to a coal project led by the Adani group, whose patron, Gautam Adani, is a close ally of Prime Minister Modi. The Adani group has also been accused of money laundering and his company is accused of the “largest con in corporate history.”<sup>117</sup> A retired Indian Revenue Services officer told us,

*“I have reason to suspect that the orders to attack Indian environmental rights NGOs came after informal complaints were raised by large corporations. In some cases, we were asked to raise suspiciously specific questions. Some of the questions seemed to have been prepared with the help of lawyers working for big corporations.”*

While the NPOs are facing intimidation and registration of false cases, FATF-inspired laws have also been misused to attack environmental activists in remote parts of India. Damodar Turi, a tribal rights and environmental activist in the mineral-rich state of Jharkhand, was booked under the UAPA and was put under solitary confinement for protesting against forceful land acquisition.<sup>118</sup> The Indian authorities have failed to follow the risk-based approach as mandated by FATF and have acted against environmental activists despite there being no threat of money laundering and terror financing. Lambasting the authorities who offloaded Greenpeace activist Priya Pillai from a plane and stopped her from attending a conference in London, the court quashed the “look out

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<sup>116</sup> Gerry Shih, Karishma Mehrotra and Anant Gupta, *India cracks down on critics of coal*, The Washington Post, 5 June 2023,

<sup>117</sup> Anand Mangnale, Ravi Nair, and NBR Arcadio, *Documents Provide Fresh Insight Into Allegations of Stock Manipulation That Rocked India’s Powerful Adani Group*, OCCPR, 31 August 2023

<sup>118</sup> CJP, *Damodar Turi’s battle in Jharkhand*, 28 June 2018, <https://cjp.org.in/damodar-turis-battle-in-jharkhand/#:~:text=Damodar%20Turi's%20battle%20in%20Jharkhand%20Human%20Rights%20Defender&text=He%20was%20arrested%20on%20February,of%20under%2Dtrials%20is%20prohibited.>

circular” issued against her and warned the government to draw a line between “nationalism and jingoism.”<sup>119</sup>

The misuse of the FCRA and IT laws is evident from the recent example of tax raids and suspension of the FCRA license of LIFE and Environics Trust,<sup>120</sup> where the authorities made sensational claims about these organizations misusing foreign funds, but the Delhi High Court stayed the suspension order and allowed them to utilize foreign funds.<sup>121</sup>

### 3.2.3.3 Unintended Consequences

The assault on Indian organizations working on climate change has impacted the capacity of these organizations to offer constructive criticism and play a pivotal role as environmental watchdogs. As a result, any critical assessment of governmental policy is not being done by professional and reputable NGOs but small, informal collectives. This is in itself not a bad thing, but it doesn't allow for focused, sustainable, and deep engagement on environmental policy, imperative in today's climate. As a climate change activist said,

*“Suddenly, we could only take up ‘positive’ projects that only proposed band-aid solutions to assaults on the environment. No organizations advocating for structural solutions or using litigation to protect the environment through a rights-based framework was permitted to function.”*

Another activist told,

*“Since any critique of the government was leading to the cancelation of FCRA licenses and since there was no safe or stable way to run an NPO that took adversarial positions, activists chose to keep the fight going by taking up other jobs and doing environmental work on a voluntary basis. This has led to the formation of a handful of small collectives that are keeping the fight going. People in environmental work are very dedicated, but certainly, the capacity to do this work has shrunk dramatically.”*

Even volunteer work has been deeply affected by the Government making an example of young climate change activist Disha Ravi. In 2021, Disha Ravi, a 22-year-old activist of the global movement called Fridays for Future, was arrested for supporting India's farmers' protest. The government charged her with serious charges of sedition and engaging in anti-India activity. An activist with knowledge of the events told,

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<sup>119</sup> Business and Human Rights Resource Center, *Delhi High Court quashes look out circular against Greenpeace campaigner Priya Pillai*, 10 March 2015, <https://www.business-humanrights.org/en/latest-news/india-delhi-high-court-quashes-look-out-circular-against-greenpeace-campaigner-priya-pillai/>

<sup>120</sup> Rahul Tripathi, *Environics Trust's Foreign Contribution Registration Act licence suspended*, 20 July 2023, <https://economictimes.indiatimes.com/news/india/envionics-trusts-foreign-contribution-registration-act-licence-suspended/articleshow/101966982.cms?from=mdr>

<sup>121</sup> The Wire, *MHA Suspended Environics Trust's FCRA License in March 2023, Delhi HC Stayed Suspension*, 20 July 2023, <https://thewire.in/rights/mha-suspends-envionics-trusts-fcra-license>

*“The impact on the participation of young people in our protest was immediate. Leave alone the reputational damage, young people and their parents were made afraid of similar arrests. The very next Friday after the arrest of Disha Ravi, participation in the weekly protests cratered, with young students feigning exams when it was not exam time, or saying their parents did not want them to participate in ‘anti-national’ activities.”*

When asked to cite a number for the impact on participation, the activist told,

*“my estimate is participation fell by as much as 70 percent and continues to remain much lower than before.”*

Another important unintended consequence of the FATF-inspired laws is the restriction on sub-granting, which has deeply affected environmental organizations. Sub-granting was a key mechanism by which funders could ensure much-needed funds reached local organizations that were both the most affected by environmental projects, and that were the only organized groups capable of sustaining a grassroots educational and advocacy campaign. With the blanket ban on the sub-granting of FCRA funds, any such possibility of supporting people in their attempts to raise grievances or call for justice was ended. A climate change activist remarked,

*“Each of the major funders in India had hundreds of smaller organizations that they funded with small sums, about INR 15 lakh (about 18,000 USD). Most of those organizations have now had to either cut back on operations or shut down entirely.”*

One organization that often uses subgrants to donate to smaller organizations, as it is impossible to effectively conduct its work across the length and breadth of India told,

*“While our organization has not faced any attacks, we have not only stopped sub-granting to smaller nonprofits, we have stopped engaging them entirely for any work, even as consultants on a for-profit basis. We just don’t know if even completely legitimate work will be spun in some way to target us.”*

The government action adversely impacted not only the environmental organizations and activists in India, but international donors too. An international funder with deep knowledge of India’s landscape of environmental organizations told us,

*“Nowadays, everyone knows to not even meet with any watchdog NPOs. Even a single meeting can lead to the funding agency being blocked out of India, leave alone much harsher consequences for the nonprofits themselves. In any case engaging Indian civil society feels like a dead end because the government seems so intent on punishing any advice or oversight by civil society. The consequences for our functioning are significant; our tracking of problems that may be arising across the country has suffered greatly, and we now have far fewer avenues of independently verifying the government’s claims. But the stakes are too high: we need the government to cooperate on environmental issues. So, we continue to*



*operate in this highly compromised environment. We are doing far less than we hope to do, and that is hard because we know the consequences are catastrophic. But it is still better than being forced to shut down and thus doing nothing at all, which seems to be the only other option.”*

## 4 Conclusion

The nonprofit sector in India works on some of the country’s most complex social issues at the intersections of life and liberty itself. India is a giant welfare state with thousands of schemes promising a better life for its citizens, but it is the nonprofit sector workers that serve as a connector between the state and the people by unlocking the benefits promised. It is estimated 4,000 to 8 lakh people per organization will lose access to the services provided by those nonprofits whose FCRA licenses have been canceled.<sup>122</sup> Notably, the sector also contributes to two percent of the Country’s GDP. According to a 2012 report by the Ministry of Statistics and Program Implementation, civil society organizations account for 27 lakh jobs and 34 lakh full-time volunteers, generating employment figures higher than that of the public sector.<sup>123</sup>

Unfortunately, the Indian government has used FATF standards to decimate Indian NPO sector undermining their significant contributions and FATF’s promise of encouraging legitimate NPOs. The government’s crackdown on the sector has had a chilling effect on free speech. The entire landscape has shifted in favor of only “government-friendly” corporatized entities. NPO leaders and activists have confirmed that even those organizations that have been permitted to continue, have dramatically changed their methods of operation to avoid the devastating effects of these crackdowns. This prevailing sense of fear and growing self-restraint among NPOs must be addressed immediately otherwise an entire sector that provides last-mile connectivity will be decimated. Unfortunately, little can be expected from the Indian government. In fact, the government is actively working to crush the rights-based NPOs in India and silence its critics. International human rights bodies and experts have often raised these concerns and raised the issue of misuse of laws for targeting NPOs.<sup>124</sup>

Therefore, FATF is obligated to step in and safeguard the interest of NPOs in India. The MER in November 2023 provides an excellent opportunity for FATF to call out India’s crackdown on NPOs and its misuse of the FATF-inspired law to target NPOs. It must impress upon the Government of India that suppression of charitable organizations in India is not a desirable implementation of FATF standards. Consequently, it should also recommend necessary legal and regulatory changes as listed in the next section, to ensure NPOs can continue working effectively, without fear in India.

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<sup>122</sup> Rajika Seth & Smarinita Shetty, *Who loses when FCRA licences get cancelled?*, IDR, 11 August 2023

<sup>123</sup> Ibid

<sup>124</sup> Human Rights Watch, *India Should Stop Using Abusive Foreign Funding Law*, 18 January 2022

## 5 Recommendations

### For the Indian government:

1. The Indian Parliament should establish an independent committee to review the FCRA, with input from NPOs, and assess the sector's risk of ML/TF abuse. The assessment's results should inform a complete retooling of all FCRA Sections. Revisions should:
  - a. Comply with India's constitution, international human rights, and FATF obligations.
  - b. Be targeted, risk-based, and proportionate to NPOs' determined ML/TF vulnerability. This includes restricting unnecessary intrusion, compliance costs and sanctions, and general monitoring and oversight requirements;
  - c. Avoid a one-size-fits-all approach to sector regulation and enact the least restrictive measures to dissuade ML/TF.
  - d. Implement mechanisms for sustained outreach and input from the NPO sector, including taking self-monitoring efforts into account;
  - e. Schedule periodic reviews of the FCRA, its impact on legitimate NPO activities, and the sector's risk to ML/TF. Sub-groups within the sector should be identified and treated according to their level of ML/TF risk.
2. Repeal the 2020 Section 7 blanket ban on sub-granting and transfers to other NPOs with FCRA certification or prior permission.
3. Remove the prohibitions on public servants and NPOs with political elements, only restricting Rule 3 of the FCRA Rules to "active" or "party" politics.
4. Issue a government circular guaranteeing and defining the procedures for cancellation of FCRA license, including the provision of giving reasonable opportunity of being heard before issuing the cancellation order.
5. Create an independent body for parties to appeal cancellations, suspensions, and refusals to renew their FCRA licenses.

### For FATF

1. Call upon India to stop misusing FATF standards to target legitimate NPOs.
2. Recommend the Indian government to revise restrictive provisions of the FCRA, PMLA, and UAPA that violate the mandate of Recommendation 8 in consultation with NPO actors.
3. Direct India to immediately publish the National Risk Assessment Report.
4. Direct India to conduct a thorough sectoral risk assessment of the NPO sector and publish such a report online.
5. Direct India to undertake a comprehensive outreach with the NPO sector explaining the risk the terror financing and money laundering and suggesting ways to address it.

## Appendix 1: Survey Questions

1. **What is your position in your NGO?**
  - a. Founder
  - b. Board Chair
  - c. Board Member
  - d. Director
  - e. General Secretary
  - f. Other Senior Staff
  
2. **What is the legal type of your NGO?**
  - a. Trust
  - b. Society
  - c. Company registered under the Companies Act 2013
  - d. Other
  
3. **Which states do your organization work in (select all that apply from the list of states)**
  
4. **Which of the following best describes the work of your organization?**
  - a. Service Work (Poverty alleviation, livelihood, and animal welfare etc.)
  - b. Advocacy work (Land rights, Human Rights, and Citizenship Rights etc.)
  
5. **Does your NGO work with marginalized groups (Like Dalits, Adivasis)?**
  - a. Yes
  - b. No (If No, skip next question)
  
6. **Which of the following marginalized groups does your NGO work with?**
  - a. Dalits
  - b. Adivasis
  - c. Religious minorities
  - d. Sexual minorities
  - e. Women
  - f. Children
  
7. **How would you rank your organization in terms of its budget?**
  - a. Small (Less than INR 50 lakhs annual budget)
  - b. Medium (Between INR 51lakhs – 2 crores annual budget)
  - c. Large (between INR 2-10 crores annual budget)
  - d. Very large (More than INR 10 crores annual budget)
  
8. **Does your NGO have registration certificate under the Foreign Contribution Regulation Act (FCRA)?**
  - a. Yes
  - b. No

**9. Did your NGO ever have a registration certificate under the FCRA in the past?**

- a. Yes
- b. No

(If the answer to Q. 8 and 9 is No, then skip to Q. 14)

**10. Has the government ever revoked your FCRA license?**

- a. Yes (If Yes, was any reason given? Kindly explain)
- b. No

**11. What has been the impact of the revocation of the FCRA license on your NGO?**

- a. Prevented us from accessing funds
- b. Could not apply for funds
- c. Forced us to refuse a grant
- d. Cancel a program
- e. Restricted our work to certain geographic areas and beneficiaries
- f. Significant increase in administrative burden
- g. Other (specify)

**12. Has your NGO tried to renew its FCRA license?**

- a. Yes (If yes, what was your experience)
- b. No (If No, then why did you not do it?)

**13. Does your NGO receive resources (foreign funds or goods) from abroad?**

- a. Yes
- b. No

**14. In what form does your NGO receive funds?**

- a. Grants or Contracts
- b. Donations through formal banking channels
- c. Cash Donations
- d. Membership fees
- e. Sales of goods/services
- f. Investments
- g. Other channels (Like Go-fundme, Milaap, Ketto, etc.).

**15. Which of the following category applies to your organization's funds source?**

- a. The Government (Central or State government)
- b. Indian Funding Agency
- c. Foreign Government
- d. Foreign Funding Agency
- e. Individuals
- f. Corporations (Like Corporate Social Responsibility contributions)
- g. Other

**16. In the last 5 years, has your NGO faced any of the following problems?**

- a. Problems in opening bank accounts

- b. Suspension or putting a hold on bank accounts.
  - c. Ban on transferring funds
  - d. Any other
  - e. No
- 17. Has your NGO ever had financial restrictions imposed upon it by the government (such as suspension or freezing of bank accounts or any related action)?**
- a. Yes (If yes, Did the government give any reason? (Please specify)
  - b. No
- 18. Does your NGO do due diligence on your donors, partners, and beneficiaries to prevent the misuse of funds?**
- a. Yes
  - b. No
- 19. When do you do due diligence?**
- a. As a routine exercise
  - b. When you identify a need
- 20. Do you do due diligence to prevent the risk of misuse of funds for money laundering and terrorist financing?**
- a. Yes
  - b. No
- 21. Do you do due diligence because: (Click all that apply)**
- a. The Government wants you to do it
  - b. Donors want you to do it
  - c. Banks want you to do it
  - d. You think it's good practice
- 22. Are you aware that the government is conducting a specific National Risk Assessment on the misuse of funds in the NGO sector?**
- a. Yes
  - b. No
- 23. Has the government contacted you to participate in this National Risk Assessment?**
- a. Yes
  - b. No
- 24. Are you aware of any law or regulation which regulates the potential misuse of funds in the NGO sector?**
- a. Yes (If yes, please name them)
  - b. No

**25. Has the government contacted you with advice or guidance on how to reduce the risk of potential misuse of funds?**

- a. Yes
- b. No

If yes,

- i. Do you think these measures are relevant for you?
- ii. Do you think these measures are effective in preventing the risk of misuse of funds?
- iii. Do these measures limit your ability to do your work?

**26. In your perception what level of risk does your NGO pose for money laundering?**

- a. No risk
- b. Low risk
- c. Medium Risk
- d. High Risk
- e. I don't know

**27. In your perception what level of risk does your NGO pose for terror financing?**

- a. No risk
- b. Low risk
- c. Medium Risk
- d. High Risk
- e. I don't know

**28. In your perception what level of risk do NGOs in India pose for money laundering??**

- a. No risk
- b. Low risk
- c. Medium Risk
- d. High Risk
- e. I don't know

**29. In your perception what level of risk do NGOs in India pose for terror financing?**

- a. No risk
- b. Low risk
- c. Medium Risk
- d. High Risk
- e. I don't know