Swabhimaan

A LIBERTARIAN PERSPECTIVE ON INDIA

ISSUE 2 | 10 AUGUST 2026 | SPECIAL EDITION

The Ghosts of Emergency Past P. 3

Delhi Has Reserved 25% of a University Nobody Has Built P. 6

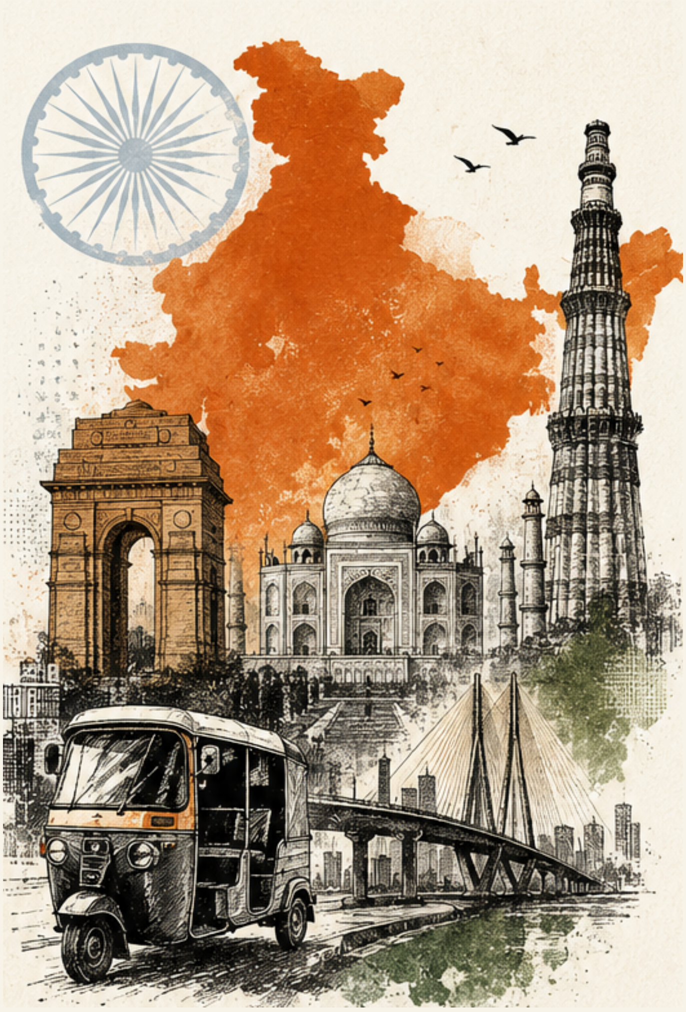
THE FCRA WAS BORN UNDER THE EMERGENCY. ITS 2026 AMENDMENT NEEDS NO EMERGENCY AT ALL.

Swabhimaan

IDEAS. LIBERTY. PROSPERITY.

A LIBERTARIAN PERSPECTIVE ON INDIA

ISSUE 2 | 10 AUGUST 2026 | SPECIAL EDITION



> *It is Swaraj when we learn to rule ourselves. It is, therefore, in the palm of our hands. But such Swaraj has to be experienced, by each one for himself. One drowning man will never save another.*
>
> — M. K. GANDHI, HIND SWARAJ, 1909

Editor: Avneesh Kasture. Swabhimaan is published every Thursday.

TABLE OF CONTENTS

3 LEAD ARTICLE
The Ghosts of Emergency Past
By Avneesh Kasture

6 OPINION
Delhi Has Reserved 25% of a University Nobody Has Built
By Attharv Banaitkar

The Ghosts of Emergency Past

BY AVNEESH KASTURE

The Foreign Contribution (Regulation) Act was passed in a single Emergency afternoon, with the opposition in jail. Its 2026 descendant needs no Emergency — the same appetite for power arrives as approvals, notifications and deadlines left to rules.

The Foreign Contribution (Regulation) Bill was passed in a single afternoon, on 29 March 1976, nine months into the Emergency. JP and Morarji Desai were in detention under MISA, along with most of the opposition leadership; the RSS was a banned organisation. Of the parties still standing, the CPI supported the Emergency and the CPI(M) kept a rump presence in the House. The opposition was, in effect, either jailed or ideologically co-opted.

The mood of the chamber is not hard to reconstruct. The Lok Sabha had just extended its own term, postponing the election due that March, and A.K. Gopalan was protesting the extension minutes before the Bill was taken up for debate: "Not to have an election is not good… It shows that they are afraid of going to the people". He was told the Emergency "has benefited the peaceful life of a developing people". In that chamber, minutes later, the FCR Bill was moved, and subsequently passed that evening.

The Foreign Contribution (Regulation) Amendment Bill, 2026, is a direct descendant of the 1976 Bill made law during those tumultuous times, in more ways than is immediately obvious. The rhetoric then was about anti-communist activities funded through missionaries; the rhetoric now is missionaries being funded for conversion activities. What has not changed is the state's appetite for power: to grow more intrusive, weaken property rights and expand the discretionary powers with which it can spare its friends and smite its foes.

This should not be a partisan issue. Governments change, and the opposition eventually inherits the powers accumulated by its predecessors.

FCRA 2.0

The Foreign Contribution (Regulation) Amendment Bill, 2026, introduced in Lok Sabha on 25 March 2026 and pending, enlarges Central Government control over FCRA enforcement in three important ways.

First, no FCRA investigation can begin without prior Central Government approval, including investigations by state Crime Branches and the CBI.

Second, clause 16 widens the principal offence to cover "accepts, utilises or assists" in the acceptance or utilisation of foreign contribution, while cutting its maximum imprisonment from five years to one. That combination matters because a one-year maximum ordinarily brings the offence within a one-year limitation period.

Third, the Bill replaces the existing custodial regime for assets with a forfeiture system. Property can provisionally vest in the state even where it was acquired partly with Indian funds, and can become permanently vested if registration is not restored within a period left to rules.

The Bill therefore gives the executive control at three consequential points: whether an investigation can begin, whether enough time remains to prosecute the principal offence, and whether provisionally vested property is returned.

Two existing powers reinforce that control. Compounding determines which violations ever reach prosecution, while commencement determines when different parts of the new machinery begin operating.

COMPOUNDING AND COMMENCEMENT

Compounding lets a violator pay a prescribed sum and avoid criminal prosecution. Section 41 makes FCRA offences compoundable in principle, leaving the Central Government to specify the officers, offences and amounts by notification. Seven substantive notification regimes, in 2011, 2013, 2016, 2018, 2022, 2023 and 2026, have filled in that blank. Parliament voted on none of them.

The changes are not merely technical. A late annual return carried a minimum penalty and a ₹500 daily charge in 2013; that became a ₹10,000 ceiling in 2016, then a ₹1 lakh minimum in 2018. The price of settling the core acceptance offence also rose sharply: the 2011 table put some forms of unregistered acceptance at two per cent of the contribution involved; the 2022 table put the section 35 offence of accepting foreign contribution without registration or prior permission at thirty per cent.

In February 2023, the compounding notification expressly contemplated compounding for "utilising" foreign contribution, even though the principal offence then did not use that word. The Bill now inserts "utilises" into section 35. The notification also decided its own temporal reach, applying to pending cases while barring reopening of disposed cases.

The point is not that every change is improper. It is that Parliament creates the framework while the practical price and scope of compounding are repeatedly altered by executive notification.

The commencement power is normally less dramatic. It allows different provisions of a law to come into force on different dates. But it can leave a parliamentary decision without legal effect. In 2021 Parliament amended the limitation schedule to remove GST and benami offences from ordinary limitation, but made those amendments dependent on separate commencement notifications. Five years later, those provisions remain uncommenced.

The Bill makes commencement consequential because its provisions interact. The government can choose when the reduced punishment, investigation veto and forfeiture machinery take effect, and the sequence can affect pending cases.

Other systems put limits on this discretion. British deferred-prosecution agreements require judicial approval; German settlements require court consent. Canada automatically repeals provisions left uncommenced for ten years and publishes an annual backlog. Australian provisions can commence automatically if no proclamation is issued within six months. India's commencement power has no comparable judge, list, fuse or default.

THE ONE-YEAR TIMEBOMB

The most consequential change is the combination of the one-year sentence and the investigation veto.

Under the existing law, the principal FCRA offence carries a maximum five-year sentence. That places it outside the ordinary limitation periods. Investigating agencies can also begin an FCRA investigation without first obtaining Central approval. The Central Government's existing control comes later: no court can take cognizance without its previous sanction.

The Bill reverses the order. The principal offence now carries a maximum of one year, bringing it within the BNSS provision that ordinarily imposes a one-year limitation period. At the same time, no investigation may begin without prior Central Government approval. Nothing in the Bill expressly excludes the time spent waiting for that approval from the limitation period.

That is the timebomb: the Ministry controls whether the ordinary investigative route can start, while the legal clock for bringing the principal offence before a court can continue to run.

The old sanction power operated at the end of the process. An investigation could be completed and the file placed before the government. The limitation chapter expressly excludes time spent obtaining a sanction required for prosecution. The new approval is different. It is required before investigation begins, and the Bill contains no equivalent express exclusion for waiting for that permission.

If the Ministry wants a case pursued, it can approve the investigation promptly. If it does not, delay can become consequential without a formal refusal. A court can compel the government to make a decision, but the Bill supplies no criteria governing that decision.

There are possible escape routes. A private complainant can approach a Magistrate, and a timely complaint or police information may have consequences for limitation. But the Bill leaves important questions unresolved: whether a complaint can stop the limitation clock when investigation itself requires Central approval; whether registration of an FIR amounts to initiating an investigation; and whether the Magistrate's power under the BNSS to direct an investigation survives the Bill's express prohibition.

Those questions would have to be resolved in litigation while the clock runs. FCRA offences also have no conventional private victim: the regulatory injury is to the state's scheme itself. A rival or whistleblower can complain, but whoever wants the case kept alive bears the cost of resolving these questions.

The result is not that every FCRA prosecution will automatically expire after one year. It is more precise than that. The Bill puts the ordinary investigative route under executive control at the same time as it places the principal offence inside a much shorter limitation regime. That gives ministerial delay a power it did not previously have.

PROSECUTION ON DEMAND

The state still has ways to keep alive the cases it wants to pursue.

A more serious FCRA offence, where the facts genuinely support it, can carry a longer limitation period. The separate offence concerning property ordered to be frozen carries a three-year maximum and is non-bailable. Independent offences such as forgery, conspiracy or cheating are outside the FCRA investigation veto and can carry their own penalties and limitation periods. The prosecution may also argue that utilisation is a continuing offence, although the Bill does not expressly say so. And the BNSS permits limitation to run from later knowledge in specified circumstances and allows courts to extend the period in appropriate cases.

These routes matter because they make the system asymmetric. When the government wants a prosecution, it can use the legally available route with the longer period. When it does not, the principal FCRA route cannot even begin without its approval.

The Bill also widens vicarious liability. Its new "key functionary" category reaches trustees, Kartas of HUFs, office bearers, members of governing bodies and anyone responsible for management or affairs. The important expansion is to trusts and Hindu undivided families and the open-ended category of persons responsible for management.

THE FORFEITURE CODE

The Bill's second major change is to property.

The current law is custodial. When registration is cancelled or surrendered, assets pass to a government-appointed custodian, who manages them and must return them if the organisation is registered again. There is no comparable deadline after which the custodian automatically becomes the owner.

The Bill replaces that system with a Designated Authority and an Administrator, both operating under the Central Government's "directions or orders, whether general or special". Cancellation and surrender remain triggers, but lapse of registration is added. Assets can be frozen when registration is suspended, before any finding of wrongdoing. Property then provisionally vests in the Designated Authority.

The striking feature is what happens to mixed assets. An asset can vest wholly even where it was acquired partly from foreign contribution and partly from Indian sources. The owner can seek return of a "distinct or ascertainable portion" attributable to those other sources. The period for restoring registration before provisional vesting becomes permanent is not fixed in the Bill; it is left to rules. If that period expires, the property "shall thereupon stand permanently vested" in the Designated Authority.

Consider a building funded eighty per cent by Indian donations and twenty per cent by foreign contribution. The whole building can provisionally vest. The owner must then establish the distinct or ascertainable Indian-funded portion before the authority holding the building.

No judicial finding of wrongdoing is required before permanent vesting. Once permanently vested, the property can be transferred to a government or local authority or sold, with the proceeds credited to the Consolidated Fund of India. The former organisation and its people cannot buy the property back. Vested property is also protected from attachment or execution by civil courts, cutting off ordinary creditors.

The scale is substantial. On Ministry figures compiled by PRS in July 2026, there were 22,498 cancelled registrations and 15,212 deemed expired: 37,710 dead registrations against 14,449 live ones. The Bill reaches this existing stock as well, deeming assets already vested under section 15 to be provisionally vested in the new system from commencement.

The Central Government can also exempt any person or class from the forfeiture provisions where it considers this necessary or expedient in the public interest.

The executive therefore controls the period for restoring registration, the registration decision itself and the exemption power. A regime that previously required a custodian to return property after restoration can become permanent state ownership after a rule-made deadline.

THE COURTROOM IRONY

The FCRA's investigation scheme is already before the courts. In the Advantages India case, petitioners challenged the government's ability to choose the investigating agency. The Delhi High Court upheld the arrangement partly because allocation between the CBI and Crime Branches rested on an objective criterion, the amount involved, while the agencies then investigated independently. The Supreme Court agreed to hear an appeal in 2024, and it remains pending.

The Bill would superimpose prior Central approval on every FCRA investigation, without prescribing statutory criteria for the exercise of that power. If enacted before the appeal is decided, the Union will have replaced the arrangement it defended with the very case-by-case discretion that its critics had challenged.

The property question is different. In Noel Harper, the Supreme Court upheld the 2020 FCRA amendments and held that there is no fundamental right to receive foreign contribution. But that judgment did not decide the constitutionality of permanently taking property already lawfully acquired under a valid registration, including the Indian share of mixed assets, without a judicial finding of wrongdoing. The Bill therefore raises a distinct question under the constitutional right to property.

1976, AGAIN

The 1976 Act needed an Emergency: a jailed opposition, a self-extended Lok Sabha, and a chamber that had just been told that postponing elections benefited the peaceful life of a developing people.

The 2026 Bill needs none of that theatre. Its architecture works through ordinary delegated powers. Parliament will vote on the words; the Ministry will decide, through approvals, notifications, rules and commencement dates, much of how those words operate.

That is why this should not be treated as a partisan question. Every government inherits the powers created by its predecessor.

The lesson of 1976 was not merely that extraordinary governments can abuse extraordinary powers. It was that powers created for one government's purposes survive the government that created them.

The decisive instrument in 2026 is quieter: an approval withheld, a rule-made deadline, a notification delayed, a provision left uncommenced. The government changes; the machinery remains.

Delhi Has Reserved 25% of a University Nobody Has Built

BY ATTHARV BANAITKAR

The draft Private Universities Bill reserves a quarter of every course for "Delhi students" — a status a dummy school can sell and twelve years of living here cannot earn. And the university it reserves does not exist.

There are schools in Delhi where nobody attends class. A student finishes Class 10 somewhere else, enrols in one of them, spends the next two years in a coaching centre, and sits his board exams on attendance that was written rather than earned. What those two years buy is a status. At the end of them he counts as a Delhi student, eligible for the 85 per cent quota that holds roughly six seats in every seven at the universities this city runs. In January last year a bench led by Chief Justice D K Upadhyaya called the practice a "fraud" and ordered inspections, and the CBSE said it had already acted against more than three hundred such schools nationwide.

Now set beside him a boy whose family has lived in Rohini for twelve years, and who finished school across the line in Gurugram because that was the school his parents could afford. In 2022 the High Court told him he did not qualify. The quota follows the location of the school, not the residence of the student. So schooling here can be bought by someone who has never lived here, and living here counts for nothing without it. Once two years of Delhi schooling are worth a university seat, that schooling stops being a record of where a child studied and becomes an asset worth manufacturing, and somebody will always set up to manufacture it.

On Friday the Delhi Cabinet cleared the draft Private Universities Bill. Among other things it reserves 25 per cent of seats in every course for Delhi students, admitted under the government's existing quota policy, which is the policy described above.

The courts have already flagged this. In Ujjwal Shori v University of Delhi, decided in September 2023, a division bench upheld the rules and then warned that they could exclude bona fide students with a legitimate claim to residence in Delhi. It directed the government to revisit them, and recorded that the Assembly was considering an amendment to build residence into the definition. Three years on the definition is unchanged, and the government is extending it to a new class of universities.

Ashish Sood has put his finger on a real grievance. Delhi is where the country's children come to prepare for their exams, and where Delhi's own children leave to take a degree. The bill carries real money for the families who felt that most, since the poorest students inside the local quarter pay no fees at all. People who dislike quotas tend to go quiet about who gets through the door. But the waiver and the quarter run on different principles. One helps a family that cannot pay, the other a family that was already here, and a child does not become poorer because her school stood five kilometres the wrong side of a boundary.

A QUARTER OF WHAT?

Count what the quarter is a quarter of. The UGC's list of private universities runs past four hundred institutions. Gujarat has sixty-five and Rajasthan fifty-three. Delhi does not appear on it at all, because the capital of India has no law under which a private university can be founded, and that absence is the whole reason Friday's bill exists.

Then subtract again. Article 30 gives religious and linguistic minorities the right to run their own institutions, and in P A Inamdar the Supreme Court held that a state cannot impose its admission quotas on private unaided colleges. Maharashtra has lived with this for years, and its minority institutions sit outside the state quota, filling up to 51 per cent of their seats from their own community. Delhi's quarter will therefore reach some universities and not others. That is a constitutional guarantee working as designed, and the arithmetic holds regardless. A quarter of the seats the rule can reach is smaller than a quarter of the seats in Delhi.

Dummy schools counterfeit a Delhi childhood. A reserved quarter counterfeits a seat that nobody has built, and of the two frauds it is the more expensive, because it is legal and nobody will be inspected for it.

SHARE RULES ARE CHEAP; BUILDINGS ARE SLOW

The test worth carrying out of this week's news is whether a rule changes who gets in or how many get in. Share rules are cheap and can be announced from a podium. Buildings are slow, and they open long after the minister has moved on. So the quarter led every headline on Friday, while the clause that will decide whether Delhi's children stay in Delhi ran somewhere down the page. That clause declines to require the traditional land-hungry campus and allows multi-storey urban ones instead. Ashoka went to Sonipat and Shiv Nadar to Greater Noida because Haryana and Uttar Pradesh had both a law permitting private universities and land to build on, and Delhi had neither.

It is also where the quarter starts to matter more than it looks. A rule about who gets a seat can be written before a single seat exists, and anyone weighing a campus in Delhi against one in Sonipat will read it as part of the price of coming. Reserve a quarter of a university that already stands and you have moved seats around. Reserve a quarter of one that does not, and you have changed the odds it gets built, which is an odd thing to do inside a law meant to get things built.

The quarter also protects a narrower group than the phrase "Delhi students" suggests: the families already inside Delhi's school system, along with the operators who have learned to manufacture entry into it. Roughly three in ten people here came from another state and built the place while they were at it, and a rule that sorts their children by which side of a line a school stood on will feel fair mainly to whoever has already cleared it.

So there is a figure worth watching over the next five years, and it is not 25. It is how many campuses open. Until one does, the boy whose attendance was invented and the boy whose neighbourhood was real are competing for a quarter of a university that does not exist.