

**House Foreign Affairs Committee Full Committee Hearing on
Indian Government Obstacles to Compassion International**

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Chairman Royce, Ranking Member Engel, members of the distinguished committee, and committee staff, thank you for the opportunity to testify today.

The U.S.-India partnership has continued to evolve under recent U.S. administrations, and the relationship has strengthened across multiple fronts, including defense collaboration, energy cooperation, and commercial ties. In addition, the Indian diaspora community in the United States makes up a vibrant political and economic constituency. While the strengthening of this strategic relationship is beneficial for the United States as we seek to foster global stability and free markets, India stands to reap significant benefits of this partnership. Therefore, the United States maintains strong leverage to engage India on the issue of NGO crackdown and foreign exchange management by their government. The current “prior permission” status of Compassion International in India is not an isolated event but it does not necessarily signify Indian governmental retaliation against faith-based – specifically Christian evangelical – organizations. Rather, this incident is consistent with a broader trend affecting many NGOs and nonprofits in India which are increasingly complaining of heavy-handed government regulation in what has led many social observers to raise alarms about an attack on civil society by the current government. Such alarmism is not entirely misguided but it is overblown. In enforcing the regulations of the Foreign Contribution (Regulation) Act (FCRA), the Government of India is acting fully within its rights as a sovereign state, and the reality is that a great many of the organizations that have lost their licenses since May 2014 were in violation of FCRA regulations. But it is also arguably true that many have violated the letter rather than the spirit of the law, and that the enforcement has been too often opaque and without clear explanation of cause. Further, while concerns that the Government of India has targeted faith-based Christian organizations disproportionately cannot be confirmed without more systematic analysis, anecdotal evidence does suggest that such concerns are not without warrant.

The critical point is that these incidents, troubling and unfortunate as they might be for specific institutions and their erstwhile beneficiaries, are but one part of the broader US-India relationship that has the potential for being a vital strategic partnership for the United States in the 21st Century. Investments in deepening this relationship have enjoyed bipartisan support in Congress and span administrations, and this commitment in turn affords the United States leverage in asking the Indian government to make the enforcement of its policies more transparent and to protect freedoms of association and speech for all civil society organizations without fear of interference.

An Overview of the U.S.-India Strategic Partnership

The U.S.-India partnership has made great gains across defense, energy, and commercial cooperation in recent decades, and initiatives aimed at strengthening this relationship across these three metrics have received bipartisan support. A fuller accounting of the gains in various dimensions of the relationship are beyond the scope of my testimony today, but a good recent summary is provided by Assistant Secretary’s Nisha Biswal’s testimony to the Senate Foreign Relations Committee on May 24th, 2016¹ and in the August 31st, 2016, joint statement following the second Strategic and

¹ Available at http://www.foreign.senate.gov/hearings/us_india-relations-balancing-progress-and-managing-expectations-052416.

Commercial Dialogue.² Here I provide a précis of the key advances in the relationship over the past decade to set the context for my recommendations of how best to deal with the issues underpinning today's hearing.

In 2006, Congress passed legislation enabling a U.S.-India civil-nuclear deal that would allow the U.S. to export nuclear materials and equipment to India, so long as India signed the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). This initiative was spearheaded by President George W. Bush, who viewed the agreement as an integral part of his non-proliferation strategy.³ President Obama continued the trend of defense cooperation with India. After nearly a decade of talks, U.S. Defense Secretary Ash Carter and Indian Defense Minister Manohar Parrikar signed the Logistics Exchange Memorandum of Agreement (LEMOA) in 2016. LEMOA built and institutionalized foundational agreements to promote interoperability between the two militaries by creating a set of common standards and systems.

The United States and India have also strengthened ties related to energy cooperation. In 2009, the U.S. and India launched the Partnership to Advance Clean Energy (PACE), which works to accelerate inclusive, low-carbon opportunities for growth by supporting research and adoption of renewable energy technologies. The U.S.-India Energy Dialogue is held annually in order to track the progress of PACE and other levels of bilateral initiatives on energy cooperation.⁴

In October 2016, India ratified the Paris Climate Agreement, the world's first comprehensive climate agreement that aims to cut CO₂ and greenhouse gas emissions. Under the terms of this agreement, India has committed to ensuring that 40% or more of its electricity will be generated by non-fossil sources by 2030. This was a bold commitment on behalf of India, the world's third-largest greenhouse gas emitter. In September 2016, India's representative at the G20 summit claimed that various legal impediments would make it impossible for the country to ratify the agreement. However, Indian officials changed their mind, partly due to strong U.S. pressure to sign on to the agreement. President Obama and Chinese President Xi Jinping made a public appearance in Hangzhou after ratifying the agreement, where President Obama remarked that the two countries were "leading by example." As the world's two largest economies and largest CO₂ and greenhouse gas emitters, their entrance into the agreement not only signaled strong international buy-in, but also put significant pressure on India to join the major political and economic powers in ratifying the agreement. That the pressure succeeded is credible evidence of India's desire to demonstrate that it should be considered a global leader in governance issues.

Commercial ties between our two countries have never been stronger. While there is a long ways to go, trade between India and the United States continues to grow in spite of a challenging global economic climate. U.S. investors continue to find opportunities in India and, encouragingly, Indian investors are looking to the United States to grow their businesses, generating jobs and prosperity. The Indian government has proven very receptive to feedback provided by U.S. businesses

² Available at <http://www.state.gov/r/pa/prs/ps/2016/08/261405.htm>.

³ Kate Heinzelman, "Towards Common Interests and Responsibilities: The U.S.-India Civil Nuclear Deal and the International Nonproliferation Regime," in *Yale Journal of International Law*, Volume 33, Number 1 (2008), 448.

⁴ U.S.-India Energy Cooperation, *U.S. Department of Energy*, 2016, <http://energy.gov/ia/initiatives/us-india-energy-cooperation>

and continues to streamline the investment process and to cut the redtape that had bedeviled previous efforts to make India's economy attractive to foreign investors. To be sure, much remains to be done to realize India's full potential as an investment destination, but the high levels of human capital and favorable demographic profile ensure that the economic relationship will continue to flourish for years to come. Of particular interest is the growing venture capital role played by Indian investors for start-up innovation in the United States; successful partnerships in this sector could lead to synergies in a variety of 21st century technology-leading domains. The uncertain future of the Trans-Pacific Partnership (TPP) makes the stronger economic relationship with India all the more important.

A final dimension on which I'd like to comment briefly is the affinity of values between the two nations. As the two largest democracies in the world, both India and the United States have long seen themselves as sharing a commitment to basic principles of human freedom and as beacons for other countries seeking to follow their examples. This affinity is enhanced by the vibrant and successful Indian diaspora population in the United States. At just about 3 million people, the Indian diaspora is the third-largest immigrant population in the United States. It is a young population with above-average education rates and income profiles, and it has become rapidly more politically organized and visible. President-elect Trump has named Indian-American Governor Nikki Haley as his pick to be the U.S. Ambassador to the United Nations, and the 2016 elections will send the first Indian-American to the U.S. Senate and four elected to this House of Representatives, including Rep. Ami Bera who serves on this committee. Given the tremendous pull of American higher education to talented Indian students, this population will likely continue to grow with great upside for the U.S. economy.

This brief overview confirms what we already know: India is a rising world power that should be a strategic partner of the United States. This partnership is enabled and strengthened by shared interests for the future of Asian and global governance, as well as a bedrock of common values and democratic principles. Yet, for all this optimism, there exist points of difference that need to be dealt with forthrightly as befits a strong relationship between friends. The issue being discussed today is one such point of contention that threatens to undermine the hard work of both sides in building a well-institutionalized partnership that spans administrations. I turn to this set of issues below.

Compassion International

Compassion International (CI) is a child-advocacy ministry that pairs impoverished children in the developing world with sponsors online. Sponsors pay a small donation each month to sponsor a child. In turn, CI uses these funds to provide educational support, vocational training, leadership skills workshops, and spiritual and character development through its partner churches and denominations. CI invests at least of 80% of all funds raised by sponsorships and donations into their front-line ministry. The remaining funds are directed towards funding overhead costs, such as fundraising efforts and administrative support. In FY 2016, 82.4% of CI funds were directed to programs that directly benefitted children, and the remaining 17.6% supported overhead costs. Compassion International is rated highly by charity watchdog agencies in terms of financial health,

accountability, and transparency. Charity Navigator gives it a rating of 84.45/100 on financial health, 100/100 on accountability and transparency, and an overall rating of 89/100.⁵ CharityWatch gave the organization an “A” rating in 2016.⁶

Compassion International operates in 26 countries, and has had a presence in India since 1968. In order to maintain such high capacity, CI partners with affiliate agencies in-country to deliver services and support. Compassion International funds its affiliates in India, such as Caruna Bal Vikas, Chennai and Compassion East India, Kolkata. These affiliates also distribute funds to other NGOs. According to the CI website, some 145,000 Indian children participate in 570 child development centers in India. According to the Indian government, in 2011-12, CI was the single-largest foreign donor under FCRA.⁷

NGOs in India that receive foreign funds must be registered under The Foreign Contribution (Regulation) Act (FCRA). This act, enacted by Parliament in 2010 to replace the FCRA act of 1976, was established to regulate and monitor foreign contribution or hospitality to safeguard against “any activities detrimental to the national interest.”⁸ The main change in 2010 was to end the practice of permanent registration; henceforth, NGOs receiving foreign funds could receive a five-year FCRA licence that had to be renewed. While FCRA-registered, NGOs are allowed to receive foreign funding as long as they adhere to the regulations outlined in the FCRA, which mandates monthly reporting, along with several other accountability mechanisms, in order to foster transparency.⁹ Of particular relevance here is the requirement that all organizations to which foreign funds might be disbursed need to be registered under FCRA.

According to the Ministry of Home Affairs (MHA), which monitors all foreign-funded nonprofits, Compassion International affiliate Caruna Bal Vikas (a registered FCRA-NGO) was distributing funds to nonprofits that were not registered with the FCRA, a violation of Section 7 of the FCRA. Under these terms, non-registered nonprofits do not have approval to receive donations from foreign organizations.¹⁰

On March 28, 2016 the MHA revoked Compassion International’s FCRA registration, and placed the nonprofit on a “prior permission” list, an oversight mechanism that requires all donations to Indian NGOs to be pre-approved by the MHA. This prevents CI from transferring funds directly to its affiliate NGOs in India, which has severely limited its capacity. CI’s Indian affiliates cannot receive any funds directly from the organization without MHA approval on a case-by-case basis. At a hearing of the Senate Foreign Relations Committee in May 2016, Colorado Senator Cory Gardner

⁵ Charity Navigator is an independent U.S. charity watchdog organization that evaluates non-profits according to two metrics: financial health and accountability/transparency. “Compassion International,” *Charity Navigator*, 2016, <https://www.charitynavigator.org/index.cfm?bay=search.summary&orgid=3555>.

⁶ CharityWatch is an independent charity watchdog organization. “Compassion International,” *CharityWatch*, 2016, <https://www.charitywatch.org/ratings-and-metrics/compassion-international/172>.

⁷ https://fcraonline.nic.in/home/PDF_Doc/annual/ar2011-12.pdf

⁸ See Foreign Contribution (Regulation) Act, 2010, https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

⁹ See Foreign Contribution (Regulation) Act, 2010, Section 17, https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

¹⁰ Rahul Tripathy, “US-based NGO, Compassion International, put on government watch list,” *The Economic Times*, July 1, 2016.

voiced his concerns about the Indian government's treatment of Compassion International, calling the apparent crackdown "an attack on civil society."¹¹ In the same committee hearing, Assistant Secretary of State for South and Central Asia Nisha Desai Biswal emphasized that while the United States has a critical role to play in sharing experiences and best practices, the issue of religious freedom and religious tolerance is one that the Indian people, and their civil society, must grapple with. However, she also added that U.S. diplomats have raised concerns with their counterparts in India about "the regulatory and legal framework that seeks to constrain the activities of civil society organizations, whether they be Indian or international organizations."¹²

U.S. Secretary of State John Kerry voiced his concerns over the treatment of Compassion International in September 2016 during the strategic and commercial dialogue, and urged the MHA to reconsider its decision to put CI on the "prior permission" list.¹³ MHA later approved, under the terms of "prior permission" Compassion International's fund transfers to 10 NGOs. An MHA official stated that CI sought permission to fund 250 NGOs during the fiscal year, all of which were Christian organizations. According to the ministry, some of these NGOs were found to be using funds to convert people to Christianity.¹⁴ However, according to the FCRA Article 12, Subsection 14, there is no restriction on funding religious agencies unless they have been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another.¹⁵

FCRA and Civil Society in India

Compassion International is not alone. Growing constraints on NGOs and civil society organizations is an ongoing concern in India, and this practice is not confined to religious organizations. Several other high-profile foreign-backed NGOs have faced similar restrictions. There are currently 21 organizations backed by foreign donors that are under the government scanner and are placed on the "prior permission" list, mandating that any incoming donations to an Indian bank account be cleared with the Ministry of Home Affairs before reaching their accounts. Eight similarly-funded organizations were put under this level of scrutiny under the Congress Party, and 13 have been put under "prior permission" under the current government. According to the 2011-12 Annual Report of the MHA, in 2012 there were 43,000 organizations with FCRA registrations. Today, four years later, that number is halved, the result of non-renewals and the decision by many NGOs not to apply for renewal.¹⁶ As of 22nd November 2016, the MHA lists 11,500 NGOs whose FCRA licenses have not

¹¹ "Ahead of PM Modi's visit, top US Senators voice concern over religious freedom in India," *The Indian Express*, May 25, 2016.

¹² *Ibid.*

¹³ "No 'compassion' for NGO in India leaves Kerry worried," *The Hindu*, October 18, 2016.

¹⁴ "The Kerry effect: Centre lifts curbs on fund transfers by NGO," *The Hindu*, updated December 1, 2016.

¹⁵ See Foreign Contribution (Regulation) Act, 2010, Section 12 Subsection 4, https://fcraonline.nic.in/home/PDF_Doc/FC-RegulationAct-2010-C.pdf

¹⁶ <http://www.hindustantimes.com/india-news/fcra-registered-ngos-halved-in-two-years-10-000-more-ngos-lose-fcra-licence/story-vkVod2CLyjedTmpuVUoE6J.html>

been renewed and another 1700 or so organizations whose renewal applications have been closed.¹⁷ The vast majority of these organizations are small local NGOs who were affiliates of larger organizations who themselves were the primary recipients of foreign funds and who then disbursed them to local affiliates. But there have been higher-profile organizations who have run afoul of FCRA.

Such high-profile cases include Mercy Corps, National Endowment for Democracy, and the George Soros' Open Society Foundations, all of which are currently on the "prior permission" list. Greenpeace, a prominent environmental NGO based in Washington, D.C. came under heavy scrutiny by the Indian government in 2014, which claimed that the NGO's activities, research, and peaceful protests were "working against the economic progress of the country."¹⁸ Greenpeace's FCRA registration was then cancelled in August 2015 due to alleged failure to disclose the movement of funds properly.¹⁹ This cancellation was seen by many observers as heralding a new phase in the interpretation of FCRA regulations wherein the Government of India altered the definition of activities considered harmful to the national interest.

The Ford Foundation has faced similar challenges. In March 2015, the foundation was placed in the "prior permission" category after the MHA reportedly found that it was funding non-FCRA registered NGOs, a violation of Section 7 of the FCRA. Earlier that year, the Gujarat government filed a complaint with the MHA that the Ford Foundation's funded "anti-India" activities of two NGOs—Sabrang Trust and Citizens for Justice and Peace, and requested that the FCRA registration of these two NGOs be cancelled.²⁰ After several months of seeking ministry clearance to process any foreign contributions, the Ford Foundation was taken off the government watch list and was granted the ability to fund its affiliates after registering under the Foreign Exchange Management Act (FEMA), which falls under the jurisdiction of the finance ministry and maintains even tighter regulations than that of FCRA.

These cases, including that of Compassion International, appear to follow a similar pattern. If the activities of an FCRA-registered NGO are perceived as contrary to government interests, these nonprofits are generally scrutinized and then moved to the "prior permission" list on charges of mismanagement of funds or failure to adhere to Article 7 of the FCRA.²¹ It is important to stress that this is not unique to the current Indian government. Indeed the original FCRA regulations of 1976 were adopted during India's Emergency period when the government sought to restrict foreign funding for civil society organizations opposed to Mrs Gandhi's autocratic rule. Subsequent governments have seen benefit in maintaining the Act, and the 2010 revision under the previous United Progressive Alliance government was a more stringent version than before. Since May 2014,

¹⁷ See https://fcraonline.nic.in/home/PDF_Doc/fcra_11319_03112016.pdf

¹⁸ Itika Sharma Punit and Manu Balachandran, "How India Cracked down on Greenpeace," *Quartz*, September 4, 2015, <http://qz.com/495212/timeline-how-india-cracked-down-on-greenpeace/>

¹⁹ Aneesha Mathur, "Centre cancels Greenpeace India's FCRA registration," *The Indian Express*, September 4, 2015, <http://indianexpress.com/article/india/india-others/greenpeace-indias-fcra-registration-cancelled-govt/>

²⁰ Express News Service, "MHA removes Ford Foundation from watch list," *The Indian Express*, March 20, 2016, <http://indianexpress.com/article/india/india-news-india/mha-removes-ford-foundation-from-watch-list/>

²¹ Bharti Jain, "'Activities not conducive to national interest': Jaisingh NGO, 24 others denied FCRA licences," *Times of India*, November 12, 2016.

the National Democratic Alliance government has continued on a well-trod path of using FCRA to scrutinize NGOs. As in the past, this is an extremely worrying phenomenon, as it stifles civil society by clamping down on alternate viewpoints and hampering political, economic, ideological, and religious diversity, not to mention depriving innocent beneficiaries of much needed social services. In light of this trend, I endorse U.S. Ambassador to India Richard Verma's warning of the "potentially chilling effects" that these regulatory steps might have on NGOs and civil society in India.²²

There is one other dimension to this issue, namely whether Christian faith-based NGOs like Compassion International are being singled out for scrutiny by the current government. Given the extremely large number of NGOs whose FCRA licenses have been canceled in the past year and a half (over 11,000 and counting), one is inclined to say that the 'crackdown' on NGOs receiving foreign funds is not just focused on Christian organizations. But anecdotal evidence suggests that a fuller investigation is warranted. The FCRA regulations allow the government to cancel the license of any NGO deemed to be engaging in religious conversions under clauses that deem activities that upset 'religious harmony' as against the national interest. Christian faith-based organizations have been under great scrutiny by supporters of the current Indian government on this dimension, and social activism by the right-wing against alleged coerced conversions is extremely high. Soon after the transition to the NDA government, there was a national *Ghar Wapsi* campaign in which marginalized communities were pressured to "convert" back to Hinduism by illiberal elements.²³ This follows a long and troubled record of attacks against Christian missionaries by Hindu extremists.²⁴ The decision in March 2016 to deny visas to the United States Commission on International Religious Freedom is especially worrisome in this context.²⁵

To my knowledge, no systematic analysis of the denial of FCRA licenses has yet been conducted to ascertain whether Christian organizations are disproportionately at risk. But a superficial glance suggests some cause for concern. India's Ministry of Home Affairs provides lists of associations whose licenses have not been renewed. A glance at these lists²⁶ suggests that a large number of these are faith-based Christian organizations and those serving tribal and lower-caste communities in extremely impoverished areas of India. Even if one assumes no malign intent, and attributes the loss of license to the higher obstacles being placed in front of these associations, the normative consequences are great as the most depressed parts of Indian society, which are extremely reliant on charitable support, are now being cut off from this aid. And, if, in fact, many of these organizations have chosen not to renew their FCRA licenses for fear of undue government scrutiny into their activities, it would only underscore Amb. Verma's warning of a chilling effect on civil society in India.

²² Nida Najar, "U.S. Ambassador criticizes India's crackdown on charities and activist groups," *New York Times*, May 6, 2015.

²³ For example, see Annie Gowen, "Christian enclave in India fears violence as Hindus press for conversions," *Washington Post*, December 18, 2014.

²⁴ See Raveena Aulakh, "Anti-Christian violence in India sparks fears," *Toronto Star*, March 19, 2015.

²⁵ See Suhasini Raj, "India denies visa request from religious freedom monitoring group," *New York Times*, March 4, 2016.

²⁶ See https://fcraonline.nic.in/home/PDF_Doc/FCRA_Cases_02112016.pdf and https://fcraonline.nic.in/home/PDF_Doc/fcra_11319_03112016.pdf (Accessed 05 December 2016).

Conclusion

India is a vital partner for the United States in the 21st century. Both countries have invested significant political capital in building this relationship and the fruits of these efforts are now being reaped in the form of more meaningful defense agreements, cooperation on energy and environmental policy dialogues, and deepening commercial ties that bind the world's signal democracies to each other. Consolidating these gains requires conceptualizing the relationship as strategic rather than transactional. Even strong partners can and will disagree on policies, and such disagreements cannot be allowed to derail the burgeoning collaboration. Yet a sure indicator of the strength of the bond is whether it can withstand some pressure. Given U.S. values and commitments to principles of religious freedom, the United States should respond to the trends documented above in a manner that continues to prioritize its strategic partnership with India, while also recognizing its own ability to use leverage against the country if it continues to engage in practices that are harmful to civil society. India's positive decision to reconsider its position on Ford Foundation's status was arguably in response to spotlights shone on its practices by Congress, Secretary Kerry, and Amb. Verma.²⁷ This indicates a susceptibility to pressure that can be leveraged to demand more transparent applications of FCRA rules and stronger commitments to protecting religious minorities in India even if the government appears reluctant thus far to do the same for Compassion International.²⁸

²⁷ Bharti Jain, "Ford Foundation said to be off 'prior permission' list," *The Times of India*, January 8, 2016.

²⁸ Bharti Jain, "Government has no immediate plans to lift curbs on US-based NGO Compassion International," *Times of India*, October 18, 2016.