

Bring 'conflict of interest' within the ambit of the Lokpal Bill

Conflict of interest has been described as “A term used to describe the situation in which a public official or fiduciary who, contrary to the obligation and absolute duty to act for the benefit of the public or a designated individual, exploits the relationship for personal benefit, typically pecuniary”¹

For Transparency International (TI), 'conflict of interest' is defined as “a ‘situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests.’ ”²

The World Health Organization (WHO) defines a potential conflict of interest more broadly, as in its guidelines for the Roll Back Malaria (RBM) programme, “A conflict of interest can occur when a Partner's ability to exercise judgment in one role is impaired by his or her obligations in another role or by the existence of competing interests. Such situations create a risk of a tendency towards bias in favor of one interest over another or that the individual would not fulfill his or her duties impartially and in the best interest of the RBM Partnership.

“A conflict of interest may exist even if no unethical or improper act results from it. It can create an appearance of impropriety that can undermine confidence in the individual, his/her constituency or organization. Both actual and perceived conflicts of interest can undermine the reputation and work of the Partnership.”³

The many faces of conflict of interest

Conflict of interest can exist in several forms, both obvious and not so obvious.

Examples of obvious forms of conflict of interest include the following situations:

- When persons known for being corrupt frame legislations, rules and regulations for controlling/preventing corruption (the presence of corruption tainted ministers in the Group of Ministers mandated to draft the Lokpal Bill);
- When public officials take policy decisions based on their personal interest (eg. Shashi Tharoor in the IPL controversy or Ashok Chavan in the Adarsh Housing Society scam);
- When food manufacturing companies sit on scientific panels to evaluate research and to set food standards (eg. Nestle, Hindustan Lever, Coca Cola, PepsiCo, ITC on scientific panels of FSSAI; food manufacturers, pesticide manufacturers included as members of the national delegation at international bodies such as CODEX ALIMENTARIUS that set standards for foods);
- When companies producing genetically modified seeds evaluate their own products as “safe” and this evaluation is accepted by public regulatory bodies without independent validation (eg. Validation of Research of Monsanto/Mahyco for Bt Brinjal by Genetic Engineering Approval Committee in 2009) ;

¹ <http://legal-dictionary.thefreedictionary.com/conflict+of+interest>,

² <http://blog.transparency.org/2009/07/27/what-is-a-%e2%80%98conflict-of-interest%e2%80%99/>, accessed 30th march 2011

³ Cited in Stuckler D, Basu S, McKee M (2011) Global Health Philanthropy and Institutional Relationships: How Should Conflicts of Interest Be Addressed? PLoS Med 8(4): e1001020. doi:10.1371/journal.pmed.1001020, accessed on 17th April 2011

However, there are less obvious situations where conflicts of interests exist. These can take several forms.

Front Organisations of corporations and Conflict of Interest

Recognising the potential for creating markets for unnecessary or dangerous products when food and pharmaceutical manufacturers approach health professionals and workers directly, India has several rules and regulations to restrict such marketing practices. The Infant Milk substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992 as amended in 2003, commonly called the IMS Act, prevents baby food manufacturers from directly advertising any of their products for children under two to parents and the public, as well as prevents them from giving gifts and goodies to health workers or sponsoring conferences, seminars, workshops, lunches, for them. Similarly, in January 2010, the Medical Council of India amended the Indian Medical Council (professional conduct, etiquette and ethics) Regulations, 2002. The modified code of ethics prohibits medical practitioners from accepting gifts, travel facilities, hospitality and monetary grants from the healthcare industry either in their name or in the names of their family members. The code bars the doctors and their family members from accepting rail or air travel facilities, cruise tickets and paid vacations from the industry. They cannot accept any hospitality either.

Industry has tried to bypass this by creating front organisations, often registered as NGOs, or trying to reach nutrition professionals, which are not covered by the existing laws in their continued attempts to influence policies and decisions. For example, Nestle has created the Nestle Nutrition Institute; Mead Johnson, the baby food manufacturers, have set up Mead Johnson Nutrition; GlaxoSmithKline, makers of Horlicks, , as well as pharmaceuticals, has set up the Horlicks Nutrition Academy, which are not covered by the IMS Act.

Examples of conflict of interest involving front organisations include:

- Nestle Nutrition Institute co-hosting the annual conference on nutrition with PGI (Chandigarh) and the Indian Society for Parenteral and Enteral Nutrition in January 2011. The conference was cancelled because NGOs brought this to the notice of the government and the media.
- Nestle Nutrition Institute entering into Public Private Partnerships with agricultural universities to take up programmes for “creating health and nutrition awareness of village women and girls in government schools in rural areas”, thus expanding their influence on consumers and strengthening their brands.
- Food and drink companies like Nestle, Coca Cola, PepsiCo, Mead Johnson, Danone, Unilever, etc. were official sponsors of the International Conference on Nutrition held in Bangkok in 2009.
- PepsiCo was a sponsor of the conference – “Leveraging agriculture for improving nutrition and health” – organised by International Food Policy and Research Institute (IFPRI) in February 2011. PepsiCo is using fortification and ready-to-use packaged food as an entry point into the malnutrition market. Ironically, the Prime Minister, who addressed the conference, chose to remain silent about the presence of the multinational company’s commercial interests in the sector.

BINGOs and Conflict of Interest

Another mechanism leading to conflict of interest is when the private sector creates a lobbying body, usually a Business Interest NGO (BINGO), and then uses this persona to influence policy

making or create markets for its products. The Global Alliance for Improved Nutrition (GAIN), Global Alliance for Vaccines and Immunisations (GAVI) and International Life Sciences Institute (ILSI) are examples of BINGOs. GAVI and ILSI have pharmaceutical, food manufacturing and agribusiness corporations as their members.

GAIN, for instance, is committed to developing business partnerships in order to increase private sector investments in nutrition. In 2005, GAIN established the GAIN Business Alliance to mobilize business to play a greater role in combating malnutrition and facilitate business partnerships between governments, NGOs, civil society, academia and media in order to create opportunities for the private sector to enter into the business of malnutrition. The Amsterdam Initiative on Malnutrition (AIM) is an example of new partnerships emerging from within the BA.⁴

GAVI is a global health partnership that brings together developing world and donor governments, private sector philanthropists, vaccine manufacturers, research and technical institutions to make new vaccines and create markets for them. One mechanism for creating markets is through Advanced Market Commitment (AMC) strategy in which donors, through GAVI commit money companies to guarantee the price of vaccines (*to match corporate revenues and profits in affluent markets*) once they have been developed, thus creating the potential for a viable future market. Decisions about which diseases to target, criteria for effectiveness, price and long-term availability are made in advance by an independent advisory group. Pfizer and GSK were the first beneficiaries, followed by Indian Companies such as Panacea Biotech.⁵ The need to create markets is thus behind the push for governments to include pneumococcal and rotavirus vaccines in their national programmes though scientific communities in these countries have raised serious doubts about their efficacy and their safety.

ILSI India is a regional branch of International Life Sciences Institute (ILSI) and coordinates activities and provides scientific inputs and assistance to the South Asian Region which includes Bangladesh, India, Maldives, Bhutan, Nepal, Pakistan, and Sri Lanka. Its activities primarily focus on local and regional critical public health issues like complementary foods and food fortification. ILSI India members include Bikanerwala Foods Pvt. Ltd., Coca-Cola India, DSM Nutritional Product India Pvt. Ltd., Frito Lays Div., PepsiCo India Holdings (P) Ltd., Haldirams Marketing Pvt. Ltd., ITC Foods Business, Kellogg India Pvt. Ltd., Mars Incorporated, Monsanto Enterprises Ltd., Nestlé India Limited, Nicholas Piramal India Limited, RSA Vitamins Private Limited, and The NutraSweet Company, among others.

- While it is not possible to prove that the BINGOs use illegal means or corruption to influence policy decisions, the presence of policy makers on their boards are clear examples of conflict of interest:
- WHO, which influences national policy related to immunisation, is a member of GAVI. WHO has removed the classification categories of “possibly related and probably related” adverse effect due to vaccines and just left categories “certainly” and “unlikely” (eg. Investigation of pentavalent vaccine deaths in Sri Lanka allowed deaths that were probably related to vaccines to be put under the classification of ‘unlikely to be related to vaccine);
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⁴ <http://www.gainhealth.org/partnerships>, accessed on 16th April 2011

⁵ <http://www.gavialliance.org/>, accessed 7th July 2010

- Members of the government and public institutions being on boards of ILSI. For example, the Directors of the National Institute of Nutrition and the Central Food Technological Institute and scientists from Indian Agricultural Research Institute are trustees of ILSI. Senior officials of ICMR, Dept. of Biotechnology, Ministry of Health and Family Welfare and other government departments, senior officials of universities including agricultural universities are members of the various expert committees along with representatives of companies such as Coca Cola, PepsiCo, Monsanto, Nestle, Hindustan Lever, etc.⁶
- The presence of Hindustan Unilever Ltd. in Bhavishya Alliance's programme "Behavioural Change Communications on personal hygiene through hand washing" and "Project Yashoda – Behaviour Change Communication on appropriate Infant Feeding", together with government and UNICEF⁷

Philanthropy and conflicts of interest⁸

Philanthropic organisations, exemplified by the Bill and Melinda Gates Foundation (BMGF), which are riddled with conflict of interest are increasingly getting involved in the formation and implementation of national health policies, creating yet new situations of conflict of interest.

BMGF, for instance, holds large amounts of stocks/shares in the following companies, to name a few

- Berkshire Hathaway Holdings (owned by Warren Buffet and being transferred to BMGF), which in turn has large investments in
 - Coca Cola (largest shareholder)
 - Kraft (largest shareholder)
 - GlaxoSmithKline
 - Sanofi-Aventis
 - Johnson and Johnson (one of the main global investors)
 - Procter & Gamble (one of the main global investors)
- McDonald
- Coca Cola
- Monsanto

Several of the Foundation's members of the management committee, leadership teams, affiliates, and major funders are currently or were previously members of the boards or executive branches of several major food and pharmaceutical companies including

⁶ <http://www.ils-india.org/about-ils-india/board-of-trustees.htm>, <http://www.ils-india.org/PDF/ILSI-India%20Expert%20Committees.pdf>, accessed 16th April 2011

⁷ <http://www.bhavishya.org.in/programs.htm>

⁸ This section is primarily based on information provided in Stuckler D, Basu S, McKee M (2011) Global Health Philanthropy and Institutional Relationships: How Should Conflicts of Interest Be Addressed? PLoS Med 8(4): e1001020. doi:10.1371/journal.pmed.1001020, accessed on 17th April 2011

- Coca-Cola,
- Merck,
- Novartis,
- General Mills,
- Kraft, and
- Unilever

BMGF is an important funder of WHO, GAIN, GAVI, and other bodies that are lobbying for new vaccines and foods to prevent malnutrition, and promoting communities to become business affiliates of Coca Cola, develop agricultural technologies together with Monsanto in Africa through the African Agricultural Technology Foundation.

BMGF's recent and earlier visits to India have been primarily to get pentavalent vaccine and rotavirus vaccine introduced in the national universal immunisation programme.

Why should philanthropic organisations be brought under national conflict of interest legislation?

Philanthropic organisations such as BMGF have budgets often larger than national budgets, and use their finances to influence national policies that affect every citizen in the country. However, these organisations are not accountable either to governments or to the people whose lives they impact. Their influence often results in policy decisions that transfer public money into the private corporations in which they hold shares or stocks. Their influence in policy making thus constitutes conflict of interest.

Movement of bureaucrats between government and private sectors and conflict of interest

Movement of persons between bureaucracy and public policy-making bodies is a very important source of conflict of interest. Such movements are of three kinds:

1. When public servants including bureaucrats and elected representatives of the people, after leaving public service, work for the companies they used to regulate, there is conflict of interest, as these bureaucrats can use their experience and contacts to get decisions made in the favour of the company.

Retired bureaucrats have recently been joining the private sector even before the stipulated two years after retirement are over, and provided huge bonanzas for their private employers. Examples include

- The case of Pradeep Bajjal, ex Chairman of TRAI, joining Nira Radia's companies in 2009, just one year after retirement, and his and Radia's connection with the 2G scam has been extensively covered by media. Bajjal had already partnered Radia to form Noesis Consultants in 2007, when he was still working for the government.
- Ex-chairmen of Securities and Exchange Board of India joining corporations soon after their retirement.
- Naresh Dayal, ex-secretary, Ministry of Health and Family Welfare, who retired on September 30, 2009, and soon after, joined GlaxoSmithKline Consumer Health-care as a non-official director⁹.

⁹ http://hotnews.com/India_A_Democracy_on_the_Road_to_Kleptocracy_by_Piyush_Pant_020311006.htm, accessed on 8th April 2011

2. This occurs in the case of serving bureaucrats, whose deputation to profit making bodies is covered under IAS Cadre Rules. Rule 6(2)(ii) in the case of IAS officers, says

"A cadre officer may also be deputed for service under an international organization, an autonomous body not controlled by the Government, or a private body, by the Central Government in consultation with the State Government on whose cadre she/he is borne."

Recognizing that deputation to private sector companies and financial institutions could lead to conflict of interest situations, the guidelines were revised on 28th November 2007, to prohibit deputation to Companies registered under the Companies Act of 1956. However, this has now been changed and Rule 6(2)(ii) now includes "Section 25 companies" -- charities and other such associations under the companies Act -- within the purview of Rule 6(2)(ii). The change allows serving bureaucrats to be deputed to private sector companies for up to five years.¹⁰

Movement of policy makers, including technical persons, to and from the private sector also finds place in the new National Health Research Policy finalized in April 2011.¹¹ Besides other provisions reflecting conflict of interest, point 4 of the "10-point Action Programme" of the NHR policy seeks to develop "*Mechanisms favouring seamless movement of personnel between teaching, research and industry.*"¹²

3. Popularly called the "revolving door" policy, this allows the movement of industry-friendly experts into positions of decision-making power. An outstanding example of such policy is the presence of Arun Maira in the Planning Commission. Chairman of the Boston Consulting Group, Maira has worked for the TATA Group, Maira has advised clients across a wide variety of industries and in many countries on issues of strategy and organisation. He has worked with clients in North America, Europe, South America and Asia in industries ranging from automobiles, steel, and oil, to pharmaceuticals, and financial services. He has been a Member of The Confederation of Indian Industry's (CII) National Council for many years, as well as Chairman of several of CII's National Councils, including the National Council for Corporate Governance, and Chairman of CII's Leadership Summit.

The chief difference between individual cases of corruption and corruption through the existence of conflict of interest in policy-making processes is that such policy impacts the life of every citizen in the country, especially when it is policy related to meeting basic needs of food, healthcare, water, shelter and livelihood.

Bureaucrats looking for plum post-retirement posts in the private sector will curry favour with them while holding office in Government

Managing Conflict of Interest -putting Public Interest Centre Stage

¹⁰ Copyright: India Today. Cited in "Plum jobs in private sector for our babus."
www.thefreelibrary.com/Plum+jobs+in+private+sector+for+our+babus.-a0249594481, accessed on 14th April 2011

¹¹ Aarti Dhar. "National health research policy finalized", *The Hindu*, April 4, 2011.
<http://www.thehindu.com/news/national/article1597255.ece>, accessed 4th April 2011

¹² "National Health Research Policy", http://icmr.nic.in/guide/draft_nhr_policy.pdf, accessed 4th April 2011

Duty of Loyalty is a term used in corporate law to describe a fiduciaries' "conflicts of interest" and requires fiduciaries to put the corporation's interests ahead of their own. Extending this logic to governance *Duty of Loyalty* dictates that every government employee, institution, or anyone representing the government in any manner must ensure that in all policies, programmes, and especially decision-making processes, public interest is put ahead of all other interests.

The integrity and independence of our public institutions is of paramount importance. Some actions that need to be taken up immediately by the government include:

- Recognise existence of conflict of interest in policy making as a form of corruption
- Develop mechanisms for managing conflict of interest
 - Legislate to prevent conflict of interest in policy making by creating new legislation or including it in existing legislation - Prevention of corruption Act 1988, Lokpal Bill, etc.
 - Create a statutory body to examine cases of conflict of interest.

This document has been developed by the AACI India for the purpose of advocacy to give effect to the issue of conflicts of interests.

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