

Minutes of Meeting Held On December 3, 2014, at 7 Nizamuddin East, New Delhi.

The first meeting of the Core Committee constituted at the Round Table Discussion held at India International Centre, to discuss and deliberate on the various comments and suggestions made by participants subsequent to the Round Table Discussion was convened on December 3, 2014 at the residence of Chander Uday Singh, and invitations were emailed to all members of the Core Committee who were able to attend. The purpose of this meeting was to take a quick look at the nature of responses and suggestions received subsequent to the Round Table Discussion, and to deliberate on the changes needed in the Draft Bill in order to bring about a strong Conflict of Interest Act. The feedback received by email from participants at the Round Table Discussion, consisting in particular of Ms. Neha Bansal, Professor Kuldeep Mathur, Shri E.A.S. Sarma, Ms. Neethi Rao, and Ms. Malini Aisola, had been circulated to members of the Core Committee along with the emailed request to attend the meeting.

The meeting started at 4:30 P.M and was attended by:

1. Dr. Arun Gupta
2. Ms. Radha Holla
3. Mr. Prashant Bhushan
4. Mr. P.M Bhatt
5. Mr. Chander Uday Singh
6. Mr. Dhaval Mehrotra (special invitee to assist the Core Committee)
7. Mr. Rishi Singh Gautam (special invitee to assist the Core Committee)

Members of the Core Committee were first given a brief overview of the nature of feedback/responses/suggestions received pursuant to the Round Table Discussion, which had also been circulated by email as aforesaid. After briefly discussing the individual suggestions, the members present put forth their suggestions, a gist of which is set out below:

1. Mr. Chander Uday Singh:

Mr. Singh suggested that for a strong statute dealing with conflict of interest it is imperative that the definitions of certain key words and phrases, particularly the definition of Conflict of Interest in Sec. 2(c), be tightened up and improved. He further suggested that since it is not possible to anticipate all possible instances of conflict of interest, it is also expedient that stress is put on disclosures to be made by public officials and persons involved in public projects. The disclosure norms under the COI Act should be applicable to members of expert bodies, advisory boards, commissions, etc, who are otherwise also engaged or represent the interest of private organizations. Further it would also empower the public to raise an objection to an interested person being a part of such an expert body, or at least keep the public informed of the interest that a member represents or might have while being a part of such expert body, advisory board, commission, etc.

As a natural corollary to the disclosure there should also be procedure or option with such an interested person of recusing himself in a perceived case of conflict of interest.

2. Ms. Radha Holla:

Ms. Holla suggested that the Draft bill should be further strengthened by taking leads from the Romanian Criminal Code on Conflict of Interest, which contains some of the most stringent provisions on conflict of Interest in the world. She further suggested that the the Act should also address the issues of where representatives of private organizations indulge in influencing policy making. The act should also address issues where private players sponsor or fund a social cause without disclosing their interest.

3. Mr. Prashant Bhushan:

In order to avoid any misinterpretation of the provisions of the Act and also to facilitate better understanding and implementation of the Act, Mr. Bhushan recommended that the provisions of the COI Act be accompanied with statutory illustrations, as are provided in the Indian Penal Code as well as in the Indian Contract Act. This would help the enforcement and adjudicatory authorities to gauge the intent of each provision and eliminate possibility of provisions being rendered ambiguous.

Further Mr. Bhushan suggested the COI Act should be strengthened to deal with situations where a bureaucrat while deciding on the policy implementation, is simultaneously also soliciting or expecting to secure a job in that very same organization whose interest would be fostered through implementation of that policy. For example, a diplomat who decides the implementation of a policy in which the World Bank is interested, and who is looking for an appointment in the World Bank. Though there might not be a direct benefit enuring at that time to the diplomat, but a benefit would follow in future. In such a scenerio there is no immediate conflict of interest, but there exists one. Hence, if a public official has dealt with an organization or establishment in the past, the official should not be permitted to join that organisation in future. A discussion on the “revolving door syndrome” followed, with inputs from Ms. Holla, Mr. Bhat and Dr. Gupta.

4. Mr. P.M Bhatt:

According to Mr. Bhatt the present definition of “conflict of interest” is rule-based, whereas the definition should be principle-based. He explained that the definition as it exists in the Draft Bill which was discussed at the Round Table Discussion, seeks to draw its existence from live examples, which definition shall always beg for exceptions to be carved out, and to this extent is fallacious. On the other hand a principle-based definition would cover all possible situations that might arise in future. Some of the members present requested Mr. Bhat to elaborate on this suggestion with an actual definition, as it was difficult to envisage how such a definition would be phrased. As such Mr. Bhatt requested the Core Group to give him some time, so that he could come up with a workable definition which is principle-based and not rule-based. The Core Group felt that this would be very useful, as an actual definition in black and white would be easier to discuss and evaluate, and requested Mr. Bhatt to formulate a proper definition as soon as possible, and to share the same with the Core Group by email or at the next meeting of the Group.

5. Dr. Arun Gupta

Dr. Gupta stressed the need for tighter controls on lobbying, and to examine how the proposed Act may be strengthened to check the malpractices associated with lobbying. He pointed out that presently, lobbying is not covered under the definition of conflict of interest. Some of the members present pointed out that where open and transparent lobbying is done, as for instance by

trade associations like FICCI or Assocham for the benefit of their members or for seeking change in industrial policy, and so on, such lobbying may not attract the concept of COI. It is only where the person who is the decision-maker or the policy-maker is herself or himself in a conflicted situation, that the concept of COI may be attracted. Dr. Gupta suggested that members should look at situations where the performance of public duty is impacted by private interest, and such instances should be brought into the net of COI, either by amending the definition, or by having a separate chapter on this.

Conclusion

The meeting was concluded by highlighting the key points which were discussed and decided, which are:

1. The Conflict of Interest Act should strive to lay stress of disclosure by public officials.
2. A provision should be incorporated setting out the procedure and right of an official to recuse himself.
3. COI Act should take lead from similar laws enacted in other evolved jurisdictions, particularly Romanian Law.
4. Provisions under the COI Act should be accompanied with illustrations.
5. Members of Public bodies or expert groups, committees etc shall not hear or take decision without making disclosures.
6. Type and kind of information to be disclosed.
7. The COI Act does not cover lobbying, but a situation where the public duty and the private interest of such an official conflicts, provisions of conflict of interest act would be attracted.
8. A more sound principle-based definition, as proposed by Mr. Bhatt, shall be analysed by the group in the next meeting.
9. Conflict of Interest Act should address not only instances of present conflict of interest, but where a situation of conflict of interest exists or might arise.

The Meeting was concluded at 6:00 P.M. and a date for the next meeting will be fixed after receiving the feedback of all members of the Core Committee, including those who could not attend, and also the additional feedback from Mr. P.M. Bhat and others based on the discussions at this meeting.