

Report on
Round Table Discussion
“Prevention and Management of Conflict of Interest Bill”

Dated: 13th September 2014

Venue: India International Centre

Organized by: Breastfeeding Promotion Network India



Background

In the milieu of numerous cases of conflicts of interest being reported in the press on one hand, and the Prime Minister’s inclusion of legislating on the issue in his 17 point plan of action, the **Alliance Against Conflict of Interest (AACI)** organized this round table discussion to counter the issue of conflict of interest.

As defined by Transparency International, ‘conflict of interest’ is “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.*”

Conflict of interest specifically in policy-making can seriously impact the fundamental rights of citizens of the country, especially basic human rights. Conflicts of interest, whether illegally present, or present as part of official policy, are both obvious forms of corruption and in themselves a part of the corrupting process.

Introduction

The round table discussion on “Prevention and Management of Conflict of Interest Bill” was organized by Alliance Against Conflict of Interest (AACI) at the India International Centre on 13th September 2014, New Delhi. It witnessed 28 participants from social, legal and health backgrounds and expertise. The objectives of the discussion were to come together and share thoughts as on the draft Bill on Conflict of Interest and explore how to move forward, especially

in the case of legislation.

Discussion

Dr. Arun Gupta, Convener, AACI started the discussion by re-orienting participant members about AACI's concept and understanding of conflict of interest as an issue. He explained the importance of preventing conflict of interest in governance in today's time. He further explained Government of India's recognition for preventing conflict of interest with legislative consideration. He also threw light on the background of developing a draft Conflict of Interest Bill back in 2011, which further got attention from Dr. EMS Natchiappan, a Rajya Sabha Member of Parliament; the same year Dr. EMS Natchiappan introduced a Private Members Bill in Rajya Sabha on conflict of interest, but unfortunately it didn't get any attention.

Mr. Chander Uday Singh, Sr. Advocate, Supreme Court and an AACI member chaired the session, he pointed that there are global precedents to legislate prevention of conflicts of interest in policy and programmes, including the ratification of the UN Convention Against Corruption by India. He highlighted that today the need for such laws is globally recognized.

The renowned anti-corruption activist and lawyer Mr. Prashant Bhushan also participated in the discussion on behalf of Campaign for Judicial Accountability. According to him dealing with conflict of interest is as important as dealing with corruption; that it is rarely discussed either in media or in public forums; he listed out various facets of conflict of interest:

- Pvt. Sector in regulatory/evaluation role, as in the case of FSSAI, where after the Supreme Court ruling, some of the members have "resigned" from their industry jobs and are now considered "independent" scientists.
- PPPs, esp. where the private entity has greater share in profits, and thus greater say in decision making, as in the case of discoms in Delhi.
- Compromised evidence –as in the case of GMOs. Given the fact that industry is the primary funder of universities and other academia, there is a problem finding independent scientists.
- Revolving door phenomenon –as in the case of the US, Wall Street controls policy making; in India, senior officers of finance ministry have invariably come from World Bank or IMF, or go there after they retire.
- Incentives to policy makers – direct and indirect (latter includes salaries, etc. coming from pvt sector) – as in the case of Steel Authority of India Ltd (SAIL), where the monitors get their salary and other benefits from SAIL itself;
- Stocks and shares – both individuals serving in government as well as government itself invests in shares of private sector;

- Judiciary – Judges invariably take up arbitration after retirement, which is hugely lucrative. Justice Bhamcha, who rejected a PIL on judicial reforms, has gone on to become the biggest arbitrator in the country today.

The vaccine industry was also discussed as a potential prey to conflict of interest, with its links on one hand to huge finances (Bill and Melinda Gates Foundation) and recommendatory bodies (Public Health Foundation of India) on the other hand, forcing unnecessary, costly and sometimes unsafe vaccines like Pentavalent and HPV vaccines on the country's public immunization programme. Dr. Jacob Puliyel, Pediatrician, St. Stephen Hospital, Delhi shared information about the National Technical Advisory Group on Immunisation (NTAGI), on whose recommended vaccines are introduced into the national programme. The advisory group has brought out a code of conduct to supposedly prevent conflict of interest. However, the draft actually allows for conflict of interest and following are the details:

- The Immunisation Technical Support Unit (ITSU) is set up by the govt. with PHFI, which itself has several conflicts of interest;
- There is no transparency on how members are selected to NTAGI.
- The minutes of deliberations will not reflect the reasons for dissent, but only state that x dissented.
- The minutes need approval by the co-chair alone.
- All discussions and deliberations are supposed to be secret, even when they are not proprietary details or unpublished data.

Further Ms. Neethi Rao, Research Officer, Institute of Public Health, Bengaluru gave examples of types of conflicts of interest exhibited relating to the tobacco industry, all of which need to be addressed in any law; according to her the degree of conflict of interest needs to be particularly looked at following levels :

Conflict at policy level

- Laws/policies related to the sector are not harmonized; on the one hand, the government projects tobacco as a killer, but the Tobacco Board's mandate is to promote the cultivation and marketing of tobacco; the Tobacco Institute of India, set up by the industry, interacts closely with the Ministry of Commerce.

Conflict at level of institution

- Tobacco control bodies in states have tie ups with tobacco companies in other sectors – eg. In Bangalore, the MahanagarPalike (Municipal Corporation), who have to implement Tobacco laws, have tied up with ITC for garbage treatment; state governments sign MOUs with tobacco companies for other products, but the logo

remains the same - cement, biscuit distribution in schools – strengthening brand image using public money

- Govt and related bodies like LIC use public money to buy shares in tobacco companies

At individual level, as when a MP is a member of the Tobacco Board or a Minister has stake in a tobacco company.

Mr. K Ashok Rao, General Secretary, Swami Sivananda Memorial Institute threw light how a paradigm shift has taken place that needs to be addressed: privatization of profit, nationalization of loss, through the machinations of global institutions like IMF and WB. Too many regulatory bodies and tribunals set up (revolving door) – the former gives space for bureaucrats, and the latter for judiciary. Further, the entire social sector is being privatized, especially the delivery. There is need for a public campaign with a special focus on parliamentarians, and for networking with other civil society organizations.

Mr.EAS Sarma, Retired Secretary to Govt. of India, made certain points about the draft law on conflict of interest in which he said that this draft law is an umbrella law. It must include definition of conflict of interest –its various facets, disclosure, penalties, mechanism, definition of public official and public body/authority needs to be redone. A national campaign is needed, strengthening penalties and examining other laws for conflict of interest – eg. Companies laws allows donations to political parties is also crucial.

Dr. Mira Shiva , Initiative for Health Equity and Society (IHES) / All India Drug Action Network (AIDAN)/AACI member pointed out that Conflicts of interest is often accompanied by other actions, such as the closure of the public sector vaccine production units to create demand for private sector vaccines; not allocating enough budgets for public institutions like ICMR to carry out research and encouraging them to tie up with industry, conflicts of interests when policy makers' families are employed by the industry, and the role of media in furthering corporate interests.

According to Mr.Dinesh Sharma, Journalist, when conflict of interest is pointed out in evidence gathering/recommendatory bodies, first there is denial then recusal; industry uses several kinds of incentives to lure policy makers, as in the case of bar coding of drugs and in scientific research; there is no space given to civil society in recommendatory bodies, only experts in subject matter – eg. Medical council of India and state medical councils.Today the government is abdicating its responsibility to the private sector, including in the area of data generation – if one wants data on software companies, ministry directs you to NASSCOM.

Mr. Shanti Bhushan , Former Law Minister of India was also present at the discussion . He explained that the Law ministry has two departments – Legal Affairs (advisory role) and

Legislative (that drafts bills). Regarding the draft law that was circulated, he said that the definition of private interest needs to be further refined (an MP wanting to do something good for his constituency may be considered to be doing it in his private interest for re-election); PPPs are beneficial, especially in the power sector as in Greater Noida, and probably in the nutrition sector, to provide foods to children in government schemes, as they have nutritionists and scientists; crony capitalism is to be condemned and not corporations; however corporations need to be regulated. Regarding the presence of the private sector in scientific panels, regulatory and recommendatory bodies, he said that there are two types of corruption – financial and intellectual. Private sector representatives are necessary in such bodies because they have experts, scientists on the whole have intellectual honesty and do voice independent judgment even when they are funded by industry, and in any case, if they are few in number, the other members will outvote them.

Mr. Dinesh Abrol from All India Peoples Science Network (AIPSN) stressed that there must be certain institutions whose autonomy must be guaranteed. A mechanism has to be thought of for this. Institutional frameworks should articulate how industry's supremacy in governance can be prevented and should cover specially details of how decisions should be taken, details of how assessments will be carried out, social audits and impact assessments and must have specific clauses to prevent industry domination.

Mr. Amitava Guha from Centre of Indian Trade Unions pointed out that any laws on conflict of interest must look not just at public policy, but also at how industry influences those who have a huge influence on our lives – eg. Giving gifts and incentives to doctors and other opinion makers. The law must cover conflict of interest in bodies like Medical Council of India, especially in the context of medical negligence; it must also cover disinvestment which is a primary cause of scams.

Dr. Vandana Prasad, National Convener, Public Health Resource Network made a point that the revolving door clauses relating to employment in private sector in the current draft would mean that a person needs to stay unemployed for four years (2 before joining govt/board/commission, etc. and 2 after) – something that is totally unfeasible, especially for someone who is being selected for her/his expertise. Also these clauses would prevent civil society members, or those from academia, from being on these govt. bodies. Private enterprise in this case needs to be defined clearly as corporate sector, etc.

Commitments

The meeting was concluded with a decision of constituting a Working Group on Conflict of Interest Legislation and Policies to reshape the draft Bill within a month time. Once Bill is ready, a request to make a deposition before the Rajya Sabha Standing Committee on Personnel will

be made. Petitions will be made at the Committee of Petitions and Right of Audience will be demanded.

Following is the list of working group members:

- 1) **Chair:** Mr.Chander Uday Singh(Advocate, Supreme Court)
- 2) **Secretariat:** Dr. Arun Gupta and Radha Holla (AACI)
- 3) Mr. EAS Sarma (Former Secretary to Government of India)
- 4) Prof. Kuldeep Mathur (Academic Expert)
- 5) Mr. Prashant Bhushan (Advocate, Supreme Court ;Campaign for Judicial Accountability)
- 6) Dr. Dinesh Abrol(India Peoples Science Network (AIPSN))
- 7) Mr. P.M. Bhat

Photo Gallery

Photo 1



Photo 2



Photo 1 and 2: Mr. Chander Uday Singh & Dr.Arun Gupta chairing the roundtable discussion

Photo 3



Photo 4



Photo 3 and 4: Mr. Prashant Bhusan addressing the fellow participants and group of participants during the discussion respectively.