

**13 September 2013**

**Sh. Ashok Kumar Sahoo**

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222, Second Floor, Parliament House Annex.  
New Delhi 110001**

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**SUB: Submission of comments on the Prevention of Corruption  
(Amendment) Bill , 2013**

**Dear Mr Sahoo,**

Please find enclosed 2 copies of my submission as stated above in the subject.

I would also like to appear before the Committee and make a request for an Oral presentation. Hope it is granted.

With thanks,

Sincerely,

**Dr Arun Gupta MD,FIAP**

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## **SUBMISSION OF MEMORANDUM**

**Sh. Shantaram Naik, Member Rajya Sabha**

**Chairperson: Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice**

### **Conflict of Interest – the hidden face of corruption**

This submission is made to the Standing Committee of the Parliament to address the issues of “conflict of interests” with in the “Prevention of Corruption Amendment Bill, 2013”. In the following pages I am able to provide its justification:

During one of the debates related to Infant and Young Child Nutrition at the World Health Assembly in 2005, India took the following position: “Commercial enterprises by definition are profit driven entities. It is neither appropriate nor realistic for the World Health Organization (WHO) to expect that commercial groups will work along with governments and other groups to protect, promote and support breastfeeding.” Following this, the World Health Assembly (WHA) adopted a Resolution 58.32, which further urges Member States “to ensure that financial support and other incentives for programmes and health professionals working in infant and young child health do not create conflict of interest”.

Today, India marches to “growth” and “progress” on corporate (commercial organisation) shoulders— overt and hidden corruption are rampant. Policies that decide people’s livelihoods, standards for their food and health are

set by advisory bodies/groups/committees that are riddled with conflict of interest. In an India driven by markets and trade, a Nestle, a Pepsico, a Coca Cola gives nutrition education to school children: a Glaxo Smith Kline, a Merck Sharpe and Dhome, decides what vaccines will be included in the public health system, a Monsanto dictates whether GM food is a health hazard or not.

There has been many times in past two years that conflict of interests has figured on top of news both in print and electronic media in almost all sectors of the work that governments do.<sup>1</sup> (Annex-1)

### **What is behind corruption, it is Conflict of interests**

Most people view corruption as limited to an individual or group of individuals illegally receiving some form of gratification, pecuniary or not, in return for granting or attempting to grant a favour. According to *Wikipedia*, “a **conflict of interest (COI)** occurs when an individual or organization is involved in multiple interests, one of which could *possibly* corrupt the motivation for an act in the other.”<sup>2</sup> Or “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”

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

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<sup>1</sup> <http://aaci-india.org/acci-news.html>

<sup>2</sup> [http://en.wikipedia.org/wiki/Conflict\\_of\\_interest](http://en.wikipedia.org/wiki/Conflict_of_interest) accessed 30<sup>th</sup> March 2011.

with choosing between the duties and demands of their position and their own private interests.’<sup>3</sup>

**Conflicts of interests’ breeds’ corruption, therefore must be prevented and managed with in the Amendment Bill.** 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. Such a situation actually breeds corruption officially.

**Let me share some examples how this happens:**

- When persons known for being corrupt or having particular interest becomes a part of the policy making body, and takes part in framing legislations, rules and regulations for controlling/preventing corruption;
- When public officials take policy decisions based on their personal interest (e.g. Shashi Tharoor in the IPL controversy);
- 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 government’s delegation at international bodies such as CODEX ALIMENTARIUS Commission that set standards for foods);
- When food (including junk food) manufacturers take on the task of educating children about nutrition (Nestle’s tie up with agriculture

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<sup>3</sup> <http://blog.transparency.org/2009/07/27/what-is-a-%e2%80%98conflict-of-interest%e2%80%99/>, accessed 30<sup>th</sup> march 2011

universities or dairy universities to give nutrition education to adolescent girls, Pepsico's tie up with schools to impart education on healthy living and nutrition to students); Britannia sets up a foundation to impact nutrition policy and partners with governments to supply its biscuits to tackle anemia<sup>4</sup>. Supreme court has observed that industry representatives should not be sitting on government panels.<sup>5</sup>

- When vaccine manufacturers or their front agents /organisations sit on public health boards nationally or internationally to advocate the use of their often unnecessary and costly vaccines in national health programmes (eg. GlaxoSmithKline, maker of Rotarix – the vaccine against rotavirus, on board of Global Alliance for Vaccines and Immunisations); there have been issues of safety and conflict of interests on decisions of introducing pentavalent vaccine in India<sup>6</sup>, recently Supreme Court has admitted a public interest petition on this issue.<sup>7</sup>
- When organisations with commercial interest have partnerships with key public authorities like PHFI. Like e.g Johnson & Johnson, Merck Sharp and Dohme (MSD) Pharmaceuticals Pvt Ltd, PepsiCo, Pfizer Inc.<sup>8</sup>
- 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

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<sup>4</sup> <http://columncm.blogspot.in/2013/05/east-delhi-corporation-reinventing.html>

<sup>5</sup> <http://courtnic.nic.in/supremecourt/temp/68120043822011p.txt>

<sup>6</sup> <http://www.deccanherald.com/content/166242/vaccines-gates-foundations-philanthropy-business.html>

<sup>7</sup> <http://www.hindustantimes.com/India-news/NewDelhi/SC-asks-govt-to-respond-to-PIL-on-Pentavalent-vaccine/Article1-1116414.aspx>

<sup>8</sup> <http://www.phfi.org/partnerships/our-partners->

Monsanto/Mahyco for Bt Brinjal by Genetic Engineering Approval Committee in 2009) ;

- When “voluntary codes” or self-policing prevail, that allow groups to hide unethical behaviour from the public, become the mechanism for regulating behaviour (Advertising Standards Council of India (ASCI), the apex self-regulatory body for the advertising content of the Indian advertising industry);
- When public servants including bureaucrats and elected representatives of the people, after leaving public service, work for the companies they used to regulate, potentially using their experience and contacts to get decisions made in the favour of the company; known as ‘revolving door’ (eg. 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 Glaxo Smith Kline Consumer Health-care as a non-official director<sup>9</sup>. Ex Cabinet Secretary sits on a board of Micronutrient Initiative<sup>10</sup>.

These cases of corruption through the existence of conflict of interest in policy-making processes 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. It also allows the official transfer of huge public

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[http://hotnhitnews.com/India\\_A\\_Democracy\\_on\\_the\\_Road\\_to\\_Kleptocracy\\_by\\_Piyush\\_Pant\\_020311006.htm](http://hotnhitnews.com/India_A_Democracy_on_the_Road_to_Kleptocracy_by_Piyush_Pant_020311006.htm), accessed on 8<sup>th</sup> April 2011

<sup>10</sup> <http://aaci-india.org/ACCI-news/Su-Casa-es-Mi-Casa.pdf>

funds and assets to the private, for-profit entities, primarily through Public Private Partnerships or PPPs.

### **Coroporation and Conflict of interest express as PPPs**

The Mail Today of 22<sup>nd</sup> July 2010 carried the headline “**Nooyi is subverting debate on obesity**” and goes on to explain: Indra Nooyi — the bubbly CEO of PepsiCo — has earned this title in the report ‘F as in Fat: How Obesity Threatens America’s Future’ released by the Robert Wood Johnson Foundation. Her two-page ‘perspective’ on obesity in a major public health document is nothing short of a coup for food Giants.... The ‘perspective’ is motivated to water down the debate on obesity and the demands for imposing ‘soda taxes’ to reduce consumption of fatty and sugary junk food — discussed in the very same report. This is not an isolated episode but part of a well crafted strategy by Big Food to masquerade as ‘champion of nutrition and health’, basically to stall any regulation on junk food. What is Pepsi doing with PHFI? May be Pepsi wants Government of India to go soft on obesity and non-communicable disease prevention?

The increasing clout of industry and its lobbies like Global Alliance for Improved Nutrition (GAIN), Micronutrient Initiative (MI) and GAVI, in policy/decision making allows them to dictate national priorities. GAIN and MI promote fortification of food products with micronutrients to reduce micronutrient deficiencies, rather than talking of or promoting policies that are based on equity – changing agricultural policies to ensure adequate production of diverse foods, making these diverse foods available to all people by controlling prices,

improving the public distribution system and widening the food basket there, demanding reduction in use of agricultural chemicals because they deplete the soil of micronutrients; these demands will not ensure profits for their members. GAVI has been pushing for the universalizing the use of vaccines such as pentavalent vaccine, pneumococcal vaccine, Hib vaccine, rotavirus vaccine, etc. which are more costly, untried in populations that are undernourished and have significant risk factors that cannot be addressed by the health system.

Britannia, Naandi and GAIN partnership for Delivering Nutrition through Fortification in India is one such clear example of conflict of interest. GAIN, as an entity is the front hub of Food industry and its partnership with Naandi Foundation, which has influential people like Anand Mahindra - Chairman, Mahindra Group, Dr Isher Judge Ahluwalia, and Chairperson of the Indian Council for Research on International Economic Relations (ICRIER). It makes any one suspicious for making it a strong opportunity for Britannia or Britannia having managed this. In this case Naandi and GAIN enter into partnership with Britannia for outsourcing “Iron fortified Biscuits” as part of the mid meal program run in Andhra Pradesh. It’s clear that getting industry giants like Britannia into the mid meal programme was a conscious and corrupt decision giving lame excuses [http://naandi.org/strategy\\_papers/PDfs/Naandi%20Case.pdf](http://naandi.org/strategy_papers/PDfs/Naandi%20Case.pdf) that Andhra Pradesh is a rice eating region and its lacks certain important micro-nutrients. And Britannia to give as a supplement with the mid meal is the most suitable solution to fill the micronutrient deficiency, ignoring the fact that it’s a “processed food” condemned by the parliament. Recent research based evidences in Lancet

Feb., 2013 proves that “processed food” can lead to health hazards like obesity and diabetes in children. Is this is not corruption and that too harming human health.

Pursuing their objectives, such organizations and their founders give huge monies to countries to adopt policies that benefit the businesses they are lobbying for. In addition, large supposedly-philanthropic organizations such as the Bill and Melinda Gates Foundation, which is the primary inspiration and funder of both GAVI and GAIN, add their voice to aid the lobbyists. Recent controversy of the pentavalent vaccine though an agency called PATH is supported by the Gates Foundation.<sup>11</sup>

Conflicts of interest in policy making often result in Public Private Partnerships that operationalise the transfer of money from the public to the commercial, profit-making sector.

The new PPP paradigm is based on certain key assumptions:

- That such partnerships are unavoidable
- that the public and the private are “equal partners”,
- the partnership is based on mutual trust
- the partnership should result in “mutual benefit”
- thus such partnerships represent a “win-win” situation.

### **PPPs distort State – People relationships**

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<sup>11</sup> <http://indiatoday.intoday.in/story/vaccinegate-hpv-vaccine-icmr-path-health-ministry-madhav-gadgil/1/305389.html>

The new PPP paradigm has two further assumptions that are more political in nature. The first assumption is that the state has failed to deliver. While this is true in most cases of health and nutrition, the rights perspective puts the onus of delivery on the State. It is the State's duty to deliver to the citizens.

The Fundamental Rights, set out in Part III of the Indian Constitution, cannot be abridged by the State. The "right to life", enshrined in Article 21 as a fundamental right, has been extended to cover the right to live with human dignity. In *Bandhua Mukti Morcha v Union of India* Justice Bhagwati referring to *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, stated;

*It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullen's case, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work etc. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right*

*to take any action which will deprive a person of the enjoyment of these basic essentials.*

When the State does not carry out its duty, it can be called to account through tools such as PILs and RTIs. The Supreme Court Orders in the Right to Food Campaign's PIL are examples of how these tools can be used. However, in the case of PPPs, this is not easy. The answer to an RTI application to the Punjab Agriculture University on its MoU with Nestle to provide nutrition education to school children said that the MoU could not be disclosed as it contained information of a commercial nature<sup>12</sup>. This is also the view of the Planning Commission. Reacting to chief information commissioner Satyananda Mishra's letter asking for PPP documents to be made public, "Right to information is not right to information of private companies. It is right to information on public authorities."<sup>13</sup>

The above view blatantly ignores the fact that public money is being transferred to a private corporation for creating markets and earning profits through PPPs, which, in the case of the Nestle- PAU PPP, allows Nestle to use the public education system to strengthen its brand image, and also be paid public money to do this.

PPPs allow the state to abdicate its duty and pass it on to corporations, who are under no compulsion of any kind to meet people's needs, but have access to public monies on account of the PPP. This is exemplified by several PPPs in the infrastructure sector – building and maintaining roads, airports, hospitals, etc.,

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<sup>12</sup> <http://www.onemillioncampaign.org/news/mnc-secret-pact-universities-food-education>

<sup>13</sup> "Pvt cos outside RTI purview: Planning Commission", *Times of India*, March 5, 2011

where corporations use public money to build and maintain, charge user fees from the people, and often return the infrastructure to the public sector after a period of say 30 years, when the infrastructure is old and practically obsolete

### **Managing Conflict of Interest -putting Public Interest at Centre Stage**

***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 ensure that in all policies, programmes, and especially decision-making processes the citizens' right to live with human dignity, as defined by Art. 21 of the Indian Constitution and its expanded interpretation in Bandhua Mukti Morcha v Union of India and other such cases, is put ahead of all other interests.

The integrity and independence of our public institutions is of paramount importance.

Corruption needs to be looked beyond giving and receiving bribes. Conflict of interest is an aspect governments need to address and recognize while making amendments in the new Corruption Bill. This nexus where a corporation /industry get into the public health service delivery interventions with the help of influential agencies and figures clearly indicates their vested interest to mint money and this nexus should be broken.

With this explanation, I feel that Prevention of Corruption Amendment Bill 2013 need to recognise conflict of interests as a major issue to be addressed and such this is an unprecedented opportunity;

1. To recognise existence of “conflict of interest” in policy making as a significant form of corruption.
2. To include a new section in the Amendment Bill that deals with **“prevention and management of conflict of interests”** in public policy, and develops mechanisms for the same.

## Annex-1

### Links to conflict of interests in news.

[New vaccines: Gates Foundation's philanthropy or business?](#)

Deccan Herald, Sep. 13, 2013

[dna edit: Conflict of interests- Judges appointing fellow judges and Members of Parliament voting to keep out their parties from the RTI Act are both instances of conflict of interests.](#)

DNA, Sep 7, 2013

[QUANTUM LEAP: Is this 'Vaccine-gate'? Report claims ICMR cast aside ethics guidelines to benefit top drug firms](#)

MailOnlineIndia, Sep. 3, 2013

[Planning Commission seeks stiff norms, defined roles for private consultants](#)

The Economic Times, Sep. 4, 2013

[Public-private projects have problems: Montek Singh Ahluwalia](#)

The Times of India, Aug. 29, 2013

[Include ministers under conflict of interest policy: Digvijay](#)

Business Standard, Aug. 16, 2013

[Conflicts of Interest in the Regulation of Food Safety: A Threat to Scientific Integrity](#)

JAMA Internal Medicine , Aug 7, 2013

[Conflicts of Interest Common in Defining Food Additive Safety](#)

MPR, Aug. 8, 2013

[David Cameron "conflict of interest" row over £2.7million NHS probe by Tory donor firm](#)

Mirror News, Jul 20, 2013

[Drug makers accuse V Mohan of possible conflict of interest in getting diabetes drug Pioglitazone banned](#)

The Economic Times, Jul 17, 2013

[Conflict of interest alleged in deciding fate of trees](#)

Hindustan Times, Jul 9, 2013

[CPI raises conflict of interest issue of Birla's bank plea](#)

The Economic Times, Jul 9 , 2013

[Misplaced hoopla over Indian anti-diarrhea vaccine](#)

The New Indian Express, Jun. 25, 2013

[Appointment of Rohan Murty in Infosys is conflict of interest: Jairam Ramesh](#)

The Economic Times, Jun 10 , 2013

[Govt allows ITC to flout WHO norms on donations from tobacco firms](#)

The Tribune , Jun 4, 2012

[Violations galore, With baby food companies flouting laws, the Centre has asked the States to prohibit offers made by them](#)

The Hindu, Mar. 18, 2012

[Media Brief: MNC Food Giant Nestle Charged for Violating of an Indian Law](#)

New Delhi. 17 March, 2012.

[Conflict of interest: Pillai defends Chidambaram](#)

ibnlive.in.com, Dec. 16, 2011

[Conflict of interest: Pillai defends Chidambaram](#)

ibnlive.in.com, Dec. 16, 2011

[Petition against pentavalent vaccine](#)

CNN-IBN, Dec. 14 , 2011

[PC in trouble, BJP cries conflict of interest](#)

www.ibnlive.in.com, Dec. 14, 2011

[Kapil Sibal accused of conflict of interest with Copyrights Bill](#)

www.ndtv.com , Dec. 14, 2011

[Big Food's Co-optation of Nutrition Professionals](#)

www.cornucopia.org, Nov. 25, 2011

[Payment debate: Health care workers defend their payments from drug companies](#)  
Billings Gazette, Nov. 20, 2011

[Lokpal panel may scrap need for sanctions to prosecute MPs, bureaucrats](#)  
Times of India, Nov. 21, 2011,

[Move to make MPs declare business interests is welcome](#)  
Mail Today, Nov. 20, 2011

[LS code of conduct on assets of MPs never enforced](#)  
Tribune News Service, Nov. 18,2011

[Conflicts of interest and the UN high-level meeting on non-communicable diseases](#)  
The Lancet, Sep 16. 2011

[Health groups warn business could hijack UN disease meeting](#)  
Reuters , Sep 16, 2011

[Experts contest new vaccine policy document](#)  
Down to Earth, Sonal Matharu , Sep 15, 2011

[Maken concerned about conflict of interest in Indian cricket](#)  
TOI, Aug 12, 2011

[Pepsi's rural strategy: New healthy beverage with low price](#)  
The Economic Times , Jul. 20 , 2011

[GM crop wing to tighten conflict of interest norms](#)  
TOI, Jul. 11, 2011

[MPs use Parliament to lobby for their business](#)  
CNN-IBN, Jul. 09, 2011

[Scientist bends rules for wife's GM trial](#)  
Times of India, July 2, 2011

[Plan panel member hires ex-employer to help draft five-year plan](#)  
TOI, Jun. 18,2011

[The 'Free' Election Offer!](#)  
The Economic Times, Apr. 2011

[False reports on vaccine trials](#)  
the independent, Apr. 2011

[Bharadwaj in a conflict of interest controversy](#)  
India Today , March 2011

[Jairam admits conflict of interest in N-development](#)  
Hindustan Times, March 16, 2011

[A 'sweet' move from Unicef to Nestle, Dinesh C. Sharma |](#)  
Mail Today, March, 2011

[Remove food, soft drink co agent from scientific panels : SC](#)  
Times of India, Feb. 2011

[MNC IN SECRET PACT WITH UNIVERSITIES FOR FOOD EDUCATION](#)  
Times of India, Jan. 2011

[Treading The Fine Line, Nestle's awareness programme runs too close to marketing](#)  
businessworld, Jan. 2011

[Hungry for profit](#)  
BMJ, Oct. 2010

[Ajit Balakrishnan: Rediff Buying Vubites Reduces Conflict Of Interest; Product, Target Market, Test Details](#)  
http://www.medianama.com, Nov. 2010

[Conflict of interest: Gupta was environment secy when Posco was cleared](#)  
Times of India , Oct. 19, 2010

['Conflict of interest, flawed data mar Posco economic benefits claims'](#)  
The Hindu, Oct. 10, 2010

[Sunil Gavaskar Behind Kochi: Another Conflict of Interest Story?](#)  
http://www.crickblog.com, Oct 26 2010

[Conflict of interest: Gupta was environment secy when Posco was cleared](#)  
Times of India, Oct. 2010

[BCCI pulled up over conflict of interest](#)  
ESPNcricinfo staff , Sept 16, 2010  
[Conflict of interest in 'superbug' report: Azad](#)  
Times of India, Aug. 14, 2010  
[Conflict of interest in regulation of Atomic Energy in India](#)  
<http://nuclear-news.net>, Aug. 2010  
[IPL-Shashi Tharoor Episode: Probe Conflict of Interest](#)  
Indiacurrentaffairs.org, Apr. 14, 2010  
[Pachauri slams charges about conflict of interest](#)  
Times of India, Dec. 21, 2009  
[Conflict of interest rules need to be clear](#)  
Business standard , Nov. 9, 2009  
['Conflict of interest, flawed data mar Posco economic benefits claims'](#)  
<http://www.hindu.com>, Jan.2007  
[Pepsi understands India better than RBI?](#)  
[www.indianexpress.com](http://www.indianexpress.com), Aug. 2006