



`Lobbying In India As A Means To Advance A Participatory Democracy Centre for Civil Society

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ABSTRACT

Worldwide, lobbying is a tool used for communicating with policy makers. It has been associated with interest groups having undue influence on the government. The purpose of this paper is to analyze the state of lobbying in India and suggest policy recommendations to make lobbying transparent. We analyze the legal frameworks as well as the systems of lobbying in the USA and Australia. Along with that, we examine a Private Members Bill introduced in the Parliament by Mr. Kalikesh Narayan Singh Deo, a Member of Parliament, to regulate lobbying activities.

We look at the current situation in India and the scams that exposed lobbying activities which shocked an unsuspecting nation. In our opinion, lobbying, despite its limitations, with the right regulations and incentives can be an effective instrument to make the currently opaque system transparent.

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I. INTRODUCTION

One can think of politics as an exchange¹— for example, votes for promises of representing the voter's interest. But these are just promises, and the exchange has already happened if the vote is given, regardless of whether the politician delivers on his promise or not. There is no guarantee of the promise being delivered. There is a constant need for voters to pressurize their elected representatives to act and to deliver on their promises. Law making happens when there is political and societal pressure. As soon as pressure/interest groups become large enough, they turn into vote banks.

Voters communicate with the government on various platforms. Ongoing long-term communication with governments to further collective business/trade interests take the form of organisations or associations. Interests and policies keep evolving and thus communication with the government is a continuous process. Examples include business/corporate associations such as the Federation of Indian Chambers of Commerce & Industry and the Builders Association of India. Expertise in their field and a constant relationship with the government helps them access government officials when policies of their interests are being debated.

The National Campaign for People's Right to Information is an example of a people's movement for greater transparency in the workings of the government, where long term talks with governments and protests has led to the Right to Information Act, 2005. Protests are another form of communication and an important mechanism to get the attention of the government to issues that matter to a large part of civil society. Protests and mass demonstrations are key to getting the attention of representatives, to inform the larger citizen body and alert them of their surroundings. During our interactions with one of

¹ James M. Buchanan, *The Constitution of Economic Policy*, 1986 accessed Feb 17, 2017,

http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/1986/buchanan-lecture.html

² Milan Vaishnav, "Why India's Electorate Chooses To Vote For Politicians With Criminal Records", *The Huffington Post*

the leaders of the Taximen's Union of Mumbai, we were informed about how there are no means for the Union to get its voice heard and hence they resort to protests and strikes which disrupts public life.

From the *Narmada Bachao Andolan*, to the *Occupy UGC* movement, protests have been integral in pressurizing the government. Pressure from protests may give the leaders access to government officials if high support is garnered. Online petitions are another way to communicate grievances or show dissent. Different mechanisms can be used to demand accountability from the government and challenge government decisions, such as the Public Interest Litigation.

Another aspect of communication is that of research organisations that present their research to the government. Information in the form of technical data and expertise that such organisations possess, gives them access to policymakers. Access and communication with the government comes easy to high net-worth individuals, industry leaders as well as other business heads, since their activities have wide ranging implications on the economic environment. Ex-civil servants and ex-government officials have greater access than the common public due to their existing network and contacts in the government. The government itself can open debates to the public, invite suggestions and comments on draft bills and invite organisations to conduct research on specific issues.

India can be thought of as an electoral marketplace², where a number of parties cater to a plethora of diverse groups. Interests are varied and conflicting; thus, disagreement is natural. While interest groups help to maintain a system of checks and balances in democracies, there is an over-abundance of these groups in India. Many are unorganized and the information they have is sometimes not transferred to the government. It is impossible for the government to possess complete information on issues. Thus, the existence of an organized channel of communication with the government is vital.

² Milan Vaishnav, "Why India's Electorate Chooses To Vote For Politicians With Criminal Records", *The Huffington Post*, Feb 3, 2017 accessed on Feb 17, 2017, <http://www.huffingtonpost.in/somak-ghoshal/why-indians-electorate-chooses-to-vote-for-politicians-with-cri/>

Where does lobbying fit in? In our opinion, lobbying can be understood as a more direct communication with policy makers through constant contact presenting of information, done to influence outcomes in a way so as to benefit the interest group that is indulging in the process. Various policies and government appointments are heavily lobbied for in India, but there is no regulation which would ensure transparency and responsibility. This also distorts the policymakers' accountability to the public.

The government is not for sale and to influence the government, the right amount of pressure and persuasion is required and that is what lobbying is. Thus lobbying can be thought of as an art where relationship building is a key component. Public relations agencies and consultancy firms engage with the government, representing various interests of their clients. Companies themselves have departments to communicate with the government. Lobbying in India is often misunderstood as policy-buying but fundamentally, it entails methods of communication to convince the government to act in a particular way. Meeting parliamentarians in the 'lobby' in order to convince them to act in a certain way has been an old practice³. With the Niira Radia tapes case, a high level of lobbying was exposed to a country that was not aware of such activities. Since lobbying is not regulated, it is not transparent in India and for the citizenry is a closed door affair. Thus, the Radia tapes case came as a shock but paved the way for an open debate regarding the ethics and intricacies of lobbying.

Politicians are also open to discuss and debate the possibility of regulating lobbying in India. Former MP Milind Deora's views reflect this clearly. He believes that disallowing lobbying in India would just drive all activities to go underground. As he says in an interview with us: "*My view is banning anything whether it's lobbying or whether its banning alcohol tomorrow, all it does is pushes things into the underground and it creates a black market for things.*"

³ "Europe Transparency Register - Briefing", European Parliament, December 2014, accessed on Feb 19, 2017, <http://www.europarl.europa.eu/EPRS/EPRS-Briefing-542170-European-Transparency-Register-FINAL.pdf>

A transparency enhancing regulatory framework for lobbying in India is the need of the hour and we made it our endeavor to shine some light on the same.

II. LITERATURE REVIEW

In their paper, *A case for democratizing lobbying in India*⁴, policy consultants Kaushiki Sanyal and Harsimran Kalra argue that for an effective lobbying law in India, it is imperative to define the term lobbying carefully. They argue that lobbying is a universal right of every citizen and a lobbying law should promote universal access and transparent policymaking. They raise four key concerns that need to be addressed while drafting a lobbying law, first being the need to carefully define who a lobbyist should be and what would constitute lobbying activities. Secondly they mention that it is important to specify the regulatory mechanism through which the law should be governed. In their third and fourth points they bring out the need to state exactly what information the lobbyists would be required to disclose along with the penalties imposed for flouting the lobbying norms.

Lawyer Diljeet Titus, founder & managing partner of Titus & Co. a law firm in India, calls corporate lobbying a “necessary evil” in the Indian Law Journal⁵. He claims that despite lobbying being perceived as influencing the government with money, it can be a “legitimate method to influence policy makers”, if transparent. He mentions that lobbying hasn't acquired a statutory or non-statutory form in India, and is still at its nascent stage. Currently he says that there are no lobbying firms in the country and thus retired civil servants, newspapers and news channels, bureaucrats, politicians, industrialists, editors and journalists are main players lobbying the government.

⁴ Kaushiki Sanyal and Harsimran Kalra, “A Case for Democratizing Lobbying in India”, SSRN, accessed on Jan 10, 2017. <https://ssrn.com/abstract=2657958>

⁵ “Corporate Lobbying and Corruption-Manipulating Capital”, Indian Law Journal, accessed Jan 10, 2017. http://www.indialawjournal.org/archives/volume4/issue_3/article_by_diljeet_titus.html

In a more general paper about lobbying published by the Princeton University, *From Corruption to Lobbying and Economic growth*⁶, Harstad and Svensson talk about lobbying and corruption as substitutes. They mention how firms in the beginning with little investment, prefer to bribe the government but as they keep investing more and becoming bigger, lobbying becomes their preferred mode of influencing the government. This leads them to conclude that as, “As corruption discourages investments, the economy may be trapped in a bribing equilibrium with so little investments the firms never switch from bribing to lobbying.”

Amrita Saha of the University of Sussex talks about lobbying strategies used by organisations in India in her paper, *Lobbying for Trade Policy: Theory and Evidence from India*⁷. She states that firms prefer to collectively lobby to influence sector-wide trade policy such as policies regarding tariffs but lobby individually for product-specific policies.

⁶ Bard Harstad and Jakob Svensson, “From Corruption to Lobbying and Economic growth”, Princeton, 2007, accessed on Jan 11, 2017. www.princeton.edu/~pegrad/Papers/harstad.pdf

⁷ Amrita Saha, “Lobbying for Trade Policy: Theory and Evidence from India” University of Sussex, accessed Jan 11, 2017. <https://www.unige.ch/degit/files/5014/3937/9919/Saha.pdf>

CURRENT SITUATION IN INDIA

Policy makers are bound by laws and codes that restrict the influence of interested individual or organisations in the policy making process of the country. Below are some laws put in place to ban corrupt practices and to protect the autonomous working of MPs, Members of Legislative Assembly (MLA) and civil servants.

Private interests of MPs are regulated by various codes of conduct⁸ and both houses have ethic committees. A few points drawn from Code of Conduct of Ministers⁹ and Code of Conduct of Members of the Rajya Sabha¹⁰ -

- A Minister cannot have connections with any business in which he has an interest in his ministerial capacity.
- An MP cannot accept foreign contributions and needs prior permission to accept foreign hospitality. A minister cannot accept gifts from people he deals with officially.
- A minister cannot accept politically or charitable contributions or gifts.
- A minister cannot accept gifts that hamper his performance of his duties. He cannot accept fees for a vote given, a bill introduced or for asking questions in the Parliament.

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- ⁸ “Conflict of Interest Issues in Parliament”, PRS India, accessed on Feb 17, 2017, http://www.prsindia.org/administrator/uploads/general/1370583452_Conflict%20of%20Interest.pdf⁹
- “India Code of Conduct of Ministers revised”, World Bank, accessed on Feb 18, 2017, http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/India_Code%20of%20Conduct%20for%20Ministers_revised%202010_en.pdf
- ¹⁰ “Code of Conduct for Members of the Rajya Sabha”, Rajya Sabha, accessed on Feb 18, 2017, http://rajyasabha.nic.in/rsnew/members/code_conduct.pdf

Rules under the Central Civil Services Conduct Rules, 1968¹¹

- Officials are penalized for accepting gifts while discharging duties by fine and imprisonment.
- Officials are prevented from frequent and lavish hospitality with individuals or firms they are dealing with.
- Civil servants cannot take up ‘commercial employment’ a year after retirement.

Laws in places to avoid influence on policy makers

The *Prevention of Corruption Act, 1988*¹² (POCA) is the main law that deals with corruption, not lobbying but can be used to restrict influencing public servants. Sections 7 to 12 deal with public servants accepting or agreeing to accept or attempting to obtain from any person, gratification other than legal remuneration as a motive or reward to do any official work. Persuading public servants by corrupt or illegal means, taking gratification to use one’s influence over public servants and abetting these offences is punishable with fine and imprisonment up to 5 years. The *Lokpal and Lokayuktas Act, 2013*¹³, calls for the establishment of a body called ‘lokpal’ to conduct preliminary inquiry into offences allegedly committed by public servants under POCA, 1988. Special courts are to also be constituted to deal with cases arising under POCA. The *Foreign Contribution (Regulation) Act, 2010*¹⁴ (FCRA) regulates foreign contribution and utilization. Under Section 3, foreign contributions cannot be accepted by candidates for elections, judges, government employee or member of legislature, political party,

¹¹ “The All India Service Conduct Rules, 1968”, IPR IAS, accessed on Feb 18, 2017, http://ipr.ias.nic.in/Docs/AIS_ConductRules1968.pdf

¹² “India : The Prevention of Corruption Act, 1988”, OECD, accessed on Feb 18, 2017, <https://www.oecd.org/site/adboecdanti-corruptioninitiative/46814376.pdf>

¹³ “Lokpal and Lokayuktas Act, 2013”, India Code, accessed on Feb 18, 2017, <http://www.indiacode.nic.in/acts2014/1%20of%202014.pdf>

¹⁴ “Foreign Contribution Regulation Act, 2010”, Law Ministry of India, accessed on Feb 18, 2017, [http://lawmin.nic.in/ld/regionallanguages/THE%20FOREIGN%20CONTRIBUTION%20\(REGULATION\)%20ACT,2010.%20\(42%20OF%202010\).pdf](http://lawmin.nic.in/ld/regionallanguages/THE%20FOREIGN%20CONTRIBUTION%20(REGULATION)%20ACT,2010.%20(42%20OF%202010).pdf)

organisation of political nature. In a recent move, the FCRA was retrospectively amended¹⁵ by the passing of a money bill titled, ‘Finance Act, 2016’ that allows for companies that adhere to the Foreign Direct Investment sectorial caps to contribute to any person or organization. This was done by excluding foreign companies with Indian subsidiaries from the definition of foreign source. This happened regardless of the Delhi High Court Judgment in 2014¹⁶ that said funding of political parties by Indian subsidiaries of a foreign company was a violation of the then FCRA, 2010.

Political party funding in India

Political parties get their income from sources such as donations, membership fees, interest from banks, sale of coupons, etc. Under section 13-A of the Income Tax Act, parties enjoy 100% tax exemption from all sources of income but are required to fill their IT returns (ITR)¹⁷ annually. In the ITR, donations made above Rs.20,000 in a year must be disclosed along with the details of the donor and total donations below Rs.20,000 should be disclosed without giving details of the donor. Thus, much of party funding happens in contributions below 20,000 and in the form of cash. As ‘unknown donors’ grow in size, corruption and black money find their way into political funding. The Association of Democratic Reforms (ADR) recently found political party

funding consisted predominantly of cash, which constituted 63% of the funds in the 11-year period from 2004 to 2015. 69% of political funding comes from unknown sources according to the ADR¹⁸. In a move towards contracting the size of unknown

¹⁵ Vijaita Singh, "Foreign firms can now fund parties", *The Hindu*, May 16, 2016 accessed on Feb 18, 2017, <http://www.thehindu.com/news/national/foreign-firms-can-now-fund-parties/article8604763.ece>

¹⁶ "Association for Democratic Reforms v. Union of India", Association for Democratic Reforms (ADR), accessed on Feb 18, 2017, [https://adrindia.org/sites/default/files/ADR%20vs.%20UOI%20\(Delhi%20High%20Court%20judgment%20on%20foreign%20funding%20received%20by%20INC%20and%20BJP\).pdf](https://adrindia.org/sites/default/files/ADR%20vs.%20UOI%20(Delhi%20High%20Court%20judgment%20on%20foreign%20funding%20received%20by%20INC%20and%20BJP).pdf)

¹⁷ "FAQs – ITR of Political Parties", Association for Democratic Reforms (ADR), accessed on Feb 18, 2017, <http://adrindia.org/sites/default/files/FAQ%20-%20ITR%20of%20Political%20Parties.pdf>

¹⁸ "69% Political Funding comes from unknown sources", *DNA India*, Jan 25, 2017, accessed Feb 1, 2017. <http://www.dnaindia.com/india/report-69-of-political-funding-comes-from-unknown-sources-2295928>

donors', the government in the Union Budget 2017 announced a cap at Rs.2000 to disclosure of details¹⁹. What is the relation between lobbying and political party funding? Both are mechanisms used for seeking influence and thus affecting political outcomes. With both lobbying and providing funding to a political party are, there is the possibility of unwarranted influence. While party funding aids election expenditure and is inbuilt in the election process, it is imperative to make it transparent so that a voter knows the people/institutes/corporations that support the respective parties.

Lobbying in India

In any democracy, interest groups will try to influence laws in which they have a stake. Thus associations or trade unions meet with policy makers, civil society groups may ask to meet with standing committees to make their case and interest groups try their best to get their way. It is impossible to suppress the voices of various interest groups especially in a diverse democracy.

But since there are no mechanisms regulating the communications between the interest groups and the people they lobby, there is no way for the citizens to keep a check on one sided interests or when the interests of one group becomes the only pressure on policy. Thus it was controversial and shocking when Walmart disclosed the amount spent on lobbying US policy makers on businesses in foreign countries including India under the Disclosure of Lobbying Activities Act, 1995 of the US, when after investigation it was found that Walmart bribed Indian officials and with the leaking of the Niira Radia tapes.

¹⁹ "Rs. 2000 ceiling for cash donations to parties", *The Hindu*, Feb 2, 2017, accessed on Feb 18, 2017, <http://www.thehindu.com/business/budget/%E2%82%B92000-ceiling-for-cash-donation-to-parties/article17128219.ece>

The Wal-Mart case

Wal-Mart, to gain access to emerging markets such as India, which had a booming retail sector, resorted to lobbying activities with the Indian Government. In compliance with the Lobbying Disclosure Act of 1995, it reported its lobbying activities every quarter to the U.S. Government. Wal-Mart's lobbying activities amounted to \$6.8 million in 2016.²⁰

Wal-Mart entered India in 2007 via a 50:50 Joint Venture with Bharti Enterprises. At that time operations were restricted to wholesale format only since the regulations did not permit FDI in multi-brand retail. In 2012 Wal-Mart had spent \$25 million²¹ on lobbying activities to gain access to the Indian retail market. This disclosure came at a very controversial time because the Indian government had decided to permit 51% FDI in multi-brand retail sector.

In India lobbying is of two types i.e. overt and covert. Overt lobbying includes conducting studies and offering technical expertise. But covert lobbying is where the big money starts to move in. Wal-Mart case can be inferred as a case of covert lobbying.

Wal-Mart's corruption allegations in Mexico and its disclosure on lobbying expenditures in the U.S. Senate stirred a controversy in India and disrupted parliamentary proceedings. It was accused of illegal activities to gain market access to Indian markets and the opposition party demanded all the illegal money be identified and the government to cease Wal-Mart's operations in India until the investigation on Wal-Mart was not concluded. The government set up a committee to look into the Wal-Mart case.

²⁰ Karthik Ramanna, Vidhya Muthuram, "Wal-Mart Lobbying in India", *Harvard Business Review*, 9-114-023, Rev: January 16, 2016, accessed on Feb 18 2017, <http://www.hbs.edu/faculty/Pages/item.aspx?num=45549>

²¹ Karthik Ramanna, Vidhya Muthuram, "Wal-Mart Lobbying in India", *Harvard Business Review*, 9-114-023, Rev: January 16, 2016, accessed on Feb 18 2017, <http://www.hbs.edu/faculty/Pages/item.aspx?num=45549>

The Indian retailers who were more interested in promoting domestic entrepreneurship realized that if FDI in wholesale retail would be permitted then it would hamper their livelihoods. Indian retailers wanted to keep foreign players out of the local market and use Wal-Mart as an example for the same.

Wal-Mart used unfair and corrupt practices to gain access to offshore markets, due to which it came under the scanner of the Foreign Corrupt Practices Act (FCPA), in the United States. Under the FCPA, it was discovered that Wal-Mart paid millions in bribes to Indian officials and it was charged under the same. It has been realized that India doesn't have a law in place restricting Indian companies from engaging in corrupt practices in foreign lands.

Radia Tapes Case

The Radia tapes brought to light the lobbying of Niira Radia in influencing the Cabinet formation after the 2009 general election. The Income Tax department taped Radia's phone conversations for 6 months in 2009. Radia had PR/consultancy firms, which took up public relations and lobbying work for companies such as the Tata Group, Reliance Industries, Unitech Group, etc. The firms operated by her included Vaishnavi Corporate Communications Private Ltd., Noesis Strategic Consulting Services Pvt Ltd, Neucom Consulting, etc²². Many former high-ranking civil servants were employed in these lobbying /PR firms²³.

The tapes revealed the efforts of Radia while lobbying for A. Raja for the post of the Union Telecom Minister and against the reappointment of Dayanidhi Maran. Telephonic conversations between Radia

²² Shantanu Ray, "Her Sinister Ringtone", *Tehelka Magazine*, Vol 7, Issue 48, Dec 04, 2010, accessed on Feb 18 2017, http://archive.tehelka.com/story_main48.asp?filename=Ne041210Coverstory.asp

²³ "Who's who in Niira Radia 'success story'", *Hindustan Times*, Nov 19, 2010, accessed on Feb 18 2017, http://www.hindustantimes.com/delhi/who-s-who-in-niira-radia-success-story/story-83ySEyjnGbx5Uk7yLdI90M_amp.html

and Ratan Tata, Bharkha Dutt, A. Raja, Kanimozhi (DMK)²⁴ show the nexus between politicians, journalists and corporate executives. Journalists were used as middlemen to pass messages to members of the Congress party then engaged in the Cabinet formation.

Through the leaked tapes, the 2G scam surfaced²⁵. The 2G scam involved officials from the UPA-II government awarding 2G spectrum allocations at rock bottom prices through unfair illegal processes. Bribes were paid to government officials to gain favors in allocation of licenses in 2007-08, when A. Raja was the Minister of Telecommunications and IT.

The lobbying for A. Raja to be appointed later on in 2009 by Radia shows that corporate interests majorly guided the political outcomes. The leaked tapes appalled many, including the Supreme Court's two-judge bench comprising of G.S Singhvi and V. Gopala Gowda. The SC asked the Central Bureau of Investigation (CBI) to probe into 14 issues after going through the transcript of the tapes, but by 2015, the CBI closed most of them due to lack of evidence²⁶. Lobbying for A. Raja, who was instrumental in causing a loss Rs.1.76 trillion to the treasury²⁷ (as per the Comptroller and Auditor General of India) for corporate interests was detrimental to public interest as a whole. Thus, a law to uncover such activities and regulate them is needed. The public must be aware of the actual "movers and shakers" of the system designed to represent them, so that when their democracy tends towards an oligarchy, the public can come together to challenge the status quo.

²⁴ "The Radia Tapes", *Outlook*, Nov 18, 2010, accessed on Feb 18, 2017, <http://www.outlookindia.com/website/story/the-radia-tapes/268214>

²⁵ C.J Kuncheria, Devidutta Tripathy, "What is the 2G scam all about?", *Livemint*, April 13, 2013, accessed on Feb 18, 2017, <http://www.livemint.com/Politics/Z1vd9waemZS59nO8MdPsiP/What-is-the-2G-scam-all-about.html>

²⁶ Neeraj Chauhan, "Niira Radia off CBI hook for 'lack of evidence'", *The Times Of India*, May 22, 2015, accessed on Feb 18, 2017, <http://timesofindia.indiatimes.com/india/Niira-Radia-off-CBI-hook-for-lack-of-evidence/articleshow/47378214.cms>

²⁷ Monalisa, Utpal Bhaskar, "Radia Tapes – SC tells CBI to probe 14 issues", *Livemint*, Oct 19, 2013, accessed on Feb 18, 2017, <http://www.livemint.com/Industry/jUw1YeL8kCgZ1uqvvyCNxsl/Niira-Radia-tapes-SC-directs-CBI-inquiry-into-14-issues.html>

AN ANALYSIS OF THE DISCLOSURE OF LOBBYING ACTIVITIES BILL, 2015

The Disclosure of Lobbying Activities Bill, 2015²⁸ was introduced by MP Kalikesh Narayan Singh Deo. The private members bill was introduced in order to set up an authority for the regulation of lobbying activities in India. The bill also has an overriding feature - if passed, it supersedes other laws such as POCA, 1988.

The crux of the bill is the establishment of an authority, constituted by the central government with the duty of maintaining a register of lobbyists. The authority is to make public this register and disclosures made by lobbyists. It will have the power to investigate those who lobby but have not registered and also the power to penalize. Appointment to this authority is to be made by the central government.

Under Section 2 of the proposed bill, a lobbyist is defined as any person or organisation that conducts lobbying activity either on his behalf or on behalf of a third party client, in return for financial or other benefits. What is alarming is the definition of lobbying activities. Lobbying activity is defined as the act of communication with and payment to a public servant with the aim of influencing parliamentary proceedings, government policy or programs, awarding of a grant, loan, license, contract, permit or allocation of funds to an individual or an organisation, nominations of persons to public office and influencing a public servant's decision in the transfer of assets. Let us look at two aspects within this definition - communication with payment and public servants being on the receiving end. This definition of lobbying mirrors what most Indians think of lobbying – paying for policy²⁹. Under this bill, the concept of lobbying is misunderstood and no clear line has been drawn between bribery and lobbying³⁰.

²⁸ "The Disclosure of Lobbying Activities Bill, 2015", Lok Sabha, accessed on Feb 18, 2017, <http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/4772LS.pdf>

²⁹ Neither the US nor Australian laws validate payments, exchange of money or any considerations from lobbyist.

³⁰ Bhargavi Zaveri, "Disclosure of Lobbying Activities Bill, 2013", *Economic and Political Weekly*, Vol. 48, Issue No.24, June 15, 2013, accessed on Feb 18, 2017, <http://www.epw.in/journal/2013/24/commentary/disclosure-lobbying-activities-bill-2013.html>

"Payment" to a public servant is defined as contribution made in cash or kind and includes cost of meals, retreat, vacations, meetings, conferences, travel or support for election campaigns and offering gifts in the course of lobbying activity. One must note that such "payments" are inconsistent with various codes of conduct and laws such as the POCA, 1988. Thus, there is evidently a huge misconception about what lobbying entails in India and this bill only confirms that.

Under Section 5, all those who conduct lobbying activities must register and the authority will charge a fee for it. Under Section 10, engaging in lobbying without registration shall lead to a fine that can go up to Rs.50 lakhs as per the bill.

The bill excludes all communication made in public or accessible to the public, communication made in a testimony given to a committee constituted by the Government, made in response for a request made for a tender, made in response to a government circular or notice. The bill doesn't mention anywhere communication between the government and that of trade delegations or any delegation travelling with foreign officials.

There is a need to implicitly address 'who can be lobbied'. According to the bill, 'public servants' are lobbied and are defined by POCA, 1988. This includes all persons in service of the government, paid in fees, commission, and salaries by the government to discharge government duties. Persons in service and pay of a corporation established by a State, Central or provisional act and of a body owned or controlled by the government and a government company defined as per the Companies Act come under public servants. Judges, professors/teachers employed by universities and employees of public bodies that hold and conduct examinations also come under the ambit of public servant. Thus here it is realized that band of individuals covered under the ambit of 'public servants' are wide and that not all public servants can directly influence policy outcomes. Professors of a public university or employees of a state run enterprises do not control nominations of people to public offices or do not have the power to introduce, pass or defeat bills in legislatures.

There needs to be a narrowed down idea of those who get lobbied, in order to sieve out only those communications made with influential officials that have the power to make and/or change policy.

Under Section 7, the bill further states that disclosure reports by the lobbyist must be made half-yearly. The reports must contain the name, business and place of business of the client and of the lobbyist consultant. The same details of an organisation other than the client that funds, supervises, and controls the lobbying functions is mandatory. In case the client is a public sector unit, the percentage of the share-holding by the GOI must be reported. Disclosure must also include the reason and perceived outcome of lobbying, the name and designation of the public servant engaged with, the amount, description and date of payment to the public servant, dates of communication with the public servant, expenses incurred by the client of the lobbyist in connection with lobbying activities and total expenses incurred.

Failure to remedy a defect in the report of disclosure within 60 days from date of receipt of notice shall be punishable by suspension or fine. Ironically there are no penalties mentioned in the bill in the case of failure to submit a half yearly report. Also, with a half yearly disclosure, there is a six month time lapse between when the lobbying activities occur and when the public comes to know of such activity.

The public servant has the duty to report details of 'payment' received during the lobbying activity. But, there are no penalties on the public servants for failure to disclose payments. There are no other responsibilities prescribed to the public servant.

The inconsistency with other laws such as POCA due to the 'payment' feature, the overriding of other laws and the broad definition of 'public servant' are the main drawbacks of the bill. But, the opening of debate to a topic not openly spoken about and where social stigma of lobbying prevails is a step towards ensuring more transparency in the policymaking of our country.

LEGAL FRAMEWORK OF THE USA

The following are few features of the legal framework regulating lobbying in the United States of America under The Lobbying Disclosure Act of 1995³¹:

A) Definition of Lobbying Activities

Any communication written or oral, with either "covered legislative branch officials" or "covered executive branch officials" regarding the "formulation, modification, or adoption" of policy or legislation constitutes a "lobbying contact."

Also included are communications relating to the –

1) Administration or execution of a federal program or policy (including contracts, grants, loans or permits)

2) The nomination or confirmation of a person subject to confirmation by the Senate

The term "lobbying activities includes not only the time spent on a lobbying contact, but also "efforts in support of such contacts, including the preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others."

B) Who is Lobbyist?

As defined by the Lobbying Disclosure Act of 1995, a lobbyist has been clarified to include any person who:

³¹ US Office of the Clerk, House of Representatives "Lobbying Disclosure Act, 1995" Accessed on Feb 1, 2017. <http://lobbyingdisclosure.house.gov/lda.html>

1) Receives financial or other compensation for lobbying in excess of \$2,500 per three month period

2) Makes more than one lobbying contact; and

3) Spends twenty per cent or more of his or her time over a three month period on lobbying activities on behalf of an employer or individual client.

C) What is a Lobbying Contract?

The term "lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—

1) The formulation, modification, or adoption of Federal legislation (including legislative proposals)

- 2) The formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government
- 3) The administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license)
- 4) The nomination or confirmation of a person for a position subject to confirmation by the Senate

D) The policy makers that can be lobbied

- 1) Members of Congress
- 2) An elected officer of either House
- 3) Any employee of, or any other individual functioning in the capacity of (but not volunteers or contractors), a Member of Congress, a committee, a leadership staff, or a working group or caucus
- 4) A senior employee of the Clerk of the House or Secretary of the Senate Covered Executive Branch Officials
- 5) The President, Vice President, and any employee in the Executive Office of the President
- 6) Any officer serving in level I-V of the Executive Schedule; agency heads, assistant secretaries, deputy assistant secretaries, general counsels of agencies, and so forth
- 7) Any member of the uniformed services whose pay grade is at or above 0-7 under section 201 of title 37 United States Code
- 8) Any other employee serving in a “confidential, policy determining, policy-making, or policy-advocating” position as described in section 7511 (b)(2) of title 5, United States Code. This includes so-called “Schedule C” employees

D) Rules regarding registration

Federal lobbyists are required to register with the Clerk of the United States House of Representatives and the Secretary of the United States Senate. The clerk and secretary must refer any acts of non-compliance to the United States Attorney for the District of Columbia. A lobbyist or lobbying firm must register within 45 days of making a lobbying contact or being employed for such activities, whichever occurs first.

E) The nature of the disclosures

Disclosures while registering:

- 1) Name, address, business telephone number, and principal place of business of the registrant, and a general description of its business or activities
- 2) The name, address, and principal place of business of the registrant’s client, and a general description of its business or activities (if different from registrant)
- 3) The general issues on which the organisation intends to engage in lobbying activities and, to the extent practicable, the specific issues that are likely to be addressed
- 4) Each employee whom the organisation expects to act as lobbyist
- 5) The identity of any organisation that provides more than \$5,000 in support in a three month period and plays a major part in the supervision of the registrant’s lobbying activities
- 6) The identity of a foreign entity that influences the registrant’s lobbying activities, directly or indirectly, or is an affiliate of the client and has a direct interest in the outcome of the lobbying activity
- 7) Under the 2007 amendments to LDA, lobbyists must also file with the Clerk of the House and Secretary of the Senate a semi-annual LD-203 report listing any campaign contributions to federal candidates and expenses related to events that honor a member of Congress

Disclosure while filing quarterly reports:

- 1) A list of the specific issues on which the lobbyists are working. This should include a list of bill numbers and references to specific executive branch actions “to the maximum extent practicable.”
- 2) A list of the houses of Congress (Senate and House) and federal agencies contacted by any employee acting as lobbyist
- 3) A disclosure of the interests of any foreign entity listed in the registration statement.
- 4) The names of the employees who acted as lobbyists during the semi-annual period

G) Penalties/ Enforceability

If a lobbyist or lobbying firm is found by the U.S. Attorney to be in violation of the LDA, they may levy substantial civil fines of up to \$100,000 for knowingly failing to comply with the LDA or for failing to resubmit an incomplete filing within 60 days of notification. As in all civil cases, violations must be proven with a preponderance of evidence.

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An overview of the systems that have emerged in USA

Lobbyists serve an important purpose in aggregating the interests of many individual constituents. Every individual has a different agenda, but with over 10,000³² bills introduced to the U.S. Congress over every two-year session, it is next to impossible for a single voice to be heard, let alone be actioned upon. Lobbyists can represent multiple voices, using fact checking and research to bolster their arguments and then try and persuade government into action. Thus, lobbying helps to cover any gaps in knowledge. Lobbying in the USA works as a relationship market³³. Firm lobbyists focus their professional attention on building relationships, mainly with members of Congress and their staff members, but also with potential clients, coalitions, and other individuals and organisations related to their clients. Day in and day out these lobbyists build, preserve, and then commodify these relationships. Often the staff employed by a member of Congress is limited and is inexperienced in legislating writings. They rely on lobbyistsforgivinginputs,researchingandwritingoflegislature.Lobbyistssubsidizetheamountspent

³² "Why Lobbying Is Legal And Important In the U.S." *Investopedia*, accessed Feb 11, 2017. <http://www.investopedia.com/articles/investing/043015/why-lobbying-legal-and-important-us.asp>

³³ Maggie McKinley and Thomas Groll, Harvard University, *The Relationship Market: How Modern Lobbying Gets Done*, February 2015, Accessed Feb 2, 2017. <http://ethics.harvard.edu/blog/relationship-market-how-modern-lobbying-gets-done>

on staffing and in return the policies drafted favor the lobbyist or the policymakers act in the interest of the lobbyist. Thus lobbying in the US is also seen as a 'legislative subsidy'.³⁴

Lobbying in the USA though, is plagued with issues. One key problem with the law is the definition of who a lobbyist is. The Lobbying Disclosure Act of 1995 has three tests to determine who a lobbyist is: Any person who 1) receives financial or other compensation for lobbying in excess of \$2,500 per three month period; 2) makes more than one lobbying contact; and 3) spends twenty per cent or more of his or her time over a three month period on lobbying activities on behalf of an employer or individual client. Only a person who has met all three tests must register as a lobbyist. So a former lawmaker who has many lobbying contacts and makes \$1 million a year lobbying but has no single client who takes up more than 20 percent of his time would not be considered a lobbyist.³⁵ OpenSecrets.org, a nonpartisan and nonprofit research group, reports that "since 2000, even though lobbying activity has exploded, the number of registered lobbyists has shrunk from 12,536 to 12,341". They estimate that in that period, the amount of money spent on lobbying has doubled from \$1.57 billion to \$3.23 billion. According to American University Professor James Thurber's estimates, the actual amount spent every year on lobbying is closer to \$9 billion and the business is the third largest industry in Washington, directly or indirectly employing 100,000 people.

A serious concern has been the "revolving door problem" in lobbying, a system that has emerged where public servants/staff take up lobbying jobs to reap benefits out of connections made during their tenure.

³⁴ Lee Drutman, "Despite Citizens United, elections aren't a good investment for corporations", *Washington Post* March, 2015, accessed on Feb 1, 2017. https://www.washingtonpost.com/opinions/despite-citizens-united-politics-isnt-a-good-investment-for-corporations/2015/03/27/f13e0d20-d26c-11e4-ab77-9646eea6a4c7_story.html?utm_term=.8a8bbb9598d3

³⁵ Ted Kaufman, "Time to close loopholes lobbyists use", *Delaware Online*, June 2014, accessed Jan 18, 2017. <http://www.delawareonline.com/story/opinion/columnists/ted-kaufman/2014/06/14/time-close-loopholes-lobbyists-use/10474425/>

Congresspersons and staffers have been shifting to the lucrative lobbying industry. The main issue of this revolving-door activity is that elected officials—persons who are supposed to represent the interests of citizens—are too closely associated with the big-money interests of for-profit corporations and interest groups

with narrow-minded concerns, which are not particularly beneficial for the citizens in general. It found that from 1998 to 2005, 43 percent of the 198 members of Congress who left government to join the private industry have registered to lobby.³⁶

Perhaps the most significant controversies related to lobbying was its involvement in the 2008 financial crisis. In a paper published by ³⁷NBER, (Deniz Igan, Prachi Mishra, Thierry Tresselt) it is argued that political influence of the financial industry contributed to the financial crisis by permitting risk accumulation. The authors claim, "In the period from 2000 to 2006, a bill that was unfavorable to the financial industry was three times less likely to become law than one promoting deregulation." Their data which looks at a lot of financial companies' politically targeted activities, made them conclude that "there was a clear association between the money affected financial firms spent on lobbying and the way legislators voted on the key bills considered before the crisis." They also point out a case of moral hazard stating that lenders take up risky lending strategies because they engage in specialised rent-seeking, expecting preferential treatment in case of bankruptcy.

In the USA, lobbyists cannot bribe the policy makers but they can contribute towards campaign finances, through Political Action Committees (PAC) that pool in funds for electoral campaigns. Corporations are prohibited from making expenditures to influence federal elections directly hence they

³⁶ "Hill, Stepping stone to K street for some", *Washington Post*, July 2005, accessed Feb 3, 2017.

<http://www.washingtonpost.com/wp-dyn/content/article/2005/07/26/AR2005072601562.html>

³⁷ Deniz Igan & Prachi Mishra & Thierry Tresselt, 2012. "A Fistful of Dollars: Lobbying and the Financial Crisis," NBER Macroeconomics Annual, University of Chicago Press, vol. 26(1), pages 195 - 230. Accessed Feb 1, 2017. <http://www.nber.org/papers/w17076>

contribute through PACs. Often lobbyists become fundraisers for politicians as well. Corporate donations to PACs are a matter of intense political debate in the US. In a recent Stanford University paper³⁸ about campaign finance and lobbying, it has been found that in the period from 1998 through 2005, only a fourth of federally registered lobbyists made campaign contributions more than \$200—the federal campaign contribution reporting threshold—to a single congressional candidate or a PAC. 6 percent of all lobbyists accounted for 83 percent of all lobbyists' campaign contributions.

Lobbying offers a much better return than campaign financing for the special interest groups in the USA. They prefer influencing and changing the thought process of a policymaker rather than getting one elected. Since 1998, corporations have consistently spent about 13 times more on lobbying than they have on campaign contributions. In the 2013-14 cycle, corporations, trade associations and business associations spent a combined \$381 million through their political action committees, the figure gets dwarfed by the corporate lobbying expenses which amounted to roughly \$5 billion during the same period.³⁹

³⁸ Richard Briffault, Stanford University, "Lobbying And Campaign Finance: Separate And Together", 2008, Accessed Feb 3 2015

³⁹ Lee Drutman, "Despite Citizens United, elections aren't a good investment for corporations",

Washington Post March, 2015, accessed on Feb 1, 2017.

https://www.washingtonpost.com/opinions/despite-citizens-united-politics-isnt-a-good-investment-for-corporations/2015/03/27/f13e0d20-d26c-11e4-ab77-9646eea6a4c7_story.html?utm_term=.8a8bbb9598d3

LEGAL FRAMEWORK OF AUSTRALIA

The following are few features of the regulatory frameworks for regulating lobbying in Australia as defined in the Lobbying Code of Conduct under the Australian Government, Department of the Prime Minister and Cabinet⁴⁰.

A) Definition of Lobbying Activities

Communication with a Government Representative to influence government decision, making or amendment of government legislation, government policy, awarding of a government contract or grant or allocation of funds. But it does not include:

- 1) Communications with a committee of the Parliament, a Minister or Parliamentary Secretary in his/her capacity as a local Member or Senator in relation to non-ministerial responsibilities
- 2) Communications in response to a call for submissions, request for a tender or requests by Government representatives for information

3) Communications of a grassroots campaign nature in an attempt to influence a Government policy or decision or making statements in public forum

B) Who is a Lobbyist?

Means any person, company or organisation or whose employees conduct lobbying activities on behalf of a third party client. But it does not include:

⁴⁰ "Lobbying Code of Conduct, 2013", *Register of Lobbyists*, Australian Government, Department of Prime Minister and Cabinet, 2013, accessed on Feb 18, 2017, http://lobbyists.pmc.gov.au/conduct_code.cfm

1) Members of trade delegations visiting Australia or individuals making representations on behalf of relatives or friends about their personal affairs

2) Charitable, religious and other organisations or funds that are endorsed as deductible gift recipients

3) People registered under an Australian Government scheme regulating the activities of members of that profession, such as registered tax agents, Customs brokers, company auditors and liquidators, provided that their dealings with Government representatives are part of the normal day to day work of people in that profession

4) Members of professions, such as doctors, lawyers or accountants that make occasional representations to Government on behalf of others for provisional purposes benefitting their service them of their professional or other services. But if the person is representing a firm of doctors, lawyers, etc. to represent its clients for lobbying purposes then the clients and the person representing them must be registered with "Register of Lobbyists"

C) What is a lobbying contract?

There shall be no lobbying contract between a government representative and other person for lobbying activities if:

1. The lobbyist is not on the register of lobbyists

2. An employee of a lobbyist, or a contractor or person engaged by a lobbyist to carry out lobbying activities whose name does not appear on the Register of Lobbyists in connection with the lobbyist

D) Registration Authority

Register of Lobbyists is maintained by the secretary of the Department of the Prime Minister and Cabinet

E) Cool off Period

1) Persons retired from office as a Minister or a Parliamentary Secretary after 6 December 2007 will not engage in lobbying activities or engage in lobbying activities with matters they had official dealings when in office, for a period of not more than 18 months

2) Persons employed after 1 July 2008 in the Offices of Ministers or Parliamentary Secretaries under the *Members of Parliament (Staff) Act 1984* at Adviser level and above, members of the Australian Defence Force at Colonel level or above and Agency Heads or persons employed under the *Public Service Act 1999* in the Senior Executive Service will not engage in lobbying activities or engage in lobbying activities with matters they had official dealings with when in office, for a period of 12 months

F) Nature of disclosures

A person, company or organisation or whose employees conducts lobbying activities on behalf of a client with a Government representative need to disclose the following details :

1) The business registration details of non- publicly listed companies along with the names of owners, partners or major shareholders and trading names of the lobbyists

2) The names and positions of persons employed, contracted or engaged by the lobbyist to carry out the lobbying activities

3) Whether a person involved in the lobbying activity is a former government representative and if so, the date the person became a former government representative

4) The names of clients on whose behalf the lobbyist conducts lobbying activities

G) Penalties/Enforceability

Lobbyists are expected to organise a pass to obtain access to the federal parliament. Two parliamentarians must sign the Parliamentary Pass. It is administered by the Department of Parliamentary Services (DPS) and has the enforcement of the Criminal Code Act 1995. The Pass is valid for two years

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An overview of the systems that have emerged in the country

Lobbyist groups in Australia have started to seek support from the public rather than politicians. They are using modern technology like social media platforms and the internet which are cheaper methods to mobilize support. Such technological platforms often gather support in a short span on any social cause.

The main area of focus of policy advocates is to make their argument heard by the government and provide concise and coherent policies backed with solid data research in a timely manner to assist in the development of public policies.⁴¹

A key aspect of the regulations in Australia is the "Principles of engagement with government representatives" which is a code of conduct and ethics for lobbyists to ensure disciplined behavior. If a lobbyist breaches this code, it is the duty of the government representative to report this. The system in

⁴¹Juan Zhang, Foreign Language Department, Qinghai Normal University, "A Study on the Strategic Changes in Australia Lobbying Industry Since the 1970's", *Journal of Politics and Law*, March 2010, accessed on Feb 18, 2017, <http://www.pantaneto.co.uk/issue51/zhang.htm>

Australia has taken notes from the 'revolving door'⁴² problem in the US, and disallows ex-government officials from lobbying on issues he/she has worked on. Further the register notes down if a lobbyist is a previous government representative.

The legal framework has a number of shortcomings. Mainly, those who lobby on their own behalf are not included under the ambit of the law. Many corporates, think tanks and NGOs that take up lobbying activities to further their interests are not regulated by law such as the Minerals Council of Australia that has been active in influencing policies such as the Mineral Super Profits Tax⁴³. There is no restriction that disallows ministers to work with interest groups after resignation or retirement, which they have dealt with in office. The details that need to be disclosed by the lobbyist do not include important information like the reason of lobbying, the people who are being lobbied by the lobbyist and the details of the meetings.

There are only 266 lobbying entities registered but estimates of the actual number go on to about 1000⁴⁴. Secretive lobbying is not disclosed due to the loophole of registering only if you are a third party. A key mechanism of lobbying is indirect lobbying in Australia, where lobbyists shape public thought, attitude and opinions so as to favor the policy goals of the lobbyist. News and advertisements in Australia are thus often directly channeled by lobbyist organisations in order to use the public as a tool to pressurize the government.

⁴²George Rennie, Phd Candidate, University of Melbourne, "Lobbying 101: how interest groups influence politicians and the public to get what they want", *The Conversation*, June 9, 2016 accessed on Feb 18, 2017, <http://theconversation.com/step-by-step-conservative-forces-move-to-silence-ngos-voices-29637>

⁴³ John Staples, Visiting Fellow, Faculty of Law, UNSW, "Step by Step, conservative forces move to silence NGOS' voices", *The Conversation*, August 26, 2014 accessed on Feb 18, 2017, <http://theconversation.com/step-by-step-conservative-forces-move-to-silence-ngos-voices-29637>

⁴⁴ John Menadue, "How the rise of the lobbyist is corrupting Australia's democracy", *The Sydney Morning Herald*, May 18, 2015, accessed on Feb 18, 2017, <http://www.smh.com.au/comment/how-the-rise-of-the-lobbyist-is-corrupting-australias-democracy-20150515-gh2iyw.html>

Lobbying in Australia has had many controversies because it involved the vested interests of individual's in the lobbying activities and they would use their power to influence the government in an indirect way. This has caused a diabolical problem because the people who have personal interests seek concessions disfavoring the public. Industry groups that have vested interests are very resistant to reform proposals. Another Example is the health "debate" in Australia which is really between the ministers and the Australian Medical Association, the Australian Pharmacy Guild, Medicines Australia and the Private Health Insurance companies. Although the debate should involve the public's view on health policy and strategy, it is actually tuning out to be how the ministers and the departments manage the vested interests. Thus systems have emerged that operate not within but around the legal framework.

COMPARISON OF LOBBYING REGULATION BETWEEN U.S.A. AND AUSTRALIA

Particulars	Australia	United States of America
Regulation regarding the Cool off Period	Persons retired from office as a Minister or a Parliamentary Secretary shall not engage in any lobbying activities ranging from 12-18 months regarding matters they had official dealings with	Does not exist.
Penalties/ Enforceability	The Secretary may remove a lobbyist from the register if in his opinion the lobbyist has violated the codes or if a minister assisting the PM in Public Service directs the Secretary to do so. The Secretary may also refuse to register a lobbyist	If a lobbyist or lobbying firm is found by the U.S. Attorney to be in violation of the LDA, they may levy substantial civil fines of upto \$100,000 for knowingly failing to comply with the LDA or for failing to resubmit an incomplete filing within 60 days of notification
Payments made to Policy makers	No specific information on payments	Cannot bribe the policy makers but can make campaign contributions Political Action Committees (PACs). This has also been regulated, in Honest Leadership and Open Government Act 2007 ⁴⁵
Provisions for Lobbying for one's own organisation	Only lobbying by a 3rd party is recognised by the law	Both lobbying by one's own organisation and by a 3rd party is recognised by the law

⁴⁵ Richard Briffault, *Lobbying and Campaign Finance: Separate and Together*, Stanford University, 2008, accessed on Feb 19, 2017, http://web.stanford.edu/group/slpr/previous/Volume19/Briffault_19slpr105.pdf

ADVANTAGES OF REGULATING LOBBYING IN INDIA

In our opinion, the following are the advantages of regulating lobbying in India:

- 1. More research-based policy making** - Bringing a policy issue out in the open, lobbyists will present research and factual evidence pertaining to various issues, and then try and nudge the government into action. Lobbyists will bring nuanced expertise and knowledge to the table, as the issue they lobby for is their sole interest and reason for employment. Policy decisions backed up by sophisticated research are likely to benefit the citizens.
- 2. Ensure transparency** - Influencing of government policies is done mostly behind closed doors in India. Along with that, policy making and the interests that guide it are an opaque phenomena, not open to 1.3 billion citizens of the country to scrutinize. Regulating lobbying and ensuring disclosure of lobbying activities would help citizens understand which stakeholders the policymaker is favoring.
- 3. Development of new industry** - Lobbying regulations will legitimize functioning of lobbying activities and thus lead to lobbying firms cropping up. These firms will create a whole new set of jobs. In the US, lobbying is a \$9 billion business, employing around 100,000 people. ⁴⁶ Considering the vast variety of interests that wish to push policies in India, the lobbying firms are likely to spruce up along with specialized lobbying professionals hired in house by organisations.
- 4. Increase in involvement of citizens in the democracy** - Citizens must participate in the process of policymaking for a representative government to be successful. Lobbyists stand for the concerns of

⁴⁶ Ted Kaufman, "Time to close loopholes lobbyists use", *Delaware Online*, June 2014, accessed Jan 18, 2017. <http://www.delawareonline.com/story/opinion/columnists/ted-kaufman/2014/06/14/time-close-loopholes-lobbyists-use/10474425/>

citizens who do not have the opportunity or access to represent them personally to the government. Thus citizens can use the professional help of lobbyists to represent their interests.

- 5. Reduction in corruption** - Coupled with reforms in political funding (banning cash donations), regulated lobbying practices in the country would reduce corruption. Before taking political funding from organisations in exchange of policy favoritism policy makers would be wary of massive media scrutiny of politicians in today's 'fishbowl media world', such exchanges would become public through disclosure norms and create significant drops in voter confidence. This will massively reduce crony clientism in the government.

- 6. Create culture of policy debate** - An organisation lobbying for a particular policy that would benefit it, will have to disclose through the public portal the specific policy it is pushing for. Any other organization which would likely to be the loss maker in case the policy is taken up, can access this information, produce counter research and present it to the government. Such acts will create a debate in the public eye regarding the

policy. For example, special interest advocacy groups often complain about government policies being too beneficial for corporates and vice-versa. The disclosure will enable them to counter each other through evidence and research.

POLICY RECOMMENDATIONS

Based on an analysis of the Disclosure of Lobbying Activities Bill, 2015 and an analysis of the legal framework in Australia and the US, in our opinion a legislation to regulate lobbying in India should have the following basic features.

On the definition of a Lobbyist

It is important to have a well-defined term so as not to leave any loose ends. A lobbyist should be defined as any person or an organisation that conducts lobbying activities on their own behalf or on behalf of a third party. A lobbyist includes Indian and foreign persons as well as Indian and foreign organisations who carry out lobbying activities in India.

Lobbying activity means an act of communication to a policymaker with the aim of influencing-

Introduction, passing and defeat of a bill or any other amendment thereto in either house of Parliament or legislature of a state.

Formulation, modification, implementation or termination of any Government policy or program

Awarding of a grant, loan, license, contract, permit or allocation of funds to an individual or an organisation

Decision of a policymaker to transfer an asset, business or institution that currently produces goods and services for the public, to a private person or to a private owned organisation

Nomination or promotion of any person for a position in public office;

But does not include communication that is :

Made in public or on a public platform

Testimony given to a committee constituted by that Government.

Made in response to a government circular or notice, tender, soliciting communication from the public on matters connected with Government legislation, policies and programs.

Made by Foreign Business leaders/trade delegation traveling with government officials from their country of origin

Note: Any agreements/communication that falls under the category of 1, 2, 3, 4 and 5 by representatives of an organisation registered outside India as well as foreign officials of a country will have to comply

with the Indian regulation as well as the local laws of their own country.

A research report/working paper that a think tank or policy consultant provides the government that helps the government in policy making.

Note: If the same organisations indulge in advocacy with an aim to influence any of the points 1, 2, 3, 4 or 5, it shall not be exempted and come under lobbying activities.

We are more or less sticking to the definition of lobbyist in the Private member bill as it includes any person or organisation, which conducts lobbying activities either on his behalf or on behalf of a third party client, in return for financial or other benefit.

The problem with the US definition is that a lobbyist is defined by the amount received (financial or other compensation) for lobbying, times spent and number of contacts made and this has led to a means of escape for many lobbyists to go unregistered, a situation that needs to be avoided in India.

In Australia, lobbying does not include people, companies or organisations lobbying for themselves.

Only those lobbying on behalf for a third party client come under the definition of Lobbyist.

Officials included under ambit of the lobbying regulation i.e those who get lobbied

Members of Parliament

Members of Legislative Assemblies

Members of Legislative Councils

Elected members of Municipal corporations

Civil Servants falling under All India Civil Services, Provisional Civil Services and Central Civil

Services

As mentioned before, not all "Public Servants" are policymakers. Thus, the bill should specifically list out those who are being lobbied as to not include everyone who is a government servant. Lobbying is more to do with the legislative and executive branches of the government. Thus, the key "movers and shakers" in these branched must come under who gets lobbied.

Cool off period

The cool off period is the time between retirement and a job as a lobbyist or with a registered lobbying firm that a public servant takes up.

For those who get lobbied, it would not be permitted to engage in any lobbying activity till after 2 years after retirement from their posts.

A major issue as mentioned above in the US is the revolving door problem, a system that has emerged where public servants take up lobbying jobs to reap benefits out of connections made during their tenure. If a civil servant finds a lobbying job lucrative, a civil servant might quit his job with the government to join a lobbying firm. Lobbyists crave 'connections' that individual in the civil service many possibly have made during their time in office. Thus a two-year gap, is a high opportunity cost when a civil servant has to choose between retaining his job with the government or quitting his government job, waiting for 2 years and then joining a lobbying firm.

On the authority to be set up

It would be ideal to have an independent authority to oversee and regulate lobbying activities. Unbiased appointments, non-interference of politicians and a transparent working of this authority should be the basic tenets for an efficient working of such an authority. The President should make appointments of the Chairman and Secretary with recommendations from a committee that constitutes the PM, Leader of Opposition and the cabinet secretary. The President should also make appointments of other members with recommendations from the Chairman and secretary. The authority must itself submit a report on the administration and regulation of lobbying to the President. The authority must make publicly available disclosures from lobbyist, disclosures from policy makers and its reports.

The authority must maintain a register of lobbyists and lobbying activities which are publicly accessible through a website and must cross check information. The main function of such an authority would be to optimally use technology to make available the information they possess. The maintenance of an up-to-date website is key.

It must have the power to investigate people who it believes are involved in lobbying activities and investigation of activities of registered lobbyist that have not been disclosed.

The authority should also have the powers to impose penalties and monetary fines in whichever form and quantum it may deem necessary for in case of failure to register, failure to disclose the information required and failure to resubmit reports with information asked by the authority. Failure to comply should also lead to a temporary ban on communicating with the government.

On gifts, meals, entertainment

Policy makers are not allowed to accept cash, non-cash payments; physical goods and services that can be valued by the market from Lobbyists.

The Disclosure of Lobbying Activities draft 2015⁴⁷ draft allows for payments to the public servants and makes disclosure on the why, what and when of the payment mandatory. This not practiced in the US, Australia nor EU. Including gifts and other payments in the regulation would just amount to legalizing bribery which would further give a boost to corrupt rent seeking activities.

On disclosure and registration

Any organisation or individual indulging in any of the above-mentioned activities needs to register with the authority.

The registered lobbyist must file a quarterly report to the authority.

The reports must contain the name, business and place of business of the lobbyist or the client of the lobbyist. The same details of an organisation other than the client that funds, supervises, and controls the lobbying functions must be disclosed.

The subject matter of the lobbying activity must be disclosed which includes :

- 1) The reason and outcome of lobbying

⁴⁷ "The Disclosure of Lobbying Activities Bill, 2015", Lok Sabha , accessed on Feb 18, 2017 , <http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/4772LS.pdf>

- 2) Policy that the lobbyist is trying to lobby against or for
- 3) Name and designation of the policymaker engaged with
- 5) Dates of communication with the policy maker
- 5) Total expenses incurred by the registrant
- 6) Expenses incurred by the client of the lobbyist in connection with lobbying activities that are transaction costs involved to facilitate the communication/exchange with the policymaker
- 7) Amount contributed to political funding, if any

The lobbied party (the policy maker) will also disclose the following details within a week of the first contact with the lobbied :

- 1) The reason and outcome of lobbying
- 2) Policy that the lobbyist is trying to lobby against or for
- 3) Name and designation of the lobbyist engaged with and the name of their firm. (In case of an external lobbying firm, both the client firm and the lobbying firm to be mentioned)
All the disclosures (by both the lobbyist and the lobbied) should be made to the authority who will upload it to a website run by it, where a database of all lobbying activities will be maintained. A two-way disclosure shall avoid any time lapse between the lobbying activity and public awareness regarding it.

Political Funding

In order to ensure the regulation of lobbying for the purpose of transparency, it is integral to bring about transparency in funding of political parties. With the recent 'cashless India' rhetoric by the government, political parties should receive all their donations through cashless means. The current allowance as Rs. 2000 for cash donations should be removed.

This will greatly reduce money given by corporates or special interest groups as a consideration for policy buying, as all the money donated to political parties will be out in the open for public scrutiny. In case special interest groups do donate a sum of money to political parties in exchange of policy favoritism, the voters shall be aware of the interests that a particular political party would stand for. Party funding by interest group will continue, only it will be out in the open. A move to a complete cashless system of funding parties will bring out the donors (many of who are lobbying for preferential policy making) in the open.

LIMITATIONS OF THE POLICIES

In our opinion the following are few limitations of the Policy Recommendations given above:

- 1. Appointments:** Even though the appointments to Chairman and Secretary are influenced by both the PM and Leader of Opposition, which is put in place to maintain a balance of views, there is a possibility of weighted control of the PM in appointments. There is no way for a body to be absolutely autonomous apart from constitutional bodies such as the Election Commission or Comptroller and Auditor General.
- 2. Implementation problems:** The benefit of regulating an already ongoing practice is transparency that comes through disclosure. But there could always be the possibility of a strategic non-disclosure by both the lobbyist and the lobbied. The authority will have to be vigilant enough to uncover those who don't register and lobby, and those cases where both the lobbyist and lobbied do not report even if registered. The arena of political lobbying is vast, and keeping track of all activity will be challenging for the Authority.
- 3. Equal Access:** Although citizens with similar grievances or petitions can come together to form associations and pool in resources in order to communicate their point of view/interests to the policy maker, it is not possible to guarantee to them the same level of access as another interest groups have to policymakers. There is no mechanism in the model to guarantee equal access to policymakers. Those associations with more funds can hire the most persuasive lobbyist and put in more time in lobbying and building contacts with a policy maker, but some associations might not have the funds nor time. If money and time determines level of access and outcomes, this leads to a system where the rich have an upper hand in lobbying activities by just hiring efficient lobbyists who are expensive as well. An exception and the way forward is when it is the size (vote bank) of the interest group that lobbies that determines access and outcome. A large enough group creates an incentive for the elected representative to at least hear out the interests of the group who might not have the money nor time to continuously lobby but are important in terms of votes.
- 4. Lobbying in the long term – more money and more time:** The interest group with more ammunition wins – in a scenario, where two interest groups have conflicting interests around a policy, the lobbying groups will stop lobbying when the cost of lobbying exceeds the gains the lobbyist expects from the outcome of the lobbying activity. But, lobbyist in order to build relations with those in the government and to network will be in the system for the long run. Thus lobbying is a continuous process and all interest groups might not be able to afford it.
- 5. Politicians as Lobbyists:** Members of political parties who are not seated MPs, MLAs, Members of Legislative Council (MLC) play a role in the political system as influencers of policies/decisions. An important example of this is the nomination and promotion of people for positions in public office is heavily lobbied. The model proposed does not take the party member himself as a lobbyist or an unseated politician as a lobbyist. Elected members, apart from having a duty towards their own constituency also have a duty towards their political party. Thus their party members are bound to communicate in ways that might come under "Lobbying activities". Elected representatives are also bound to take decisions which are in accordance with the broader

ideology and stance of their party- thus communication with the high command of unseated members of the legislatures is bound to happen.

Individuals become part of interest groups because of geography/region, occupation, etc. In India, interests groups are also formed on the basis of caste and religion. One cannot deny the infiltration of caste and religion in elections, laws, and politics. Thus, these ideologies will make their way as interest groups in the lobbying system too. There are possibilities that religious leaders become lobbyist themselves and with their influence they can mobilize masses to influence policy as per their wish or even on the behalf of a third party client. The opinion of such groups carry a different kind of weight, as they don't just consist of a vote bank but are can also be personally important to many policymakers.

6. Indirect lobbying – Indirect lobbying is the mechanism used by lobbyists to use public pressure on the government to further their own policy interests. Lobbyists shape public opinions in their favor through advertisements in the public domain, through paid news, etc. The public is only informed of the lobbyist perspective, and the lobbyist feeds their ideas regarding an issue. Public opinion if directed towards the government can act as a tool of pressurizing the government to act in a certain way. This method of lobbying has not been dealt with in the policy recommendations.

III. CONCLUSION

Though there are some limitations to the model proposed by us, much of the success of a regulated system depends on the ability of the authority to make compliance with it necessary through incentives. There is no doubt that lobbying is intricately woven in the law making process, thus it is integral to make this intangible influence transparent and know to all citizens of the country. The information, previously withheld from the public eye can lead to greater participation of the public in the policy making process. The flow of information from the lobbyist to the lobbied, the competition of pressure of various interest groups on policymakers will lead to a more efficient law making process. The timely disclosures from both sides can inform the public on what issues are being taken up by which interest group. Favoring pressure groups is also out in the public, thus a voter now knows what the politician stands for. When a pressure group has undue influence and when a vacuum is created if a side is not represented, civil society organisations and the public as a whole will be instigated to participate. A thriving civil society can form a support base and a check on lobbying activities and a regulated transparent lobbying system can lead to a thriving civil society. Greater transparency can lead to greater participation. A legal framework for lobbying has only been adopted so far by few developed countries of the world, and if a bill regarding it gets passed in India, it will be amongst the first in the developing world to do so.

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