

CORPORATE LOBBYING: AN ANALYTICAL CONCLUSION

Anuveeta Datta Chowdhury & Akanksha Saxena

School of Law, University of Petroleum & Energy Studies, Dehradun

INTRODUCTION

Corporate Lobbying is a communication tool between the parliament and the corporations. In simple words Lobbying is paying money in exchanging for a favorable legislation. Corporate Lobbying is a tool used by the corporations to mold laws in their favor. In lobbying the corporations send their representatives to pursue the law makers to draft or enact a certain legislation which could benefit the corporation. But since it is mutual kind of dealing and hence money is also involved. The major issues that are dealt in are tax policies, certain exemptions, environmental clearances and many more. Lobbying comes from the word lobby which means a hallway, i.e. where the government official and the representative of the big corporations meet to discuss their interest and in lieu offer great deal of money to the officials. It is a high profile activity, since it involves glamorous meetings where money involved is huge, several gifts are offered. The corporations have investors, shareholders which is the public at large. So there are chances that their interest are not known to the legislators. So through corporate lobbying, public's opinion can be shown to the legislator so that the legislator can have a better understanding of the demands of public from the enactment of certain legislation. Corporate lobbying addresses whether an industry needs to be protected from economic shocks or foreign competition through subsidies or tariffs. At a local level, companies can lobby lawmakers to create infrastructure improvements, such as wider roads for shipping goods or more bus stops for commuting employees.¹

A lobbyist is the person who carries out the lobbying. He is the one who attempts to persuade the parliamentarians to formulate laws. A 'lobbyist' is a person who tries to influence legislation on behalf of a special interest or a member of a lobby.² In India unlike USA, lobbying is often equated with bribery, but there is a thin line difference between the two. Lobbying is not regulated, and hence no law on the same. It's often termed as grey area as nobody would discuss about the same in public. The lack of a statutory regulation gives lobbying the effect of bribery. Bribery is in contrast with a democratic system. Since India is a democratic country no law regulating corporate lobbying should legitimize bribery in any manner. There have been many initiatives to legalize it but still no definite results. A reflection of regulating the activity of corporate lobbying is seen under the section

¹Available at <http://smallbusiness.chron.com/corporate-lobbying-11729.html>, last visited 24th Oct, 2017

² Random House Unabridged Dictionary. 2006

7 of the Prevention of Corruption Act 1988, where any government official if found extorting money other than the salary is liable to punishment.

As Thomas Jefferson said, “Information is the currency of Democracy”. Lobbyists would bring nuanced expertise and knowledge to the table as the issue they lobby for is their sole interest and the very reason for their employment. Policy decisions backed up by sophisticated research are likely to benefit the citizens. The transparency is also likely to provide an impetus to policy debates in the public domain. Coupled with reforms in political funding (banning cash donations), regulated lobbying practices in the country could possibly reduce corruption. Before taking political funding from organizations in exchange of policy favoritism, policy makers would be wary of massive media scrutiny in today’s ‘fishbowl media world’. Such exchanges would become public through disclosure norms and create significant drops in voter confidence. All of which could lead to potentially reducing crony clientism in the government.

ADVANTAGES OF CORPORATE LOBBYING

It is in the interest of common people. In today’s Indian Scenario ministers are hard to be approached and so all those common people who do not have a direct access to them, Lobbying serves as a great opportunity to convey their issues through a lobbyist. Policy decisions backed up by sophisticated research are likely to benefit the citizens.³ There is no harm in this unless the laws enacted do well to a larger section of society. And so in this manner the government is not in contrast with public policy. But for it to work efficiently, the activity of lobbying has to be regulated. The USA has full-fledged laws and regulations governing lobbying. There should be a mandate that the lobbyist should be registered. They need to file disclosures as to the money involved and various other terms. If there are disclosures made it’s easy to catch the wrong doers if anything goes wrong. There should be penalizing provisions for non-disclosures. It is a fact that this practice is prevalent in India from a longtime, but because it is not regulated nobody can be held accountable for the money laundered. A developing country like India needs lobbying but regulated. We as a growing economy can make use of lobbying as a tool for development. So when this practice is already there why not regulate it. Anyways lobbying will take place but regulating it will ensure more accountability from the ministers as well as lobbyist. If there is transparency brought then people can understand who are lobbyist and what are their agendas. If there is an access to online database of the whole information then it can lead to greater participation of the public in framing the laws. In a country like India corruption is a very big problem, because the money is for development activities which is used by the ministers to fund their vacations. Through bringing transparency in lobbying activities the corruption rate could also go down, because then the huge sum of money being transferred could very well be accounted for.

³ Available at <https://qrius.com/lobbying-govt/>, last visited 24thOct,2017

DISADVANTAGES

Lobbying isn't an activity which any individual can pursue. A lobbyist need to have great contacts, good approach, the power to convince a parliamentarian, great oratory skills, and who knows the way to approach people. So here big corporations which have good terms or friendship ties with the legislators can only have their interest being represented. There are several corporations which exist but do not have the power to approach the law makers. This is the draw back. Corporate lobbying does not appreciate equality. Every other company cannot opt for lobbying to formulate a legislation in its favor, and because of which only few firms enjoy this privilege. The firms having edge in this sector are basically from petroleum industry, pharmaceuticals, communications etc. so there is a disparity which could be seen. And hence it could be concluded that every man's voice does not reaches the legislator.

THE WALMART LOBBYING CASE

Walmart is an American corporation, founded in 1962 by Sam Walton. It has retail units around the globe, diversifying in various sectors like groceries, home furnishing, electronics and many more.

The Indian market has always been a great attraction for the retail investment. It has the second highest shop density in the world, hence a great market in retail sector to flourish. But the Indian Government in order to protect the domestic retailers was refraining to allow FDI Foreign Direct Investment in India. But gradually for better growth of the economy and growing industrialization the Parliament allowed FDI in certain Sectors.

In 2007, The Corporation entered into a joint venture with Bharti Enterprises in the wholesale sector. They had their first brand Store set up in Amritsar named 'Best Price Modern Wholesale', since there was restriction in the multi-brand retail sector. In April 2012, came a bad news for the firm. It had been accused of bribery in Mexico, and the authorities were conducting investigations.

In September 2012, the Indian Government expanded the FDI in retail sector, making the permissible limit upto 51%. Due to this there was great hue in the Indian market. In Nov 2012, Walmart being an American corporation, lobbying being legal in America gave disclosures that it had spent 125 crores since 2008 in India. After this both houses of parliament had great discussions. Ravishankar Prasad contended that lobbying is legal in USA but not in India and hence the lobbying of money is not justified. In Jan 2013 a one man Committee was set up to scrutinize the lobbying activities of Walmart In India it was headed by justice Mukesh mudgal. But because of lack of evidences and legality of the lobbying in the nation where the firm is registered, it was not possible to impose major penalties.

Corporate lobbying in anti- dumping cases

What is anti-dumping? Dumping is an activity where a corporation exports its product to a different nation at a price below its market price in the domestic market or below cost of production. And hence the corporations of the nation where product is being exported faces challenge, and hence files an anti- dumping complaint against the said organization. In India it's dealt under Section 9A and 9B of Customs and Tariffs Act, 1975 (Amended 1995) and The Anti-dumping rules such as (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules of 1995⁴. The section 9A defines that in cases of dumping the central government can impose anti-dumping duties to be paid by such exporter companies.

In USA, the companies use corporate lobbying as a tool to make profits out of dumping activities. It is seen that generally the companies who have filed the anti-dumping complaints tip off the legislators to receive the duty amount. It's an established law that the amount which is received by the government by the companies paying anti-dumping duty is distributed among the complainants. So generally the company which has made bigger payments to the law makers receives the duty amount in the same proportion. So it can be phrased as 'Is protection for sale'? Meaning thereby in order to get protection from dumping activities, corporation's payoff the legislators thereby making it a sale business. And so it defeats the whole purpose of anti-dumping laws, which is to protect the firms which are genuinely getting affected from such activities and so the duty amount should be distributed judiciously. So there is a chance that the healthy firms who require the money and have the capability to develop might not get that opportunity, whereas firms who do not want to innovate in business but then they have spent quite a considerable amount in lobbying to receive that kind of protection. And hence this is not good for the competitive market.

One of the prominent reasons of managers of the big corporations to indulge in corporate lobbying is to increase the value of the firm. The greater the contacts and influence of the firm over legislators will help the firm to turn policies in its favor. Politics is not everyone's cup of tea. The ones with higher pay off limits can afford such political relations. So here it establishes the direct relation of lobbying and firm size. The greater the size of the firm higher are the chances of firm to get indulge in Corporate Lobbying. It works well for those industries which are in developing stage. One of the other reason of lobbying is expectation of great investments. The firm is risking great deal of money with the view that it will bring good investment deals for the firm, as the firm has a value in the market and along with that they will have a good influence on the legislations to be drafted if it affects the variable cost for the firm.⁵

In the case of *the law Debenture Trust Corporation PLC v. Ukraine, Represented by the Minister of Finance of Ukraine Acting upon the instructions of the Cabinet of Ministers of Ukraine*⁶, the Russian government exercised all its influence and lobbying power to stop

⁴ Available at [https://en.wikipedia.org/wiki/Dumping_\(pricing_policy\)](https://en.wikipedia.org/wiki/Dumping_(pricing_policy)), last visited 24th Oct, 2017

⁵ Wiley, determinants and effects of CL

⁶ MANU/UKCM/0035/2017

Ukraine from signing an Association Agreement with European Union. So here it can be seen that lobbying is not only used for making legislators draft a favorable legislation, but it could be used to stop the Ministers from entering into agreements. Here the Russian government in order to refrain Ukraine from signing this Agreement imposed unlawful trade practices, in consequence impacting the economy of Ukraine badly. So lobbying can be classified as positive act or a negative act, which includes abstention as well.

CONCLUSION

Regardless of the level of reform, it has to be accepted that corporate lobbying is a necessary evil. It remains an integral part of the policymaking process of government at all times; only its manifestations vary. In the last few days, India has witnessed a raging debate on lobbying as it was raked up in the aftermath of a corporate feud that reached the corridors of power in Delhi. Lobbyists on either side had tried hard to tilt the government's petroleum policy to their advantage. Lobbying in India is at a nascent stage.

Until recently, it was rated equivalent to influencing government policy with money. With increased transparency in governance, corporate entities realized that a more legitimate method is needed to influence policymakers. The authorities take cognizance of the fact that money associated with development works usually comes from the tax payers' pocket which eventually lands up in corrupt hands and in the process development takes a back seat. Given where India stands at the global corporate map, India cannot afford to lose its money nor its resources to either of the two, corporate lobbying or corruption

In India, corporate lobbying, in the form of intensive briefings and presentations to ministers and senior civil servants, has expanded and the current political climate also makes ministers, officials, and legislators more receptive to it. Lobbying is not yet recognized in a statutory or non-statutory form in India. Thus there is no formal organization for lobbying. Operations like these are being routed through Public Relations Firms and some well-connected individuals. However due to lack of organizational set up these firms largely operate on word of mouth. Scams like the recent 2G spectrum scam in India only go onto highlight the dire need to regulate legitimate lobbying. Union Corporate Affairs Minister, Salman Khurshid, has remarked that his ministry and other departments of the government are working on the issue of "regularizing" lobbying. The Planning Commission of India has also set up an expert committee to look into the issue of lobbying. However, in the wake of the disclosure of the Radia tapes, the entire lobbying profession has certainly taken a dubious dimension. In India, the only law that has some relevance to lobbying is Section 7 of the Prevention of Corruption Act, 1988, which makes it illegal for a "public servant taking gratification other than legal remuneration in respect of an official Act". In the United States, the U.S Lobbying Disclosure Act (LDA) was passed in 1995 and was further strengthened in 2009 making it a condition precedent for Lobbyists to register themselves with the secretary of the Senate and the clerk of the House of Representatives within a stipulated time. Besides, lobbyists are also required to file their financial activity reports. These reports help the public to know the lobbyist's clients and

other relevant details, thus making the process more transparent. Per corporate governance practices in India, directors sign the Code of Corporate Ethics which they have to adhere to in order to have a well-balanced view on business and ethics and to conduct their business within legal boundaries⁷

⁷ Corporate lobbying and corruption manipulating capital ‘, Available at http://www.indialawjournal.org/archives/volume4/issue_3/article_by_diljeet_titus.html, last visited 24th Oct, 2017