



# Alliance for Integrity

Chiselling the Way Forward

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New Delhi, 15 November, 2013



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# Partners

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Thought Arbitrage Research Institute ([www.tari.co.in](http://www.tari.co.in)) is a not-for-profit organisation set up under Section 25 of the Indian Companies Act.

TARI's mandate is to develop intellectual capital for the country in the areas of Corporate Governance, Sustainability, Economics and Public Policy.



In India there is very little privately funded research that puts forth unbiased points of view. TARI attempts to bridge this gap in the area of thought development.

Tomorrow's arbitrage will not be on labour, cost or capital—but on knowledge, ideas and thought. Countries that are at the forefront in these areas will control the course of global economic power. India's ascent to economic power has to be driven by home grown ideas and solutions tailored to Indian conditions. TARI strives to understand and define Indian conditions better through research.

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Established in 1927, FICCI is the largest and oldest apex business organisation in India. Its history is closely interwoven with India's struggle for independence, its industrialisation and its emergence as one of the most rapidly growing global economies. FICCI contributed to this historical process by encouraging debate, articulating the private sector's view and influencing policy. A non-government, not-for-profit organisation, FICCI is the voice of India's business and industry.



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Readers are encouraged to inform the project partners about any inaccuracies or to provide additional information for future editions.

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# Executive Summary



Good governance, transparency, integrity and accountability are the fundamental principles on which any society functions. In an increasingly globalised world, where diverse stakeholders interact within and across borders, different levels of transparency in different systems pose a challenge to effective engagement especially in the economic sphere. India's democratic polity, liberalising economy, its institutions, and increasingly conscious civil society are interacting to create a greater demand for transparency than ever before.

India's steady progress as a credible economic force in the region and internationally depends also on it transforming itself into a secure investment destination where its markets promote fair competition for domestic and international, small and big businesses without compromising the objectives of sustainable and inclusive growth.

This theme paper focuses on the current state of regulatory measures, challenges and the potential collaborative actions that may be taken by the industry with relevant stake-holders.

## Challenges to Ethical Business Conduct

Some factors that are particular to India include the *entrenchment of ownership* in businesses, which influence the corporate governance structures and codes within a company that inherently do not promote the rights of minority shareholders.

*Lack of effective enforcement* of laws seems to produce a conundrum that becomes difficult to break. It engenders and nurtures the supply and demand side of corruption.

This aggravates the *lack of clear business benefit* or understanding of the cost of corruption for business performance and continuity. This also promotes an *attitude of 'wait till others do it too'* which in turn deters majority of companies from taking voluntary action against unethical practices themselves or demand it from their suppliers, subsidiaries and partners alike.

The *need for greater institutional coordination* cannot be overemphasised. The interplay amongst regulators and various government agencies is contestable in that it serves to delay resolution of cases.

*Industry associations haven't played their part to the fullest potential that raises the bar of conduct amongst their members through dialogue, advocacy and capacity development of their members.*

**Enabling Legislations:** Indian legislation has developed a response to universal concerns on economic, environmental and social impacts. There is a set of legislations which empower the stakeholder and intend to correct the imbalance brought in by opacity in rules and exercise of power in a discretionary manner.

Regulations like the Right to Information Act, Prevention of Money Laundering Act of 2005, SEBI's requirement of Business Responsibility Reports, Prevention of Corruption Act of 1998 are aimed at developing an enabling legislative framework to promote responsible business, transparency and ethical behaviour.

*Implementation of e-governance and e-procurement schemes* forms part of the procedures to crack down on regulatory loopholes that promote corruption. Several other bills that are awaiting passage into law relate to whistleblower protection, bribery of foreign officials, the Lokpal (People's Ombudsman) Bill. *These enabling laws and shifting winds are expected to bring down the levels of corruption in India.*

## Collective Action

While there is no single solution to curb bribery and corruption – collective actions, discussions, dialogue, coordination and cooperation will lead to a number of complementary and supplementary measures involving all stakeholders across and within countries.

Alliance for Integrity proposes a set of potential measures across three main pillars of action namely: **Awareness raising** around good practices by companies on inculcating and integrating ethics in their decision-making, operations and communication to stakeholders, **capacity development** for companies and their supply chains on ethics and integrity, and **public-private dialogues** around streamlining public services.

International cooperation can also be obtained to achieve greater transparency with the use of information technology and achieving cooperation amongst various anti-corruption norms and frameworks.



# Corruption and Its Impact



Amongst the proverbial factors that engender corruption, the three that seem to prevail in India in varying degrees are: opacity of rules and their application, low deterrence in the form of punishment or consequences; and discretionary powers of public officials. For long, the interplay of these factors has fed the collusion between business and government. In the recent past, however, the voice against corruption has acquired a greater force.

Also, while widespread corruption may coexist with strong economic performance, studies suggest that corruption is bad for development. *Some estimates reveal (1998) that an increase of 0.78% in the rate of corruption could result in reducing the rate of income growth of the poor by 7.8%! They also found that worsening of the corruption index by one standard deviation point will reduce the average secondary schooling of the poor by 2.3 years.*

Paolo Mauro (1995) concludes that corruption lowers investment and economic growth. His analysis indicates that one standard deviation improvement in corruption indices caused investments to rise by 5% of GDP and annual per capita GDP growth rate to rise by half a percentage point.

*Such evidence has only mounted in time refuting theories such as that propounded by Nathaniel Leff (1964) and Huntington (1968) who have argued that corruption and development could be positively linked. Leff had suggested that "speed money" or bribes help circumvent bureaucratic red tape and speed up economic activity; and it makes government employees who receive bribes more efficient especially if the bribes act as a piece rate incentive.*

International response to the malaise and impact of corruption has come through many conventions and frameworks. Notably, the United Nations Convention against Corruption (UNCAC) was the first binding global anti-corruption instrument. Former UN Secretary General, *Kofi Annan, had written in the foreword to the UNCAC that "Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violation of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish." UNCAC first entered into force in December 2005 and was ratified by India on May 1, 2011.*

*While studies have shown that corruption reduces efficiency and increases inequality, quantifying the impact of corruption remains a challenge due to its very nature. However, recent estimates by the World Economic Forum show that the cost of corruption equals more than 5% of the global GDP or US\$ 2.6 trillion. This is a huge amount and could have made a significant impact on the human condition if available for productive use. Even as exact cost of corruption may not be easy to calculate, it is clear that it aggravates underdevelopment which is not only a huge challenge for the state to deal with but also poses risks and challenges for business.*

## Business Case for Integrity: Impact of Ethical Practices on a Company

Business is a major driver of economic activity and its viability and sustenance depends on its stock of various capitals – human, natural, social, financial. The Corporate Executive Board (CEB) of USA propagates that 'integrity capital' is an alternate measure of corporate performance based on the levels of ethics, governance and integrity in the value created by a company. Integrity capital also acts as insurance when there is a global crisis or crisis of faith in business institutions and their environment.

The CEB surveyed about 130 companies for levels of integrity within their corporate cultures and found that companies that scored the highest marks outperformed those that scored the lowest by more than 16 percentage points over a 10-year period when it came to shareholder returns and companies with a culture of high integrity enjoyed a 12% advantage in employee productivity over other firms.

Research by UK Institute of Business Ethics – Does Business Ethics Pay? (2003) and Does Ethics Pay? (2007) **establishes through their study of FTSE 250 companies, a positive relationship between business ethics and financial performance.** In comparing companies that have demonstrated a commitment to business ethics with those that did not, and using the existence of a code of ethics as a proxy for such commitment, the first 2003 study found that overall, companies with codes of ethics performed better against four different measures of financial performance – Economic Value Added, Market Value Added, Return on Capital Employed and Higher Price Earnings.

In 2007, this study was revisited by going a step further: companies that were implementing ethics training programs were compared with those that professed only a commitment to business ethics (better performers from the 2003 study). Consistent with the 2003 results, the 2007 study revealed that companies that took steps to implement their declared ethical values financially outperformed those that did not go beyond a declaration of commitment to business ethics.

*The conclusion from these studies is that the risk of fraud and corruption is all pervasive. It highlights that economic and social costs of fraud and corrupt practices are not localised to the entity committing the fraud but impact the economic performance of the sector under which it falls as well as the geographical market it represents due to the higher risk premium put in by investors. The country's cost of capital and risk premium deeply increases with higher levels of corruption.*

## India: Do fraud and corruption have any effect on companies and their management practices?

A report titled *Fraud and Corruption in Private Sector in India* by Thought Arbitrage Research Institute and UN Global Compact (2013) studied the impact of corruption and fraud on companies, post their indictment, analysing the impact with respect to scale and continuity, valuations, closure, etc.

Cases (%)	Outcome
43%	The business or company ceased to exist. They have either been liquidated, or are currently in the process of liquidation or their operations are discontinued. Further, there were some companies which became untraceable with no credible information available.
30%	The companies have continued their business but at reduced levels. In some of the listed companies, market valuations have significantly fallen with little or no trading of their stock.
5%	The companies have faced a change in management or the company has been merged with another entity.
21%	The percentage of companies Scale of operations and market valuations have been marginally impacted in.

*The business case for higher levels of ethics and governance is no longer a discussion for comparative or strategic advantage but one of own survival and continuance. However, a word of caution needs to be put forth, that is, from a strictly empirical point of view, the evidence remains both minimal and elusive for making an irrefutable business case for ethical business behaviour even as experience shows that companies that adhere to ethical standards perform better financially in the long run than those without such a commitment. Academic research and case studies, which are just beginning to take systematic interest in this topic, largely support this finding.*



# Challenges to Ethical Business Conduct in India

## Entrenchment of Ownership

A key challenge to ethical business conduct in the country emanates from entrenchment of ownership in businesses.

Corporate governance issues in India, unlike in western economies, often arise due to the dominance of the majority shareholder over policies and operations of an enterprise. This applies across the spectrum of Indian industry with dominant shareholders:

- PSEs—with government as the dominant shareholder;
- Multi-national companies—where the parent company is the dominant shareholder; and
- Domestic companies that are family owned and run by business groups.

Entrenchment has its ramifications on governance practices, and corporate governance codes and frameworks should deliberate the cause of minority shareholders to protect them from unjust and unfair decisions and business practices of the majority. Hence, implementing higher ethical values in businesses in India can be done only if the majority owners drive this change.

## Public Procurement

Article 9 of the UN Convention against Corruption (Public procurement and management of public finances) sets out the principles of public procurement. It states that steps should be taken *“to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making that are effective, inter alia, in preventing corruption.”*

Acknowledging that public procurement is an activity that is highly prone to corruption, the Central Vigilance Commissioner (CVC) of India stated that it remains a fundamental focus area for the CVC. He states that *“Procurement of goods and services is a very important government activity in a developing economy. Public procurement contracts are instruments which enable the government to deliver promised goods and services to the citizens. Achievement of our development goals depends to a great extent on the effectiveness and efficiency of our public procurement system”.*

A UNODC report titled India: Probity in Public Procurement states that public procurement accounts for a substantial amount of global expenditure – about 15% of the world's GDP. *In India, estimates of public procurement vary between 20% of GDP and 30% of GDP. There are ministries in the Government of India where approximately half of the total budget is spent on public procurement alone.* This makes the need for integrity in public procurement an economic and social and not merely an ethical requirement.

According to the report, lack of or inadequate rules (having legislative status) guiding public procurement is a concern. *There are approximately 35 different ministries at the central level alone with no central procurement mechanisms. In addition, there are approximately 26 states*

and 7 union territories that procure independently. Only a few states have drafted legislation for public procurement. Internal and individual company policies and codes of private companies govern their association with the government in procurement contracts, creating challenges to accountability.

To address some of these issues, the Government of India drafted the Public Procurement Bill 2012 which also contains Draft Rules for PPP 2011. This legislation, however, is applicable for procurement by the central government and does not apply to the states.

A study by Devika Malhotra for IIT Delhi on Public Procurement (2012) – titled *Evidence Based Competition Advocacy* – states that distortions in fair public procurement may occur in the form of market distortions like restricting entry of new firms, driving existing competitors out, denial of market-linked benefits to consumers, etc. It also states that the yardsticks of fairness, integrity and transparency through competition, efficiency and economy in public procurement practices established by the Government Financial Rules 2005 (GFR 2005), failed to achieve their desired objectives.

*If probity and ethical participation in public procurement is to be achieved, it needs to be driven collectively by all stakeholders, mainly by the government and its enterprises, the sellers or bidders bound by their pact of equity and anti-corrupt and fair practices, civil society, regulators and other beneficiaries towards a common goal and objective. This, like all other equations have equal responsibility for the demand and supply functions to work in unison for promoting ethical business.*

## Perspectives Of Small And Medium Businesses

Small and Medium Enterprises (SMEs) face greater challenges in tackling corruption, as compared to large companies, due to their limited resources and capacities. Since the SMEs are often the only means for development in societies vulnerable to poverty, the effects of corruption on them can be devastating.

According to a UNIDO publication – Providing Anti-Corruption Assistance to Small Businesses in the Developing World – two different surveys show that SMEs pay much higher percentages of annual revenues in bribes to public officials and make additional payments to get things done much more frequently than large companies do. It states that SMEs are more susceptible to corruption than larger companies due to the following broad reasons:

- Structure: degree of informality and relationship between staff which can create a culture where corruption is more easily tolerated
- Short-term vision and perspective
- Limited financial resources
- Inability to exert a strong influence over officials and/or institutions

A survey conducted by tradeindia.com (India's largest B2B portal), has revealed that almost all SMEs have been victims of corruption in the bureaucracy, at least once. Conducted in 2010-11, the survey reported that 89% of the respondents agreed that various scams that have come to light in the recent past have dented India's global image to a large extent. SMEs reveal that the main source of corruption is the misuse of state power. The state has misused power in various ways with favoured voting groups and favoured business lobbies for campaign contributions, ignoring the sentiments of SMEs who are left to fight their own battles.

The measures needed to enable SMEs to defend themselves better when faced with corruption need to be taken at three levels, namely the micro, the meso and the macro levels. This entails enhancing the capacity of SMEs to follow ethical standards, helping individual companies follow robust commercial practices, and the government creating a fair and clean business environment at the macro level.

*The road to the goal of lowering corruption is fraught with challenges and risks. Larger businesses need to create an enabling environment for their supply chain to operate with ethics and integrity. This can be done in a number of ways, such as building capacity for anti-corruption practices in the supply chain, fair development of the suppliers, implementing a code of ethics in the supply chain and having a reward scheme for SMEs in the supply chain that adhere to a high level of ethics.*

## Perspectives Of Leading Businesses

Large businesses also face risks due to corrupt practices of suppliers. These corrupt practices may include bypassing health and safety requirements, avoiding necessary licensing, or otherwise evading legitimate law enforcement and creating enormous risks to product quality. Supply chain corruption leads to compromises on the health and safety standards of products and also endangers consumer life.

Corruption in the supply chain has both direct and indirect costs, and the former is often dwarfed by the latter. Legal liability; reputational damage and resources spent in mitigating such issues arising out of unethical business conduct lead to significant supply chain costs. The damage to a company's reputation in particular can dramatically affect brand value, relationships with business partners and share prices. According to a 2008 global survey of supply chain managers, 61% rated corruption as the most significant risk to their business, second only to product safety. The UNGC Guide for Customers and Suppliers states that firms that engage their supply chain through meaningful anti-corruption programmes can improve product quality, reduce fraud and related costs, enhance their reputations for honest business and improve the environment for business.

Investigations by the US Department of Justice on violations of Foreign Corrupt Practices Act in India revealed that the indicted companies have used distributors or other entities in the supply chain to make facilitation payments or bribes on behalf of these companies. Developing high ethical standards is required not only for SMEs in the supply chain but also for companies that are the principals. This is an action point for the collective fight towards integrity, where larger companies need to demonstrate higher value systems and lead by example.

## Delivery of Public Services

A large part of corruption in India is associated with delivery of public services. A survey conducted by CMS – India Corruption Study 2012, covering eight public services in a sample of households in urban slums across nine Indian cities found that more than half of those surveyed felt that corruption in general had 'increased' in public services in the previous 12 months while around 29% said that corruption in public services continued to 'remain the same'. This indicated that measures towards improving governance, as claimed by central and state governments are not reaching the poor. The incidence of corruption has doubled since 2008 in urban India according to this survey, from 34% to 67%. Out of those who were asked to pay, 84% paid a bribe to avail services. Around 35% of the slum dwellers were denied service at least once as they could not pay the bribe.

The primary factors that promote corruption in the delivery of public services include lack of education among the citizens, information asymmetry as a result of which the common citizen is unaware of his rights and discretionary powers in the hands of public officials. All these factors contribute to delays in the delivery of the public services.

The corporate-government interface in delivery of public services in areas of government clearances for setting up factories, public procurement, land registration, clearances for building construction, environment clearances related to mining, payment of taxes and filing of returns, and other smaller ticket items like obtaining utilities connections like electricity,

water, telephone, etc., provides significant discretionary powers to government officials and the political executive. The government monopoly in delivery of a number of these services creates a concentration of power, which results often in corruption and inefficiencies.

Bibek Debroy (2013) suggests that the monopoly in providing public services can be ended by enabling private sector delivery since many public goods and services are free of protectionism. Countervailing pressures must be created by civil society which in turn requires awareness and dissemination of information. He concludes that corruption in the delivery of public goods and services should be easier to address than big-ticket corruption. Reducing monopoly and discretion, supply side changes through decentralised planning in provision of public goods and services, increased countervailing pressure and credible anti-corruption machinery are achievable agenda items, unlike big-ticket agenda of electoral cum political reform .

## Enforcement and Sanctions

A Cornell study found that India has some of the best enacted laws. This study ranks India amongst the top percentile of countries on the quality of laws and rights accorded by such laws. The score, however, turns retrograde when it comes to the implementation of these laws. It ranks India amongst the bottom percentile of 81 countries when it comes to implementation, i.e., enforcement of rights and obligations under these laws.

Corporate conduct in India is overseen by multiple regulators, enforcement agencies and gatekeepers who act on different aspects of business transactions. Regulators such as the Securities and Exchange Board of India, the Reserve Bank of India, Insurance Regulatory and Development Authority, Ministry of Corporate Affairs, Central Bureau of Investigation, Serious Fraud Investigation Office, etc., are responsible for enforcement of corporate laws. Gatekeepers like auditors, directors, rating agencies, etc., operate in an independent rather than in an interdependent manner and it is important to have a certain degree of collective responsibility among all gatekeepers and regulators to harness their total capacity to emerge as a strong deterrent force. The lack of collective regulatory action sometimes leads to regulatory arbitrage and regulatory capture, impeding delivery of justice.

Bibek Debroy also points out that the probability of conviction for corruption is .006% and hence the expected gain from corruption is significantly higher than its related costs, thereby concluding that the *system encourages corruption*.

The average fines for non-compliance of Company Law violations in the last five years is less than Rs.3000 for an offence, while for securities trading violations from 1998 to 2012, the fines for 46% of the cases were below Rs.10,000. These fines do not cause any deterrence towards creating a culture of compliance.

However, the changes in Companies Act 2013, SEBI and other regulations have now set punitive actions and grant the regulators significant powers of prosecution. This might force a change in the enforcement regulations and the levels of compliance by businesses in India in dealing with issues of business integrity.



# Promoting Responsible Business in India – Winds of Change

The burden of sharing the negative impact of development is a sensitive issue globally, requiring careful consideration of economies and regional forces while balancing the need for development. India has been proactive in responding to universal concerns of economic, environmental and social dimensions. It has many publicly-funded programmes for the prevention and control of climate risks and issues relating to sustainable development.

Financial reporting includes mandatory reporting on environment and social matters such as on consumption of energy, use of raw materials, environment costs, disclosures on liability for environment issues, etc. Companies are also required to report on aspects of labour use, which includes aspects of salaries, wages and benefits paid to employees, retirement and social benefits, etc.

## Tone at the Top with Indian Businesses

The governance philosophy within a company is usually driven by its management. The tone at the top determines the functioning, philosophy and ethical values of an organisation. It is the general ethical environment established in an organisation by its board of directors, committees of the board (particularly the audit committee) and the senior management, which inculcates values in an organisational culture. In simple terms, the expression 'tone at the top' implies leading by example. The composition of the board of directors of a company, the number of and actual independence of independent directors, the terms of reference of the audit committee, qualifications and experience of board and committee members, etc., are all important elements of the governance structure of an organisation that sets the tone at the top.

Transparency International in a recent report (published in October 2013) – *Transparency in Corporate Reporting: Assessing Emerging Market*

*Multinationals*, evaluated 100 of the fastest-growing companies based in 16 emerging markets. Three-quarters of companies in emerging markets scored less than 5 out of 10 on a scale where 0 is the least transparent and 10 is the most transparent. Scores were based on publicly available information about anti-corruption measures, transparency in reporting, how the companies structure themselves and the amount of financial information they provide for each country they operate in. According to the report, thanks to national laws obliging publication of key financial information on their subsidiaries, Indian firms perform best in the BRICS with a result of 5.4 out of a maximum of 10. In country-by-country reporting, Indian firms scored 29%

Transparency in Corporate Reporting (TI Report)

		ACP	OT	CBC
Tata Communications	7.1	92%	88%	34%
Tata Global Beverages	6.6	92%	75%	31%
Tata Steel	6.6	92%	75%	30%
Bharti Airtel	6.4	85%	75%	34%
Petronas	6.3	88%	100%	1%
United Company Rusal	6.2	89%	100%	17%
Tata Chemicals	6.2	81%	75%	30%
Mahindra & Mahindra	6.1	73%	81%	30%
Tata Motors	6.0	77%	75%	28%
Tata Consultancy Services	5.9	85%	75%	17%

ACP-result for reporting on anti-corruption programmes  
OT-result for organisational transparency  
CBC-result for country-by-country reporting



compared to 9% on average and 1% in China.

Interestingly, despite the recent scams and corporate frauds reported in India, the report states that with the notable exception of the Indian companies, most emerging market companies in the sample are still a very long way from disclosing financial data across all countries of operations.

*The report states that while robust disclosures do not reduce all risk of corruption, they are a sign of the right tone from top management, reflecting an awareness of corruption risks and a commitment to manage them effectively that is essential for companies operating across borders.*

## Enabling Regulations: Winds of Change

Enabling regulations or legislations are different from delegated legislations which give appropriate officials the authority to implement or enforce the law. Legislations that empower citizens to attain their rights or to demand accountability from administrators are called 'enabling laws'. In India, these are the new winds of change through which regulators, citizens and other stakeholders are getting empowered, thus creating an oversight mechanism which reduces the information asymmetry between government and people.

*Kaufmann, Kraay, and Mastruzzi (2005) find that global companies have the means and the power to shape the business climate where they operate. Good-practice companies can be proactive agents of change simply by voluntarily agreeing to raise their standards of business ethics.*

Enhanced disclosures on business and governance practices tend to set the tone at the top and improve transparency and accountability. Companies have also started making voluntary disclosures as the changed landscape is leading to more demands for greater transparency and accountability from all concerned stakeholders.

While some laws promoting corporate accountability and citizen empowerment already exist, some others are in the pipeline.

### Regulations To Enhance Corporate Accountability And Transparency

Right to Information Act, Prevention of Money Laundering Act, Prevention of Corruption Act, Business Responsibility Reporting:

*The Right to Information Act* is an enabling legislation which is used to elevate passive democracy to a participatory democracy. It sets a time-frame within which officials must provide information, and also provides for punishments to those officers who wrongfully, or with mal-intent, deny information to the public. Any officer who denies any information under this act has to justify his decision; against which one can further appeal.

*The Prevention of Money Laundering Act* of 2005 is another example of how the legal framework can be used to make a difference in raising the bar of ethics and accountability in the country. Anti-Money Laundering policies and Know Your Customer (KYC) guidelines that banks are mandated to follow improve due diligence and help curb anti-national behaviour such as tax avoidance.

*The Prevention of Corruption Act* of 1998 that was amended in 2008 also aims at curbing corruption. It criminalises corruption in the form of attempted corruption, active and passive bribery, extortion, abuse of office, and money laundering. Public servant involvement in private sector activities is also restricted by law.

The Companies Act, 2013, empowers regulators to take punitive action, empowers independent directors and creates high fines and punishment for companies and their management for unethical practices including fraud.

SEBI in order to enhance the levels of disclosure and transparency now requires the top 100 listed entities based on market capitalisation to disclose in a report titled Business Responsibility Report the initiatives taken by them from an environmental, social and governance perspective along the lines of the key principles enunciated in the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business released by the Ministry of Corporate Affairs. Other listed companies are encouraged to voluntarily file BRRs.

These changes in corporate reporting are a paradigm shift with respect to their focus shifting from financial profits alone to returns to all stakeholders in areas of environment, social and governance performance.

**Bribery of foreign officials:**

Currently bribery of foreign officials is not a crime under Indian law. However, a new bill awaiting Parliamentary approval, viz., “*The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011*” once passed into law will make accepting or giving bribes by foreign public officials a criminal offence entailing imprisonment of up to seven years among other penal provisions.

## Institutional Improvements In Public Delivery Mechanism

**E-governance and E-procurement:**

*E-governance:* One of the most efficient ways to increase transparency is through implementation of E-governance. Its main objective is to provide a SMARRT Government, i.e., a Simple, Moral, Accountable, Responsive, Responsible and Transparent Government.

Towards this end, the government has started digitising a wide range of public services to improve their delivery mechanism. Some of these services include telecommunications, transportation, postal services, etc., as well as services relating to citizenship such as licensing, taxation, passports, ID cards, etc.

*E-procurement:* In order to make the procurement process more transparent and facilitate e-procurement, the Government of India has set up a Central Procurement Portal (CPP) with an e-publishing and e-procurement module. It is mandatory to publish tender enquiries, corrigenda, and details of bids awarded on the CPP portal using the e-publishing module in respect of all the procurements irrespective of size. From 1st April, 2012, E-procurement is mandatory for transactions greater than Rs.1 million.

## Regulations Enhancing People’s Empowerment

**Lokpal Bill/People’s Ombudsman:**

The Lokpal Bill, an anti-corruption law which proposes the appointment of an ombudsman to independently investigate corruption cases, was introduced in Parliament in 2011 after large public protests, incorporating demands such as the creation of a Citizen’s Charter that entitles citizens to demand that public officials effectively carry out their responsibilities. The Bill was passed in the lower house and awaits passage in the upper house.

**Whistleblower protection:**

In the absence of protection to a whistleblower, often the system and the corrupt victimise the whistleblower thus offering no recourse to one of the biggest gatekeepers of civil society. The government introduced ‘The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill’ in 2010 which is expected to provide adequate protection to whistleblowers

to enable greater probity in public procurement by encouraging reporting of instances of corruption or wilful misuse of official power. It is awaiting passage into law.

The Companies Act, 2013, requires every listed company (and other classes of companies) to establish a vigil mechanism for directors and employees to report genuine concerns. It requires adequate safeguards against victimisation to be provided to those who use the mechanism.

*The other changes like financial inclusion, direct cash transfer of benefits and unique identification numbers for citizens will result in economic empowerment for the vulnerable. This in turn will reduce the levels of corruption as the discretionary powers of officials will be significantly diminished. Business environment cannot exist outside the influence of society and corporate governance cannot flourish outside the ambit of overall governance. These enabling laws and shifting winds are expected to bring down the levels of corruption in India.*

*The rate of change in India in the last few years relating to anti-corruption laws and their enforcement is significant and clearly shows the direction of the winds of change. The key stakeholders of democracy like the judiciary, citizens, businesses and media are playing an active role to assert their rights and responsibilities in creating a fair state of play for the country.*



# Chiselling the Way Forward – Conclusions

In the “flying geese paradigm”, Japanese economist Kaname Akamatsu explains that companies restructure to find the cheapest labour costs by moving low-value activities to nearby less-developed countries. Today that story rings truer than ever before as global value chains (GVCs) reach a critical turning point. Simply put, GVCs take a broader look at supply chains coordinated by multinational companies, but also encompass economic analyses of the countries involved with the activities.

For companies doing business outside India, one of the key issues would be to harmonise global business practices and ethical guidelines across the operating countries. This would include compliance with, for instance, stringent laws like the Bribery Act, 2010, of the UK and Foreign Corrupt Practices Act, 1977, of the USA. While the UK Bribery Act deals with crimes of bribery, being bribed, the bribery of foreign public officials, and the failure of a commercial organisation to prevent bribery on its behalf, the US Act has two main provisions, one that addresses accounting transparency requirements under the Securities Exchange Act of 1934 and the other concerning bribery of foreign officials. The risk of non-compliance is real and runs higher in those countries where there is higher perception of corruption.

Many companies have contributed significant resources to the development of effective ethics and compliance programmes through training programmes and higher education to ensure that their current and future employees understand the meaning of ethical business conduct. The private sector has the capacity to share good practices, training material and resources to support the implementation of integrity programmes and control procedures, and to raise awareness in both the public and private sectors.

Improvements in external factors in the form of healthy governance, effective prevention and robust prosecution and recovery mechanisms by governments/enforcement agencies can provide the necessary impetus in fraud prevention and detection endeavours.

Collective measures include the role of social groups, civil society and other organisations in improving the anti-fraud and anti-corruption environment. Other measures relate to international cooperation for greater transparency and sharing of resources and good practices in governance mechanisms in laws and regulations. The adoption of a collaborative approach amongst civil society, business and government is also essential in improving transparency, ethics and integrity.

International cooperation can be towards greater transparency and use of information technology. Greater coordination and cooperation should be facilitated between law enforcement agencies and regulators to counteract cross-border fraud and corruption and to share skills and resources to tackle serious economic crimes. Investigation agencies in India can leverage technology to improve their own efficiency in the same manner as the SFO in the UK – it has been able to reduce the time of first charge for cases of frauds from 48+ months five years ago to 19 months now.

Business ethics makes prudent economic sense and in a complex global environment is the currency of public trust. Public trust creates equitable wealth for society and accelerates sustainable development. Companies thus, first need to set the tone at the top by incorporating policies and programmes to build and promote trust amongst all stakeholders including initiating counter corruption measures. These programmes should be tailored to reflect the company’s sector and jurisdiction, culture, size, nature of business and locations or operations, etc.

Developing these ethics and anti-corruption programmes into strategic priorities may include the following:

- Set the organisational commitment and responsibilities;
- Cover all business relationships (viz., subsidiaries, joint ventures, contractors and suppliers) in all jurisdictions;
- Human resource policies and practices that reflect commitment to ethical behaviour;
- Appropriate training on ethics programmes and policies should be conducted for directors, managers and employees, and where possible suppliers and contractors;
- Appropriate channels (whistleblowing hotline, emails, etc.) should be available to employees and others to raise concerns and violations;
- Internal and external communication of ethics and anti-corruption policies is necessary as also the systems employed to implement these programmes;
- Adequate internal controls should be put in place to check for violations, counter bribery, checks and balances to maintain the integrity of financial records;
- Establishment of recognition systems to promote ethical behaviour, benchmarking tools, creation of transparency labels and such like.

However, change to established entrenchment is bound to meet with resistance and while there is no single solution to curb bribery and corruption – collective actions, discussions, dialogue, coordination and cooperation will lead to a number of complementary and supplementary measures involving all stakeholders across and within countries. Some of the collective business actions include initiatives like Integrity Pact of Transparency International, Collective Action Project of UNGC, which have laid the foundation in many countries and some of them are being adopted in India to combat the risks of corruption and promote ethical businesses.

The Alliance for Integrity reflects the need that the fight against corruption should be a collaborative approach amongst governments, industry and civil society. The various stakeholders prioritize areas of action, such as those indicated above. The overall objective is to promote integrity and transparency by improving business practices since corruption destabilizes the bedrock of business: the market. By upsetting the possibility of a level playing field, it adversely impacts the possibility of a free, fair, efficient and competitive market in which businesses may prosper. The process of change is also a matter of change of mindset and behaviour. Progressive regulation, effective enforcement and voluntary action beyond compliance are co-evolutionary streams of action which such a coalition can and will foster.



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