

That Which Shall Not be Named: Questioning the Taboo of Lobbying in the Indian Polity

-A Prologue to Public Sphere Reforms

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Abstract— Lobby groups exert strong influence on the formulation of public policies across all major democratic political systems. The more pluralist democracies, which are open to several competing interests, witness higher degree of interest groups functioning. Such ubiquity, however, is coupled with an increasing crisis in terms of declining public legitimacy, transparency and accountability. As a global practice, legal regulation is employed as the fundamental approach to bring the requisite transparency and legitimacy to the lobbying process. India, as a transitional political economy, witnesses substantive deterioration in its public sphere and legislative activity. Lobbying comes across as a taboo in debates around the workings of the Indian polity. The paper proposes recognition and regulation of lobbying as the next generation reform to revive the declining standards of policy debates.

Keywords- *Participatory Democracy; Interest Groups; Lobbying; Public Sphere; Transitional Political Economies; Corruption.*

I. INTRODUCTION

The Indian polity, formally constituted through its legislative institutions and practices, faces a crisis of deteriorating public legitimacy. Last two decades have been symptomatic of increasingly chaotic and wasteful tendencies in the form of floor disruptions, declining standards of debating, constructive participation and conduct of the legislators, *etc* (Kashyap 2000; National Commission to Review the Working of the Constitution 2002). Such decline, however, has been conceptualized as an inevitable paradox of democratic evolution. B.L. Shankar and Valerian Rodrigues, in their recent book “The Indian Parliament- A Democracy at Work”, argue that the chaos and wastefulness is a necessary product of the progressive democratization of the Indian polity. Dr. Subhash Kashyap also flags this element of unavailability, but he attributes it partly to the inherent complexities of modernization, reflected in globalization, “information explosion and technological revolution”, which have caused such institutional strains in the polity.

Both the perspectives, however, agree that democratization has, overtime, significantly altered the composition of legislature membership. The era following the end of colonial rule populated the legislatures with elite intelligentsia, which was closely associated with the national freedom movement, exuding “national unity” and moral authority. The decade of ‘70s witnessed consolidation of interest groups, like peasants and workers. The qualitative nature of membership got further fragmented through the ‘90s (Shankar & Rodrigues 2014). This was the phase of unstable coalition politics where both the government and the opposition, as groups, could only retain diluted authority, while individual members (‘politicians’) emerged as “a new caste” and “co-sharers in the spoils” (Kashyap 2000). Coincidentally, this phase also initiated multiple fragmentation and emergence of new political parties, predominantly at the provincial level. Politics now increasingly seems to be a secure investment. It is, therefore, not surprising that political corruption- nepotism and *quid pro quo* tendencies- have been high on the agenda of law and policy reforms in the contemporary political discourse.

Analogically, this transition is relatable to the democratization process in Latin America. The early stages of democratic transition from colonial rule or authoritarianism witnessed representation of a few established interest groups, like business, labour unions and agriculture, in the polity. A political arrangement conceptualized as the “corporatist state”, in the jargon of Political Science. Sustained democratic reforms and practices further fragmented such representation into several smaller and highly specialized factions- a transition from corporatist to pluralist polity (L.A. dos Santos 2012).

A. *The Logic of Continuous Reforms in a Democratic Polity*

Such characterization of the problem of collective enterprise, as a by-product of democratization, reminds of the classic *Olsonian paradox of latent organizations* (Mancur Olson 1965). The transition (or fragmentation) of

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the legislature from being composed of a few interest groups (an oligopolistic enterprise) to a body of individual politicians or multiple political parties (a large latent organization) accentuates the structural and operational constraints. The process of deliberation and negotiation, in such latent organizations, becomes fragmented and chaotic; also the incentive (or motivation) to function as a collective dilutes below optimal for individual members with multifarious interests and objectives.

However, even if one concedes the inevitable nature of such political decline as a necessary evil or an opportunity cost of reforming democratic institutions and processes, it does not escape the fact that such decline, in turn, compromises the very process of democratization. Like a *Golem* of Jewish folklore, it looms large on its very source or master, with the sole purpose of consuming or destroying its essence altogether. This counter-effect operates in two broad forms. Firstly, the inefficiency and wastefulness creates a general and systematic loss of public legitimacy and trust in political institutions. Secondly, it substantively drags and constrains further democratic reforms and good governance.

The very product of our ‘tryst with democracy’, therefore, has also become a material cause for reinvigorating political reforms. The corrective measures, suggested in this context, range from quantitative improvements in the functioning of legislatures- working days, intensity of constructive legislative activity, intensity of committee meetings, frequency of adjournments *etc.*- to qualitative reforms- debating standards, agenda framing, salience of public policy issues, quality of legislation, supervision of the executive government, and improvement of public perception through mass media *etc* (Agnihotri 2009).

B. Limitations of Existing Reforms in Transitional Political Economies like India

I argue that such an inward looking or self-referential reform agenda, though not unnecessary, is certainly inadequate for a polity like India, which is progressing towards the mature stage of democratic transition- reflected in its political institutions and practices. If transparency and accountability are integral elements of democratic reforms, the Right to Information Act, 2005 and the impending Lokpal (Ombudsman) legislation, to certain degree, mark the paradigm shift by ensuring micro-level participation of the citizenry in the realm of public policy and governance. Such measures, however, are predominantly reactive (individual complaint redress mechanisms). Therefore, while these reforms drive the political paraphernalia to a corrective and efficient policy path, such correction is severely limited by the inherent nature of these individualistic or micro-level reforms.

As a mark of democratic maturity, India needs to engage with the best of International practices- across jurisdictions and international organizations. In this context,

there exists a trilogy of such ‘sunshine’ reforms of transparency, which are built around the idea of participatory democracy. The drive initiated by the legal recognition of right to information and Ombudsman takes a paradigm leap with the third set of participatory reforms in the form of legal recognition and regulation of interest groups and lobbying activities. I further argue that in the context of developing economies like India, regulatory recognition of lobbying does not only offer a *negative benefit* of monitoring political corruption, it equally offers a substantive *positive benefit* in terms of better articulation of policy concerns and public debate through recognized and established mediums. It, therefore, offers *dual contribution* towards the paradigm of good governance.

II. LOBBYING, INTEREST GROUPS AND REGULATION

For most of the western democracies, governed by the capitalist economic philosophy, lobbying and interest groups participation has been entrenched themes of law and public policy since the latter half of the previous century. The United Kingdom is the latest of those established democracies to have formally incorporated lobbying within its regulatory framework. Till 2014, eleven jurisdictions have formally implemented the regulatory framework for lobbying activities within their legal system. They are the US, Canada, the EU, Germany, the UK, Australia, Hungary, Lithuania, Poland, Taiwan and Slovenia (Chari, Hogan & Murphy 2010).

The regulatory conception of interest group lobbying, despite its operational variance across jurisdictions, partakes the “motivated communication of private interests to public authority” model prevalent in political science. Interests, in this context, are distinct from mere subjective preferences or feelings on a public policy issue. Lobbying interests, therefore, necessarily involve active interface of the private group with a governmental entity or public authority (Heinz, Laumann, Nelson & Salisbury 1993).

According to these authors, interests are only created when private values come in contact with government. The profit motive, religious beliefs, desire for some public good, or opinions on a social issue, then, are not in themselves “interests”, but become so only when those who share them make demands on government. (Baumgartner & Leech 1998)

A. The Influence/Exchange Model of Lobbying & Questions of Transparency

Based upon the premise of policy engagement and participation, lobbying has been defined as “*the stimulation and transmission of communication, by someone other than a citizen acting on his own behalf, directed to a governmental decision-maker with the hope of influencing his decision*” (Milbarth 1963). This definition is comprehensive because it is not only operative

at different levels of governmental authority (local, national, regional and international) or different branches (legislative and executive), but also applicable to various actors, such as corporate lobbyist and citizen groups. Its essence lies in the *attempt to influence* and not necessarily in the realization of the final outcome, in terms of success or failure. Another core feature of lobbying lies in it being the act of *private actors* attempting to influence public actors. These “private actors” are conceived as *extra-institutional*, i.e. an entity or person who is not, in doing so, exerting public authority or fulfilling a constitutional mandate (**Venice Commission 2013**). It further highlights the representational nature of participation- the *extra-institutional actors* act on behalf of specific public constituencies.

This model of lobbying raises certain fundamental questions of transparency and accountability on the part of the public authority, which is being purported to be influenced in the process. It is on this account that lobbying often generates negative public opinion on the questions of its legitimacy and desirability. This problem is reflected in the following account of a well-known professional lobbyist in the US.

Folklore has it that the oldest profession is prostitution. I always thought it was lobbying. The serpent in the Garden of Eden talked Eve into trying the apple from the Tree of Knowledge by *successfully portraying knowledge as a virtue* rather than the vice that God had made it out to be. For his efforts, the serpent was punished by God by being forced from then on to crawl on his belly in the dust. *To much of the public mind, lobbyists belong alongside the serpents* (**Lipsen & Leshner 1977**).

It is the overall specter of secrecy and “closed-door dealings” that undermines its public legitimacy. As with the profession of legal advocates, it is not so much their aims and objectives, rather the procedures or means they employ that give lobbying an element of notoriety and “bestseller appeal”. Apart from being seen as an (ab)use of power and influence, the transparency problem is closely related to its alternative conception as an exchange transaction between public authority and private interests- *quid pro quo*. By this logic, lobbying has the potentiality for wasteful rent seeking and distorted tariff and subsidy allocations (**Gordon Tullock 2005**).

B. Corruption and Lobbying Regulation

One of the popular perceptions about lobbying is that it only involves corporate and moneyed interests. Its morality is questioned on the ground that corporate lobbying involves profit-maximization at the cost of the underprivileged sections of the society, who lack a similar accessibility to power corridors. Since corruption is predominantly an economic vice, there seems to be a close nexus between the public perception of identifying lobbying solely with business interests (corporate sector in the economy) and equating lobbying with corruption.

Corruption is heuristically defined as misuse of public authority for private gains. There are two primary reasons cited for higher incidences of corruption in any political economy (**Montinola & Jackman 2002**):

- The lack or inadequacy of political and economic competition or alternatives, which is primarily caused in the earlier stages of economic development and democratic reforms;
- Inadequate or lower levels of income and wages in public sector employment.

Following reasons are provided for such causes of corruption:

If constituents (lobbyists) can replace politicians, or clients can readily reapply for bureaucratic privileges from different officials, individual officials have fewer incentives to engage in corruption (**Rose-Ackerman 1978**).

If public officials are well paid, they will value their positions more highly and will have fewer incentives to jeopardize those positions by engaging in corrupt behaviour (**Montinola & Jackman 2002**).

Further, democratic competition is promoted largely through transparency legislations or regulatory norms. In this regard, guaranteeing the twin freedoms of information and association is significant. It creates a surveillance mechanism over the discretionary powers of public officials. Also, electoral reforms to ensure free and fair elections coupled with fair equality of opportunity in holding public offices introduce rigour and uncertainty over ‘perpetuities of formal power’. Public officials can be replaced through established procedures, and they cannot promise long-term favours to private clients.

Regulatory regimes on lobbying in developed economies primarily address such issues of transparency. Being in the advanced stages of economic and democratic indices, the predominant concerns of such regulations is disclosure of relevant information by the private interests and public authorities and transparency in the specific lobbying transactions. While there will be inter-jurisdictional variance in specific details of the lobbying regulation, each such regulation is primarily informed by the broad vision of enthusing the policy process with a credible degree of transparency and public legitimacy.

C. Regulatory Challenges

There are certain conceptual challenges in the designing of regulatory framework for lobbying. Any political economy embarking upon such legislative enterprise will be confronted by “hard questions” of public law. It is so because a shift from questions of policy to legal regulation is an interface among politics, economics and positive law. Would the conceptual categories from the discipline of political science *ipso facto* accommodate themselves in a positively enforceable legal regulation? For instance, who should be the subjects of such regulation; which processes could be the objects of law;

what is the locus of public officials; what is the rigour of sanction regime; retrospective enforcement of legal rules; questions of jurisdiction and implementing authority (e.g. Multinational Entities like MNC's or International NGOs) are only some of the pertinent questions in this context.

Essentially public communications with Government, political system and the public service fall into three main categories (**Ireland Reform Proposals 2012**):

- Day-to-day contact between individual citizens in a personal capacity and their local political representatives, constituency TD, Councilor or public servant in relation to any issues affecting them as individuals (i.e. such contact could range, for example, from personal administrative matters to representations the individual is making on international issues) or in relation to local issues which do not have a wider national or regional impact;
- Contact between individuals representing organizations either in a remunerated capacity or as office holders in those bodies and office holders (i.e. ministers) or public servants in relation to matters concerning the objectives of the organization in which they are employed or hold office or on a wider sector or sectional interest; and
- Interaction between individuals in professional lobbying organizations representing the interests of third party clients and political representatives, office holders or public servants.

It is essential that normal local and constituency-related interactions set out at (1) above should be unaffected by the proposals to regulate lobbying because (**OECD 2010**):

Under no means should citizens who voluntarily and without compensation exercise their right to petition government, who communicate their viewpoints with elected and appointed representatives be subject to registration requirements or reporting or disclosure burdens. Any such imposition on average citizens is unnecessary, over-reaching and anathema to democracy.

D. *The Case of Transitional Political Economies*

While the previously articulated interface between corruption and lobbying regulation effectively explains the position of advanced western democracies, the study of developing and transitional political economies reveals supplemental paradigms to those of transparency rationale. Firstly, transitional economies generally experience significantly higher levels of corruption than the advanced economies (**Transparency International 2014**). Therefore, it is difficult to assume that the regulatory vision and purpose of such distinct political economies would bring out equally efficacious results in the long run. In other words, the regulatory structure and implementation in developing economies needs to exceed

mere aim of transparency, which is more suited to the advanced economies.

Advanced economies are successful in garnering substantive public legitimacy for their resource distribution and allocation policies because they have the fiscal capacity, in terms of tax and other forms of fiscal revenue. As a result they are able to pool in optimal resources to be adequately distributed among competing interest groups. Fiscal transfers to diverse clientele are, therefore, 'perceived' to be transparent and justified. The case of transitional political economies is qualitatively distinct, in terms of their revenue base and mobilization. At any particular policy intervention, certain groups are often excluded by structural compulsions. This significantly contributes towards the lowering of public legitimacy in the resource mobilization and allocation policies of the government (**Mushtaq Khan 2006**).

This is the classic paradox of transitional democracies: while long-term economic development, largely driven through private enterprises, is *sine qua non* for structural reduction in incidences of corruption and consequent harnessing of public trust and legitimacy; private business enterprises are perceived, in the short term, to have appropriated the policy domain by exuding undue influence over government through lobbying. The mass media outcry of democracy being reduced to the rule by elite economic minority (corporate interests) is a regular feature of public debates in such developing economies, including India.

I, therefore, argue that such transitional democracies need to envision the remedial measures beyond mere enthusing of transparency principles; else the short-term trust deficit would create significant drags in the forward transition of these economies. This paradigm shift does not discount the merits of the transparency model. The latter is rather the starting point of the reform narrative. This supplemental conceptualization, therefore, builds upon the merits and gains of the transparency model.

One conclusion, however, can definitely be drawn from this analysis: for India, the Right to Information Act and Ombudsman law can produce short-term, micro-level gains within the overall rationale of the transparency paradigm. But without the entrenchment of responsible lobbying and substantive policy participation, that accompanies it, India will certainly enter into the phase of paradox that plagues such transitional economies. Being witness to the nature of skewed public discourse on significant policy agendas, both in mass media and the legislatures, one can fairly presume that India has already entered into that zone of stagnation. It will be a serious obstacle to the realization of long-term maturity in both political as well as economic sphere.

III. A PROLOGUE TO PUBLIC SPHERE REFORMS

Transitional economies need to continuously learn from the experiences of their more mature counterparts. They need to manifest stringent commitment towards adopting the best of international practices. While this certainly will be a common enterprise for the concerned political economy as a whole, involving all relevant stakeholders; yet the unique role and responsibility of the political authority (represented through formal institutions of legislature and government) must be realized for the movement to initiate in the first place. Political authority has the capacity to change conditions of mass inertia that often obstruct sector-specific reforms. For example in the Indian context, codification of customary personal laws governing conditions of marriage, divorce and inheritance; reforms in criminal law; changing customary practices through dowry prohibition legislation; land reforms against entrenched interests of the propertied class; transitioning from a closed economy to the neo-liberal globalization era *etc.* are some of the illustrations where formal political initiative led to subsequent alignment of the interest groups and masses in general.

Surely, there are illustrations where such political initiative remained an unfinished enterprise because it failed to align the underlying practices in the long run, such as the problems of child labour, sexual offences, caste discriminations *etc.* While there could be many reasons for the structural failure in these policy domains, yet one cannot still argue that the formal political initiative in the form of legislative or regulatory policy interventions was a bad start. May be something got lost in translation, but the inherent merits and suitability of formal political interventions cannot be undermined. It is in this context that I argue for a substantive legal recognition and regulation of interest group lobbying in India.

A. An Alternative Conception of Lobbying

Lobbying has been traditionally articulated as an *enterprise of political exchange* between private and public interests or a method of exuding power and influence, employed by the private interests, over formal public institutions and authority. In both these models, lobbying is seen as 'outsider's play' that is solely interested in promoting its self-interest, even at any opportunity cost. The design of regulatory norms, and the consequent legal language, simply reproduces this alienated persona of lobbying interests. This has further reinforced the bad reputation and skewed skepticism of lobbying as a policy process.

An alternative conception of lobbying substantively moves away from the understanding of policy domain as a locus of conflict, maneuvering and zero-sum game. It rather establishes interest group lobbying as the fourth pillar, which co-exists with mass media, of democracy, and a substantive index of democratic and economic maturity and health of a nation. Lobbying, in this framework, is

conceptualized as a collaborative enterprise. It acts as a "service bureau", a significant institution of assistance to the formal political authority (**Hall & Deardorff 2006**).

I do not reject the models of *exchange* and *influence* altogether, for that would be bereft of the pragmatic truthfulness and salience of those models. I rather believe that exhausting the essence of lobbying with these models creates inadequate incentives (and also elicits knee-jerk response) for the political authority to intervene through regulatory mechanisms. Also I presume that such an alternative conception is perhaps the best buffer or hedge against the previously mentioned failures of regulatory interventions, which failed to align the public perception and practices over long run.

European Union (EU) is one of the best sites to study the best practices in public policy and law. Its judiciary (ECHR) is perhaps the most effective international organization in terms of eliciting observance and general obedience from the municipal jurisdictions of its member countries. Even the UK, which has long cherished and still takes pride in its model of parliamentary sovereignty, has conceded significant space of authority to EU. The latter engages with lobbyists in a collaborative enterprise, where professional lobbyists supplement (and not substitute) the policy formulation process.

Expertise plays a central role in the deliberation, negotiations, and decision-making. The technical aspect, including technical expertise, disciplines the political bargaining in the specialized networks or sub-governments. It also *provides a language and means of framing problems and their solutions, that is to structure the discourses and negotiations of policy...* The concept of framing captures the deliberate definition of a particular issue and the particular context in which it should be understood (**Burns & Carson 2002**).

B. Lobbying and the Public Sphere

This constructive function of lobbyists is analogical to the mass media articulation of policy issues through news frames. The important distinction being that, in such an enabling system of government, lobbyists will always be significantly more proximate to the political dispensation than the mass media, because of the inherent nature of their roles. But we must remember that the advanced political economies maintain the vibrancy of public discourse by ensuring that there is always a substantive interface between lobbyists and mass media. It is so because mass media is the most appropriate source to engage with and inform the public at large.

Governments employ various mechanisms and strategies to acquire information relevant to policy domains, ranging from statutory commissions to expert task force *etc.* Informational-lobbying, however, is an equally significant source of policy assistance to formal governmental institutions. Such informational lobbying might create winners and losers amongst specialized interest groups, but it is potentially beneficial to the overall interest of the political economy in the domains of public good, like

environmental concerns, public infrastructure, health, education *etc.* (**Lagerlof 2004**).

Such constructive and necessary role of interest groups as source of relevant and complex information, or even the democratic requisite of a pluralist approach to public decision-making are often ignored as reasons to justify regulation. Instead, for example, the primary rationale of lobby regulation initiatives in Latin America is the need to tackle corruption and promote transparency in order to restore trust in the government and reliance in the political system (**L.A. dos Santos 2012**).

It is for this reason that I categorize the former objectives and conceptualizations as the positive and proactive articulation of lobbying by public law, which acknowledges its inevitable role in resurrecting the public sphere in the transitional political economies; while the latter approach to regulation is centered around a negative and reactive conception of lobbying, wherein the only demand that the public sphere puts against lobbyists is that of 'limited information disclosure' to prove their legitimacy. While the former envisions lobbying as an integral part of public sphere, the latter authorizes public sphere as an inspector exercising surveillance over lobbyists.

IV. INDIAN POLITY AND THE TABOO OF LOBBYING

There is adequate circumstantial evidence to infer that "lobbying" is a taboo word in the Indian public sphere. On an impersonal note, the scant literature available around this forsaken reality clearly articulates the position that we as a democratic society need to cast out this undesirable phenomenon from our public life. One must not forget that western democracies, both Europe and America, have dedicated an entire century of research and legal interventions on the same subject, which to us seems to be quite futile.

My personal engagement with the Indian academia, however, reveals the degree to which the latter understands this subject matter. During my doctoral course work, a professor of acclaimed international scholastic stature, who has substantively worked in certain sectors of civil rights advocacy, moderated one of the sessions. During the session, I spoke about the international regulatory practices, which for regulatory purposes do not make substantive distinctions between corporate-business lobbying and civil rights advocacy groups. The professor, in turn, refused to be designated by the word "lobbyist".

Similarly, during my pre-proposal interview, I was questioned about the significance of this project by one of the external examiners, who insisted that when bribery and *quid pro quo* are completely covered by the Indian Prevention of Corruption Act, 1988, such an enterprise is futile. For him, "lobbying" was "bribery". During the

second stage of the interview, I was confronted by another professor-expert in Intellectual Property, who believed that lobbying is an all-US business; that it does not cover social action groups *etc.*; that, at best, any work on lobbying is intended to be a "bestseller" and not a "genuine research project". These instances clearly reveal the degree of evaluation of lobbying that the Indian academia does at its end. One can only imagine the extent of research that would be available in such a tabooed domain.

In the context of India, the pathological conception of lobbying gathered populist momentum two years ago when recorded phone conversations of corporate lobbyist *Nira Radia* exposed her role in the 2G-spectrum controversy. More recently, with *Walmart's* disclosure of its lobbying expenses in India, questions were raised about the strategies adopted by the corporate to enter the Indian market. Unfortunately, since lobbying activities were repeatedly identified in the context of corruption cases, they became synonymous with corruption and political scandals in the public consciousness. The only times we utter this word in public sphere are those when we are aggressively demanding an absolute ban over it, without having any clue as to what is the general nature, scope, significance and problem of the subject-matter.

A. Literature Quality and Intensity

There is no denying that lobbying as a politico-legal issue has a diminished presence in the Indian scholastic literature. Quantitatively, *Economic and Political Weekly* is perhaps the sole Indian journal to have around 3-4 articles on lobbying. But they span over a period of 20 years. The other sources are newspaper reporting's in the aftermath of some *quid pro quo* scandals like Wal-Mart, 2G-Spectrum Auction *etc.* These reports summarily equate lobbying with bribery.

One article equates State-Union deliberation on resource allocation with political lobbying. It, therefore, argues that a skewed regional development and industrialization is the result of political lobbying, and that the latter undermines fiscal federalism (**Biswas and Marjit 2002**). To construe an engagement within two public authorities in their official and Constitutional capacities as lobbying is conceptually flawed. Another article focuses on electoral reforms and highlights lobbying as a significant threat to free and fair elections in India (**SR Sen 1994**). Lobbying as a participatory process is primarily a post-electoral phenomenon. Then, plethora of field research has established that election funding does not have a correlation with policy related lobbying success.

Indian research space, in this context, is completely untouched by any official articulation from any of the public institutions. There are no policy papers, recommendations, draft proposals *etc.* It is surprising because many of the developing economies have already ventured into this area of public policy (**Santos 2012**). The introduction of a **Private Member's Bill in 2013** to

regulate lobbying was more in the nature of an individual leap of faith because with near zero background research, the Bill would be conceptually malnourished, as we shall see now.

In defining “*lobbying*”, it commits an anomaly by necessitating payments to a public official as an integral component of the definition. It is a classic case of equating lobbying with corruption. Corruption is not *regulated* but *proscribed*. It imports the exact definition of “public servant” from the Prevention of Corruption Act, 1988. Again, empirical research has established that lobbying happens at the policy frame level, involving strategic public authorities like legislators, ministers, senior bureaucrats *etc.*

A recent study on the emerging role of India’s corporate law firms’ influence over the policy and regulatory frameworks is perhaps the most realistic account of the activity of lobbying in the Indian context (**Bhargavi Zaveri 2014**). It highlights the phenomenon whereby the Indian corporate law firms are increasingly showcasing ‘policy affairs’ in their suite of transactional and advisory services, thus following the footsteps of their American and British counterparts. Thus the current policy frameworks allow wide latitude for the corporate legal services sector to influence policy formulation, implementation and reform in India. The constantly evolving regulatory frameworks that seek to address the increasing complexities of the Indian economy are only going to propel a demand for expertise-oriented representation before the administration. As witnessed in the US, the emphasis on transparency will underpin this demand for representation in legal ways, in contradistinction to traditional methodologies of informal access.

B. Regulation as a Prologue to Reform the Indian Polity

Once lobbying is perceived as an integral feature of democracy, the role of regulation is not so optimal in exercising substantive control over lobbying. In such a context, the regulation is more like a device to harness public legitimacy (**Lowenstein 1957**). This is the initial stage role of such regulation because in recent and developing democracies, where a more hopeful approach could be expected, media and common sense always link lobbying with corruption or influence trafficking, setting a perception that special interests are inherently illegitimate (**Thomas & Hrebenar 2008**).

One of the objectives of the regulation is to gain balanced perspectives on issues and lead to informed policy debate and formulation of effective policies, and allow all stakeholders, from the private sector and the public at large, fair and equitable access to participate in the development of public policies, that is crucial to protect the integrity of decisions and to safeguard the public interest by counterbalancing vocal vested interests (**OECD 2010, vide dos Santos 2012**).

Any regulation that respects [Latin American] local political culture must take into account, among other aspects, that lobbying is not appraised in the region as an inherent part of democracy. A public campaign to restore the image of lobbying must be launched. Indeed, lobbying must be controlled, not forbidden. It must be feasible for the public to distinguish the lobbyist who relies on corruption and influence trafficking and who professionally advocates private but legitimate interests, preserving the impartiality and autonomy of government (**L.A. dos Santos 2012**). This need for supportive action is equally true for India as we are dealing with almost a taboo theme.

One of the most important potential gains from such regulation could be the eventual emergence and consolidation of a new profession. Professional lobbyists across the globe clearly owe their present stature to the humble beginnings of their legal recognition through regulatory instruments. It led to progressive institutionalization, training and certification of lobbyist, on the similar pattern as any other white-collar profession (**Susman 2006**). It, therefore, brings lobbying in the mainstream of public sphere as a recognized and accepted profession with certain social purpose.

A related advantage of the institutional professionalism would its direct interface with the international best practices. **The UN Reporting on Responsible Lobbying 2005** models the behavioral and normative concerns of responsible engagement of business lobbyists in public sphere:

For companies and non-business organizations... they also [need the] understanding that their relationship with government not only concerns influencing particular policies; it also involves help developing the capacity of governments to deliver these policies. This will require them to: (i) work with countries to formulate policy, by for example lobbying for better regulation; (ii) push governments to fulfill aid and other commitments; (iii) build the capacity of public institutions to implement policy; and (iv) encourage governments to nurture enterprise development and capacity, such as the Growing Sustainable Business Initiative.

C. Academic and Research Fraternity’s Impending Enterprise

The western democracies, at the advanced stage of their economic and democratic experience, invested the past century on studying interest groups as the principal unit of political participation. Even the transitional economies of Latin America have initiated the research enterprise to engage in a critical study of lobbying. In this context, when I encounter the brilliant work of **Baumgartner et al.** where they attempt a critical review of the entire literature on interest groups spanning over 100 years of the US political history, I can fairly gauge the sheer enormity of the task. I realize that my individual efforts could count for nothing when a parallel universe employs the entire clan of scholars for the same task.

Through this paper, I reach out to my fellow researchers from India and South Asia to evaluate the effectiveness of this enterprise and embark upon the requisite path.

As a part of the prologue, I offer the perspective of **Baumgartner et al.** on the state of research on interest groups and its future scope. They observe that the research in this area has completed one full cycle in the last half century. While interest group research was the predominant scholastic enterprise in political science and public policy till 1980's, it now lies at the periphery, as the research on formal institutions of government is back on agenda.

They further divide the field into areas of advanced research (at a mature stage) and areas of avoided research (inadequate scholarship). While intra-group dynamics of membership nature, incentives, funding, patronage *etc.* are themes that have already reached at a mature stage of research; issues like lobbying and governmental engagement suffer from a balkanization of research, wherein small and unrelated research, mainly in the form of highly focused case studies, is the general norm. Latter types of studies suffer from two problems: technical problem of too small empirical design; and conceptual problem of a-contextual and isolated piece-meal nature of research.

They finally highlight the collective nature of the enterprise by referring to the most significant empirical research on lobbying carried out by **Heinz et al** in 1993. It was a macro project funded by two of the most significant professional interest groups: the American Bar Association (ABA) and the National Science Foundation (NSF), without whose support it would be impossible to carry out such research. I share this account because it flags certain structural concerns for research enterprises, provided we are ready to initiate. But are we?

V. CONCLUSION

In recent years there has been an increase in the number and spending on lobbying. Data reveals around 12398 active and registered lobbyists in the US. The total costs of lobbying increased from \$1.56 billion in 2000 to \$3.30 billion in 2012- a 100% increase over a decade (**Center for Responsive Politics 2013**). Rise of pressure groups, relative decline of corporatism and emergence of alternative non-corporate interest groups, and increasing public awareness are some of the factors for increase in lobbying as a professional activity (**Rowbottom 2010**). This increase in lobbying activity is being accompanied by a decline in its public legitimacy. A study conducted by the OECD in 2012 reveals that 90% of the lobbyists in OECD countries acknowledge the negative reputation of their profession; 76% agree upon the need for transparency and accountability framework, but only 26% were in favour of governmental regulations (**OECD 2010**).

In terms of scale of involvement, it is well established that, in all democratic political systems, lobby groups exert a strong influence when public policy is formulated and political decisions are made (**Baumgartner et al. 2009**). The size and number of lobby groups that are active in any political system will vary according to countries. Their presence and role today in all political systems has become ubiquitous. One would expect that the more pluralist democracies, which are open to several competing interests, having the opportunity to influence policy-making, would see relatively more interest groups functioning than those political systems which have been traditionally defined as corporatists (**Chari et al. 2010**).

The 2014 general elections to constitute the 16th *Lok Sabha* were immense on various evaluation criteria, participation of voters being prominent among them. It witnessed, at 66.4 percent, the highest ever voter turn out in the Indian electoral history. Compared to the 2009 elections, the 2014 turnout had increased by eight percentage points- the highest ever between two successive parliamentary elections. It was marked by a significantly increased participation of women and urban voters. The *participatory facet* was coupled by *governance* as the predominant electoral agenda, both for the voters and the political entities. Various field surveys delineated economic growth, corruption in public services, and consumer price inflation as occupying 70-85 percent of the electoral agenda (**The Hindu; The Indian Express**).

This *participation-governance* theme has been extended as the core functioning principle of the newly constituted Central Government. A fleeting survey of the prevalent agenda setting by various media sources, academia, business associations, citizens' groups, and even the government itself reflects this finding. While commentators transcend significantly from this theme to articulate the challenges of socio-welfare rights, civil liberties, and minority welfare for the new government, an equally significant section has identified the *participatory governance* theme as the core mandate.

However, as highlighted in this paper, there is a general agreement that the Indian public sphere of debate and deliberation is swiftly deteriorating. The declining standards of legislative proceedings and mass media's agenda framing reflect the intensity of the problem. The recent policy debates on issues like foreign direct investment (FDI) in retail business, Land Acquisition (Amendment) Bill *etc.* were marked by homogeneity of interest representation across mass media. The business and corporate sector has clearly withdrawn from the public sphere since quite some time now (perhaps with the setting in of the neo-liberal reforms in the '90's; it would be an interesting research study to further analyze this phenomenon). The debates are lopsided with the same interests creating repetitive loop of the issues that concern them.

To be fair to the corporate sector, and being critical of the liberals, speaking about economic benefits and profits in contemporary times, has become a taboo. The distinction between “profit-making” and “profiteering” has collapsed in the Indian public discourse. While the liberal academia and university community takes immense pride in nourishing the culture of dissent and diversity, sadly in our times it has been reduced to skewing the policy debates in a unidirectional framework. “Dissent and diversity” has been equated with “diversity of dissent” against specific policy agendas with absolute suppression of alternate discourse. Indian academia manifests a particularly curious case, especially the university fora in India. Indian academia, as a white-collar profession, has been a clear beneficiary of neo-liberalism, in terms of rising perks and global penetration. In such a scenario, while it is logically possible for the community to still take the position of an ethical watchdog over the excesses of neo-liberalism, yet over these years it seems, that the liberal academic community has lost the sense of perspective. Contemporary academia and university scholarship reflects not so much a position of ethical evaluation for neo-liberalism; rather it is plagued by the problem of perceptual blindness in lacking a holistic approach towards the public sphere discourse on policy paradigms. Such a degeneration of public discourse will eventually harm all the stakeholders in the long run, also binding India’s overall transition towards becoming a mature political economy. Its effects on the quality of legislative and governmental activity are out for all to lament. It is time that we start doing some serious ‘business’ before it is too late (pun intended).

REFERENCES

- [1] Dr. Subhash Kashyap, “Working of Parliament and Need for Reforms”, REVIEWING THE CONSTITUTION? Delhi, 2000.
- [2] The Report of the National Commission to Review the Working of the Constitution, 2002.
- [3] B.L. Shankar and Valerian Rodrigues, THE INDIAN PARLIAMENT- A DEMOCRACY AT WORK, Oxford, 2014.
- [4] Luiz Alberto dos Santos, “Lobby Regulation, Transparency and Democratic Governance in Brazil”, unpublished.
- [5] Mancur Olson, THE LOGIC OF COLLECTIVE ACTION-PUBLIC GOODS AND THE THEORY OF GROUPS, Harvard, 1965.
- [6] Dr. V.K. Agnihotri, “Evaluating Parliament: Objectives, Methods, Results and Impact”, Discussion Paper, Geneva, 2009.
- [7] Raj Chari, John Hogan and Gary Murphy, REGULATING LOBBYING: A GLOBAL COMPARISON, Manchester, 2010.
- [8] John P. Heinz, Edward O. Laumann, Robert L. Nelson and Robert H. Salisbury, THE HOLLOW CORE: PRIVATE INTERESTS IN NATIONAL POLICYMAING, Harvard, 1993.
- [9] Frank R. Baumgartner and Beth L. Leech, BASIC INTERESTS: THE IMPORTANCE OF GROUPS IN POLITICS AND IN POLITICAL SCIENCE, Princeton, 1998.

- [10] Lester W. Milbrath, THE WASHINGTON LOBBYISTS, Chicago, 1963.
- [11] A REPORT ON THE EXTRA-INSTITUTIONAL ACTORS IN THE DEMOCRATIC SYSTEM (LOBBYING), European Commission for Democracy through Law (Venice Commission), 2013.
- [12] Charles B. Lipsen and Stephan Leshner, VESTED INTEREST: A LOBBYIST’S ACCOUNT OF WASHINGTON POWER AND HOW IT REALLY WORKS, 1977.
- [13] Gordon Tullock, THE RENT-SEEKING SOCIETY, Liberty Fund, Indianapolis, 2005.
- [14] Gabriella R. Montinola and Robert W. Jackman, “Sources of Corruption: A Cross-Country Study”, BRITISH JOURNAL OF POLITICAL SCIENCE, Vol. 32, No.1, Cambridge, 2002.
- [15] Susan Rose-Ackerman, CORRUPTION: A STUDY IN POLITICAL ECONOMY, Academic Press, 1978.
- [16] “Regulation of Lobbying: Policy Proposals”, Govt. Reform Unit, Ireland, 2012.
- [17] The OECD Recommendation of the Council on Principles for Transparency and Integrity in Lobbying, 2010.
- [18] CORRUPTION PERCEPTIONS INDEX, Transparency International, 2014.
- [19] Mushtaq H. Khan, “Determinants of Corruption in Developing Countries: The Limits of Conventional Economic Analysis”, Susan Rose-Ackerman, Ed., INTERNATIONAL HANDBOOK ON THE ECONOMICS OF CORRUPTION, Edward Elgar, pp. 216-44, 2006.
- [20] Richard L. Hall and Alan V. Deardorff, “Lobbying as Legislative Subsidy”, THE AMERICAN POLITICAL SCIENCE REVIEW, Vol. 100, No. 1, pp. 69-84, 2006.
- [21] Tom R. Burns and Marcus Carson, “European Union, Neo-Corporatist, and Pluralist Governance Arrangements: Lobbying and Policy-Making Patterns in a Comparative Perspective”, INTERNATIONAL JOURNAL OF REGULATION AND GOVERNANCE, VOL 2 (2), PP. 129-75, 2002.
- [22] JOHAN LAGERLOF, “Are We Better Off If Our Politicians Have More Information?”, THE SCANDINAVIAN JOURNAL OF ECONOMICS, Vol. 106, No. 1, pp. 123-42, 2004.
- [23] Rongili Biswas and Sugata Marjit, “Political Lobbying and Fiscal Federalism: Case of Industrial Licenses and Letters of Intent”, EPW, Feb. 23, 2002.
- [24] S.R. Sen, “Vote Power and Lobby Power”, EPW, Aug. 13, 1994.
- [25] Bhargavi Zaveri, “The Disclosure of Lobbying Activities Bill, 2013”, EPW, June 15, 2013.
- [26] Daniel H. Lowenstein, POLITICAL POWER AND GOVERNMENTAL POWER, Chicago, 1957.
- [27] Clive S. Thomas and Ronald J. Hrebener, “Understanding Interest Groups, Lobbying and Lobbyists in Developing Democracies”, JOURNAL OF PUBLIC AFFAIRS, Feb./May, 2008.
- [28] Thomas M. Susman, “Lobbying in the 21st Century- Reciprocity and the Need for Reform”, ADMINISTRATIVE LAW REVIEW, Vol. 58, No. 4, pp. 737-51, 2006.
- [29] TOWARDS RESPONSIBLE LOBBYING, A Report from AccountAbility in collaboration with the United Nations Global Compact, 2005.

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