

Bill No. LVII of 2011

THE PREVENTION AND MANAGEMENT OF CONFLICT OF INTEREST BILL, 2011

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Bill No. LVII of 2011

THE PREVENTION AND MANAGEMENT OF CONFLICT OF
INTEREST BILL, 2011

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BILL

to provide for setting up of an Institution for prevention and management of conflict of interest and to realise the rights and duties of every citizen in a welfare state like India and for matters connected therewith or incidental thereto.

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Prevention and Management of Conflict of Interest Act, 2011.

Short title,
extent and
commencement.

5 (2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

10 Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Chairperson" means Chairperson of Conflict of Interest Commission appointed under section 22 of the Act;

(b) "Commission" means Conflict of Interest Commission set up under section 21 of the Act; 5

(c) "Conflict of Interest" means the existence of conflict between the public duty of a public official or consultant and the private interest of such official or consultant or any other person, in which the private interest of such official, consultant or other person could improperly influence the performance of official duties and responsibilities by any person, or result in breach of public trust, or be calculated to further the private or commercial interest of any person or organisation; 10

Explanation I.— A conflict of interest may exist even if no unethical or improper act results from it.

Explanation II.— A conflict of interest situation exists when a public official/consultant/person serving on a public body/authority/project or whose recommendations are sought for any public project by any public authority or body, or who is inducted or proposed to be inducted on any committee or sub-committee or advisory body established for any public project has served in a private organisation within the past twenty four months, or is currently serving in a private organisation or will be serving in a private organisation within the following twenty-four months. 15 20

(d) "Consultant" means any person whose expert services, advice or recommendations are sought for any public project by any public authority or body, or who is inducted or proposed to be inducted on any committee or sub-committee or advisory body established for any public project;

(e) "Person" means any individual or association of persons or body or organisation, whether incorporated or not, and includes any trust, foundation or multilateral agency or organisation; 25

(f) "Prescribed" means prescribed by rules made under this Act;

(g) "Private interest" means an interest that is of personal financial, commercial or other benefit to a public official or the organisation to which he belongs or has belonged or has links to, or that can lead to financial, commercial or other benefits to any person or corporation or organisation. 30

(h) "Public authority or body" means and includes:

(i) the Central Government or any Ministry or Department thereof;

(ii) a State Government or any Ministry or Department thereof; 35

(iii) any authority, organisation or body established by or under the Constitution of India or under any law made by Parliament or the Legislature of any State;

(iv) any authority, organisation or body owned, controlled or financed, directly or indirectly, by funds provided by the Central Government or any State Government; 40

(v) any non-government organisation which is substantially financed, directly or indirectly, by funds provided by the Central Government or any State Government;

(vi) any scientific, technical or research institution, university or deemed university which is consulted by, or whose facilities or faculty are utilized for obtaining expert services or recommendations for decision-making by, Governments or entities enumerated in sub-clauses (i) to (v) of this clause; 45

(vii) any private organisation, agency or body which is consulted by, or whose facilities or employees are utilized for obtaining expert services or recommendations for decision-making by, Governments or entities enumerated in sub-clauses (i) to (v) of this clause.

5 (i) "Public project" means any project or program or activity or scheme proposed or undertaken by the Central Government, a State Government or any of the entities enumerated in sub-clauses (i) to (v) of clause (h) of this Section, including projects, programs or activities proposed or undertaken through public-private partnership, privatization, international or multilateral co-orporation or collaboration, or in furtherance
10 of international treaties or conventions;

(j) "Public official" means any person employed or for the time being engaged by a public authority or body, whose services are at the relevant time utilized for any public project, and includes any member of a committee or consultative group constituted by any public authority or body for the purposes of a public project.

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CHAPTER II

CONFLICT OF INTEREST

3. (1) A public authority or body which is engaged in planning or performance of a public project shall not engage or utilize any public official or person or consultant for such project if they know or have reason to believe that such public official or person or consultant
20 has or is likely to have a conflict of interest in respect of such project. Duty of public authority or body.

(2) If at any time it comes to the notice of such public authority or body that any public official or person or consultant has or is likely to have a conflict of interest in respect of such project, the public authority or body shall forthwith ensure that such public official or person or consultant ceases to be engaged or employed or associated with such project, regardless
25 of whether such public project commenced before or after the coming into force of this Act, or whether the appointment or engagement of such public official, person or consultant was prior to coming into force of this Act.

(3) If at any time it comes to the notice of such public authority or body that any recommendation was made or decision taken with the participation of a public official, person
30 or consultant who has or was likely to have a conflict of interest in respect of the particular public project, the public authority or body shall forthwith re-examine such recommendation or decision after complying with sub-section (2), and upon such re-examination shall take a fresh decision or make a fresh recommendation if it deems fit.

(4) a public authority or body referred to in sub-section (1) shall not, except when it is
35 unavoidable in the public interest, accept funding or donations from any person if they know or have reason to believe that such person has or is likely to have a conflict of interest in respect of such project:

Provided that where acceptance of funding from such person is unavoidable in the public interest, reasons shall be recorded for the same and the public authority or body shall
40 seek to obtain such funding from all competitors in the concerned filed.

4. A public official, consultant or a member or employee of any public authority or body shall not render advice or make a recommendation or decision or participate in making a recommendation or decision in respect of a public project if the concerned person has a conflict of interest or knows or reasonably should know that in the making of the
45 recommendation or decision there is the opportunity to further the concerned person's private interest or to further another person's private interest. Duty of individual.

5. (1) A public official, consultant or a member or employee of any public authority or body shall not use information that is obtained in his or her capacity as a public official, consultant, member or employee and that is not available to the general public to further or
Disclosure of inside information.

to seek to further the concerned person's private interest or to further another person's private interest.

(2) A public official, consultant or a member or employee of any public authority or body shall not divulge or communicate information mentioned in sub-section (1) to another person if the concerned person knows or reasonably should know that the information may be used for a purpose described in that sub-section. 5

Not to influence the decision of another person.

6. A public official, consultant or a member or employee of any public authority or body shall not use his or her office to seek to influence a decision made by another person so as to further the concerned person's private interest or to further another person's private interest. 10

Restrictions on gifts, services and benefits.

7. (1) A public official, consultant or a member or employee of any public authority or body shall not accept any direct or indirect benefit including but not limited to fee, payment, gift, services that are monetary or in kind, hospitality including travel costs, personal benefit, research funding, gifts to family members and the like, except lawful compensation, from any person who he knows or has reason to believe or is likely to have a conflict of interest in respect of any public project with which the public official, consultant, member or employee of a public authority or body is concerned. 15

(2) Nothing contained in sub-section (1) shall apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office: 20

Provided that such gift or personal benefit is immediately reported in writing to the concerned public authority or body.

(3) The gift disclosure statement shall,—

(a) be in the form prescribed by the Commissioner; and

(b) indicate the nature of the gift or personal benefit, its source and the circumstances under which it was given and accepted. 25

Procedure on Conflict of Interest.

8. Without prejudice to the provisions of section 4, a public official, consultant or a member or employee of any public authority or body who knows or has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Committee or Panel or Board or Authority or Any other decision making or implementing body, shall, if present at a meeting considering the matter, — 30

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in consideration of the matter.

Removal of person from office having conflict of interest.

9. (1) If it is found that any public official, consultant or employee or member of any public authority or body has or had a conflict of interest, then such person shall forthwith be removed from the said public body or authority, and all decision taken by the said public authority or body during the tenure of such a person herein be cancelled and, shall thereafter, be reviewed by public authority or body after the removal of such a person. 35

(2) Such public authority or body shall inform the Commission about the removal of the concerned person and the results of the review of all the decisions taken during the tenure of the said person, and shall also notify the same on the concerned public authority's or body's website. 40

CHAPTER III

PROVISIONS APPLICABLE TO MEMBERS OF COMMITTEE, PANELS, BOARD, AUTHORITY, COMMISSION OR OTHER DECISION MAKING OR IMPLEMENTING BODY 45

Prohibited activities.

10. A member of a Committee, Panels, Board, Authority, Commission or other decision Making or implementing body shall not,—

(a) engage in any trade, occupation or employment or in the practice of any profession that can be construed as giving rise to conflict of interest; or 50

(b) engage in the management of a business carried on by a corporation or a Business Interest Organisation; or

(c) carry on business through a partnership or sole proprietorship; or

5 (d) hold or trade in securities, stocks, futures or commodities, of commercial enterprises that may benefit directly or indirectly through policy decisions or implementation; or

(e) hold an office or directorship in a commercial enterprise or a Business Interest Organisation or have held an office or directorship in a commercial enterprise or a Business Interest Organisation for the past twenty four months.

10 **11.** Any authority, committee, Panel, Board or other decision making or a implementing body or a member of such a body shall not knowingly award a contract to or approve a contract with, or grant a benefit to, a former member of the body until twenty-four months have expired after the date on which the former member ceased to hold office.

Restrictions applicable to the Committee, Panel, Board, Authority, Other decision-making or implementing body. Restrictions applicable to former members.

15 **12.** No former member of a Committee, Panel, Board, Authority or Other decision-making or Implementing body shall, unless twenty-four months have expired after the date when he or she ceased to hold office as a member of the said body,—

(a) accept a contract or benefit that is awarded, approved or granted by the Committee, Panel, Board, Authority or Other decision-making or implementing body.

20 (b) make representations on his or her own behalf or on behalf of any other person, corporation, commercial sector or Business Interest Organisation with respect to a contract or benefit.

CHAPTER IV

DISCLOSURE

25 **13.** (1) Every public official, consultant, member or employee concerned with a public project shall file with the public authority or body, a public disclosure statement in the form prescribed by the Commissioner.

Public disclosure statement.

(2) Where a consultant or member of any committee, sub-committee, advisory or recommendatory body established by a public authority or body is employed or engaged by any other person, corporation or organization, or is nominated or deputed for the purpose by any other person, corporation or organization, then such other person, corporation or organization shall also file with the public authority or body, a public disclosure statement in the form prescribed by the Commissioner.

(3) A public disclosure statement shall be filed,—

35 (a) within thirty days after becoming a member of a Committee, sub-committee, Advisory body, Panel, Board, Authority or Other decision-making or implementing body; and

(b) within each subsequent year at the time specified by the Chairperson.

40 (4) Every person mentioned in sub-section (1) who is a member on the coming into force of this section shall file a public disclosure statement in the prescribed form within thirty days after the coming into force of this section.

(5) Subject to sub-section (6), a public disclosure statement shall contain,—

(a) interests of the member, and, so far as is known by the member, of the member's spouse and minor children, and of private corporations controlled by the member, the member's spouse and minor children, or any of them, and

45 (b) any salary, financial assistance or other benefit the member has received from

any person, corporation or organisation other than the employer during the preceding twelve months, or is likely to receive during the next twelve months.

(6) In a public disclosure statement with respect to a member or the member's spouse or minor children, the following shall not be disclosed,—

(a) the primary residence owned or controlled by any such person; 5

(b) the primary recreational property owned or controlled by any such person;

(c) automobiles owned or controlled by any such person;

(d) items of domestic, household or personal use of ownership, including cash, non-convertible bonds, trust and bank certificates and registered retirement savings plans which are not self-administered. 10

(7) The person concerned shall file a statement of material change in the disclosure with the public authority or body, in the form prescribed by the Chairperson, within thirty days after,—

(a) a change in the assets, liabilities or financial or business interest of the member or his or her spouse and minor children, or any private corporation represented by any of them; or 15

(b) an event causes a person to become or cease to be a member of the member's family, if such change or event shall reasonably be expected to have a significant effect on the information previously disclosed.

Failure to file public disclosure statement.

14. (1) Where a public official, consultant, member or employee concerned with a public project fails to file a public disclosure statement within the prescribed period, the public authority or body shall not permit such person to attend the meetings of, or to participate in the Committee, sub-committee, advisory or recommendatory body or in any other aspect of the concerned public project, and shall forthwith report about the failure to the Chairperson. 20 25

(2) Where a member fails to file a public disclosure statement by the date specified by the Chairperson under sub-section (1) or fails to appear for consultation by the date specified by the chairperson shall then he prepare a report with the name of the member concerned and for public disclosure.

Availability of Public disclosure statement.

15. The public disclosure statement filed by the concerned person, corporation or organization is deemed to be a public document, and shall be notified by the responsible public body or authority and the Commission on their website and shall be made available on payment of reasonable charges to any person. 30

CHAPTER V

PUNISHMENTS FOR OFFENCES 35

Offences and Penalties.

16. (1) Whoever contravenes or attempts to contravene or abets in the contravention of provisions of section 3 or section 4 or section 5 or section 6 or section 8 or section 9 shall be punishable with imprisonment for a term which may extent to five years, or with fine which may extend to rupees ten lakh, or with both.

(2) Whoever contravenes or attempts to contravene or abets in the contravention of the Provisions of section 11 or section 12 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees five lakh, or with both. 40

(3) Whoever contravenes or attempts to contravene or abets in the contravention of any provisions of this Act or the Rules framed thereunder, for which no other penalty is prescribed, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to rupees one lakh, or with both. 45

17. (1) Where any offence under this Act has been committed by a company, every person who, at the time of the offence was directly incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

18. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offences under this Act shall be cognizable and non-bailable.

Offences to be cognizable and non-bailable.

19. No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall take cognizance of and try any offence punishable under this Act.

Cognizance of offences.

20. For violation of any of the provisions of the Act with criminal intention, the person shall be punished with minimum two years of rigorous imprisonment and a maximum of seven years of rigorous imprisonment or with fine of rupees five lakh and both according to the gravity of offence.

Punishment for act done with criminal intention.

CHAPTER VI

CONFLICT OF INTEREST COMMISSION

21. (1) The Central Government shall, by notification in the official Gazette, constitute a body to be known as the Conflict of Interest Commission to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

Constitution of the Conflict of Interest Commission.

(2) The Commission shall consist of the following:—

(a) a Chairperson, who shall be a person of eminence and has done outstanding work for promoting human rights and a serving or retired judge of Supreme Court;

(b) eight Members, out of which at least six shall be from civil society organisations, and to shall be women, to be appointed by the Central Government from amongst persons of eminence, ability, integrity, standing and experience in the following fields:—

(i) education; or

(ii) public health including women and children's health; or

(iii) food and nutrition; or

(iv) employment and livelihood; or

(v) agriculture; or

(vi) environmental sciences; or

(vii) natural resource management; or

(viii) economics; or

(ix) law.

(3) The office of the Commission shall be at Delhi.

Appointment of Chairperson and Members.	<p>22. The Central Government shall, by notification in the official Gazette, appoint the Chairperson and such other Members as defined in sub-section (2) of section 21:</p> <p>Provided that the Chairperson shall be appointed on the recommendation of a three member Selection Committee constituted by the Central Government under the Chairmanship of the Prime Minister.</p>	5
Term of Office and conditions of service of Chairperson and Members.	<p>23. (1) The Chairperson and every Member shall hold office for a term of three years from the date of assuming the office:</p> <p>Provided that Chairperson or any Member shall not hold the office for more than two terms:</p> <p>Provided further that no Chairperson or any Member shall hold office as such after he or she has attained,—</p> <p style="padding-left: 40px;">(a) in the case of the Chairperson, the age of seventy years; and</p> <p style="padding-left: 40px;">(b) in the case of a Member, the age of sixty five years.</p> <p>(2) The Chairperson or a Member may, by writing under his hand addressed to the Central Government, resign his office at any time.</p>	10
Salary and allowances of Chairperson and Members.	<p>24. The Salary and allowances payable to, and other terms and conditions of service of, the Chairperson and Members, shall be such as may be prescribed by the Central Government:</p> <p>Provided that neither the salary and allowances nor the other terms and conditions of the Chairperson and Members, as the case may be, shall be varied to his or her disadvantage after his or her appointment.</p>	20
Removal from Office.	<p>25. (1) Subject to the provisions of sub-section (2), the Chairperson may be removed from office by an order of the Central Government on the ground of proved misbehaviour or incapacity.</p> <p>(2) Notwithstanding anything contained in sub-section (1), the Central Government may by order remove from office the Chairperson or any other Member, if the Chairperson or any other Members, as the case may be,—</p> <p style="padding-left: 40px;">(a) is adjudged an insolvent; or</p> <p style="padding-left: 40px;">(b) engages during his or her term of office in any paid employment outside the duties of his office; or</p> <p style="padding-left: 40px;">(c) refuses to act or becomes incapable of acting; or</p> <p style="padding-left: 40px;">(d) is of unsound mind and stands so declared by a competent court; or</p> <p style="padding-left: 40px;">(e) has so abused his office as to render his or her continuance in office detrimental to the public interest; or</p> <p style="padding-left: 40px;">(f) is charged with Conflict of Interest; or</p> <p style="padding-left: 40px;">(g) is convicted and sentenced to imprisonment for an offence, which in the opinion of the Central Government involves moral turpitude; or</p> <p style="padding-left: 40px;">(h) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission.</p> <p>(3) No person shall be removed under this section until that person has been given an opportunity of being heard in the matter.</p>	25
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26. (1) If the Chairperson or a Member, as the case may be,

Vacation of office of Chairperson or Member.

(a) becomes subject to any of the disqualifications as mentioned in section 25; or

5 (b) tenders his or her resignation under sub-section (2) of section 22, his or her seat shall thereupon become vacant.

(2) If a casual vacancy occurs in the office of the Chairperson or a Member, whether by reason of his or her death, resignation or otherwise, such vacancy shall be filled within a period of ninety days by making afresh appointment in accordance with the provisions of section 22 and the person so appointed shall hold office for the remainder of the term of office for which the chairperson, or the Member, as the case may be, in whose place he or she is so appointed.

27. No act or proceeding of the Commission shall be invalid merely by reason of,—

Vacancies, etc. not to invalidate the proceedings of the Commission.

(a) any vacancy in, or any defect in the constitution of the Commission; or

(b) any defect in the appointment of a person as the Chairperson or a Member;

15 (c) any irregularity in the procedure of the Commission not affecting the merits of the case.

28. (1) The Commission may appoint a Commissioner and such number of Officers and Staffs, as it considers necessary for the efficient discharge of its functions as provided under the Act:

Appointment of Commissioner, Officers and Staff.

20 **Provided that no appointment shall be made without prior approval of the Central Government.**

(2) The salary and allowances, and other terms of conditions of service shall be as may be prescribed.

25 **29. (1)** The Commission shall meet regularly at its office at such time as the Chairperson thinks fit, but three months shall not intervene between its last and the next meeting.

Procedure for transacting the business.

(2) All decisions at a meeting shall be taken by majority:

Provided that in the case of equality of votes, the Chairperson, or in his or her absence the person presiding, shall have and exercise a second or casting vote.

30 (3) If for any reason, the Chairperson is unable to attend the meeting of the Commission, any Member chosen by the Members present from amongst themselves at the meeting, shall preside.

(4) The Commission shall observe such rules of procedure in the transaction of its business at a Meeting, including the quorum at such meeting, as may be prescribed by the Central Government.

35 (5) All orders and decisions of the Commission shall be authenticated by the Chairperson or any other officer of the Commission in this behalf.

CHAPTER VII

FUNCTIONS AND POWERS OF THE COMMISSION

30. (1) The Commission shall perform all or any of the following functions, namely,—

Functions of the Commission.

40 (a) examine and review the safeguards provided by or under any law for the time being in force for prevention of Conflict of Interest in decision making and

implementation of any policy or programme of the Government of India and State Government;

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) examine all policies and programmes of the Central Government for Conflict of Interest in decision making and implementation and initiate proceedings in such cases; 5

(d) examine proposals for Public Private Partnerships for conflict of interest and make recommendations to the Central Government;

(e) examine policies, programmes and Public Private Partnerships initiated before the setting up of the Commission for conflict of interest and institute remedial action if such conflict of interest is found to be existing or having existed when the decision was taken or the programme was implemented; 10

(f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities for conflict of interest; 15

(g) spread Conflict of Interest literacy among various sections of the society and promote awareness of the safeguards available to prevent it through publications, media, seminars and other available means;

(h) inquire into complaints and take *suo motu* notice of matters relating to conflict of interest; 20

(i) such other functions as it may consider necessary for safeguarding the interests of the people and their human rights and any other matter incidental to the above functions.

(2) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force. 25

Powers of the Commission.

31. (1) The Commission shall, while inquiring into any matter referred to in clause (h) of sub-section (1) of section 30 have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and, in particular, in respect of the following matters, namely,— 5 of 1908.

(a) summoning and enforcing the attendance of any person and examining him or her on oath; 30

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office; and 35

(e) issuing commissions for the examination of witnesses or documents.

(2) The Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused.

Action to be taken after inquiry.

32. The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely:— 40

(i) where the inquiry discloses Conflict of interest, initiate measures to remove such conflict; and

(ii) approach the Supreme Court or the High Court concerned for such direction, orders or writs as that Court may deem necessary. 45

CHAPTER VIII

INVESTIGATION INTO BREACHES

33. (1) Any person may request in writing to the chairperson for investigating an alleged breach of this Act by a Member of a policy or decision-making or implementing body. Request for investigation.

5 (2) A request under sub-section (1) shall be in the form of an affidavit and shall set out the grounds for the belief and the nature of the alleged breach.

(3) The decision-making or implementing body may also request the Chairperson to investigate any matter in respect of an alleged breach of this Act by a Member.

10 **34.** (1) On receiving a request under section 33, the Chairperson may conduct an investigation with or without conducting an inquiry. Investigation and inquiry.

(2) The Chairperson shall provide the Member who is the subject of the investigation with reasonable notice and shall give the member an opportunity to respond to the allegation.

15 (3) When the Chairperson conducts an investigation or an inquiry under this section the Member who is the subject of the request under section 33 shall respond promptly and completely to all of the Chairperson's questions and requests for information.

(4) Where the Chairperson elects to conduct an inquiry under this section, he has all the powers and privileges conferred on a Chairperson under of this Act under sub-section (2) of section 31.

20 (5) If the Chairperson is of the opinion that the request is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Chairperson may refuse to conduct an investigation, or may cease the investigation.

(6) If the Chairperson refuses to conduct an investigation or ceases an investigation, then he or she shall inform,—

(a) the member against whom the allegation was made, and

25 (b) the person or the decision-making or implementing body who made the request for investigation.

Explanation.—

49 of 1988. 30 For the purposes of this section, the powers and actions taken by the Chairperson or other authorities hereunder, shall be without prejudice to the provisions of the Prevention of Corruption Act, 1988 or any other law dealing with conduct, discipline or vigilance of Government servants or public authorities.

35 **35.** If the Chairperson, when conducting an investigation, discovers that the subject matter of the investigation is being investigated by police or that a charge has been laid, the Chairperson shall suspend the investigation until the police investigation or charge has been finally disposed of, and shall make public disclosure of the matter. Police investigation of charge.

36. (1) Where a request is made under section 33 and the chairperson has determined that the request does not fall within the scope of sub-section (5) of section 34, the Chairperson shall, upon completion of an investigation, report to,— Report of Chairperson.

(a) the decision-making or implementing body to which the Member belongs,

40 (b) the Member who is the subject of the investigation,

(c) if the request was made by a person under sub-section (1) of section 33 that person.

45 (2) Where it appears to the Chairperson that a report may adversely affect a Member, the Chairperson shall inform the Member of the particulars and give the Member an opportunity to make representations, before the Chairperson completes the report.

(3) The report of the Chairperson shall set out,—

(a) the facts found by the Chairperson,

(b) the findings as to whether or not a Member has breached the Act and the nature of the breach, and

(c) the recommended sanction, if any.

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(4) The Chairperson's report shall remain confidential until it is laid before the decision-making or implementing body to which the Member belongs, and no person shall disclose all or any portion of it before that time.

Recommended sanctions.

37. Where the Chairperson conducts an investigation under section 34 and finds that a member has breached any of sections 3, 4, 5, 6, 8, 9, 10 11, 13, inclusive, or has failed to file a gift disclosure statement, a public disclosure statement or a statement of material change within the time provided by this Act or has failed to disclose relevant information in that statement, the Chairperson may recommend that the Member be expelled from membership of the said decision-making or implementing body.

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Public Disclosure of sanctions.

38. Where the Chairperson conducts an investigation under section 34 and finds that a Member has breached any of the sections mentioned in 37, the Chairperson shall make a public disclosure of the findings and the sanctions against the Member and the same on the website of the Commission.

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CHAPTER IX

MISCELLANEOUS

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Power to make rules.

39. (1) The Central Government may, by notification in the official Gazette and make rules for carrying out provisions of this Act.

(2) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

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Annual Report and audit statement to be laid before Parliament.

40. (1) The Chairperson shall in each year submit to both Houses of Parliament an annual report describing the progress and activities of the Commission in the previous year.

(2) The Annual Report and Audited statement of the commission shall be tabled in both Houses of Parliament.

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STATEMENT OF OBJECTS AND REASONS

Conflict of interest may be defined as a situation in which politicians, public servants, consultants, technical or scientific experts, subject matter specialists or even academics have an actual or potential interest (usually financial) that may influence or appear to influence the conduct of their official duties or the quality of advice or recommendations rendered by them in the context of decision making by the governance structures and institutions for public good, conflict of interest becomes even more critical in cases where the corporate or private sector or their lobbyists are involved.

Duty of Loyalty is a term used in corporate law to describe a fiduciaries' "conflicts of interest" and requires fiduciaries to put the corporation's interests ahead of their own. Extending this logic to governance structures and institutions, government employees, and those representing the government in any form or manner are required to put public interest or citizens' interests and rights ahead of their own interests or that of any other party.

The Fundamental Rights are set out in Part III of the Constitution. The State cannot abridge those rights. The "right to life" is enshrined in article 21 as a fundamental right. This right has been extended to cover the right to live with human dignity. In **Bandhua Mukti Morcha Vs. Union of India** Justice Bhagwati referring to **Francis Coralie Mullin Vs. Administrator**, Union Territory of Delhi, stated:

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

Thus, Duty of Loyalty dictates that every government employee, institution, or anyone representing the government directly or indirectly in any manner ensure that, in cases where conflict of interest exists, the citizens' right to live with human dignity is put ahead of all other interests.

The need to avoid conflicts of interest in governmental decision making, and particularly when constituting expert committees or advisory bodies, has found statutory recognition in section 13(1) of the Food Safety and Standards Act, 2006 which requires that the experts co-opted on such committees must be "independent." The Supreme Court, in its Order dated February 8, 2011 in Writ Petition (Civil) No. 681 of 2004 (**Central for Public Interest Litigation v/s Union of India and Others**), enforced this requirement for independence to avoid conflicts of interest.

International and multilateral agencies and bodies have also accepted and recognised the need to protect public decision making from private conflicts of interest. For example, Article 5.3 of the Framework Convention on Tobacco Control spells out clearly the duty of the state: "when Parties are setting and implementing public health policies related to tobacco control, they shall 'act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law'." Similarly, the various agencies and bodies constituted under the aegis of the United Nations, including the World Health

Organisation and other agencies, have framed guidelines to prevent conflicts of interest. The current market liberalization has ushered in an era of new relationships between the state and the markets, with a potential for creating a new relationship between the state and the citizen. Private sector is increasingly being invited to present their solutions to the nation's ills. Yet many services, such as public goods—health care, nutrition, education, water sanitation, protection of the environment, etc.—cannot be provided by markets. The primary duty of the private sector is to increase its profits for its shareholders, whereas the fundamental and inalienable duty of the State is to provide all its citizens, especially the weakest and poorest, with the minimum requirements to live a life with safety and dignity, regardless of the cost. The Constitution of India makes it incumbent that the State gives primacy to article 21 and its expanded interpretation as the right to live with human dignity.

The differing priorities—that of the State and that of the private sector—present in themselves a serious conflict of interest. The current draft legislation on Conflict of Interest is an attempt to safeguard the duty of the State towards its citizens and to uphold article 21 of the Constitution.

Hence, this Bill.

DR. E.M. SUDARSANA NATCHIAPPAN

FINANCIAL MEMORANDUM

Clause 21 of the Bill provides for the constitution of a Commission to be known as the conflict of Interest Commission. Clause 24 provides for the salary and allowances of Chairperson and Members.

Clause 28 provides for the appointment of Commission Officers and staffs and their salary and allowances and other terms of condition of service.

The Bill, if enacted, will involve expenditure from the consolidated Fund of India. However, at this stage, it is not possible to quantify the exact amount of recurring and non-recurring expenditure to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 40 of the Bill empowers the Central Government to make rules for carrying out the purposes of this Bill. The rules will relate to matters of details only. The delegation of legislative power is of normal character.

RAJYA SABHA

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BILL

to provide for setting up of an Institution for prevention and management of conflict of interest and to realise the rights and duties of every citizen in a welfare State like India and for matters connected therewith or incidental thereto.

(Dr. E.M. Sudarsana Natchiappan, M.P.)