

# Business Standard

## AirAsia case: Lobbying continues to exist in a grey zone, say legal experts

The AirAsia incident opens up the debate on whether to regulate lobbying

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*Illustration by Ajay Mohanty*

The Central Bureau of Investigation (CBI) has alleged that AirAsia tried to influence India's international flying regulations through lobbyists. Currently, there are no rules regulating or guiding lobbying in India. Neither is it explicitly forbidden. So, it continues to exist in a grey zone, say legal experts.

“Lobbying” is a common allegation in many FIRs and charge sheets filed by the CBI and other law enforcement agencies, though policymakers do not call this activity “illegal”. Several recent cases have centred on lobbying by corporates, implying that government policies have been influenced or attempts have been made to change policies. Bribing government officials has often been linked to lobbying.

Explaining the thin line between what is legal and what is illegal, a government official noted that many ministries, such as Defence, have a clear understanding of what is permitted. While bureaucrats can hold meetings with top company executives, middlemen and outside representatives are actively discouraged. Even informal meetings with such persons at social gatherings are seen as unethical, he pointed out.

In fact, there's a reference list made by the CBI, which it revises periodically, to tell government officials and public authorities as to who are persona non grata. This is a "secret list". However, many names have tumbled out of the list, triggering controversy. In 2012, the CBI came out with a list of 23 names as 'undesirable contact men' or UCM, according to reports. These persons were learnt to be operating in ministries such as Defence, Home, Finance, Coal, Power, Telecom and Shipping. These UCMs include chartered accountants, consultants, arms dealers and lobbyists. There has been a demand to make it a public document, but the list remains "confidential".

When questions on "undesirable contact men" were asked in Parliament, the government declined to reveal the list. Minister of State for Personnel, Public Grievances and Pensions Jitendra Singh, however, had told the Lok Sabha in December 2015 that the Centre is committed to implementing its policy of zero tolerance against corruption.

K M Chandrasekhar, former cabinet secretary, noted middlemen were people to whom a supplier gives a commission for swinging a deal. "This is illegal and for defence equipment, the seller has to give an undertaking that no middleman has been used," he says. But, he interpreted lobbying differently.

"Lobbying means speaking for one's own projects and ideas and trying to persuade others to accept your arguments. This cannot be illegal," he adds. The problem arises only when corruption enters the picture and unjustified favours are given.

According to Vineeta Yadav, associate professor in Department of Political Science, Penn State University, while lobbying for a gain that accrues only to a single firm or benefits one segment at the existential expense of another — such as the repealing of the land acquisition Act — may seem unethical, in a democracy, one cannot ban it. "Democracy is about advocating for different interests," she adds.

Rajiv Desai, chairman and chief executive of Comma Consulting, agrees that lobbying and advocacy are essential for democracy. Experts point to lobbying campaigns for universal primary education, against sex trafficking, against smoking, for lower taxes on toiletries and cosmetics, to amend laws governing the business of financial services, courier firms and cable operators, among others. "They have benefited the public interest as much as the interests of those who sponsored them," says Desai.

Experts say one also needs to understand the fine line between advocacy and lobbying. "Advocacy means arguing in favour of a cause or idea or issues that affect people or society at large. Lobbying limits the scope of advocacy and is aimed at influencing policies through manipulating policymakers," says Diljeet Titus, founder of corporate law firm, Titus & Co.

The need for regulating the activity of lobbying was first taken up through a private member's bill, The Disclosures of Lobbying Activities Bill, 2013, that was introduced in the Lok Sabha in the wake of the Niira Radia controversy. But the Bill lapsed and the effort was not revived. In 2014, the US retail major Walmart faced a probe on its lobbying activities in India but the report by the committee, headed by a former chief justice of Punjab and Haryana high court, was inconclusive.

Nishith Desai, founder and managing partner, Nishith Desai Associates, feels that regulation of lobbying activities in India are envisaged largely on the supply-side. “Such an approach may not satisfactorily address concerns of transparency and constitutional ethics,” he adds. He is in favour of the Law Commission examining the need for regulating the activity of lobbying.

Rajiv Desai feels the establishment of a registry would provide credentials to lobbyists, individual as well as firms. “In accepting such credentials, lobbyists would be required to disclose their clients and fees received. The registry could go a step further and demand from various government ministries, departments and agencies periodic reports on any contacts they may have had with lobbyists,” he adds.

Titus favours adopting Slovenia’s model —within Indian context — where an independent commission for prevention of corrupt practices has been set up and entrusted for monitoring and enforcing compliance with the lobbying laws.

“We need to create more systematic channels of consultation between officials and stakeholders that are open to the entire public and allow public scrutiny as well,” says Yadav.

### **Laws that impact lobbying in India**

- **Lobbying** is presently neither recognised nor regulated
- **The Prevention of Corruption Act, 1988 (POCA)**, a statute that seeks to curb corruption in public offices, has an indirect influence on lobbying
- **Under sections 7 to 12 of the Act**, any person found to be persuading public servants by corrupt or illegal means is punishable with fine and imprisonment up to 5 years
- **The Lokpal and Lokayuktas Act, 2013**, calls for setting up of ‘lokpal’ to conduct preliminary inquiry into offences allegedly committed by public servants under the POCA.
- **The Foreign Contribution (Regulation) Act, 2010**, regulates foreign contribution and utilisation. Under Section 3 of the Act, foreign contributions cannot be accepted by candidates for elections, judges, government employee or member of legislature, political party, organisation of political nature

### **How other nations regulate lobbying**

- **Lobbying is regulated** by a few countries, including the US, Canada, Australia, the UK, Germany, Lithuania, Slovenia, Ireland, France, Japan
- **In the US**, the US Lobbying Disclosure Act makes it mandatory for lobbyists to register with the Secretary of Senate and the Clerk of the House of Representatives
- **In several countries**, lobbyists are required to file their financial reports, list of clients and the methods employed to lobby
- **In the UK**, policymakers are prohibited from advocating a matter in Parliament in return for pecuniary gratification by lobbyists. In Germany, lawmakers must disclose communications with lobbyists
- **In Lithuania and Hungary**, regulations have failed to persuade lobbyists and public officials to register and disclose their activities