



UNODC

United Nations Office on Drugs and Crime

Corporate Integrity



A Report

Incentives to corporate integrity in accordance with the United Nations Convention against Corruption

**INDIA: Incentives for corporate integrity in accordance
with the United Nations Convention against
Corruption**



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A report on:

Compliance of Indian laws and policies on private sector corruption with the United Nations Convention against Corruption (UNCAC).

And

Current practices, grassroot challenges and training needs required to be addressed to strengthen corporate integrity and compliance with the United Nations Convention against Corruption.

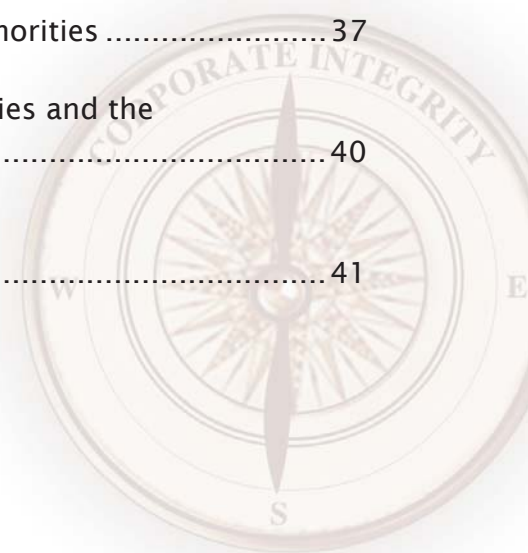
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Table of Contents

Acknowledgements.....	vii
Definitions.....	ix
Acronyms	xi
1. Executive Summary.....	1
2. Approach and Methodology.....	5
3. United Nations Convention against Corruption (UNCAC)	9
4. Introduction: Private sector and corruption.....	15
5. National legislation on private sector corruption.....	17
5.1 Analysis: Compliance of Indian legislation with UNCAC.....	17
5.1.1 Article 12: Private sector.....	17
5.1.2 Article 21: Bribery in the private sector.....	26
5.1.3 Article 26: Liability of legal persons.....	30
5.1.4 Article 32: Protection of witnesses, experts and victims.....	32
5.1.5 Article 33: Protection of reporting persons	35
5.1.6 Article 37: Cooperation with law enforcement authorities	37
5.1.7 Article 39: Cooperation between national authorities and the private sector.	40
Table 1: Summary of Indian legislation and policy compliance with the UNCAC.....	41



6. Grassroot challenges, current practices and training needs	49
7. Recommendations	83

Annexures

Annexure 1: List of legislation and policy reviewed	91
Annexure 2 : Sampling strategy followed for survey.....	93
Annexure 3 : Survey questionnaire - Private sector.....	94
Annexure 4 : Survey questionnaire - Law enforcement	104
Annexure 5 : List of Working Group participants - New Delhi & Bangalore	112
Annexure 6 : Bibliography	117





Acknowledgement

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Special acknowledgements:

UNODC would like to thank all the participants of the two 'Expert Working Group' who gave their time and their valuable inputs during the discussions held at the meetings and afterwards too.

UNODC would like to acknowledge the support received from the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India to conduct the survey and develop this report.



Definitions

To establish consistency, a few definitions have been clearly outlined as below:

Policy – A policy describes the objectives of a government and the various programs, principles and action plans that help the government achieve the stated objectives. A policy is viewed as a guideline document that helps governments move towards accomplishing their objectives.

Law – Laws help governments to deploy their stated policies. Law provides the legal framework for implementing a policy. A law establishes the set of rules and regulations to be followed compulsorily and prescribes punishments or sanctions for not following the same.

Practice – Practice is defined as to how the policy and legislation are implemented on the ground. There are processes, procedures and rules that are prescribed for implementation that define the recommended practice. However in the context of this research report, we focus primarily on practice as “actions on the ground”.

Best Practice – It is important to note the difference between ‘practice’ and ‘best practice’. A ‘best practice’ is defined as a set of techniques or processes that have consistently yielded better results than other similar ones in the space of study. Best practices are applicable across legislation, policy and practice as defined above.

Incentives – Used in the context of corporate integrity, incentives are positive enablers that reward compliance to corporate integrity. Incentives represent a positive approach to promote corporate integrity.

Sanctions – Used in the context of corporate integrity, sanctions are inhibitions, deterrents or penalties imposed on non-compliance or compromise of corporate integrity. Sanctions represent a deterrent based approach to ensure that corporate integrity is not compromised.





Acronyms

AAI	Airports Authority of India
ADB	Asian Development Bank
AERO	Airport Economic Regulatory Authority
BII	Business Integrity Index
CAG	Comptroller and Auditor General
CIC	Chief Information Commission
CBI	Central Bureau of Investigation
CII	Confederation of Indian Industry
CrPC	Criminal Procedure Code, 1973
CPR	Centre for Policy Research, New Delhi
CVC	Central Vigilance Commission
DCA	Department of Company Affairs
DF	Development Fees
DFPR	Delegated Financial Powers Rules
DIAL	Delhi International Airport Limited
E & Y	Ernst & Young, New Delhi
FCPA	The US Foreign Corrupt Practices Act, 1977
FICCI	Federation of Chambers of Indian Commerce and Industry
GFR	General Financial Rules, 2005
GOI	Government of India
IGIA	Indira Gandhi International Airport
INR	Indian Rupee
IP	Integrity Pact
IRDA	Industries Development and Regulation Act, 1951
ISO	International Organization for Standardization



JV	Joint Venture
KTPP	Karnataka Transparency in Public Procurement Act, 1999
MIS	Management Information System
MNC	Multi National Company
MoCA	Ministry of Civil Aviation
MoU	Memorandum of Understanding
NFRA	National Financial Reporting Authority
OECD	Organization for Economic Co-operation and Development
OMDA	Operations Management Development Agreement
PAC	Parliamentary Accounts Committee
PPP	Public – Private Partnership
PSF	Passenger Service Fee
ROFR	Right of First Refusal
RTI	Right to Information Act, 2005
SEBI	Securities and Exchange Board of India
SSA	State Support Agreement
TII	Transparency International India
ToR	Terms of Reference
UNCAC	United Nations Convention against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNODC	United Nations Office on Drugs and Crime





1 Executive Summary

Corruption is a challenge that no country or sector can claim to be immune to. Increasingly, there has been global recognition of the valuable role that the private sector can play and must play in addressing corruption.

The involvement of the private sector is especially pertinent in a country like India. The private sector's share of Indian GDP has grown significantly in recent years. India is a member of the Business 20 (B20). The Business 20, a task force set up under the G20 has identified 12 topics which are believed to be crucial for businesses across the world. Of these 12 topics, corruption has been identified as one of the priority issues, urging members to participate in the fight against it. Furthermore in today's business environment, business ethics and an anti-corruption orientation is no longer a choice, but a necessity for sustainable business.

The opening up of the Indian economy in the 1990's, which led to the free inflow of Foreign Direct Investment (FDI), not only increased the role and importance of the private sector in the Indian economy but has also heightened the need for focus on business ethics and corporate integrity. In 2002, the Department of Company Affairs (DCA) under the Ministry of Finance and Company Affairs then set up the Naresh Chandra Commission to examine various corporate governance issues. Corporate governance is an all-encompassing subject, which involves regulatory mechanisms to monitor actions of a company's management and its director. The objective of this is to mitigate risks which may stem from the misdeeds of corporate officers. One observation made by this commission was that unlike in many other countries, the need for strong and effective corporate governance in India does not emerge from financial crisis; it stems from increasing international competition resulting from the liberalization or opening of economy, and several large scams (such as the '1992 stock market scam') and others recent times.

In May 2011, India became party to the United Nations Convention against Corruption (UNCAC) joining over 160 other countries who were party to this UN Convention. The UNCAC calls attention to the need to prevent and address private sector corruption. It provides for article 12 on the private sector and many other articles that are applicable to private sector corruption. As the custodian of the UNCAC, enhancing the capacity of States Parties to implement the provisions of this Convention is one of the prime mandates of UNODC. In India, UNODC is implementing two 'anti-corruption projects' supported by the Siemens Integrity Initiative – 'Incentives to corporate integrity and cooperation in accordance with UNCAC' which addresses a larger umbrella of private sector integrity issues, including private sector association with the State during public procurement. The purpose of this project is to create awareness on the need for a system of incentives, both within organizations and in

the competitive landscape they work in, so as to strengthen an environment where companies are more willing to self-report an incident of corruption. The second project, 'Public-Private Partnership for probity in public procurement' seeks to reduce vulnerabilities to corruption in the intersection between the private sector and the State under public private partnership projects.

This report presents the findings of two research initiatives carried out under the first project 'Incentives to corporate integrity and cooperation in accordance with UNCAC'. The first is an assessment of Indian legislation to assess compliance with the UNCAC and to identify legislative gaps. The second is a survey of current practices, grassroots challenges and training needs to identify gaps in practice. Both provide valuable information on the legal framework as well as its practical implementation.

As indicated in this report, India has no specific legislation addressing corruption in the private sector. However, India is fairly compliant with the UNCAC in relation to addressing private sector corruption, taking into account provisions in existing legislations and if the draft legislations are enacted. The Ministry of Home Affairs is currently debating an amendment to the Indian Penal Code to include as an offence, 'bribery' within the private sector. Secondly, the Ministry of Corporate Affairs, Government of India has drafted the Company Bill 2012, which criminalizes a number of offences, such as 'wrongful withholding of property' of the company or applying it in a manner that has not been authorized and 'fraud', which includes intent to deceive, to gain undue advantage from, or to injure the interests of the company or its shareholders or its creditors or any other person. Some of the means by which fraud is done could include corrupt practices, such as: providing false documentation like financial statements, returns, reports, certificates etc. and intentional giving of false evidence. It also provides for a limited liability of companies wherein penalties are applicable to the company or any officer of a company for violations of any provisions of the Act. The Company Bill contains certain requirements for audit, responsibilities of directors and company secretaries and also the investigative roles of selected organizations to look at private sector management. The Government of India has also drafted the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill 2011.

While these legislations and amendments to legislations are still pending, what currently exists are broad offences across different legislations. Some of these laws that are applicable to the private sector are: general offences of cheating, breach of trust or attempt to commit a criminal offence, or the giving or attempting to give a gratification with a view to induce the electoral right of a person, right to stand, not stand or withdraw from being a candidature in electoral proceedings under the Indian Penal Code. The Prevention of Corruption Act 1988 includes as an offence, the receipt of gratification by a private person to use personal influence over a public servant through illegal and corrupt means, abetment in the commission of an offence by a person who is not a public servant. The Prevention of Money Laundering Act 2002 covers as an offence a person's act of being part of any of the process of the proceeds

of crime and calls this property untainted property. Additionally, from April 2001, listed companies in India need to follow very stringent guidelines on corporate governance¹. The enactment of the UK Bribery Act 2010 and the Foreign Corrupt Practices Act 1977 (US'FCPA) has also additional obligations for many MNCs operating in India.

In light of this several recommendations contained in this report include a need to create legal liability of legal entities along with the liability of natural and legal persons who are proved to have committed acts of corruption. This liability of an entity must be different and additional to the liability of the person. Secondly, what is required are legal provisions by which there are reduced sanctions, punishments and penalties for self- disclosure or for cooperating with law enforcement during investigations, such as commercial and operational sanctions, legal sanctions, and reputational sanctions². Thirdly, it is important to include in legislation the requirement for companies beyond a certain threshold to have a whistleblower mechanism or some form of internal reporting channels of corruption, as well as some form of external audit. Protection of witnesses, experts and victims is also a much required area that needs to be addressed. Fourthly, India has drafted the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organizations Bill 2011, which is an important legislation requiring enactment.

It is well known that a strong legislation is effective only with effective implementation. It is also well known that there is a need to put in place a number of measures that address the deviations which may occur at the grassroots level and in the daily practices of the thousands of professionals working for the private sector in India. Governments, multilateral institutions, banks and companies recalled that the devil lay in the details i.e. the nitty-gritty of transactions among companies, banks, financial institutions and capital markets; corporate laws, bankruptcy procedures and practices; the structure of ownership and crony capitalism; stock market practices; poor Boards of Directors with scant fiduciary responsibility; poor disclosures and transparency; and inadequate accounting and auditing standards.

High targets and tight deadlines, low orientation of the management's focus on ethical issues along with a highly dynamic and competitive market are some of the reasons cited for corruption in the Indian business sector. Most companies have a code of ethics, but there is very little adherence as they remain voluntary codes. The challenges to small and medium sized companies in an environment such as this are even greater. However, the loss of image and clientele in an international market is also cited as one of the reasons why companies are slowing seeking to ensure strong corporate governance and integrity. While a strong legislation may only address some of these aspects, it is important to create a change in business practice and mind set on the ground.

In view of these observations and along with recommendations concerning legislation, this report further recommends a balance between incentives and sanctions to strengthen corporate integrity. The environment in India does not as yet acknowledge the need for incentives and

¹ Executive Summary- Naresh Chandra Commission 2002- Corporate governance

² Humbolt-Viadrina School of Governance."Motivating Business to Counter Corruption: A Global Survey on Anti-Corruption Incentives and Sanctions", 2012.http://www.humboldt-viadrina.org/w/files/anti-corruption/hvsg_acis_motivating-business-to-counter-corruption_report_final.pdf

there is very little awareness and acceptance of this aspect of corporate integrity. Nevertheless some of the incentives suggested during discussion meetings are: professional recognition within organizations for the ability to follow clean processes of business despite the presence of competition; preferred access to business opportunities globally and among international clients; lower turn around of staff as a result of greater employee morale; and strong and effective whistleblower mechanisms. While corporate integrity has largely been seen as a private organizational concern, views of the private sector indicate that the government can play a significant role in this process. Government recognition for ethical corporate behaviour, national recognition through greater financial access from finance institutions; positive investor perception, rebates and favourable commercial conditions (e.g. lower interest rates & tax breaks), and industry chamber membership are just a few possibilities.

Awareness and sensitization on the issue of private sector corruption and the vulnerabilities to the same are an important area to be addressed. These awareness and sensitization programmes must start from the level of management institutes and business schools to target the next generation of private sector. Training and sensitization is also required for law enforcement officials who handle economic crimes. As limited knowledge or poor orientation may lead to harassment and offer opportunities for other forms of corruption. The close cooperation between law enforcement officials and the private sector may be a recommended practice.

While a number of non-mandatory provisions were analysed under this report, there is a need for some mandatory provisions and immediate recommendations to be taken up in order to strengthen adherence to the UNCAC. These would be important as India prepares for the peer review mechanism in 2014 outlined under the ratification process of the UNCAC.





Approach and methodology

This report reflects the findings and consolidated recommendations of two studies to understand compliance with the following articles of the UNCAC: Article 12 (Private sector), 26 (Liability of legal person), 32 (Protection of witnesses, experts and victims), 33 (Protection of reporting persons), 37 (Cooperation with law enforcement), and 39 (Cooperation between national authorities and public Sector).

A. Assessment of Indian legislation to assess compliance of Indian laws and policies on private sector corruption with the UNCAC.

Methodology:

The assessment was based on a desk review of Indian legislation and policy at the central level to assess compliance with the above mentioned articles of the UNCAC. Furthermore and as a part of the effort to obtain feedback on how laws and policies are perceived at a grassroots level, 12 entities were selected to participate in this corporate integrity project based on the criteria listed below:

- Top 50 of India's most admired companies – Fortune Magazine, Hay Group (2012, 2011).
- Wall Street Journal – India's most admired companies 2009.
- Top 7 sectors and the first organization on the list in each sector.

Annexure 1 details of the different legislations, policy documents and the list of 12 entities referred to for this analysis.

B. Survey to assess current practices, grassroots challenges and training needs to identify areas that require strengthening.

Methodology:

A survey questionnaire was developed to encourage responses from both law enforcement officials and private sector. The questionnaire was tested with a group of 10 to 15 individuals and then modified. Thereafter the survey was conducted between June 2012 to January 2013. Approximately 400 individuals were contacted and responses were obtained from approximately 150 respondents. Ernst & Young Pvt. Ltd., a global consulting firm was contracted for this assignment.

Modes of data collection:

Since corruption is a sensitive topic and senior executives' survey responses were planned, Ernst and Young adopted the following methods to administer the survey:

- Face to face interviews: It provided flexibility and opportunity to ask questions and get adequate responses from the respondents.
- Telephonic interview: These were conducted with executives who were not available for direct interviews.
- Written document (mail survey): These were conducted with respondents who were not available for either direct or telephonic interviews.

Obtaining survey responses

1. Ernst & Young Pvt. Ltd. contacted both senior executives and lower management personnel of companies in the sample selected for the survey. This entailed wider information on different topics because different levels of corporate hierarchy might have different opinions on the same subject.
2. Ernst & Young Pvt. Ltd. contacted about 15 small sized companies where no responses were received.

An effort was also made to include small & medium sized enterprises

Annexure 2 provides details of the sample chosen for the survey and a copy of the survey questionnaire.

Sample of both studies were discussed and shared at six meetings with the 'Expert Working Groups' for the project conducted at New Delhi and Bangalore respectively, between May and June 2012. The recommendations and findings of this report reflect the feedback received from working groups participants which enriched the review process and helped the research team arrive at more precise outputs for both projects. Findings of the research were also fine-tuned based on expert group discussions that took place in the expert's group meeting held at the IACA Laxenburg, Austria from 24 to 26 September 2012.

Annexure 3 provides details on the participation of the working group meetings, New Delhi and Bangalore.



Challenges faced during research:

Both research teams faced several challenges during the process of eliciting information and opinions. Responses were not forthcoming from the selected entities on queries about corruption and areas vulnerable to corruption. Most entities were silent, reticent or cautious in their responses. Whatever little was received by way of responses around practice were more statements of intent rather than how these are translated into practice on the ground. Consequently, the research team undertook a course correction and focused on obtaining information on practical difficulties encountered, from official reports of the CAG and the CIC. This indicates that reluctance and fear to talk about corruption is an important area that needs to be addressed. Secondly at the time of research and publication of this report, the Public Procurement Bill was still in draft. Therefore there may be a possibility that recommendations of this report already have been integrated.





United Nations Convention against Corruption (UNCAC)

3

The United Nations Convention against Corruption (UNCAC), entered into force on 14 December 2005. It is the first global legally binding anti-corruption instrument that urges State Parties to create legal and policy frameworks in accordance with globally accepted standards, international regime to tackle corruption more effectively.

The UNCAC also contains articles related to addressing private sector corruption. Provided below is the full text of the articles that this report has chosen to assess compliance of Indian legislation with. However, many of these articles may not be meant for the private sector alone.

Article 12: Private Sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and where, appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.
2. Measures to achieve these ends may include, inter alia
 - A) Promoting cooperation between law enforcement agencies and relevant private entities.
 - B) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among business and in the contractual relations of business with the State.
 - C) Promoting transparency among private entities, including where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.
 - D) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities.
 - E) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure.

- F) Ensuring that private enterprises taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.
- 3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention.
 - A) The establishment of off the books accounts.
 - B) The making of off the books or inadequately identifies transactions
 - C) The recording of non -existent expenditure
 - D) The entry of liabilities with incorrect identification of the objects
 - E) The use of false documents
 - F) The intentional destruction of bookkeeping documents earlier than foreseen by the law.
- 4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 21: Bribery in the private sector

- 1. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities.
 - A) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
 - B) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 26: Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions. Including monetary sanctions.

Article 32: Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.
2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:
 - A) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons.
 - B) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.
3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.
4. The provisions of this article shall also apply to victims in so far as they are witnesses.
5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 33: Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

Article 37: Cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.
2. Each State Party shall consider providing for the possibility, in appropriate cases, of migrating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.
4. Protection of such persons shall be, mutatis mutandis, as provided as provided for in article 32 of this Convention.
5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 39: Cooperation between national authorities and the private sector

1. Each State Party shall take measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with the Convention.
2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

In addition, the UNCAC mentions additional acts which should be criminalised in the private sector:

- **Bribery** - both the promise, offering, giving of an undue advantage and also the acceptance of this undue advantage in different situations i.e when it is offered, given or promised to and accepted by a national public official; similarly when it is offered, given or promised to and accepted by foreign public officials and officials of public international organizations; and also when it is promised, offered, given and if it is also accepted by the a person working in the private sector. It also disallows the tax deductibility of expenses that constitute bribes.
- **Embezzlement of property** in the private sector including private funds or securities.

The table below provides an understanding of which articles from the ones reviewed fall in to the category of mandatory to implement (M), optional to implement (O) and obligation to implement if consistent with fundamental legal principles (C).

Article of the UNCAC	Sub provision and category
Article 12: Private sector.	Art. 12(1)(M) – Prevention, accounting and auditing standards, penalties for failure to comply. Art. 12(2)(O) – Measures to achieve the above. Art. 12(3)(M) - Prohibiting fraudulent accounts, records, and documents Art. 12(4)(M) - Disallow tax deductibility of bribes Participation of society
Article 21: Bribery in the private sector.	Art. 21(C) - Bribery
Article 26: Liability of legal persons.	Art. 26(1) (2) (3) (M) Measures to establish legal liability of legal persons.
Article 33: Protection of reporting persons.	Art. 33(C) - Protection of reporting persons
Article 37: Cooperation with law enforcement authorities.	Art. 37(1)(M) - Supply of information to authorities Art. 37(2)(C) - Mitigated punishment for cooperative accused person Art. 37(3)(C) - Immunity from prosecution Art. 37(5)(O) - Mitigation or immunity via different States
Article 39: Cooperation between national authorities and the private sector.	Art. 39(1)(M) - Cooperation between private sector and national authorities Art. 39(2)(C) - Cooperation between nationals and habitual residents with authorities





Introduction: Private sector and corruption

Governments around the world have realized and are committed to making progress in deterring the crime of corruption. Corruption is an intolerable impediment to the efficiency of the global economy, to fair competition and to sustainable global development. Bribery erodes the integrity of markets, distorts fair competition and reduces the benefits of globalization for industrialized and developing countries alike³. The private sector's contribution is essential and therefore, there seems to be a fast emerging awareness of this fact. The Anti-Corruption Action Plan set out in 2010 at the Seoul G20 recognised the need for a proactive role by the private sector, stating that failure to address corruption undermines the effectiveness of G20 efforts across its entire agenda.

Organisations too are realizing that preventing corruption makes good business sense. Many companies have learnt from their own experiences or through experiences of others that complicity can render them easily vulnerable to repeated illegal demands, can cause cost escalations and may compel them to commit economic offences, including fraud and forgery for the generation of unaccounted cash flows. Even worse, as seen in recent history, unethical practices in some large, formerly well-reputed companies have caused economic collapses, not to mention the loss of image to these organizations in the market, among competitors and customers. Recognizing the costs and adverse effects of corruption to business, there are numerous examples of good initiatives that companies are taking the world over to put in place mechanisms to address and fortify themselves against corruption.

In India too, not long ago, corporate leaders believed that they were victims of bribery or extortion. Few were able to visualize and understand its long term harmful consequences on business. It was believed that corruption existed only in the association between the private sector and the State. Today, corruption between private to private organizations is an emerging and common concern as well. There is a growing awareness on the need to maintain focus on corporate integrity issues that comprehensively address the different vulnerabilities to corruption. Investors are factoring not only environmental, social and governance considerations into their decision-making, but sound ethical performance as well. There are large Indian companies that have built and maintained their core brand image on ethical business, finding respect and a competitive edge as a result in both national and international markets. In recent times, an increasing number of new initiatives are being taken by individual organizations to place mechanisms to address and fortify themselves against corruption. Today it seems like we are witnessing a surge of scams and private sector

³ Business 20- <http://www.b20businesssummit.com/b20>

corruption scandals but these also an indication of a changing environment – an environment that is more vigilant and where there is greater intolerance to corruption.

The need to address private sector corruption has been recognized by the Government of India by introducing required legislations and regulatory bodies to oversee the functioning of the private sector. There is a large share of international companies operating in India and so too there are many Indian companies that have business relations with companies in other countries. The UK and US have always been favoured business markets along with other countries. The enactment of the UK Bribery Act 2010 and the US' Foreign Corrupt Practices Act (FCPA) also bring obligations for a number of companies.

However, while there are these positive trends, there is a need to provide consistent and focussed priority to the issue of private corruption and corporate integrity. There is a need to address the challenges faced by both large companies, but also that of small and medium sized companies in maintaining this focus. SMEs while being largely an unorganized sector are still a significant proportion of Indian business sector. SMEs contribute 22% to India's GDP and compete with large and global enterprises to survive in a highly competitive market⁴. Lastly, there is also a need to address the issue of private sector corruption from both a legislative and policy perspective and also from a practical perspective that can bring about a mind and behaviour change making India more compliant with international legal norms outlined in the UNCAC.



⁴ Small & Medium Business Development Chamber of India (SME Chamber of India)



National legislation on private sector corruption

5

Currently, India does not have one comprehensive legislation on private sector corruption. There exist provisions applicable to the private sector in different legislations and to different extents. With regard to incentives to corporate integrity, there is nothing that exists in legislature. In practice too, this was found to be a very new concept in India.

An attempt has been made in the following sections to review these legislations to understand their compliance with selected articles of the UNCAC. Annexure 1 provides the list of different legislations that were reviewed. However, the main legislation considered for the review is the Company Bill 2012. At the time of undertaking and completing this study, the bill was titled Company Bill 2011. Thereafter, it was presented in parliament and passed by the Lok Sabha in December 2012 to be called Company bill 2012. As of April 2013, it awaits clearance from the Rajya Sabha. This bill once enacted into law shall be applicable for the entire country of India and all private sector organizations. For the purpose of this report, the Company bill 2012 is the term used.

The analysis presented in the following chapters indicates that India is fairly compliant with the UNCAC, with regard to addressing private sector corruption if the proposed legislations are enacted.

Since the main legislation analyzed in this report were still draft legislations at the time of review, the section or chapter numbers and titles quoted below may change. However the important aspect that the review below highlights is compliance with the UNCAC.

5.1. Analysis: Compliance of Indian legislation and policy with UNCAC

5.1.1. UNCAC: Article 12-Private sector -

Article 12 addresses mainly prevention of corruption in the private sector. Article 12.1 lists three objectives. The first is a general commitment to take measures aimed at preventing corruption involving the private sector. The provisions in the rest of paragraph 1 and indeed the remainder of article 12 are steps towards the achievement of that goal, which is to improve preventive and monitoring functions through accounting and auditing standards and where appropriate, introduce sanctions for non-compliance. From a legislative perspective, the Companies Act 1956, the proposed Companies Bill 2011, the Securities Contracts (Regulation) Act, 1956 and the Accounting Standards notified by Ministry of Corporate Affairs are the overarching regulations that address the requirements of article 12.1. Details of the same are contained in the following sections.

Article 12.2(a): Promoting cooperation between law enforcement and private entities-

Often private enterprises are in the best position to identify and detect irregularities indicative of corrupt conduct. They may also be victim of corrupt practices engaged in by competitors who may thereby gain unfair and illicit advantages. A cooperative relationship between the private sector and law enforcement agencies is thus, instrumental to both the prevention and deterrence of corruption. Cooperation with law enforcement agencies can be at two stages: (a) preventing corruption wherein law enforcement may offer advice and suggestions on how best a company can prevent corruption or put in place preventive mechanisms and (b) after an act of corruption has been committed or detected and for cooperation in the proper investigation of the cases. Both these forms of corruption and the cooperation prescribed under article 12 of the UNCAC do not require a law, but it is a practice that is encouraged.

In India, whatever is stated in the law is in the form of consequences for non-cooperation. Section 224 of Indian Penal Code (IPC) punishes a person who intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence. Section 225 of IPC punishes a person who intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence. Section 225B contains punishment in cases not provided for in Section 224 and 225.

12.2(b): Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among business and in the contractual relations of business with the State.

This article can be broken into two aspects-

1. Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest.

Codes of conduct can be formal or informal. They may be developed through private sector or even single company initiatives. An important function performed by such codes is to enhance predictability, clarify issues and procedures and provide guidelines and support relative to the correct course of action in frequently arising dilemmas for private officials. Another function is to assist in providing training on how to avoid conflicts of interest and what to do when they arise and in establishing clear lines between acceptable and unacceptable conduct. Private initiatives are not a substitute for what governments deem necessary and appropriate for regulation, but States Parties may wish to consider giving official sanction to certain private sector initiatives.

There is no Indian legislation that lays down codes of conduct for the private sector. Development of such codes, procedures and their adoption has been left entirely to the discretion of the private sector and industry bodies. Having an ethics code is a common practice in a company; however, strict implementation of the code is lacking. It has become a checklist exercise for employees to sign it on joining. Less attention is paid by the company to create awareness among its employees regarding the ethics code. These are neither monitored externally nor is there penalization for lack of compliance. There is a need to promote standards of integrity through codes of conduct and good practices among corporates, but also to put in place mechanisms to ensure the translation of codes of conduct into practice.

It has also been seen that the awareness of what is corruption and what is ethical business is still not adequate. The common understanding is that bribery alone comprises corruption. In order to prevent, create vigilance and address private sector corruption, there is a need to first create adequate understanding of the various activities that are corrupt business activities.

With regard to conflict of interest within private organizations, the Companies Act 1956 has stipulations regarding conflicts of interest that the director or the member of the company may face. Under section 297 of the Companies Act, the sanction of the company law board is required for certain contracts in which particular directors are interested. Section 299 mandates directors of companies to disclose their interest in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company and section 300 prohibits the director from participating or voting in the board's proceedings if he/she is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement. Under section 301, every company shall keep one or more registers in which shall be entered separately particulars of all contracts or arrangements to which section 297 or section 299 applies. Section 302 specifies that the company shall, within twenty-one days from the date of entering into the contract for the appointment of a manager of the company in which any director has interests or of the varying of such a contract, as the case may be, send to every member of the company an abstract of the terms of the contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such contract or variation.

Similar and corresponding provision for each of the above exists in the Companies Bill 2011.

2. The promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State-

In the specific context of public procurement involving a private bidder, Clause 6 of the Public Procurement Bill 2012 has laid down a detailed code of conduct for promotion of good business practices involving both public officials and private players.

Section 3 of Competition Act 2002 covers the aspects of good commercial practices that have an adverse effect on competition. Both this Act and the Competition Commission provide a potential mechanism to regulate good commercial practices with regard to anti-corruption measures. However, currently, it indirectly indicates the areas which could also be presumed as corruption prone in the private sector such as - exclusive supply agreements. The Act addresses more the possibilities to create an adverse effect on competition in India and

to regulate price and quality rather than anti-corruption measures. Some of these are the possibility of directly or indirectly determining purchase or sale prices, directly or indirectly leading to bid rigging or collusive bidding etc.

There is a need to strengthen the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State with regard to anti-corruption measures.

Article 12.2(c) of UNCAC calls for promoting transparency among private entities, including where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.

Risks of corruption and vulnerability are higher when transactions and the organizational structure of private entities are not transparent. Where appropriate, it is important to enhance transparency with respect to the identities of persons who play important roles in the creation and management or operations of corporate entities.

There is no legislation in India promoting or mandating transparency in the identity of legal and natural persons involved in the establishment and management of corporate entities.

However, listing agreements of stock exchanges require the details of shareholding to be furnished before corporate entities are listed in the stock exchange. Clause 31(a) of the listing agreements states that a company must forward to the stock exchange “six copies of the statutory and directors’ annual reports, balance sheets, profit and loss accounts and all periodical and special reports as soon as they are issued.” Under existing clause 35 of the listing agreement, all listed companies are required to file with stock exchanges, the shareholding pattern in a specified format within 21 days from the close of each quarter. The new disclosure format does away with the term “promoters” and replaces it with “controlling interest”. The key issue is not who initially promoted the company but who controls it as on date.

Clause 41 outlines the preparation and submission to the stock exchange of the financial results. Clause 47(a) provided details about the appointment of the company secretary to act as compliance officer who will be responsible for monitoring share transfer process & report to the company’s board of directors in each meeting. Clause 49 of the SEBI guidelines on corporate governance, as amended on 29 October 2004, has disclosure requirements with regard to financial transaction, but more importantly the appointment of a new director or re-appointment of a director.

This practice brings in a certain level of transparency, but is limited to listed corporates. Due to its application to a limited number of companies, 835,860 registered companies as of 2010 out of which 1,652 companies are listed in the National Stock Exchange as of July 2012 and 5,133 in Bombay Stock Exchange as of March 2012.

The Companies Bill 2012 has outlined the duties of the company secretary and also the duties of directors [Clause 166]. Among the different duties of a director, two important duties to be mentioned in light of anti-corruption are:

- a. Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- b. Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain under sub-section (7), he shall be liable to pay an amount equal to that gain to the company.

When the Companies Bill is enacted, this will be an important contribution towards compliance with this article of the UNCAC; however, the list and definition of corrupt acts/undue gain must be expanded. Many a times the act of misappropriation of funds, siphoning funds by heads or organizations, owners of organizations affects shareholders of the company in terms of net value of shares that they hold. It is suggested to consider making the director of companies responsible for compliance against some of these acts. Additionally, educating the shareholder and creating mechanisms for shareholders to seek information/reports regarding the company is also suggested.

Article 12.2(d) Calls for preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities.

As per the UNCAC, the areas of subsidies and licensing for certain commercial activities, as with other areas where the State intervenes in one way or another in economic life and the private sector, have been shown to be vulnerable to corrupt practices or other abuses. States are encouraged to pay particular attention to the prevention of corrupt conduct in those areas.

The Industrial Licensing Policy mentions making licensing procedures transparent. Though it has not been stated, it can be implied that transparency will assist in preventing misuse. Several important controls such as the Competition Act, capital goods import control, government policy regarding foreign import control, and government policy regarding foreign investments and foreign collaborations have been taken into consideration in this research.

The Industries (Development and Regulation) Act, 1951 (IDRA) constitutes a Central Advisory Council comprised of owners of industrial undertakings, consumers, employees in industrial undertakings and primary producers. A sub-committee of the advisory council is constituted which is empowered to review all licenses issued, refused, varied, amended or revoked from time to time, and advise the government on the general principles to be followed in the issue of licenses for establishing new undertakings or substantial expansion of the existing undertakings.

Section 14 of the IDRA mentions the procedure for the granting of a license or permission. Before granting any license or permission under section 11, section 11A, section 13 or section 29B, the Central Government may require such officer or authority as it may appoint for the purpose, to make a full and complete investigation in respect of applications received in this behalf and report to it the result of such investigation. In making any such investigation, the officer or authority shall follow such procedure as may be prescribed. Though procedures are explained to a great degree of detail, the officers appointed for the issue of licenses exercise a large amount of discretion while holding a monopoly over the issue of licenses. From a practical perspective, such a situation could be conducive to corruption.

Article 12.2(e): Preventing conflicts of interest

Article 12.2(e) of the UNCAC speaks of preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure.

Under the provisions of the Central Civil Services (Pension) Rules 1971, former Group ‘A’ public officials of the Central Government need prior permission from the government if he/she wishes to accept any commercial employment before the expiry of two years from the date of retirement. There are similar provisions in the conduct rules for State governments and of public sector undertakings that have comparative advantage in the market. Under the Railways Services (Pension) Rules, 1993, a pensioner who, immediately before his retirement was a member of Central Service Group ‘A’, wishes to accept any commercial employment before the expiry of one year from the date of his retirement, shall obtain the previous sanction of the government to such acceptance by submitting an application.

However, there are challenges in practice as there is no clause or procedure that prevents former public officials from engaging with the private sector on terms beyond direct employment, for example, as an advisor on a retainer basis, or as a sub-contractor. The absence of details in the rules and regulations concerned leads to the lack of procedural clarity in practice.

In the specific context of public procurement, there are interesting clauses in the Public Procurement Bill that seek to prevent conflict of interests. Clause 45 of the bill prescribes sanctions (imprisonment upto 5 years and liability to fine upto 10% of the assessed value of procurement) to deter offences mentioned in the bill, including the offence of engagement of a former official of a procuring entity “as an employee, director, consultant, adviser or otherwise, within a period of one year after such former official was disassociated with a procurement in which the employer had an interest”. Clause 6 of the bill, under its code of integrity, also prohibits non disclosure of “conflict of interest”, vide clause (b) of Sub Section 1 thereof.

Article 12.2(f): Ensuring sufficient auditing controls in private enterprises. 

Article 12.2(f) of UNCAC calls for ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures. Simple and small enterprises may not require such arrangements. Similar, but less formal measures include the rotation of staff, periodic surveys about awareness of rules and regulations, policies ensuring the maintenance of proper documentation, etc.

The Companies Act, 1956 under section 581ZF mandates that every producer company (not all companies) shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified, by a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Institute of Chartered Accountants Act, 1949 (38 of 1949). Stock exchange listing agreements also mention the mandatory audit requirements as well.

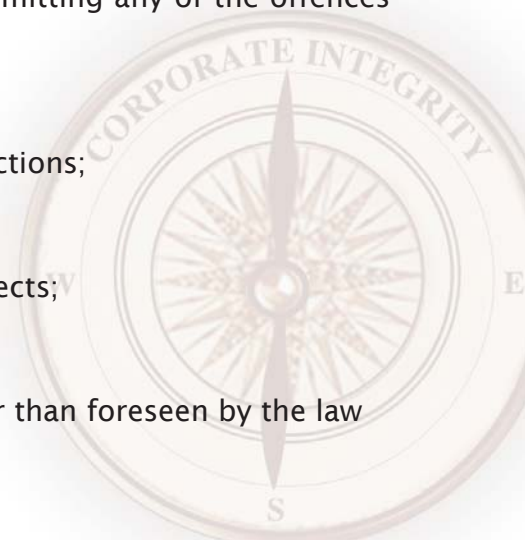
The Companies Act, 1956 does not mandate internal audit for all or any of the classes of companies. The auditors are supposed to comment on the adequacy of internal control measures taken by the company; it does not mandate the company to have an internal audit department. However, Section 138 of the Companies Bill 2012 seeks to provide that prescribed companies shall be required to conduct internal audit of functions and activities of the company by an internal auditor appointed by the company. The manner of conducting internal audit shall be prescribed by the Central Government.

Section 44AB of the Indian Income Act, 1961 mandates that every business or professional person having total sales or gross receipts above a specified threshold, must necessarily have their accounts audited by a specified date every year and get the audit report in a prescribed form duly verified by their accountant.

Article 12.3: Maintenance of books and records 

Article 12.3 of UNCAC indicates that each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;
- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects;
- (e) The use of false documents; and
- (f) The intentional destruction of book keeping documents earlier than foreseen by the law



The Naresh Chandra Commission which was set up in August 2002 to look at governance issues made important recommendations with regard to the audit processes of a company including auditing of auditors, the need for independent directors, board size of listed companies, exempting non-executive directors from certain liabilities, setting up of Corporate Serious Fraud Office (CSFO), and improving facilities of the DCA. In response to these recommendations, the Serious Frauds Investigating Office was created in 2003. (SF10)

Indian legislations/regulations have measures with regard to maintenance of books of accounts, but do not explicitly mention the offences detailed under this article. The Companies Act, 1956 goes into the details of the form and contents of balance sheet and profit and loss account, inspection rights of the auditors, presenting the annual statements to the shareholders etc.

Section 227 of the Companies Act, 1956 mentions the duties of the auditor and Section 233 penalizes the auditor for non-compliance with the standards. The onus is currently on the professional auditor to certify the correctness of the statement of accounts. This could lead to a discretionary power which is subject to misuse. There is regulation that mandates the auditors to report bribery.

Sections 28 to 44DB of the Income Tax Act detail the expenditures which can legitimately be claimed under the Act to arrive at the profits and gains from business or profession. Section 68 of the Act charges to tax the unexplained credits found in the books of accounts. Similar taxability is there if unexplained investments (Section 69 of the Act), unexplained money, bullion, jewellery or other valuable articles (Section 69A of the Act), unexplained investment not fully disclosed in the books of accounts (Section 69 B of the Act) or unexplained expenditure (Section 69C of the Act) are discovered.

Section 44AA of the Income Tax Act makes mandatory, the maintenance of books of accounts for most professionals and for businesses or professional persons having income above a specified threshold.

Section 271(c) contains sanctions for concealment of income or furnishing of inaccurate particulars of income, with maximum penalty up to three times the amount of tax sought to be evaded through such concealment.

The Indian Income Tax Act also contains prosecution provisions, i.e. punishment with imprisonment and fine for offences such as falsification of books of accounts or documents (Section 277 A) ; false statement in verification in a statement made under the Act (Section 277) ; failure to furnish the return of income (Section 276 CC and Section 276 CCC); and failure to produce accounts and documents called for in an income tax proceeding (Section 276 D) etc. It would thus be seen that most of the offences covered under Article 12.3 of the UNCAC are addressed through the comprehensive provisions of the Indian Income Tax Act, 1961.

Clause 132 of the Companies Bill 2012 provides for the constitution of a National Financial Reporting Authority (NFRA) to advise the Central Government on matters relating to the formulation and laying down of accounting and auditing policies and standards; monitoring and enforcing compliance with such standards; overseeing the quality of service of the

professionals associated with ensuring compliance with such standards; suggesting measures required for improvement in quality of services; and other such related matters as may be prescribed.

The Companies Bill 2012 also calls for the rotation of auditors. Under clause 139- Statutory Auditors (Clause 139): No listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint:

- (a) An individual as auditor for more than one term of five consecutive years; and
- (b) An audit firm as auditor for more than two terms of five consecutive years.

Article 12.4: Tax deductibility of expenses that constitute bribes 

Article 12.4 of UNCAC mandates each State Party to disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention.

In India any expenditure incurred for the purpose which is an offence or which is prohibited by law is disallowed as per Section 37(1) of the Income Tax Act, 1961.

Overall compliance to Article 12 - Based on the compliance status of Indian regulation to the individual sub articles that constitute Article 12, it can be concluded that India is largely compliant to Article 12 of the UNCAC.



5.1.2 Article 21: Bribery in the private sector

UNCAC urges each State Party to consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

- (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
- (b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

Article 21 brings out the importance of requiring integrity and honesty in economic, financial or commercial activities. UN Convention against Corruption introduces active and passive bribery in the private sector, an important innovation compared to the Organized Crime Convention or other international instruments.

This article makes a very important distinction-

Active Bribery- The promise of giving the bribe which must be criminalized

1. The required elements of this offence are those of promising, offering or giving something to a person who directs or works for a private sector entity. The offence must cover instances where it is not a gift or something tangible that is offered. So, an undue advantage may be something tangible or intangible, whether pecuniary or non-pecuniary.
2. The undue advantage does not have to be given immediately or directly to a person who directs or works for a private sector entity. It may be promised, offered or given directly or indirectly. A gift, concession or other advantage may be given to some other person, such as a relative or a political organization. Some national laws may cover the promise and offer under provisions regarding the attempt to commit bribery. When this is not the case, it will be necessary to specifically cover promising (which implies an agreement between the bribe giver and the bribe taker) and offering (which does not imply the agreement of the prospective bribe taker). The undue advantage or bribe must be linked to the person's duties. The required mental or subjective element for this offence is that the conduct must be intentional. In addition, some link must be established between the offer or advantage and inducing the person who directs or works for a private sector entity to act or refrain from acting in breach of his or her duties in the course of economic, financial or commercial activities. Since the conduct covers cases of merely offering a bribe, that is, even including cases where it was not accepted and could therefore not have affected conduct, the link must be that the accused intended not only to offer the bribe, but also to influence the conduct of the recipient, regardless of whether or not this actually took place.

Passive Bribery - The promise of accepting the bribe must be criminalized too. This offence is the passive version of the first offence. The required elements are soliciting or accepting

the bribe. The link with the influence over the conduct of the person who directs or works in any capacity for a private sector entity must also be established.

1. As with the previous offence, the undue advantage may be for the person who directs or works in any capacity for a private sector entity or some other person or entity. The solicitation or acceptance must be by that person or through an intermediary, that is, directly or indirectly.
2. The mental or subjective element is only that of intending to solicit or accept the undue advantage for the purpose of altering one's conduct in breach of his or her duties, in the course of economic, financial or commercial activities.

As indicated and detailed previously in Chapter 3, the Public Procurement Bill 2012, seeks to regulate bribery in the private sector, specifically in the area of public procurement. Clause 6 mandates a 'Code of Integrity for both the procuring entity as well as the bidders. It addresses issues of bribe giving and bribe taking as well as "non disclosure of conflict of interest" and "obstruction of any investigation or audit of a procurement process". The sanctions for violation for the private sector bidder include exclusion from the procurement process, forfeitures, recoveries, cancellation of contract, debarment from participation in future procurement for a period of up to two years etc. Moreover, for other breaches of the Act, Clause 44 on 'Punishment for taking gratification or valuable thing in respect of public procurement' levies sanctions equally on private suppliers and public officials, thereby addressing both the supply and the demand side of corruption.

Even the main existing anti-graft legislation, the Prevention of Corruption Act 1988, through its Section 12 treats as an offence the act of "abatement" of the major offence of bribe taking, which can be interpreted to cover the offering of illicit gratification by private players. However, this provision in the Act is weakened by the fact that if the abettor turns approver, no action can be taken against the abettor, vide Section 24 of the Act.

Another new enactment on the anvil to directly tackle private sector corruption is the 'Prevention of Bribery of Foreign Public Officials and Officials of the Public International Organisations Bill 2011' which, inter alia, prohibits the giving of gratification to foreign public officials/officials of public international organisations or its abatement.

The Indian Penal Code 1860 is proposed to be amended to make bribery in the private sector- both giving and accepting it - a criminal offence. The draft IPC (Amendments) Bill 2011, circulated to the States and Union Territories for comments, seeks to cover graft by an individual, firm, society, trust, association of persons companies(whether incorporated or not) which undertakes any economic or financial or commercial activity. The Ministry of Home Affairs has proposed to amend the IPC by inserting a new Chapter VII A (of offences by or relating to officials in private sector) wherein two clauses i.e. 160A and 160B have been proposed to curb the menace of bribery in the private sector. As per the draft law, whoever in the course of economic, financial or commercial activity promises, offers or gives, directly or indirectly, any gratification, in any capacity, for a private sector entity, for the person himself or for another person, shall be punishable.

Example of international legislation that addresses the prevention of bribery-

United Kingdom Bribery Act 2010

The Bribery Act 2010, of UK under the section 'Failure of commercial organization to prevent bribery' requires the government to publish guidance on procedures that commercial organizations can put in place to prevent bribery on their behalf.

Section 7 of the Bribery Act criminalizes the failure of commercial organizations to prevent persons associated with them from bribing another person on their behalf. A company or corporate entity is culpable for board-level complicity in bribery, including bribery through intermediaries. There is also a personal liability for senior company officers who turn a blind eye to such board-level bribery. In addition, a company or corporate entity is culpable for bribes given to a third party with the intention of obtaining or retaining business for the organization or obtaining or retaining an advantage useful to the conduct of the business by their employees and associated persons, even if they had no knowledge of those actions. The company can invoke in its defence that it 'had in place adequate procedures designed to prevent persons associated from undertaking such conduct'. It puts across six principles which can be taken as 'adequate procedures' to prevent bribery:

- Action taken to be proportionate to the risks faced and size of business.
- Commitment from the top level management.
- Risk assessment into new business arrangements and new markets overseas.
- Due diligence about people engaged to represent the business dealings.
- Communication of policies and procedures to staff and others to enhance awareness and help deter bribery.
- Monitoring and review of the anti-bribery steps taken over time.

The United States Foreign Corrupt Practices Act (FCPA) 1977

The anti-bribery provisions of the US Foreign Corrupt Practices Act (FCPA), 1977 makes it unlawful for a U.S. citizen and certain foreign issuers of securities, to make corrupt payments to foreign officials for the purpose of obtaining or retaining business for or with, or directing business to any person. Since 1998, they also apply to foreign firms and persons who take any act in furtherance of such a corrupt payment while in the United States.

The FCPA potentially applies to any individual, firm, officer, director, employee, or agent of a firm and any stockholder acting on behalf of a firm and prohibits corrupt payments through intermediaries. It is unlawful to make a payment to a third party, while knowing that all or a portion of the payment will go directly or indirectly to a foreign official.

The term 'knowing' includes conscious disregard and deliberate ignorance. The sanctions under FCPA include civil charges, criminal charges and also debarring a person from doing business. It is recommended that the above provisions be included in India's anti-corruption legislation.

Severe penalties for violations of the anti-bribery provisions under the FCPA also highlight the possible deterrence value of these legislations:⁵

Statutory Sanctions for Violations

- Criminal penalties
 - Officers, directors, stockholders, employees, agents (fines up to \$100,000 and imprisonment for up to 5 years)
 - Corporations and other business entities (fines up to \$2,000,000)
- Civil Action
 - Attorney General or SEC may bring civil action for additional fines or to enjoin act or practice
- Governmental Action – barred from doing business with Federal Government.
 - Severe penalties for violations of the record-keeping provisions

Criminal penalties for wilful violations; false and misleading statements

- Officers, directors, stockholders, employees, agents – natural person (fines up to \$5,000,000 and/or imprisonment for up to 20 years)
- Corporations and other business entities (fines up to \$25,000,000)
- Civil Action.
- Attorney General or SEC may bring civil action for additional fines or to enjoin act or practice.
- Governmental Action – barred from doing business with Federal government.



⁵ As presented by US & UK governmental experts, at the project Expert Group Meeting held in September 2012.

5.1.3 Article 26: Liability of legal persons

UNCAC requires each State Party to adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention. This implies the legal liability for legal entities and also legal liability of legal persons.

Liability of legal entities- UNCAC talks of this liability which can be criminal, civil or administrative, thus accommodating the various legal systems and approaches. At the same time, the Convention requires that the monetary or other sanctions that will be introduced must be effective, proportionate and dissuasive.

The principle that corporations cannot commit crimes (*societas delinquere non potest*) used to be universally accepted. This changed initially in some common law systems. Today, the age-old debate on whether legal entities can bear criminal responsibility has shifted more widely to the question of how to define and regulate such responsibility.

1. Complex corporate structures can effectively hide the true ownership, clients or specific transactions related to serious crimes, including the corrupt acts criminalized in accordance with the Convention against Corruption.
2. In the context of globalization, international corporations play an important role. Decision-making processes have become increasingly sophisticated. Decisions leading to corruption can be hard to interpret as they may involve multiple layers of other decisions, making it difficult to say who exactly is responsible or liable.
3. Even when such a determination may be possible, individual executives may reside outside the State where the offence was committed and the responsibility of specific individuals may be difficult to prove.
4. Criminal liability of a legal entity may also have a deterrent effect, partly because reputational damage and monetary sanctions can be very costly and partly because it may act as a catalyst for more effective management and supervisory structures to ensure compliance with the law.

The most frequently used sanction is a fine, which is sometimes characterized as criminal, sometimes as non-criminal and sometimes as a hybrid. Other sanctions include exclusion from contracting with the government (for example public procurement, aid procurement and export credit financing), forfeiture, confiscation, restitution, debarment or closing down of legal entities. In addition, states may wish to consider non-monetary sanctions available in some jurisdictions, such as withdrawal of certain advantages, suspension of certain rights, prohibition of certain activities, publication of the judgement, the appointment of a trustee, the requirement to establish an effective internal compliance programme and the direct regulation of corporate structures.

Finally, the Convention requires mutual legal assistance to be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party, in cases where a legal entity is subject to a criminal, civil or administrative liability.

Liability of natural persons – When an individual commits crimes on behalf of a legal entity, it must be possible to prosecute and sanction them both. The Convention against Corruption requires that liability for offences be established both for natural or biological persons and for legal persons.

Current Indian legislation only punishes the natural person who is in charge of the affairs of the legal entity but not the legal entity. There is a requirement to make legal persons liable for offences of corruption committed in furtherance of its affairs.

Legal persons are not mentioned in the Companies Act, 1956 (sections pertaining to maintenance of accounts), the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organizations Bill, 2011 or the Prevention of Corruption Act, 1988

However Section 47 of the Public Procurement Bill 2012 contains provisions to deter an offence committed by a company, including sanctions not only for the persons who at the time the offence was committed were in charge of the conduct of the business of the company, but also sanctions against the company itself, as a legal entity. Post the passing of the Public Procurement Bill 2012, liability of legal persons will be applicable to private bidders – however the larger canvas of private sector transactions still do not address liability of legal persons.

The Company Bill 2012 also provided of a limited liability wherein offences/penalties are applicable to the company or any officer of a company for violations of any provision of the Act. However this area needs strengthening wherein the liability is both expand and additional.

India is not compliant to Article 26 of the UNCAC that seeks establishment of the liability of legal persons for corruption.



5.1.4 Article 32: Protection of witnesses, experts and victims

Protection of witnesses, experts and victims is covered by UNCAC under Article 32. In accordance with Article 32 and bearing in mind that some victims may also be witnesses, States Parties are required to provide effective protection for witnesses, within available means. This may include:

1. Establishing procedures for the physical protection of such persons, such as relocating them and permitting limitations on the disclosure of information concerning their identity and whereabouts [Art. 32, para. 2 (a)];
2. Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness.
3. These provisions also apply to victims in so far as they are witnesses.
4. These requirements are without prejudice to the rights of defendants and within the means of the State Party concerned.

The prevention and criminalization of corrupt practices needs to be supported by measures and mechanisms that enable other parts of the overall anti-corruption strategy: detection, prosecution, punishment and reparation.

Currently, India does not have legislation for the protection of witnesses, experts and victims.

There are no rules enabling witnesses and experts to give testimony in a manner that ensures the safety of such persons. There is also currently no provision that provides for domestic or foreign relocation as a strategy for providing protection and cooperation between different States Parties.

India is not compliant to Article 32 of the UNCAC seeking protection of witnesses, experts and victims.

This article requires that States Parties take appropriate measures within their means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences established in accordance with the Convention and, as appropriate, for their relatives and other persons close to them.

The term “witness” is not defined in UNCAC, but article 32 limits the scope of witnesses to those who give testimony concerning offences established in accordance with the Convention, and, as appropriate, for their relatives or other persons close to them. Interpreted narrowly, this would only apply where testimony is actually given, or when it is apparent that testimony will be given, although the requirement to protect witnesses from potential retaliation may lead to a broader definition in some states.

The experience of states with witness-protection schemes suggests that a broader approach to implementing this requirement will be needed to guarantee sufficient protection to ensure

that witnesses are willing to cooperate with investigations and prosecutions. In addition to witnesses who have actually testified, protection schemes should generally seek to extend protection in the following cases:

- (a) To persons who cooperate with or assist in investigations until it becomes apparent that they will not be called upon to testify; and
- (b) To persons who provide information that is relevant but not required as testimony or not used in court because of concerns for the safety of the informant or other persons.

Legislators may therefore wish to make provisions applicable to any person who has or may have information that is or may be relevant to the investigation or prosecution of a corruption offence, whether this is produced as evidence or not.

It should be noted that this obligation also applies to the protection of persons who participate or have participated in the offences established in accordance with the Convention and who then cooperate with or assist law enforcement, whether or not they are witnesses. Depending on the constitutional or other legal requirements of States Parties, two significant constraints may exist in the method of implementing article 32, as they affect the basic rights of persons accused of crimes.

Accordingly, article 32, paragraph 2, provides that the measures implemented should be without prejudice to the rights of the defendant. For example, in some states, the giving of evidence without the physical presence of witnesses or while shielding their identity from the media and the defendants may have to be reconciled with constitutional or other rules allowing defendants the right to confront the accuser. Another example would be that in some states, the constitution or other basic legal rules include the requirement that either all information possessed by prosecutors, or all such information which may be exculpatory to the accused, must be disclosed in order to enable an adequate defence to the charges. This may include personal information or the identities of witnesses to permit proper cross-examination. Some elements of witness protection may be related to the offence of obstructing justice (Art. 25), which includes the application of physical force, threats and intimidation against witnesses.

In cases where these interests conflict with measures taken to protect the identity or other information about a witness for safety reasons, the courts may be called upon to fashion solutions specific to each case that meets basic requirements regarding the rights of the accused while not disclosing enough information to identify sensitive investigative sources or endanger witnesses or informants. Legislation establishing and circumscribing judicial discretion in such cases could be considered. Some options include the following measures:

- (a) Statutory limits on disclosure obligations, applicable where some basic degree of risk has been established;
- (b) Judicial discretion to review and edit written materials, deciding what does not have to be disclosed and can be edited out;
- (c) Closed hearings of sensitive evidence, from which the media and other observers can be excluded.

States Parties, subject to their domestic laws, can enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence. In States Parties where such opportunities do not already exist, amendments to laws governing trial procedures may be necessary.

Such legislation should take the following factors into consideration:

- (a) The obligation only extends to victims of offences covered by the Convention.
- (b) Whether a person who sought to make his or her views or concerns known was a victim of such an offence or not would normally be a question of fact for the court hearing the case or conducting the proceedings to decide. If a victim is to be given the opportunity to appear prior to the final determination of the court as to whether the offence actually occurred and the person accused is convicted of that offence, legislation should allow the court to permit the participation based on the claims of the victim, but without making any finding prejudicial to the eventual outcome in the case. If the victim is only permitted to appear in the event that the accused is convicted and prior to or after a sentence is imposed, this issue does not arise.
- (c) Legislation should allow for some form of expression on the part of the victim and require that it actually be considered by the court.
- (d) The obligation is to allow concerns to be presented, which could include either written submissions or viva voce statements. The latter may be more effective in cases where the victim is able to speak effectively. The victim is not normally prepared or represented by legal counsel, however, and there is a risk that information that is not admissible as evidence will be disclosed to those deciding matters of fact. This is of particular concern in proceedings involving lay persons such as juries and where statements may be made prior to the final determination of guilt.
- (e) The obligation is to allow participation at appropriate stages and in a manner not prejudicial to the rights of the defence. This may require precautions to ensure that victims do not disclose information that has been excluded as evidence because defence rights had been infringed, or which was so prejudicial as to infringe the basic right to a fair trial. Many states that allow victims to appear (other than as witnesses) consider that the only appropriate stage is following a conviction. If the victim's evidence is needed, then he or she is called as an ordinary witness. If the accused is acquitted, the victim's statements become irrelevant. If the accused is convicted, however, information relating to the impact of the crime on the victim is often highly relevant to sentencing.

5.1.5 Article 33: Protection of reporting persons

UNCAC urges each State to consider incorporating into its domestic legal system, appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities, any facts concerning offences established in accordance with this Convention. The UN Convention against Corruption acknowledges the potentially useful contributions made by persons who observe or otherwise come into contact with corrupt practices. In such instances, protection should be considered for those making reports on acts relative to corruption offences that are made in good faith, on reasonable grounds and to appropriate authorities.

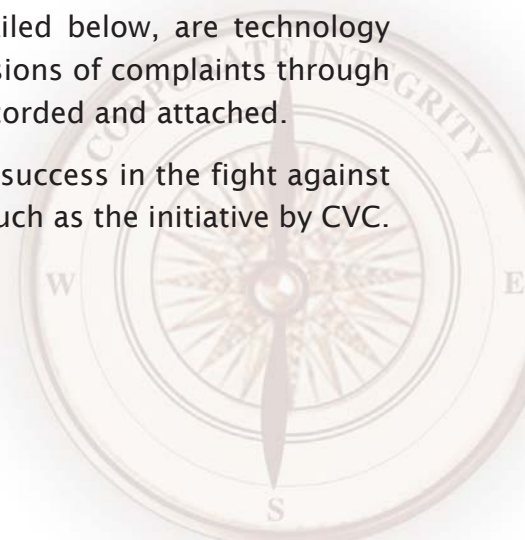
The Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010 seeks to protect persons making a public interest disclosure related to an act of corruption, misuse of power, or criminal offence by a public servant and does not apply to the private sector. However, it can apply to corrupt dealings of the private sector where a public official is involved. It punishes any person making false complaints. However, it does not provide any penalty for victimising a complainant. Provisions against victimization and protection exist under Sections 10 and 11 of the proposed bill, but there are no provisions for physical protection or protection of relatives, nor has victimization been defined.

India is not compliant to Article 33 of the UNCAC on protection of reporting persons when related to the private sector even following enactment of the Public Interest Disclosure and Protection of Persons Making the Disclosures bill 2010 since this bill is only applicable to public officials. Secondly, whistleblower mechanisms in the private sector seem more of an internal initiative taken up by companies on an individual basis.

Currently, encouragement comes from the Central Vigilance Commission (CVC) which has been designated as the authority to receive written complaints or disclosure on any allegation of corruption or of misuse of office by any employee of the Central Government or of any corporation established under any Central Act, government companies, societies or local authorities owned or controlled by the Central Government.

CVC's initiative 'Blow your whistle' and 'Project VIGEYE' as detailed below, are technology supported citizen-centric initiatives to facilitate real-time submissions of complaints through a call, "sms" or on the website with evidences or explanations recorded and attached.

A well-designed legal and institutional framework can guarantee success in the fight against corruption only if supplemented with robust practical solutions such as the initiative by CVC.



BLOW YOUR WHISTLE is a technology supported anti-corruption initiative of the Central Vigilance Commission (CVC), India's apex vigilance institution dealing with all matters of corruption in the Central Government. www.blowyourwhistle.in is the website that supports the initiative.

Project VIGEYE (Vigilance Eye) is a citizen-centric initiative, wherein citizens join hands with the Central Vigilance Commission in fighting corruption in India. Project Vigeye is the platform through which vigilance information flows freely through common public, the government agencies and the vigilance commission, making it possible to achieve a step jump in improving the corruption index of the nation.

G20 compendium of best practices on whistleblower protection legislation:

At its Seoul Summit in November 2010, G-20 Leaders identified the protection of whistleblowers as one of the high priority areas in their global anti-corruption agenda. To protect from discriminatory and retaliatory actions, G-20 countries decided to enact and implement whistleblower protection rules by the end of 2012. To that end, building upon the existing work of organizations such as the OECD and the World Bank, G-20 experts did a study and summarized existing whistleblower protection legislation and enforcement mechanisms and proposed best practices on whistleblower protection legislation.⁶

The guiding principles that each state needs to consider include-

- Clear legislation and an effective institutional framework to protect from discriminatory or disciplinary action employees who disclose in good faith and on reasonable grounds certain suspected acts of wrongdoing or corruption to competent authorities.
- Legislation provides a clear definition on the scope of protected disclosures and of the persons afforded protection under the law.
- That the legislation ensures that the protection afforded to whistleblowers is robust and comprehensive.
- That the legislation clearly defines the procedures and prescribed channels for facilitating the reporting of suspected acts of corruption, and encourages the use of protective and easily accessible whistleblowing channels.
- That the legislation ensures that effective protection mechanisms are in place, including by entrusting a specific body that is accountable and empowered with the responsibility of receiving and investigating complaints of retaliation and/or improper investigation and by providing for a full range of remedies.
- Implementation of whistleblower protection legislation is supported by awareness-raising, communication, training and periodic evaluation of the effectiveness of the framework of protection.

⁶ G20 Anti Corruption Action Plan Action Point 7 : Protection of Whistleblowers, 2010.

5.1.6 Article 37: Cooperation with law enforcement authorities

Under article 37 of UNCAC, States Parties are required to take appropriate measures to encourage persons who participate or who have participated in the commission of any offence established in accordance with the Convention to cooperate with law enforcement authorities. The specific steps to be taken are left to the discretion of States, which are asked, but not obliged, to adopt immunity or leniency provisions. In light of this, the article also provides for possibilities of mitigating punishment of an accused person and granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecutions.

Under article 37, States Parties are required to take appropriate measures to encourage persons who participate or who have participated in the commission of any offence established in accordance with the Convention to cooperate with law enforcement authorities. It requires that states extend the protections of article 32 (regarding witnesses, experts and victims) to persons providing substantial cooperation in the investigation or prosecution of an offence established in accordance with the Convention. This means that such protective measures must be within the means of States Parties and provided when necessary, appropriate and consistent with domestic law.

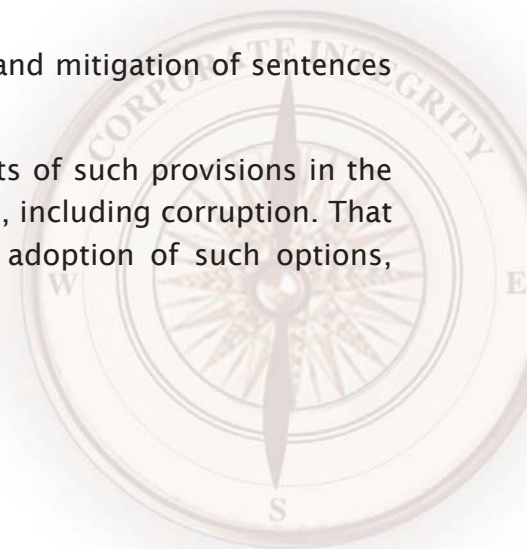
The investigation of offenders and the process of enforcing the law against them can be greatly assisted by the cooperation of participants in corrupt acts. The same applies to the prevention of serious crimes, where inside information can lead to the foiling of planned criminal operations.

These are special witnesses, as they are subject to prosecution themselves by means of their direct or indirect participation in corruption offences. Some states have sought to promote the cooperation of such witnesses through the granting of immunity from prosecution or comparative lenience, under certain conditions, which vary from state to state.

Generally, the inducements and protections needed to encourage persons to assist investigators or prosecutors can be provided without legislative authority, but some provisions will have to be enacted if they do not already exist. States Parties are required to take appropriate measures, but the substance of such measures is left to the State.

States Parties are required to consider the options of immunity and mitigation of sentences for those who cooperate under Article 37, paragraph 2.

The experience of certain jurisdictions has highlighted the merits of such provisions in the fight against organized criminal groups involved in serious crime, including corruption. That is why the UN Convention against Corruption encourages the adoption of such options, consistent with fundamental domestic legal principles.



2. Possible legislative measures include the following:

- (a) Judges may require specific authority to mitigate sentences for those convicted of offences but who have cooperated and exceptions may have to be made for any otherwise applicable mandatory minimum sentences. Provisions that require judges to impose more lenient sentences should be approached with caution, as they may raise concerns about judicial independence and create potential for the corruption of prosecutors;
- (b) Affording immunity from prosecution (Art. 37, para. 3), if implemented, may require legislation either creating discretion not to prosecute in appropriate cases or structuring such prosecutorial discretion as already exists.

Some form of judicial review and ratification may have to be provided for, in order to set out the terms of any informal arrangements and ensure that decisions to confer immunity are binding;

- (c) As noted above, the physical protection and safety of persons who cooperate is the same as for witnesses under Article 32 (Art. 37, para. 4).

Optional measures: measures States Parties may wish to consider

- 1. Where a person can provide important information to more than one State Party for purposes of combating corruption, Article 37, paragraph 5, encourages States Parties to consider the possibility of reaching an agreement on mitigated punishment or immunity to the person with respect to charges that might be brought in those states.
- 2. In order to increase their ability to do so, States Parties may wish to consider the possibility of mitigated punishment for such persons or of granting them immunity from prosecution. This is an option that States Parties may or may not be able to adopt, depending on their fundamental principles. It is important to note, however, that in jurisdictions where prosecution is mandatory for all offences, such measures may need additional legislation.

With regard to legislation in India, Section 21 of the Prevention of Corruption Act, 1988 provides for any accused person to become a competent witness for the defence and give evidence under oath to disprove the charges made against him or any person charged together with him at the same trial. Section 24 of the Act protects the person making a statement against a public servant that he/she offered or agreed to offer any gratification or any valuable thing from prosecution.

India is only partially compliant to Article 37 of the UNCAC regarding cooperation with law enforcement authorities.

Example of legal incentives offered for cooperation with national authorities under United States' legislation⁷-

- **Deferred and non-prosecution agreements-** The US also follows what is known as deferred and non-prosecution agreements, which are contracts with the government in which a company (or individual) undertakes specified actions in exchange for charges being dismissed or not filed altogether. The terms usually require payment of a fine, continued cooperation with any investigations or trials and a commitment to enhance internal controls. If the agreement is breached, the agreement typically permits prosecutors to restart the case and use any admissions by the company in the subsequent proceeding. The United States Attorneys' Manual (USAM) of the DOJ allows consideration of non-prosecution or deferred prosecution of corporate criminal offenses because of collateral consequences. The 2011 Federal Sentencing Guidelines Manual also provides effective guidelines for corporate ethical compliance programmes.
- **A proffer agreement** is a written agreement providing that any statements made by a person, on a specific date, may not be used against that individual in subsequent proceedings, except that the Commission may use statements made during the proffer session as a source of leads to discover additional evidence and for impeachment or rebuttal purposes if the person testifies or argues inconsistently in a subsequent proceeding. The Commission also may share the information provided by the proffering individual with appropriate authorities in a prosecution for perjury, making a false statement or obstruction of justice.
- **Cooperation agreements-** In a cooperation agreement, the Division agrees to recommend to the Commission that the individual or company receive credit for cooperating in its investigation and related enforcement actions and, under certain circumstances, to make specific enforcement recommendations if, among other things: 1) The Division concludes that the individual or company has provided or is likely to provide substantial assistance to the Commission; 2) The individual or company agrees to cooperate truthfully and fully in the Commission's investigation and related enforcement actions and waive the applicable statute of limitations; and 3) The individual or company satisfies his/her/its obligations under the agreement. If the agreement is violated, the staff may recommend an enforcement action to the Commission against the individual or company without any limitation.
- **A plea bargain (also plea agreement, plea deal or copping a plea)** is an agreement in a criminal case between the prosecutor and defendant whereby the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor. This may mean that the defendant will plead guilty to a less serious charge, or to one of several charges, in return for the dismissal of other charges. Or it may mean that the defendant will plead guilty to the original criminal charge in return for a more lenient sentence. Sometimes this may be in exchange for information that may be useful in completing the investigation of the case or in tracing the assets back.

⁷ Summary of presentation of US expert a project Expert Group Meeting in September 2012.

5.1.7 Article 39: Cooperation between national authorities and the private sector

The role of the private sector in preventing, detecting and prosecuting actors involved in corrupt practices cannot be underestimated. It is often competitors who observe irregularities and suspicious transactions in the course of their routine financial and commercial activities. People specializing in specific sectors or operations are well placed to identify vulnerabilities or uncommon patterns that may serve as indicators of abuse. Authorities in charge of anti-corruption activities would benefit from such insights and could turn attention to areas and sectors of priority more easily. Actors in the private sector may also be in a position to play a vital role in the identification of criminal proceeds and their return to legitimate owners. A consensual relationship between the private sector and national authorities is, thus, instrumental to the effective fight against corruption and its adverse consequences.

The benefits of a corruption-free economic environment are clear to private industry as a whole, but its concrete collaboration with public authorities needs to be institutionalized and framed properly, in order to avoid cross jurisdictional or other conflicts enterprises may face, related, for example, to privacy, confidentiality or bank secrecy rules.

The UNCAC provision mandates each State Party to take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

Section 9 of the Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 authorizes the Competent Authority to take the assistance of police authorities in making discreet inquiry or obtaining information from the organization concerned.

In practice, most departments or organizations have Central Vigilance Officers appointed who cooperate with the investigating agency (Central Bureau of Investigation or others).

Section 18 of the Prevention of Corruption Act, 1988 authorizes the investigating officer to go through relevant banker books for the investigation of a corruption case.

There is no provision in law providing for cooperation between authorities and the private sector, in particular financial institutions. There is an evident gap between UNCAC and proposed and existing Indian legislation in this regard which needs to be addressed. The financial institutions need to be encouraged to actively disclose any suspicious activity in the financial accounts.

Article 39 requires that States Parties consider encouraging their nationals and other persons with a habitual residence in their territory to report to the national investigating and prosecuting authorities, the commission of an offence established in accordance with the Convention. A precedent and growing practice in many states that national drafters may wish to use as a model is that of placing a duty on certain private entities to report suspicious transactions to appropriate authorities. This applies to formal and informal financial institutions as well as businesses in specific sectors.

Based on the status of Indian regulation to the individual sub-articles that constitute Article 39, it can be concluded that India is partially compliant to Article 39 of the UNCAC.

Table 1: Summary of compliance of Indian legislation and policy with UNCAC explained in the previous section.

UNCAC Article	Corresponding Indian Legislation	Details of compliance
<p>Art 12.1 Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.</p>	<p>Companies Act 1956 Companies Bill 2012 Securities Contracts (Regulation) Act, 1956 Accounting Standards notified by Ministry of Corporate Affairs</p>	<p>India is largely compliance with article 12.</p>
<p>Art 12.2 Measures to achieve these ends may include, inter alia: (a) Promoting cooperation between law enforcement agencies and relevant private entities.</p>		<p>This does not require a legislation.</p>
<p>Art 12.2. (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.</p>	<p>Companies Act 1956 - Section 297, 299, 300, 301, 302 Companies Bill 2012 - Clause 184, 188, 189, 190</p>	<p>There is no Indian legislation that lays down codes of conduct. Development of such codes and their adoption has been left entirely to the discretion of the private sector and industry bodies. The Companies Act 1956 has stipulations regarding conflicts of interest that the director or the member of the company may face.</p> <p>Under section 297, the board's sanction is required for certain contracts in which particular directors are interested.</p> <p>Section 299 mandates the director to disclose their interest in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company and section 300 prohibits the director from participating or voting in the board's proceedings if she/he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement.</p> <p>Under section 301, every company shall keep one or more registers in which shall be entered separately particulars of all contracts or arrangements to which section 297 or section 299 applies.</p> <p>Section 302 specifies that the company shall, within twenty-one days from the date of entering into the contract for the appointment of a manager of the company in which any director is interested or of the varying of such a contract, as the case may be, send to every member of the company an abstract of the terms of the contract or variation, together with a memorandum clearly specifying the nature of the concern or interest of the director in such contract or variation.</p>

UNCAC Article	Corresponding Indian Legislation	Details of compliance
		<p>Corresponding provision for each of the above exists in Companies Bill 2012.</p> <p>In practice, many private sector entities and industry bodies have laid down codes of conduct to govern the functioning of corporate entities, but these are neither monitored externally nor is there penalisation for lack of compliance. There is a need to promote standards of integrity through codes of conduct and good practices among corporates, as also to put in place mechanisms to ensure the translation of codes of conduct into practice.</p>
<p>Art 12.2. (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.</p>	<p>Listing Agreement – Clause 31a, 35, 41, 47a, 49</p>	<p>Listing agreements of the stock exchanges require the details of shareholding to be furnished before corporate entities are listed in the stock exchange. This practice brings in a certain level of transparency, but is limited to listed corporates. This practice would not be sufficient to conclude that India is partially compliant with the provisions of this clause.</p>
<p>Art 12.2. (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities.</p>	<p>The Industries (Development and Regulation) Act, 1951 Industrial Licensing policy Foreign Trade Policy Competition Act, 2002</p>	<p>The Industrial Licensing policy talks about making procedures transparent. Though it has not been stated, can be implied that transparency will ensure in preventing misuse.</p> <p>The Industries (Development and Regulation) Act, 1951 (IDRA) constitutes a Central Advisory Council comprising of owners of industrial undertakings, consumers, employees in industrial undertakings and primary producers. A sub-committee of the advisory council is constituted which is empowered to review all licenses issued, refused, varied, amended or revoked from time to time, and advise the government on the general principles to be followed in the issue of licenses for establishing new undertakings or substantial expansion of the existing undertakings.</p> <p>Section 14 of the IDRA mentions the procedure for the grant of license or permission. Before granting any license or permission under section 11, section 11A, section 13 or section 29B, the Central Government may require such officer or authority as it may appoint for the purpose, to make a full and complete investigation in respect of applications received in this behalf and report to it the result of such investigation and in making any such investigation, the officer or authority shall follow such procedure as may be prescribed.</p>
		<p>Through the Competition Act, government will endeavour to abolish the monopoly of any sector or any individual enterprise in any field of manufacture, except on strategic or military considerations and open all manufacturing activity to competition.</p>

UNCAC Article	Corresponding Indian Legislation	Details of compliance
<p>Art 12.2. (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;</p>	<p>The Central Civil Services (Pension) Rules 1971 The Railways Services (Pension) Rules, 1993</p>	<p>Under the provisions of the conduct rules, former Group A public official of the Central Government need prior permission from the government if she/he wishes to accept any commercial employment before the expiry of two years from the date of retirement. There are similar provisions in the conduct rules of State governments.</p> <p>Under the Railways Services (Pension) Rules, 1993, a pensioner who immediately before his retirement was a member of Central Service Group 'A' wishes to accept any commercial employment before the expiry of one year from the date of his retirement, he shall obtain the previous sanction of the Government to such acceptance by submitting an application.</p> <p>However there are challenges in practice. There is no clause or procedure that prevents former public officials from engaging with the private sector on terms beyond direct employment, for example, as an advisor on a retainer basis, or as a sub-contractor. The absence of details in the rules and regulations concerned leads to the lack of procedural clarity in practice.</p>
<p>Art 12.2. (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.</p>	<p>Companies Act, 1956 - Section 581ZF Companies Bill, 2012 - Clause 138 Income Tax Act, 1961 - Section 44AB</p>	<p>The Companies Act, 1956 under section 581ZF mandates that every Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a Chartered Accountant as defined in clause (b) of sub-section (1) of section 2 of the Institute of Chartered Accountants Act, 1949 (38 of 1949)</p> <p>Clause 138. - This is a new clause and seeks to provide that prescribed Companies shall be required to conduct internal audit of functions and activities of the company by internal auditor appointed by the company. Manner of conducting internal audit shall be prescribed by the Central Government.</p> <p>The Companies Act, 1956 does not mandate internal audit for all or any of the class of companies. The auditors are supposed to comment on the adequacy of internal control measures taken by the company, it does not mandate the company to have an internal audit department.</p>
		<p>If the new Bill is passed, it will mandate internal audit to classes of companies as prescribed by the government.</p>

UNCAC Article	Corresponding Indian Legislation	Details of compliance
<p>Art 12.3 Each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:</p> <p>(a) The establishment of off-the-books accounts.</p> <p>(b) The making of off-the-books or inadequately identified transactions.</p> <p>(c) The recording of non-existent expenditure.</p> <p>(d) The entry of liabilities with incorrect identification of their objects.</p> <p>(e) The use of false documents, and</p> <p>(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.</p>	<p>Companies Act 1956 - Section 209, 210A, 227, 233</p> <p>Companies Bill 2012 - Clause 128, 130, 132, 143</p> <p>Securities Contracts (Regulation) Act, 1956 - Section 23A</p> <p>Income Tax Act, 1961 - Section 28 to 44DB, 68, 69, 69A, 69B, 69C, 44AA, 271(c), 277A, 277, 276CC and 277CCC</p>	<p>Indian legislations have measures with regard to maintenance of books of accounts, but do not explicitly mention the offences mentioned under this Article.</p> <p>Section 227 indicates the duties of the Auditor and Section 233 penalizes the Auditor if the standards are not complied with Sections 28 to 44DB of the Income Tax Act detail the expenditures which can legitimately be claimed under the Act to arrive at the profits and gains from business or profession. Section 68 of the Act charges to tax the unexplained credits found in the books of accounts. Similar taxability is there if unexplained investments (Section 69 of the Act), unexplained money, bullion, jewellery or other valuable articles (Section 69A of the Act), unexplained investment not fully disclosed in the books of accounts (Section 69 B of the Act) or unexplained expenditure (Section 69C of the Act) are discovered. There are various provisions in the Income Tax Act which make India compliant with UNCAC and the case will be strengthened with the proposed Companies Bill.</p> <p>Section 44AA of the Income Tax Act makes mandatory the maintenance of books of accounts for most professionals and for businesses or professional persons having income above a specified threshold.</p> <p>Section 271(c) contains sanctions for concealment of income or furnishing of inaccurate particulars of income, with maximum penalty up to three times the amount of tax sought to be evaded through such concealment.</p> <p>The Indian Income Tax Act also contains prosecution provisions, i.e. punishment with imprisonment and fine for offences such as falsification of books of accounts or documents (Section 277 A) ; false statement in verification in a statement made under the Act (Section 277) ; failure to furnish the return of income (Section 276 CC and Section 276 CCC) ; failure to produce accounts and documents called for in an income tax proceeding (Section 276 D) etc.</p> <p>The proposed bill seeks to constitute the National Financial Reporting Authority to oversee the quality of service of such professionals.</p>



UNCAC Article	Corresponding Indian Legislation	Details of compliance
<p>Art 12.4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention</p>	<p>Income Tax Act, 1961 - Section 37 (1)</p>	<p>37(1)Any expenditure, not being an expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession”.</p> <p>For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.</p>
<p>Art 21 Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:</p> <p>(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;</p> <p>(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.</p>	<p>Indian Penal Code (Amendments) Bill 2011 Prevention of Bribery of Foreign Public officials and Officials of Public International Organisations Bill 2011</p>	<p>No legislation exists in the Indian context on corruption in the private sector, currently. Though in practice, many private sector entities and industry bodies have codes of conduct for their functioning that inter-alia prohibit bribery and corruption, these are neither monitored nor deviations penalized. Indian Penal Code 1860 is proposed to be amended to make bribery in the private sector (both giving and receiving) a criminal offence. Prevention of Bribery of Foreign Public officials and officials of Public International Organisations Bill 2011- prohibits the giving of gratification to foreign public officials/ officials of public international organisation or its abetment.</p>
<p>Art 26 Liability of a Legal Person</p> <p>1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.</p> <p>2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.</p>	<p>Companies Act, 1956 - Section 209, 210A Prevention of Corruption Act, 1988 The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011 Prevention of Money Laundering Act, 2002 - Clause 70</p>	<p>The Indian legislations reviewed for the different offences punish the natural person involved in the crime.</p> <p>Legal persons have not been mentioned in the Companies Act, 1956 (sections pertaining to maintenance of accounts), the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011 or the Prevention of Corruption Act, 1988.</p>

UNCAC Article	Corresponding Indian Legislation	Details of compliance
<p>3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.</p> <p>4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.</p>	<p>The Benami Transaction (Prohibition) Act, 1988</p> <p>The Benami Transactions (Prohibition) Bill, 2011 – Clause 37</p> <p>Criminal Law Amendment Ordinance, 1944</p>	<p>There is a requirement to make legal persons liable for offences of corruption committed in furtherance of its affairs. Current legislation only punishes the natural person who is in charge of the affairs of the legal entity but not the legal entity.</p> <p>Company bill 2012 also provided for a limited liability of companies wherein offences are applicable to the company or any officer for violation of the provisions.</p>
<p>Art 32</p> <p>1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.</p> <p>2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.</p> <p>3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.</p> <p>4. The provisions of this article shall also apply to victims insofar as they are witnesses.</p> <p>5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.</p>		<p>Currently, India does not have legislation for the protection of witnesses, experts and victims.</p> <p>However, the proposed law does not define victimization. In addition, physical protection and protection of relatives has not been covered by the Bill.</p> <p>There are no rules enabling witnesses and experts to give testimony in a manner that ensures the safety of such persons. There is also currently no provision that provides for domestic or foreign relocation as a strategy for providing protection and cooperation between different State Parties.</p>

UNCAC Article	Corresponding Indian Legislation	Details of compliance
<p>Art 33 Each State Party shall consider incorporating into its domestic legal system, appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.</p>	<p>The Public Interest Disclosure and Protection of Persons Making the Disclosures bill, 2010 – Clause 10, 11</p>	<p>Similar to Article 32, currently, India does not have a legislation equivalent to UNCAC article 33 on protection of reporting persons. The Public Interest Disclosure and Protection of Persons Bill, 2010 is applicable to disclosures made against public officials. Further, provisions against victimization and protection exist under Sections 10 and 11 of the proposed Bill, but there are no provisions for physical protection or protection of relatives, nor has victimization been defined.</p>
<p>Art 37 : 1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.</p> <p>2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.</p> <p>3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.</p> <p>4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.</p> <p>5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.</p>	<p>Prevention of Corruption Act of 1988 – Clause 21,24</p>	<p>Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial.</p> <p>A statement made by a person in any proceeding against a public servant for an offence under sections 7 to 11 or under section 13 or section 15, that he offered or agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under section 12.</p>

UNCAC Article	Corresponding Indian Legislation	Details of compliance
<p>Art 39.1 Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.</p>	<p>Prevention of Corruption Act of 1988 - Clause 18</p>	<p>Competent authorities are authorized to seek assistance from other agencies wherever necessary.</p> <p>There is no provision to encourage cooperation between investigating and prosecuting authorities and entities of the private sector</p> <p>Prevention of Corruption Act authorizes the investigating officer to inspect the bankers books.</p> <p>The CBI in its authority receives support from the central vigilance officers. Such officers, civil servants, or senior police officers are appointed in every department or organization within state-level bureaus. They cooperate with the CBI or any other federal authority investigating suspected corrupt activities.</p> <p>There is a need for an explicit section providing for cooperation between investigating authorities and financial institutions and private sector to encourage active disclosure of suspicious activities in any financial account.</p>
<p>Art 39.2 Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.</p>	<p>Code of Criminal Procedure (1973) - Section 39</p>	<p>Section 39 of the Criminal Procedure Code (CrPC) mandates the reporting of any alleged corrupt offence on the individuals concerned and prescribes prosecution and punishment on failure to do so. The responsibility to report crimes is wide and sweeping, applicable to any individual regardless of occupation or professional status. In practice however, this provision has rarely been invoked. Consequently, it does little to encourage citizens to report cases of corruption.</p>





Grassroots Challenges, Current Practices and Training Needs

A critical insight from the assessment of the legal regime in the above sections is the need for stronger legislation to curb corruption in the private sector and to encourage corporate integrity. In such circumstances, practice is completely discretionary. It stands to reason that where there is discretion and no traceable accountability for compliance to a framework of safeguards, there emerges vulnerability to corruption.

There is also the widespread feeling that someone else has to take the first step. A key insight is the widespread belief that corruption is a necessary tool or instrument for attaining business success in today's environment in India. This conviction is the most important reason for the skepticism surrounding the adoption of a path of integrity and honesty in business.

'Corporate Integrity' are words used by the private sector to indicate their adherence to ethical norms and to a sense of lawfulness. It implies the core values of an enterprise. However, as witnessed on many occasions, corporate integrity becomes more of a "statement of intent" than an established practice. In India, pursuing the path of integrity is a voluntary undertaking for corporates. One of the mechanisms to address integrity violations is through sanctions. However, sanctions do not by themselves help improve or raise the standards of corporate integrity. Incentives need to be established that act as positive enablers to raise the standards of corporate integrity.

There are several reasons that are quoted by the private sector as impediments to raising their respective levels of integrity. Some of these impediments are:

- Corrupt practices followed by competition give them a competitive edge. Adoption of practices of integrity cannot come without loss of business.
- There is rampant promotion of corrupt practices in awarding business, licenses or subsidies by employer (government or private) and they have to be factored in when doing business. This is a reality that must be accepted.
- Corrupt judiciary, law enforcement agencies, regulatory and inspection authorities makes it difficult for businesses to adopt and maintain high standards of integrity.

- Collusion to secure favours that translate into profits is necessary for keeping a business going. Thus, parallel or undocumented systems of subversion of due process in return for favours to key government officials of departments such as income tax, sales and excise, is inevitable.
- Private sector to private sector corruption is as much a concern as private sector to government.
- Private sector corruption is not limited to one form. Bribery to other private sector officials, government sector, public sector officials; embezzlement; trading in influence; and misappropriation all seem to be prevalent practices. However, bribes to government officials for obtaining contracts was regarded as one of the most common forms of corruption.

Corruption can arise and thrive within an organization's internal boundaries as well. Some of the factors that contribute to internal corruption are indicated below:

- Unrealistic or extremely challenging performance targets (revenue, sales, profit) set by the management.
- Weak internal controls (no audit, no oversight on reporting, lack of MIS).
- Limited senior management focus on ensuring adherence to a code of conduct, statement of values and ethics.
- Deficiencies in human resources management (recruitment, promotions, compensation and benefits).
- Poor understanding of corporate affairs and economic crimes among law enforcement.
- Complex legal and police procedures.
- Long delays and harassment from authorities.



6.1 Responses from survey analysis on Grassroots Challenges, Current practices and Training Needs

A baseline survey on grassroots challenges, current practices and training needs was conducted. Following is the information extracted from the survey responses. It includes responses from both the private sector and law enforcement officials:

6.1.1 Vulnerabilities to corruption and the private sector:

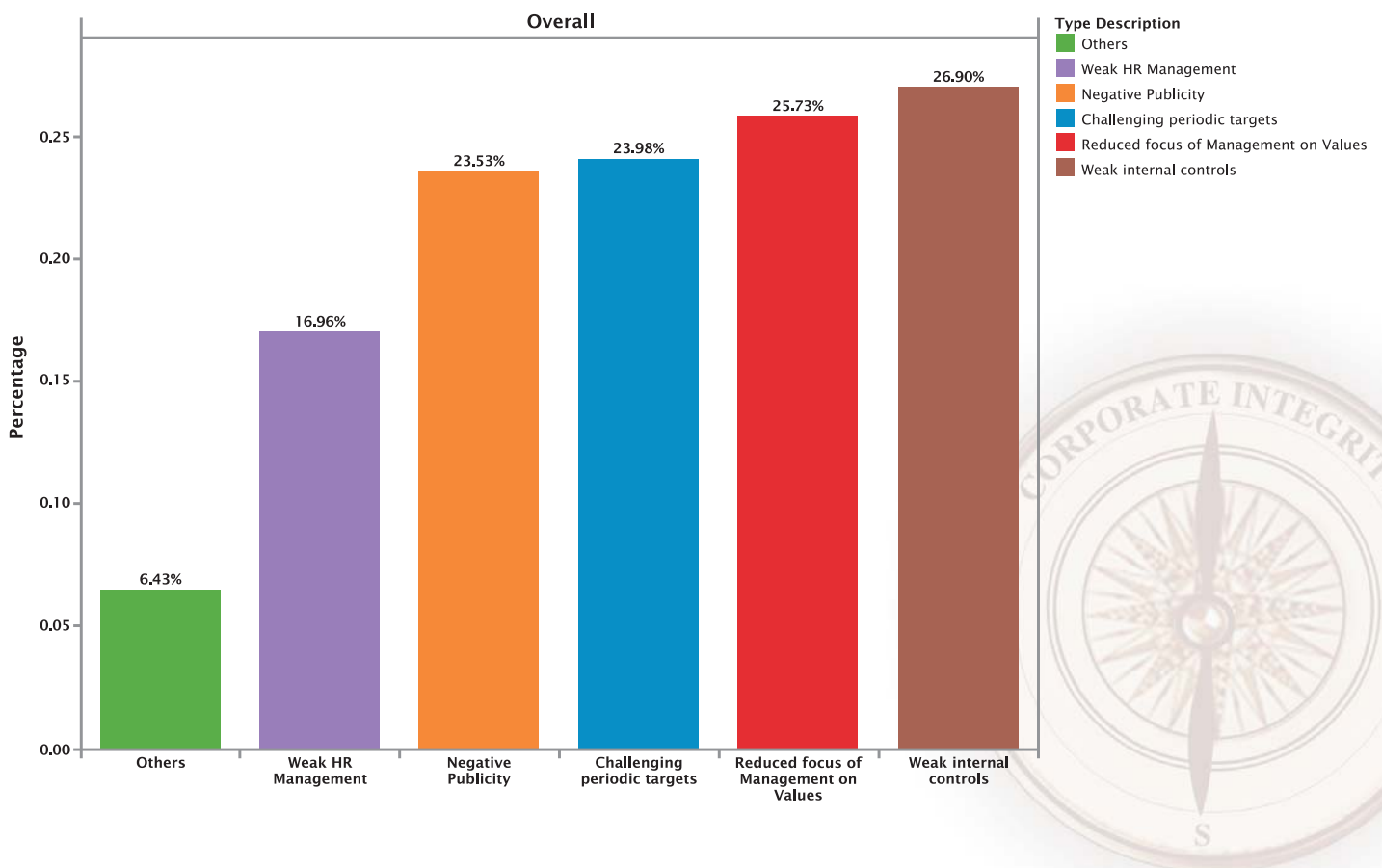
1. *Private sector officials were asked as to what they felt were the factors that foster corruption in the corporate environment?*

Options provided to them were:

- 1) Challenging targets set by management (e.g., sales, profits, etc.)
- 2) Weak internal controls (e.g., inadequate reporting, weak audit function, etc.)
- 3) Lack of senior management focus on ethical business.
- 4) Weak human resource management (e.g., promotions, recruitment, etc.)
- 5) Others, please specify

Analysis:

- The respondents largely identified periodic targets, weak internal controls and lack of management focus as the main reasons.



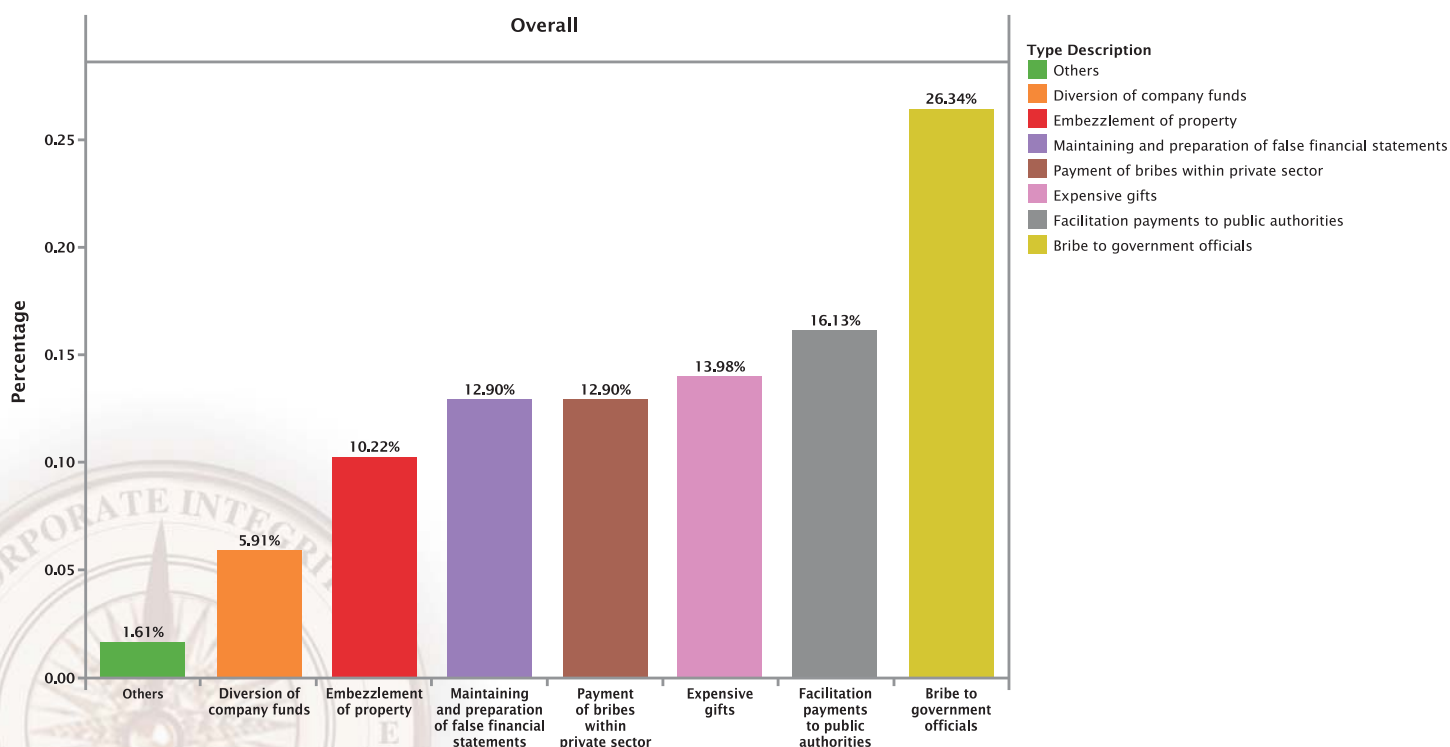
2. What forms of corrupt practices are followed by private sector companies?

Options provided were:

- 1) Maintaining and preparation of false and incorrect financial statements
- 2) Payment of bribes within the private sector
- 3) Bribe to government officials for obtaining contracts
- 4) Facilitation payments to various public authorities
- 5) Expensive gift including giving and taking by the private sector
- 6) Embezzlement of property
- 7) Diversion of company funds
- 8) Others

Analysis:

- All forms of the options provided were selected.
- Maximum number of respondents (26%) selected “bribe to government officials for obtaining contracts.”



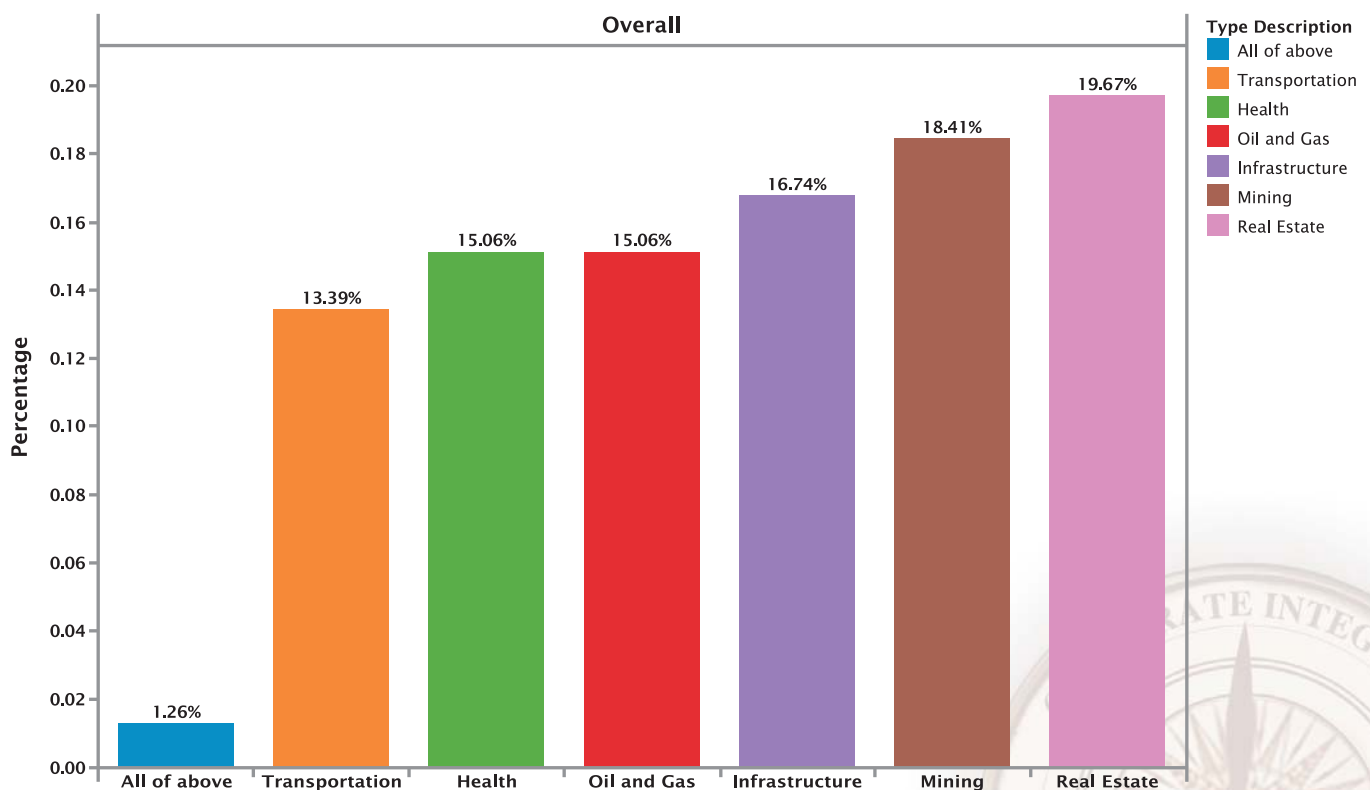
3. In what sector is clean business more difficult?

Options provided were:

- 1) Real Estate
- 2) Oil & Gas
- 3) Health
- 4) Transportation
- 5) Infrastructure
- 6) Mining
- 7) All
- 8) Others

Analysis:

- Real Estate and Mining seem to be the most difficult sectors to do clean business in.



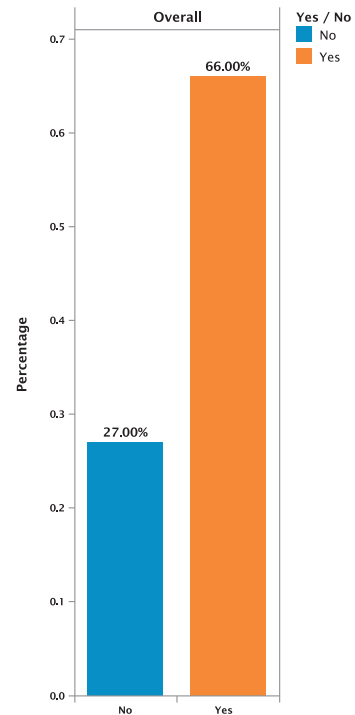
4. Are incentives better than imposing sanctions or penalties on a person/company?

Options:

- 1) Yes
- 2) No

Analysis:

- Approximately 70% of respondents chose incentives over sanctions



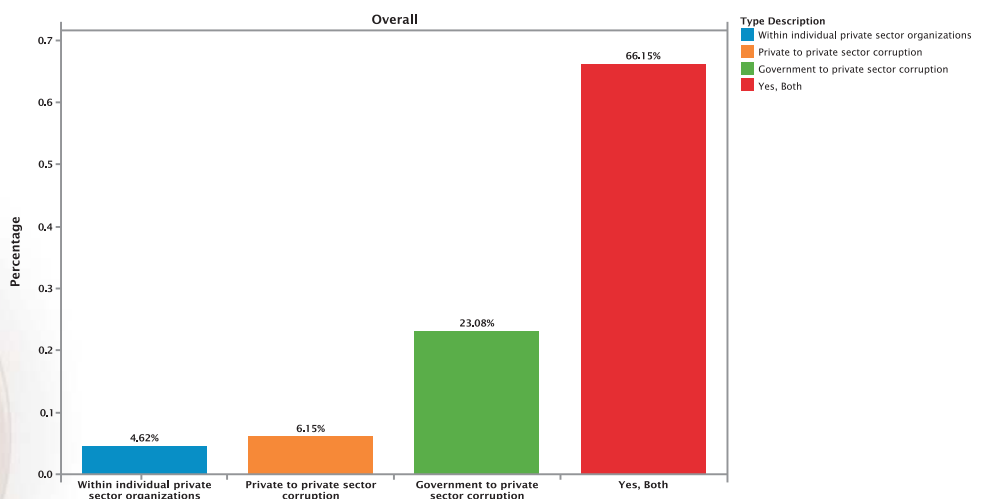
5. Is corruption in the government/public sector a greater concern or is corruption in the private sector a greater concern for your business?

Options:

- 1) Yes, Both
- 2) Government to private sector corruption
- 3) Private to private sector corruption
- 4) Within individual private sector organizations

Analysis:

- Majority of the respondents (66%) identified both corruption in the government/public sector and corruption in the private sector as bigger concerns for their business.
- Least number of respondents (5%) identified “within individual private sector organizations” as a concern.



6.1.2 How does the private sector view on-going efforts to raise integrity levels-

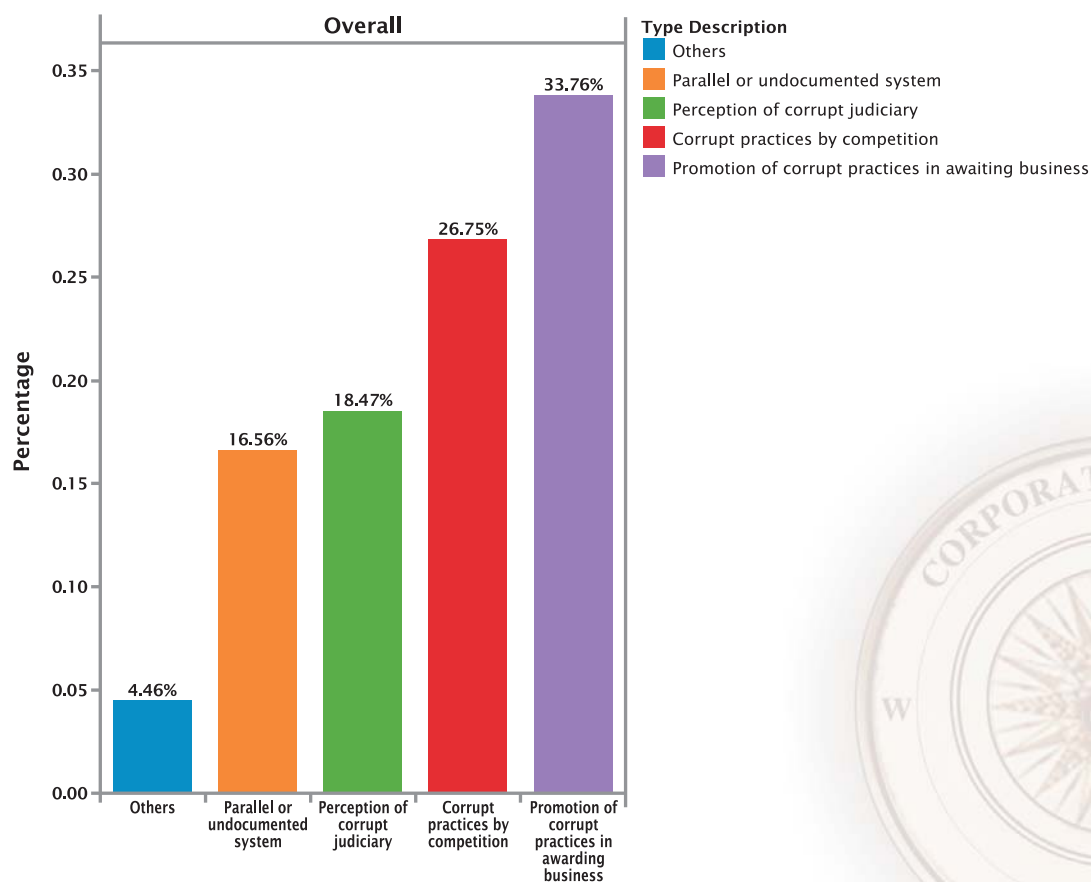
1. What is hindering⁸ private companies in their endeavour to raise integrity levels within their organizations?

Options:

- 1) Corrupt practices followed by the competition.
- 2) Promotion of corrupt practices in awarding business, licenses or subsidies by employer (government or private) & fear of losing business.
- 3) Perception of corrupt judiciary and law enforcement agencies.
- 4) Parallel or undocumented system of subversion of due process in return for favors to key government officials of departments such as income tax, sales and excise.
- 5) Others, please specify.

Analysis:

- Respondents identified “corrupt practices in awarding business and fear of losing business” as the most important hindrance for the management.
- From the given responses, it seems that the companies are indulging in corrupt practices due to pressure from peers.



⁸ Reasons that deters (or diverts) management to be tough (or zero tolerance) against corruption

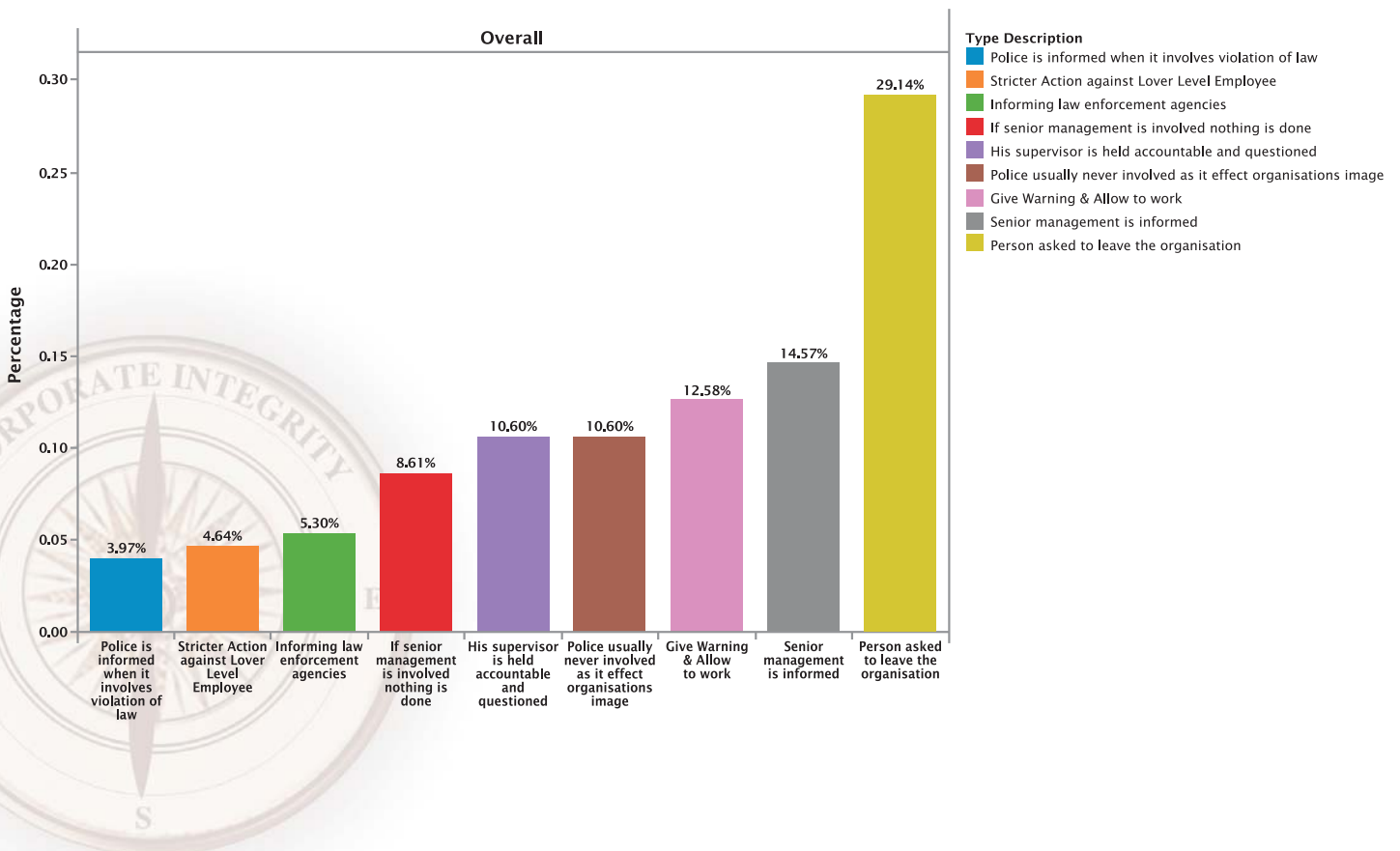
2. Based on your experience, what are the actions taken by private sector companies in case they found any corrupt practices?

Options:

- 1) Give warning & allow to work
- 2) His supervisor is held accountable and questioned
- 3) Senior management is informed
- 4) Informing law enforcement agencies
- 5) Person asked to leave the organisation
- 6) If senior management is involved nothing is done
- 7) Police is informed when it involves violation of law
- 8) Police usually never involved as it affect organisations image
- 9) Stricter action against lower level employee
- 10) Others

Analysis:

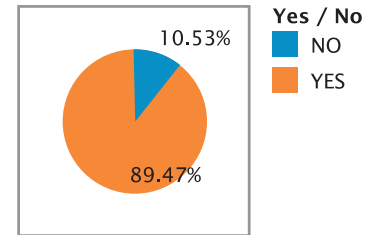
- Majority of the respondents pointed out that the person is asked to leave the organization, if found guilty of any corrupt practice.



3. Does your company have an 'ethics code'?

Options:

- 1) Yes
- 2) No



Analysis:

- Survey revealed that among the responding companies, 89% of the respondents' company have an 'ethics code'.
- But when asked further, most private sector officials had never read or referred to their company's code of ethics.

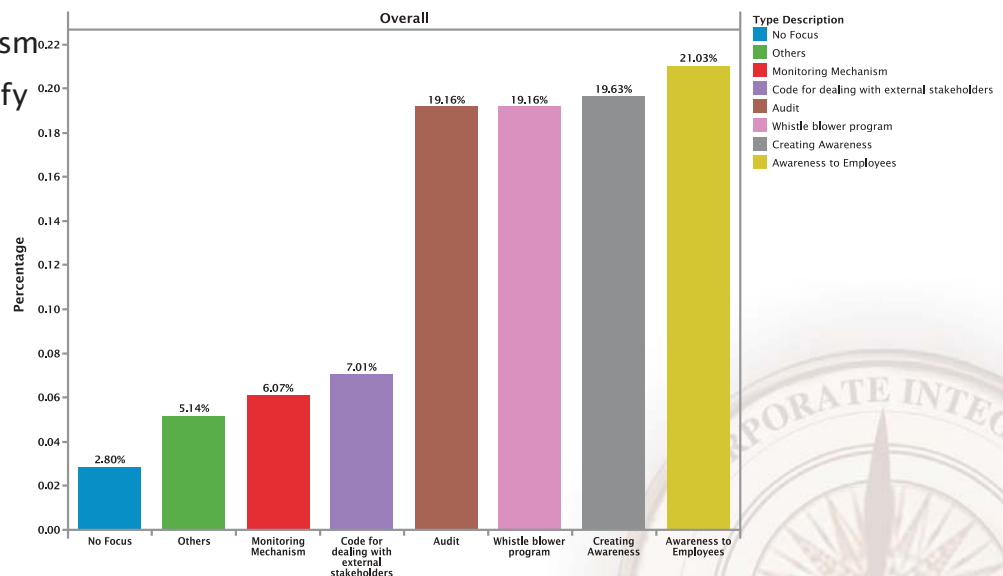
4. The role of the board of directors in fighting corruption is of paramount importance. Which 'anti-corruption mechanism' is the focus of your organization's board of directors?

Options:

- 1) Code for dealing with external stakeholders
- 2) Whistleblower program
- 3) Audit with a focus on detection and prevention of fraud
- 4) Anti-corruption policies and creation of specific roles within the organization to enforce these
- 5) Awareness of the importance of fighting corruption among employees, partners and vendors
- 6) No focus at present
- 7) Monitoring mechanism
- 8) Others, please specify

Analysis:

- Overall, almost all options formed part of the boards' agenda of different companies. However, the boards' focus seems to be more on detection of corruption rather than its prevention. Prevention programs will have long term effect on reducing corruption as compared to detection programs.

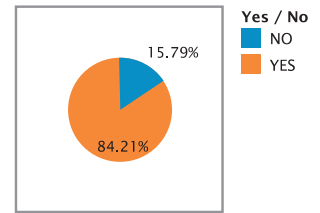


- Surprisingly, developing a code to deal with external stakeholders of the company has received the least focus according to the respondents. Interface between the company and its external ecosystem is also susceptible to corruption and deserves attention.

5. Is there a need for legislation to address corruption in the private sector?

Options:

- 1) Yes
- 2) No



Analysis:

- Majority of the respondents believe that there is a need for a legislation to address private sector corruption.

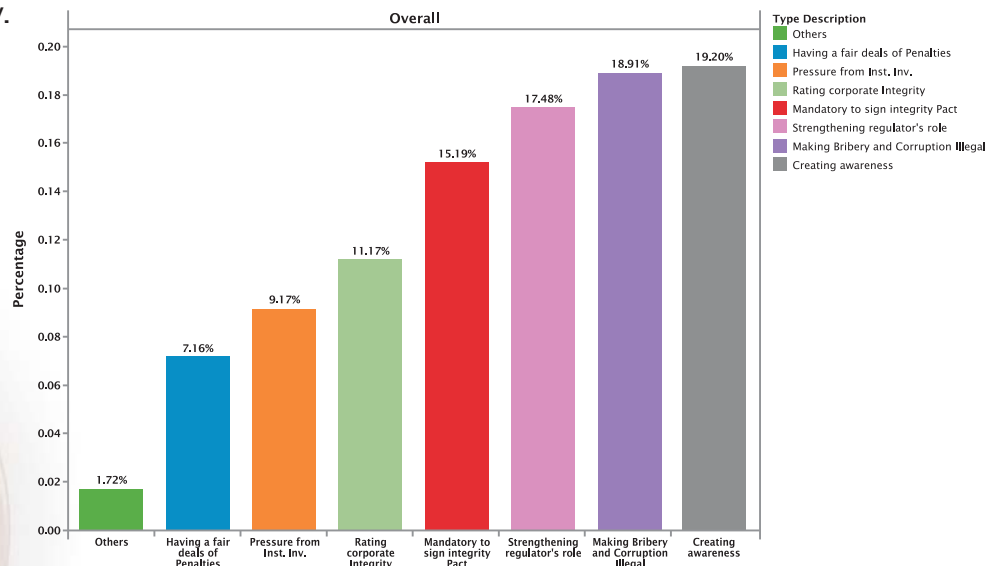
6. What is the best external⁹ way to promote integrity in private companies?

Options:

- 1) Making it mandatory for companies to sign agreements, e.g., an integrity pact.
- 2) Making bribery and corruption in the private sector an illegal activity in India through a dedicated law.
- 3) Strengthening the role of regulators and industry associations & Improving government institutions.
- 4) Creating awareness among all the stakeholders, including shareholders, customers, suppliers, employees, etc. (positive publicity).
- 5) Putting in place an index to rate the corporate integrity of organizations.
- 6) Pressure from the institutional investors.
- 7) Having a fair deal of penalties.
- 8) Others, please specify.

Analysis:

- Majority of respondents believe that making bribery illegal in the private sector will promote integrity.
- Many respondents also believe that imposing penalties cannot solve the problem of bribery in the private sector.



⁹ Environment under which a company operates, for example, regulator, government institutions, etc.

7. *What is the best internal¹⁰ mechanism to promote integrity within private companies?*

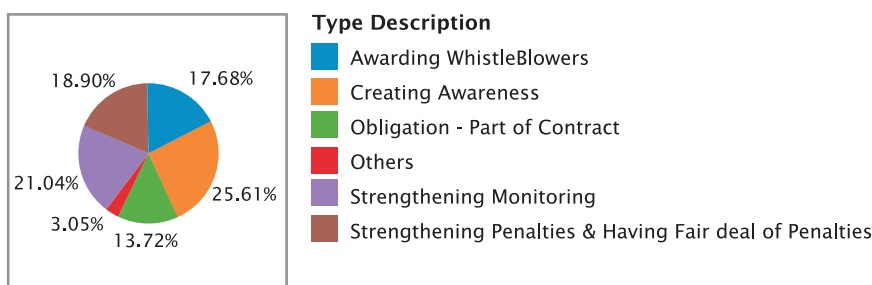
Options:

- 1) Strengthening monitoring and detection mechanisms within the organization.
- 2) Creating awareness of the company's anti-corruption initiatives among its employees, customers, business partners and vendors.
- 3) Strengthening penalties imposed on vendors and partners for corrupt practices & having a fair deal of penalties.
- 4) Meeting an organization's client obligations in relation to anti-corruption (part of contract).
- 5) Encouraging and rewarding whistleblowers.
- 6) Others, please specify.

Analysis:

- Creating awareness was identified as the best internal mechanism to promote integrity.

8. *Which practice, if followed within an organization, can increase confidence to report fraud, corruption or misuse?*



Options:

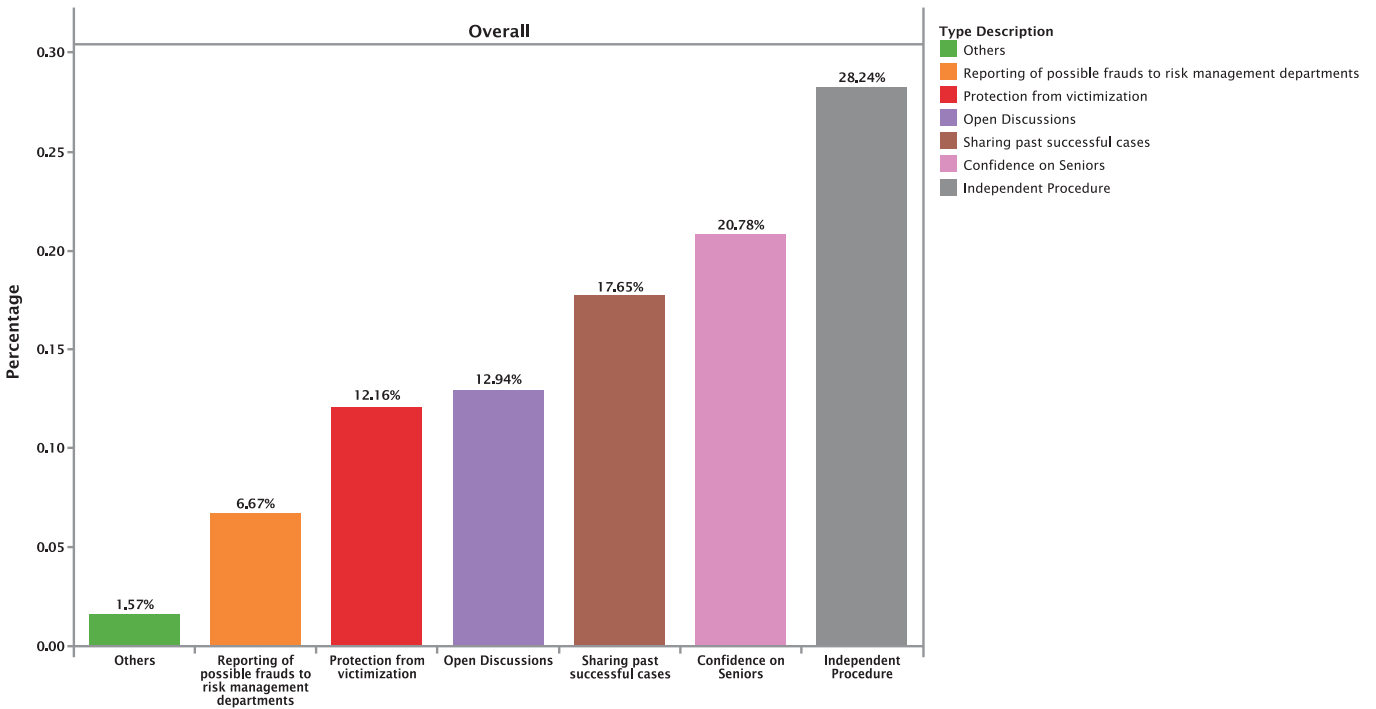
- 1) A well laid independent procedure to handle complaints & an independent department.
- 2) Confidence on the seniors to take action.
- 3) Open discussion on the subject of integrity.
- 4) Past examples of successful handling of complaints.
- 5) Protection from victimization.
- 6) Reporting of possible frauds to risk management departments.
- 7) Others, please specify.



¹⁰ Mechanism which management can introduce within their company (company policy, programs, etc.)

Analysis:

- Due to fear of victimization, most of the respondents preferred having an independent department with results to demonstrate credibility.



9. What could be the incentives¹¹ to private companies to adhere to increased levels of integrity?

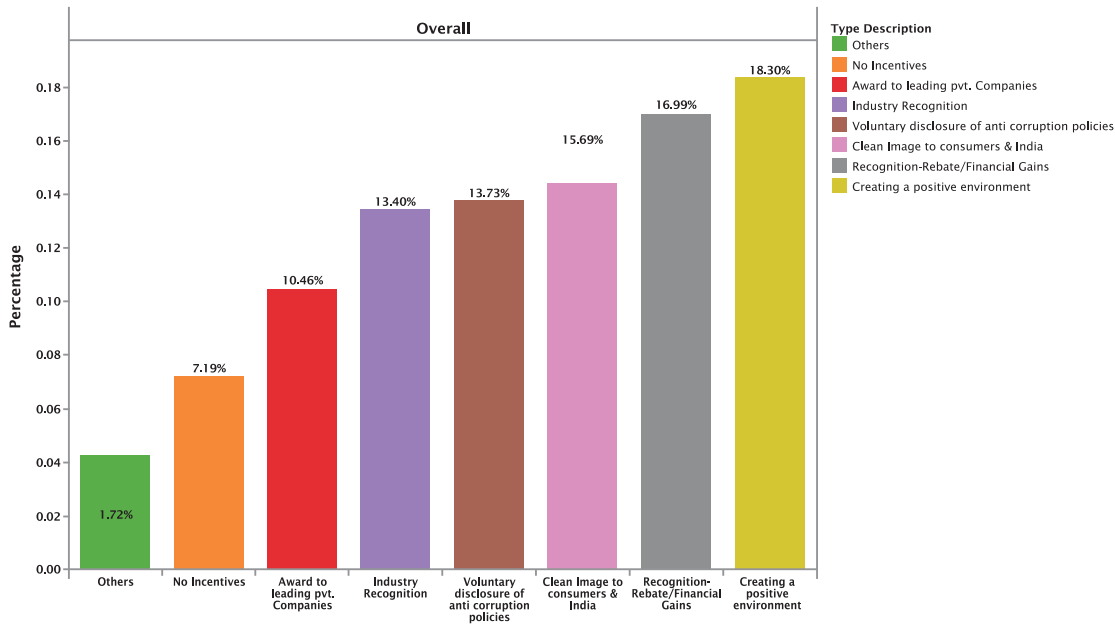
Options:

- 1) Recognition-rebate/financial gain.
- 2) Industry recognition.
- 3) Clean image to consumer & industry.
- 4) Creating a positive environment within the country which would create additional business opportunities globally.
- 5) No incentives.
- 6) Award to leading private companies with anti- corruption initiative.
- 7) Voluntary disclosure of anti -corruption policies.
- 8) Others, please specify.

¹¹ Practices, if followed by companies, can promote integrity. Example, legal incentives provided by the government, incentives within the company, etc.

Analysis:

- Majority of respondents feel that “creating a positive environment” can be an incentive. This might be related to recent cases of voluntarily reporting of fraud cases to law enforcement.



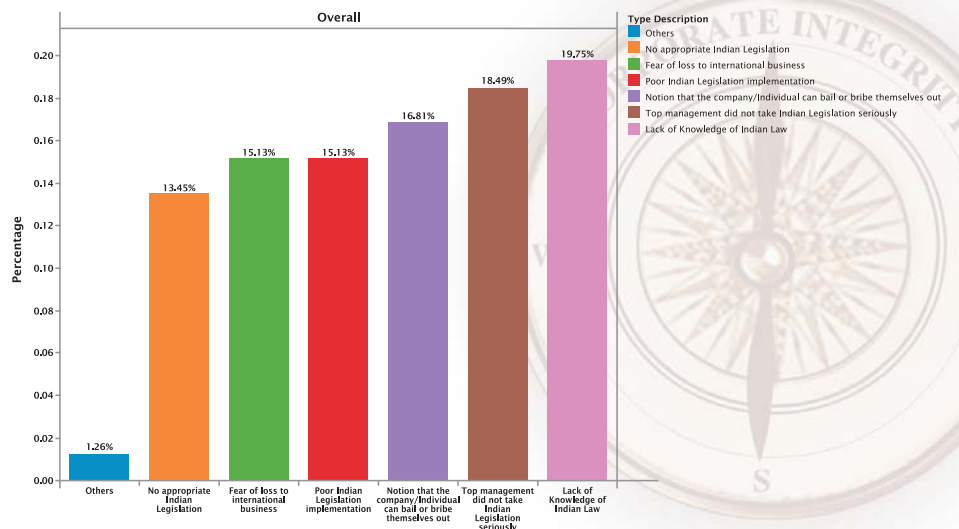
10. Private sector companies seem to follow the FCPA & UK Bribery Acts so diligently but the same level of fear or deterrence is not there for Indian laws. Why so?

Options:

- Lack of knowledge of Indian law
- Fear of loss to international business
- Poor Indian legislation implementation
- No appropriate Indian legislation
- Notion that the company/individual can bail or bribe themselves out
- Top management did not take Indian Legislation seriously
- Others

Analysis:

- Majority of the respondents identified “lack of knowledge of Indian law”. This shows that respondents are not aware of the Indian compliance requirements.
- Many respondents selected “poor implementation of Indian legislation” as the option.

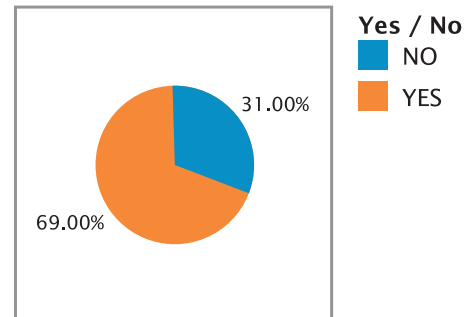


6.1.3 Private sector and law enforcement:

1. Do you face any problem in reporting cases to law enforcement & judiciary? Based on your experience, what are the factors that discourage private or public companies' reporting to the law enforcement (LE) ?

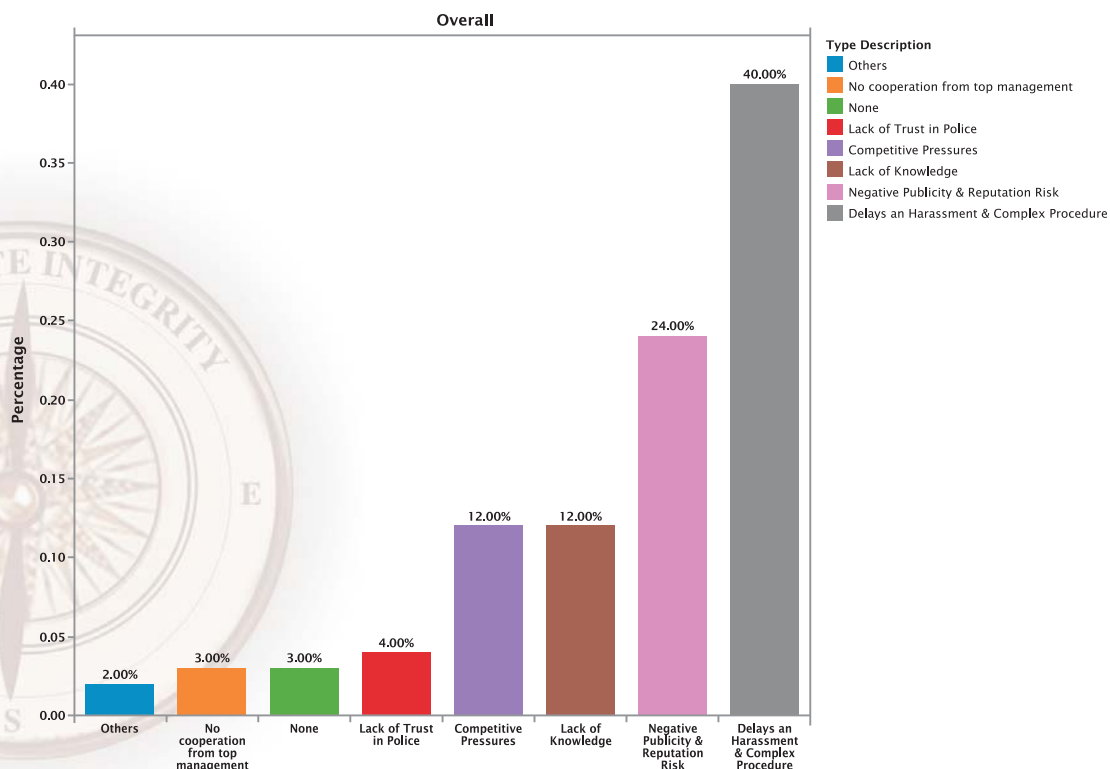
Options:

- 1) Yes
- 2) No
- 3) If yes, then what are the factors?
 - a. Negative publicity & Reputation risk
 - b. Lack of trust in police
 - c. Lack of knowledge of Indian laws
 - d. Competitive and business environment pressures
 - e. Long delays and harassment from the authorities & Complex procedures
 - f. No cooperation from top management
 - g. None
 - h. Others, please specify



Analysis:

- Negative environment for example, delays, harassment and complex procedures are deterrents to reporting to law enforcement, as mentioned by most respondents.



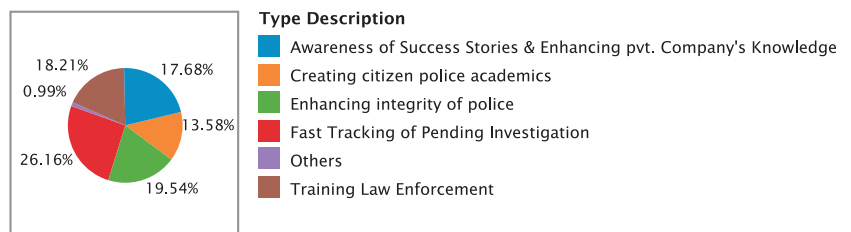
2. What is the best way of building trust between law enforcement agencies and private companies?

Options:

- 1) Fast-tracking pending investigations and setting fixed timelines for future investigations.
- 2) Building awareness of success stories (or capabilities) relating to solved white-collar crimes & enhancing knowledge of private companies.
- 3) Training law enforcement officers on corporate practices.
- 4) Creating citizen police academies (to enable learning of law enforcement laws and operations).
- 5) Enhancing integrity of police and other investigating authorities.
- 6) Others, please specify.

Analysis:

- Fast track mode of solving pending investigations was the most selected option (26%). Creating awareness and enhancing knowledge about the law enforcement received second-highest number of responses (22%).



3. Do you believe that law enforcement has a role to play in enhancing incentives to corporate integrity and what role can they play?

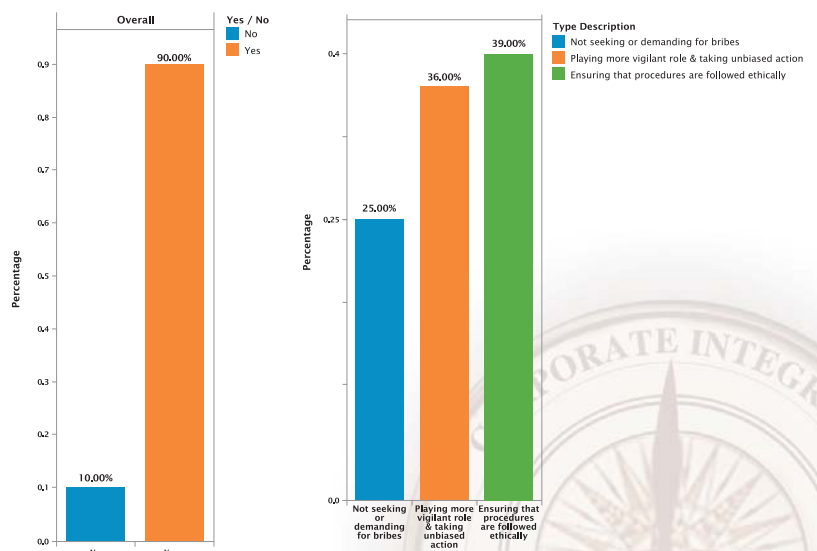
Options:

- 1) Yes
 - a. Playing more vigilant role & taking unbiased action.
 - b. Not seeking or demanding for bribes.
 - c. Ensuring that procedures are followed ethically.

2) No

Analysis:

- Maximum number of respondents (90%) feel that law enforcement can play a positive role in enhancing incentives to corporate integrity. Fast tracking pending investigations and improving the law enforcement integrity perception can be the incentives as evident from the previous responses.

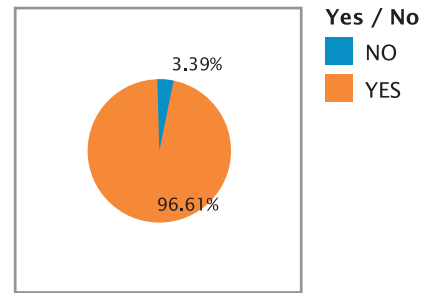


4. Is there a role that government can play in enhancing incentives to corporate integrity?

Options:

1) Yes

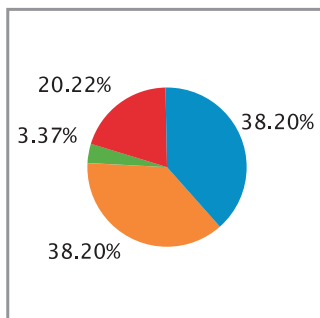
- a. Enhancing legislation to encourage and recognize transparent and fair practices.
- b. Greater sanctions and recognition to companies that are compliant.
- c. Training of their own law enforcement agencies.
- d. Others.



2) No

Analysis:

- Most of the respondents (38%) selected “greater sanctions and recognition to companies that are compliant” as an option.
- Majority of the respondents (96.6%) said that government has a role to play in enhancing incentives to corporate integrity.



Type Description

- Enhancing legislation to encourage and recognize transparent an fair practices
- Greater sanctions and recognition to companies that are compliance
- Others
- Training of their own law enforcement agencies

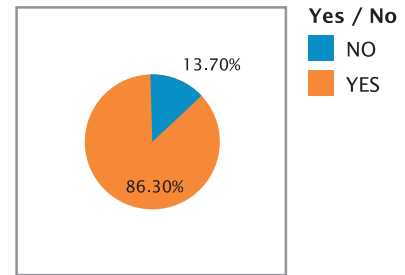


6.1.4. Responses from law enforcement officials :

1. *During your career, have you interacted with private companies?*

Options:

- 1) Yes
- 2) No



Analysis:

- Among the respondents, 86% said that they have interacted with private companies.

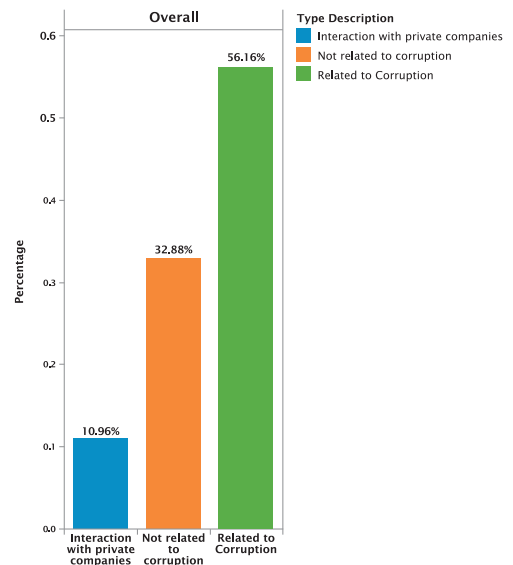
2. *Was your interaction with private companies related to corruption (breach of trust/ forgery/ fraud/ misrepresentation) related cases?*

Options:

- 1) Yes. Related to corruption issues.
- 2) No. Related to issues other than corruption.
- 3) No interaction with private companies.

Analysis:

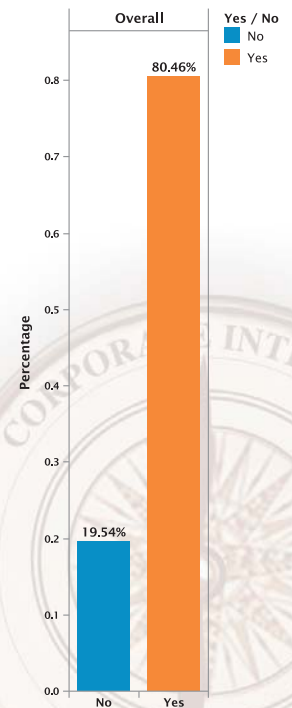
- More than half of the cases (56%) were related to corruption.



3. *During your career, have you come across instances where offences related to corruption/fraud or improper payments in the private sector have been reported?*

Options:

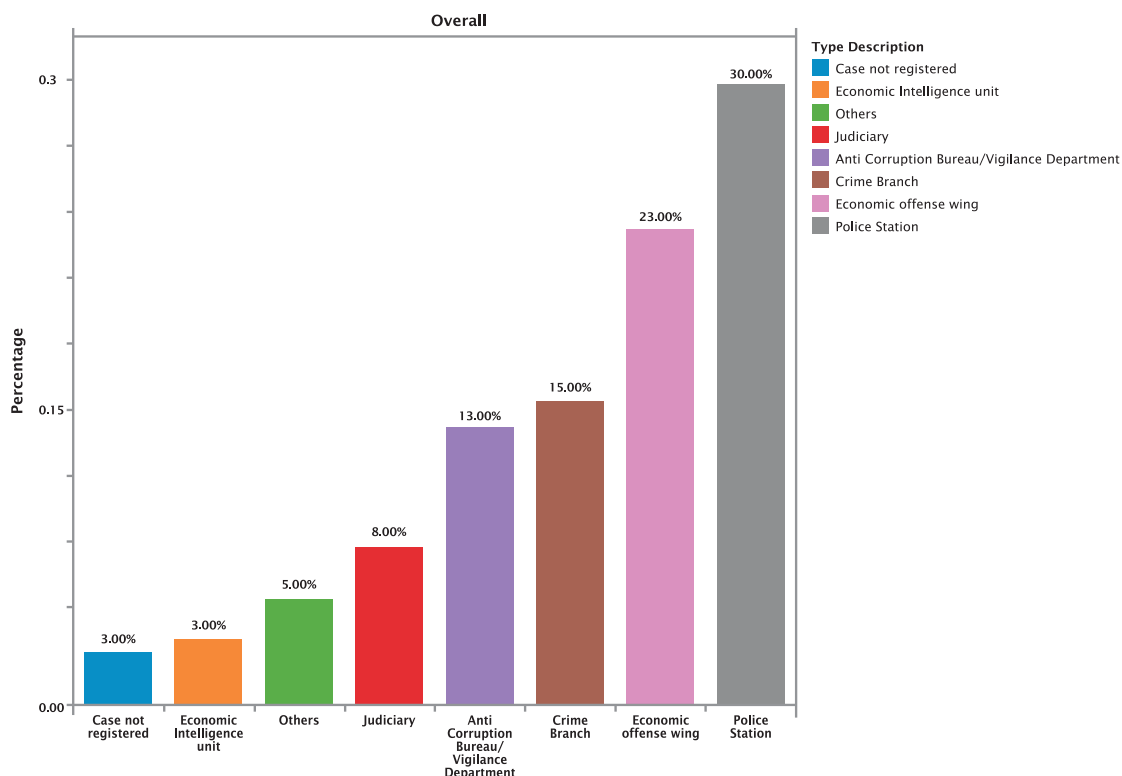
- 1) Yes.
- 2) No
- 3) Under which authority were the offences relating to corruption or improper payment registered
 - a. Economic Offence Wing (EOW)
 - b. Crime Branch
 - c. Police Station
 - d. Anti-Corruption Bureau/ Vigilance department
 - e. Judiciary, u/s 156(3) of Criminal Procedure Code



- f. Economic Intelligence Unit
- g. Case not registered
- h. Others

Analysis:

- Majority of the respondents (90%) shared that they have experienced situations of corruption in private sector.
- Police Station and EOW remains the authority for registration of corruption related case.



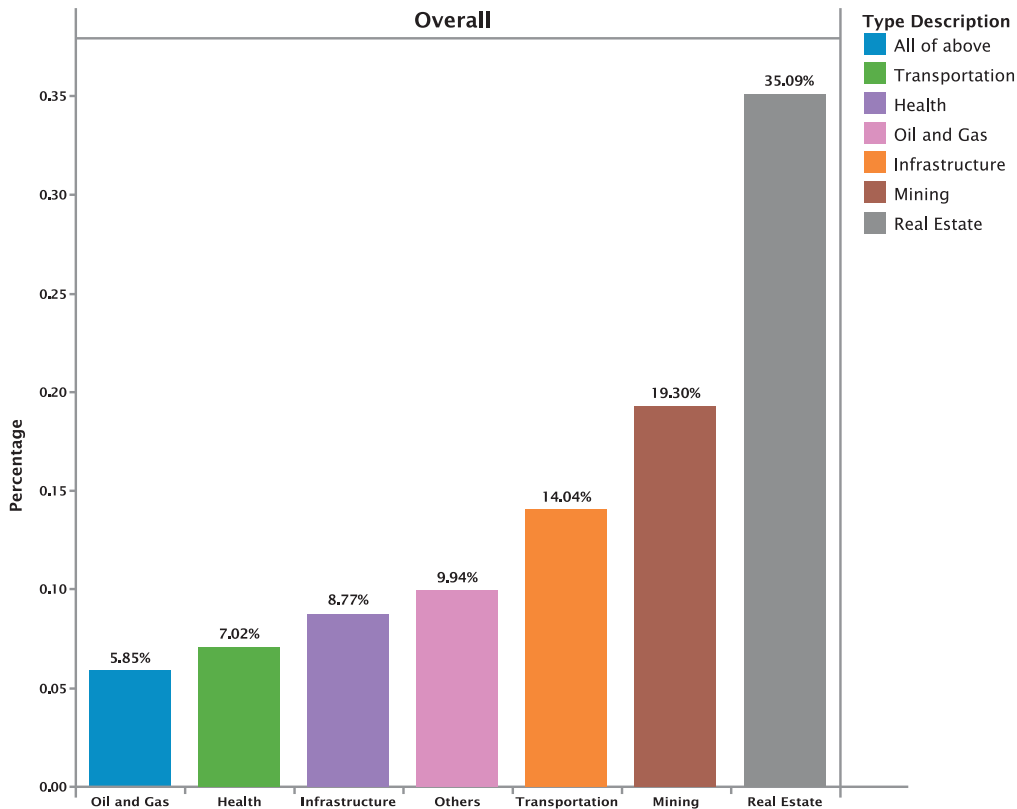
4. In what sector do you see large number of issues being reported related to corruption (breach of trust, forgery, fraud, misrepresentation)?

Options:

- 1) Real Estate
- 2) Oil and Gas
- 3) Health
- 4) Transportation
- 5) Infrastructure
- 6) Mining
- 7) Others

Analysis:

- The highest number of respondents (35%) identified 'real estate' as the sector. This was followed by 19% respondents for the mining sector.
- The response matches with the private sector survey where majority of the respondents selected the 'real estate sector' as the most difficult sector for conducting business.



5. What are the issues that are discouraging private sector companies from cooperating with law enforcement agencies?

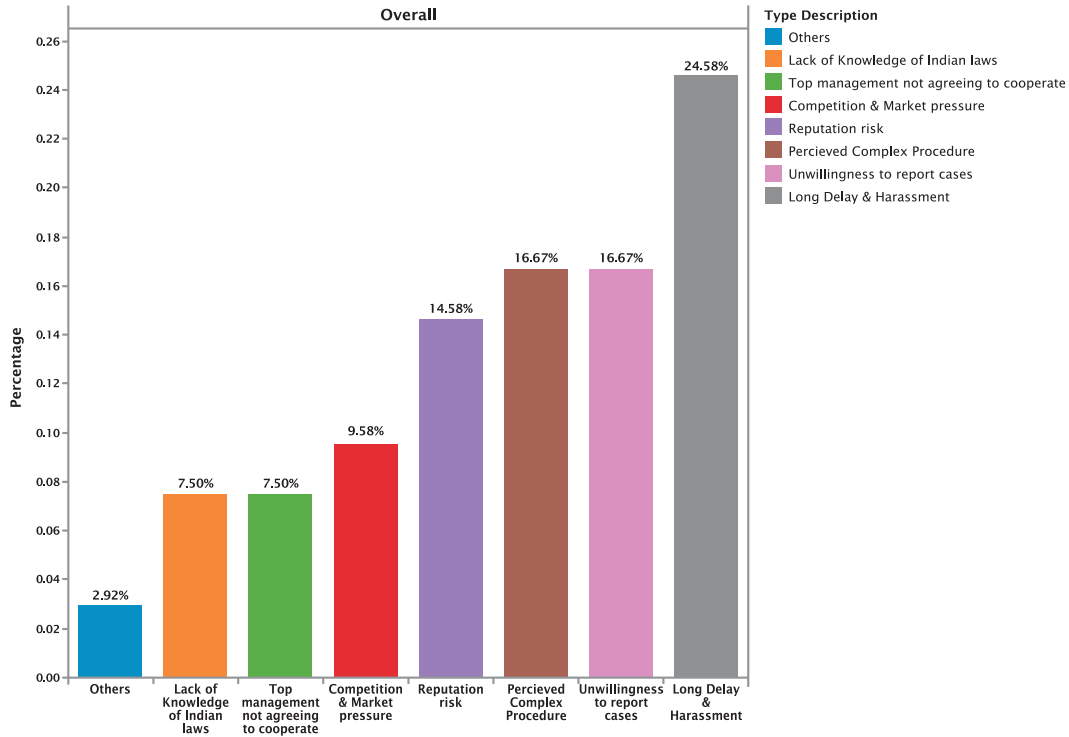
Options:

- 1) Lack of knowledge of Indian law.
- 2) Perceived complex procedure.
- 3) Competition & market pressure.
- 4) Long delay in process & harassment by authorities.
- 5) Top management not agreeing to cooperate.
- 6) Reputation risk of private sector company.
- 7) Unwillingness to report cases or don't want to enter into legal tangles.
- 8) Others.



Analysis:

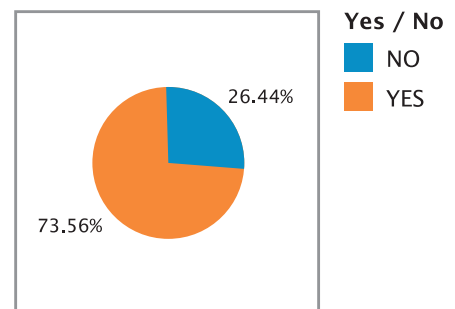
- Long delays and harassment has been identified as a primary reason by most of the respondents (25%). This response matches with the private sector survey where the same option was identified by majority of the respondents.



6. Has your department attempted to bridge the knowledge gap with companies and promote cooperation in the past?

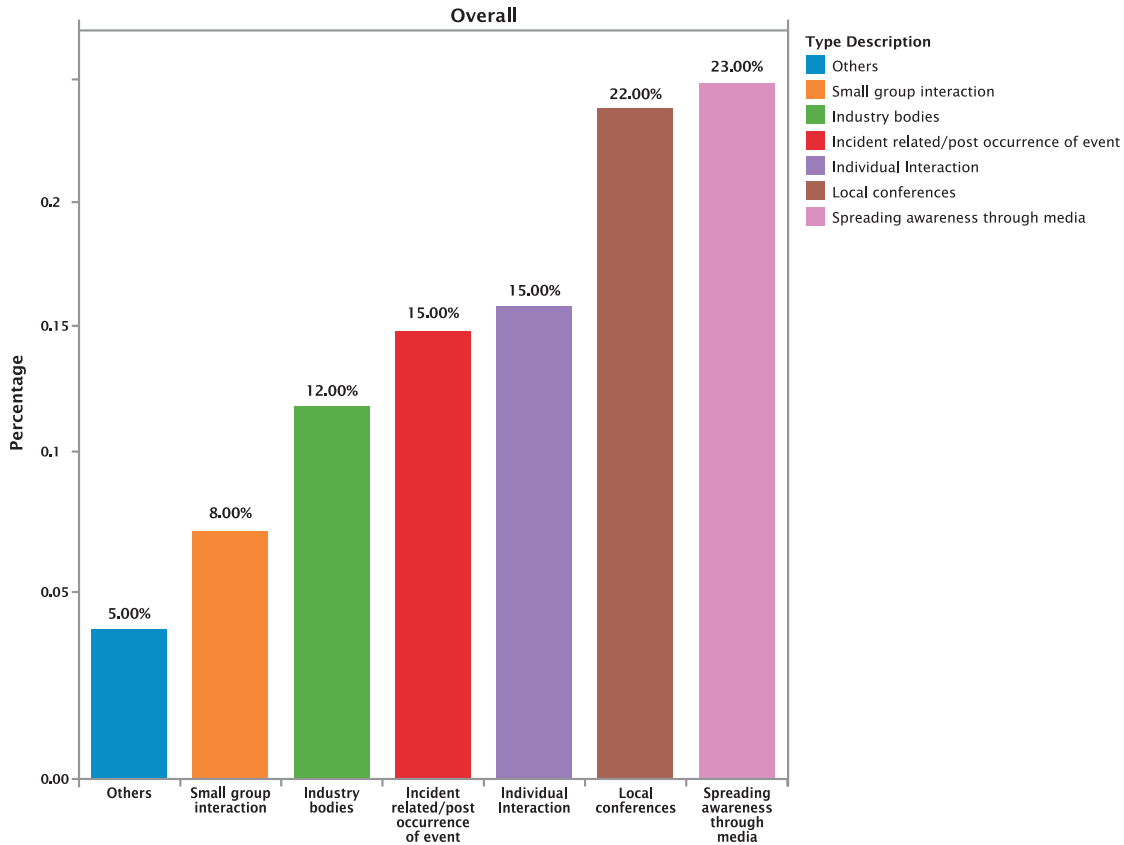
Options:

- 1) Yes. If yes, then what are the means through which your agency educated private and public companies on cooperating with & reporting internal wrongdoings to the relevant authorities?
 - a. Local conferences.
 - b. Industry bodies such as FICCI, CII, ASSOCHAM & NASSCOM.
 - c. Spreading awareness through media.
 - d. Individual interaction.
 - e. Small group interaction.
 - f. Incident related/ post occurrence of any event.
 - g. Others.
- 2) No



Analysis:

- Majority of the respondents (74%) approximately shared that they have attempted to bridge the gap and the most common method reported was “Spreading awareness through media”. There is an opportunity here to increase knowledge gap using social media techniques as well.



7. Have you come across any incident/complaint where bribe was allegedly paid/offered to any law enforcement official?

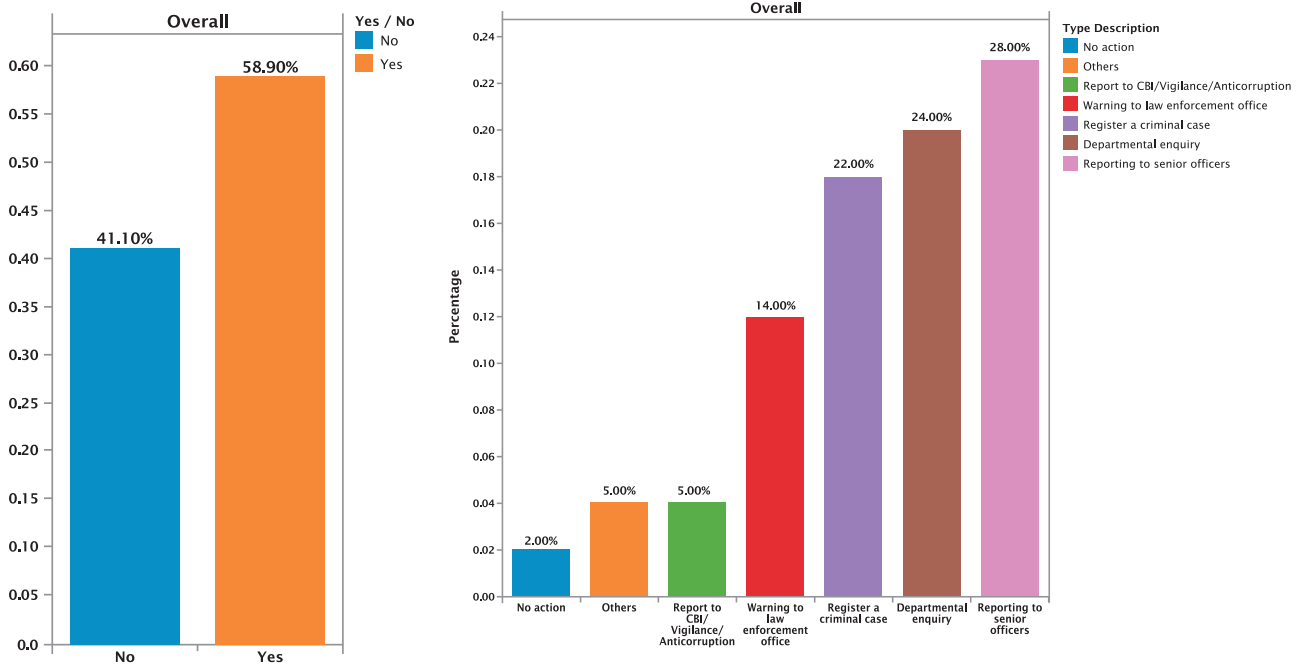
Options:

- Yes. What actions were taken by you to resolve such issues?
 - Reporting to senior officer.
 - Departmental enquiry.
 - Warning to the law enforcement officer.
 - Report to CBI/ Vigilance/ Anti-Corruption.
 - Register a criminal case.
 - No action.
 - Others.
- No



Analysis:

- More than 50% of the respondents (57%) reported coming across an incident or complaint where bribe was paid offered to a law enforcement officer.
- Majority of the respondents said that complaints related to bribes given to law enforcement officers were reported to seniors (20%).



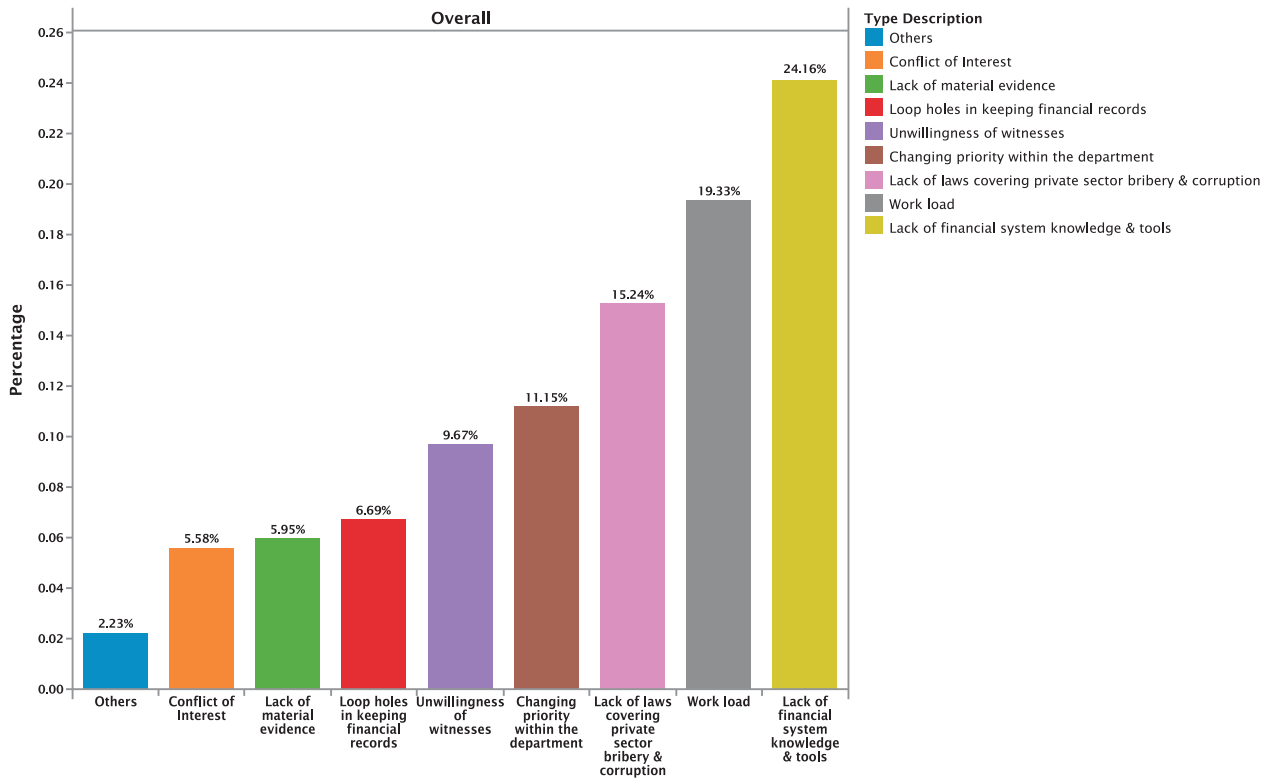
8. What are the current impediments to the fair and thorough investigation of white collar crimes?

Options:

- 1) Lack of financial systems knowledge & tools.
- 2) Conflict of interest because of corruption in law enforcement.
- 3) Unwillingness/ no co-operation of witnesses.
- 4) Lack of laws covering private sector bribery & corruption.
- 5) Work load(working on multiple investigations).
- 6) Loop holes in keeping financial records of company.
- 7) Lack of material evidence.
- 8) Changing priority within the department.
- 9) Others.

Analysis:

- Work load was identified (18%) as an impediment to fair/thorough investigation, followed by lack of financial system knowledge (17%). Police are primarily tasked with maintaining law and order, and their performance is measured based on this parameter. Therefore, the police have limited focus and knowledge on financial systems (and related crimes).



9. What are the current issues within the police department, which result in poor perception of the integrity of police personnel?

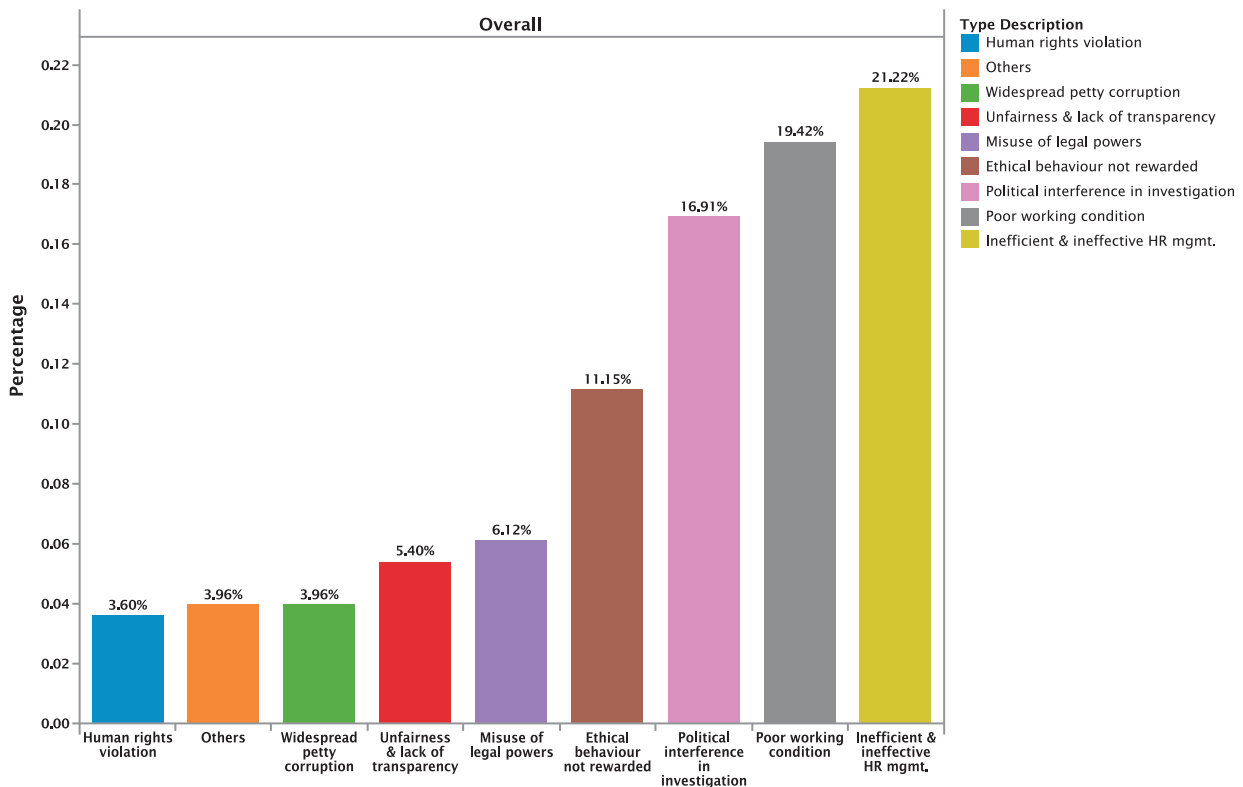
Options:

- 1) Political interferences in investigation.
- 2) Poor working condition.
- 3) Ineffective & inefficient human resource management (recruitment & promotion).
- 4) Ethical behavior not rewarded, ethical culture not promoted or supported.
- 5) Widespread petty corruption.
- 6) Human rights violation (Ill treatment to witness/ suspects).
- 7) Unfairness and lack of transparency.
- 8) Misuse of legal power.
- 9) Others.



Analysis:

- Majority of the respondents (21%) identified “ineffective and inefficient human resource management (recruitment & promotion)” as the problem. Corruption in recruitment is the root cause of corruption in law enforcement, since facilitation payments are required to be paid at the time of recruitment and promotions.
- Poor working conditions were identified by 19% of the respondents; this affects their family life and thinking capacity resulting in frustration.



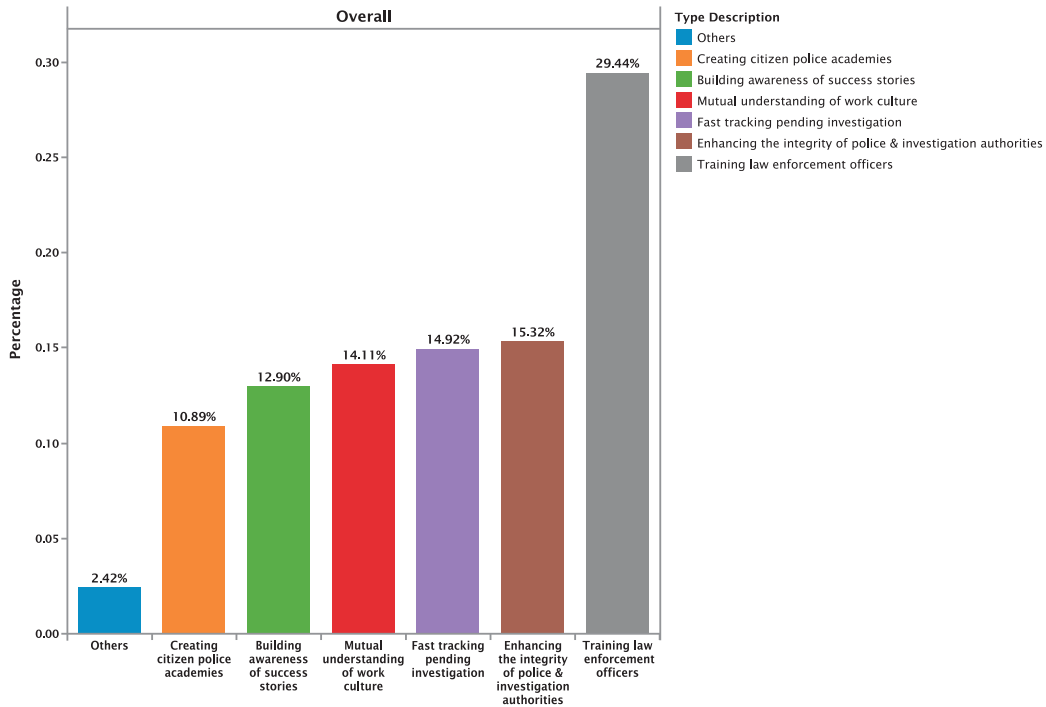
10. What would be the best way of building better understanding and trust between law enforcement agencies and private companies?

Options:

- 1) Fast-tracking pending investigations and setting fixed timelines for future investigation.
- 2) Building awareness of success stories (capabilities) of solved white collar crimes.
- 3) Training law enforcement officers on corporate practices.
- 4) Creating citizen police academies (to spread learning of law enforcement and its operations).
- 5) Enhancing the integrity of police and other investigating authorities.
- 6) Mutual understanding of work culture.
- 7) Others.

Analysis:

- Majority of the respondents (29%) selected “training law enforcement officers on corporate practices” as the best way of building trust between law enforcement agencies & private companies.



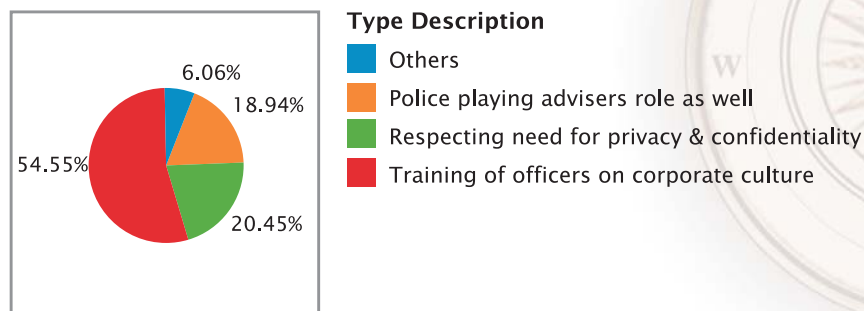
11. How can a better interface be developed with private sector companies?

Options:

- 1) Training of officers on corporate culture.
- 2) Respecting need for privacy and confidentiality of private sector.
- 3) Police playing advisors role as well.
- 4) Others.

Analysis:

- Majority of the respondents (55%) selected “training law enforcement officers on corporate practices” as a better way of developing interface.



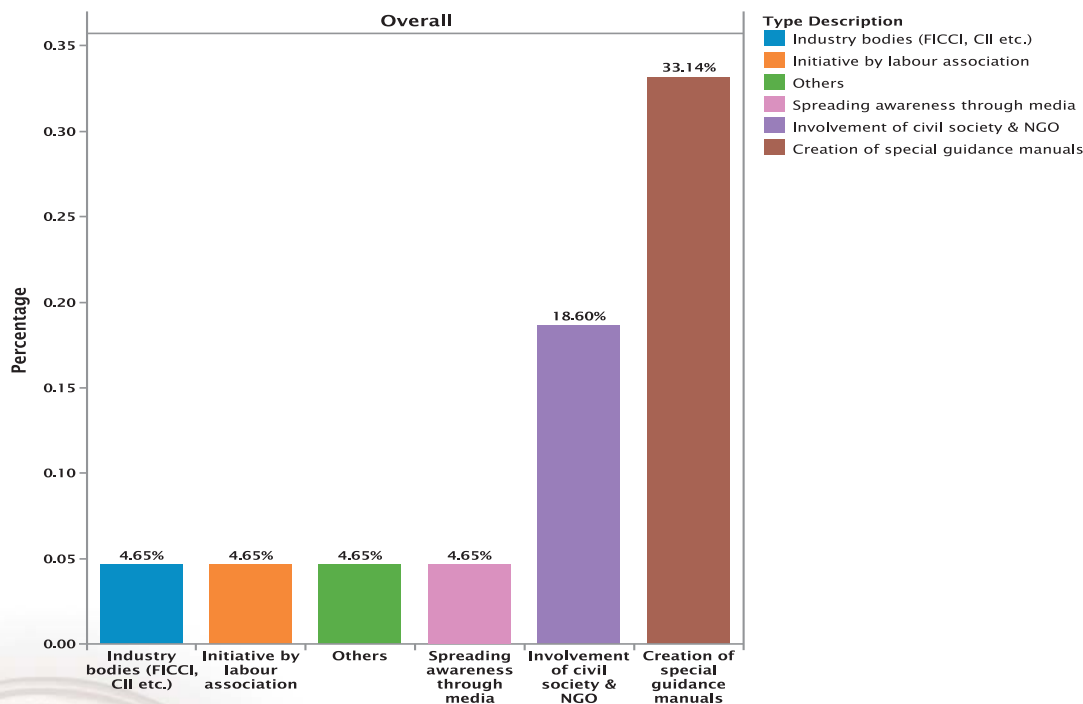
12. What would be the best way to build awareness of white collar crime laws and procedures among private companies?

Options:

- 1) Involvement of civil society & NGO's.
- 2) Creation of special guidance manuals to spread awareness of laws & procedures.
- 3) Industry bodies such as FICCI, CII, ASSOCHAM & NASSCOM.
- 4) Spreading awareness through the media.
- 5) Initiative by labor associations/ unions.
- 6) Others.

Analysis:

- Majority of the respondents (33%) selected “creation of special guidance manuals to spread awareness of laws and procedures among private companies.”



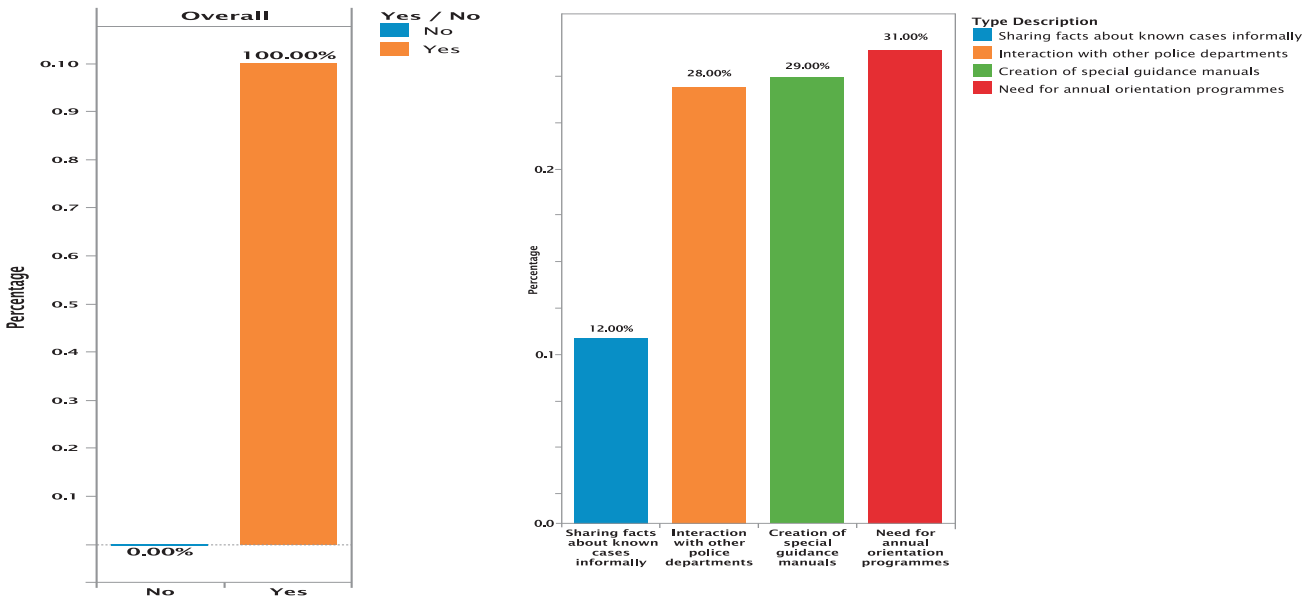
13. In your opinion, is there a need to build awareness of white collar crimes within the law enforcement machinery?

Options:

- 1) Yes. if yes what would be the best way of building awareness of white collar crimes laws & procedures within the law enforcement?
 - a. Sharing facts about known cases informally.
 - b. Need for annual orientation programmes.
 - c. Interface & interaction with other police departments that have dealt with white collar crimes.
 - d. Creation of special guidance manuals to spread awareness of laws & procedures.
- 2) No

Analysis:

- Majority of the respondents (31%) selected “need for annual orientation programs,” followed by “preparation of guidance manuals” (29%) as the next selected option.
- Interesting to note that 100% of the respondents agreed on the need to build awareness for while collar crimes. Requirement of awareness is felt more in lower level officers as compared to senior officers.



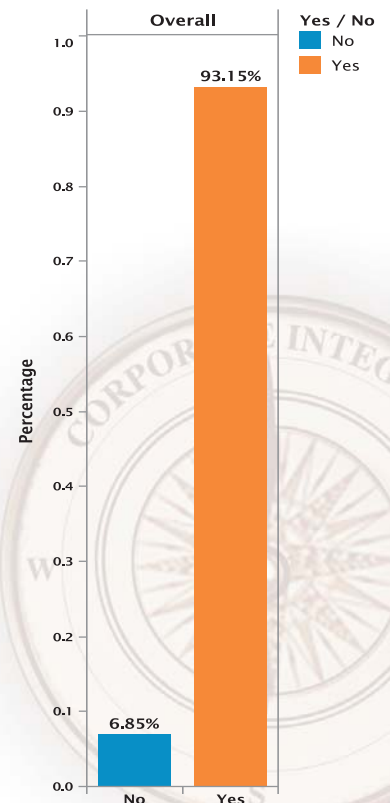
14. Is there a role that you believe law enforcement agencies can play in enhancing or supporting company integrity?

Options:

- 1) Yes. What would be the best way in which law enforcement can help in enhancing corporate integrity?
 - a. Enhancing integrity of law enforcement officers.
 - b. Frequent informal interaction with private companies.
 - c. Small group interactions on a regular basis.
 - d. Media.
- 2) No

Analysis:

- Majority of the respondents believe that “frequent informal interaction with private companies” can enhance company integrity. Timely closure of pending investigations can also increase the trust of private companies since delay in investigations was identified by majority of the private sector respondents.



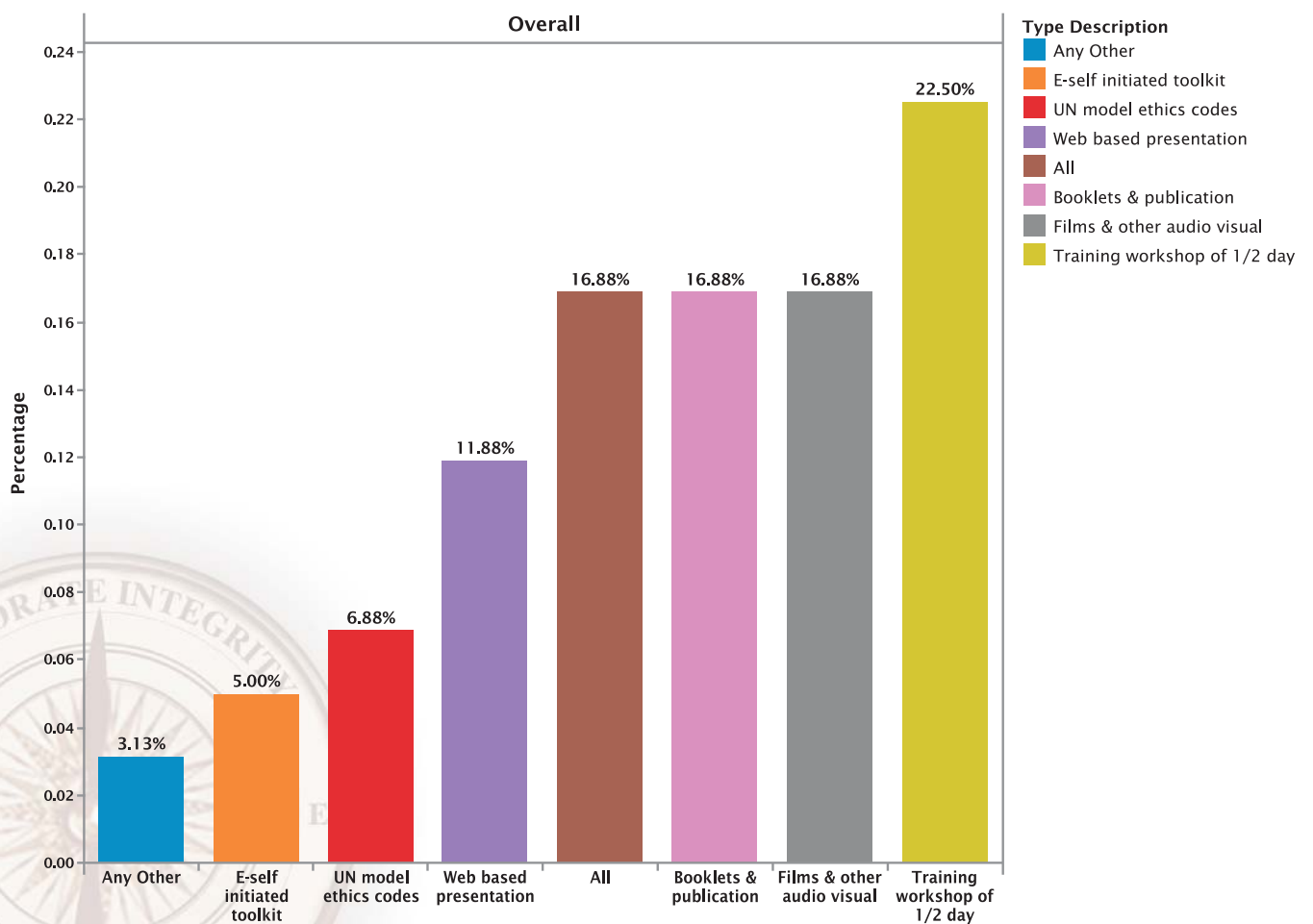
15. What should be the best method for creating awareness and sensitization among the corporate sector on incentives to corporate integrity?

Options:

- 1) Training workshops of 1/2 days.
- 2) E-self initiated tool kits.
- 3) Web based presentation and leading practices.
- 4) UN model ethics codes.
- 5) Films & other audio visual medium.
- 6) Booklets and publications.
- 7) All.
- 8) Any other.

Analysis:

- Training workshop was the best method identified by majority of the respondents (23%) to create awareness & sensitization among the corporate sector on incentives to corporate integrity.



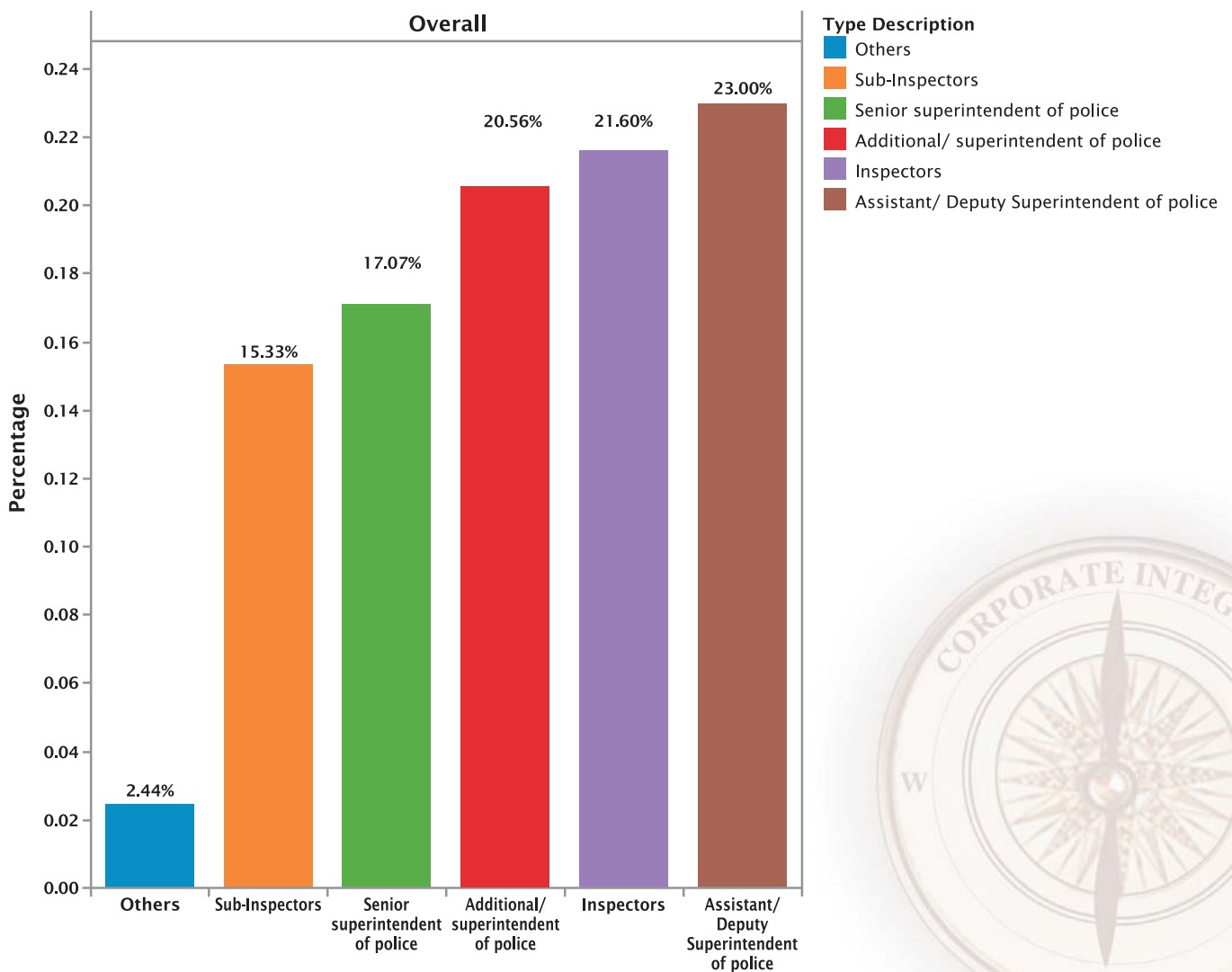
16. What level of officers should take part in the sensitization program?

Options:

- 1) Sub-inspector.
- 2) Inspector.
- 3) Assistant/ Deputy Superintendent of Police.
- 4) Additional/ Superintendent of Police.
- 5) Senior Superintendent of Police.
- 6) Others.

Analysis:

- The responses indicate that all level of officers should participate in training and sensitization programmes.



6.1.4 Training and awareness:

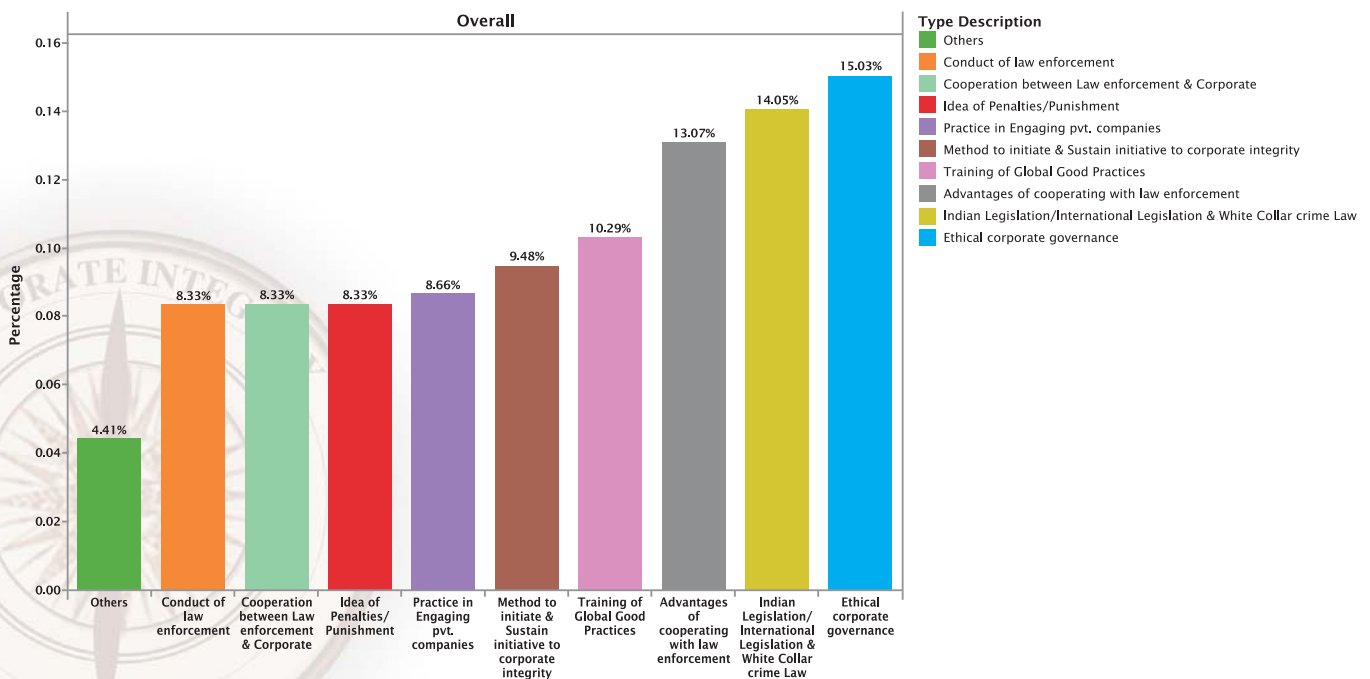
1. On which areas should a sensitization program focus?

Options:

- 1) Ideas of penalties/punishment.
- 2) Indian legislation & International legislation & white collar crime laws.
- 3) Advantages of cooperating with law enforcement and prosecuting agencies (building trust and confidence among public and private sector organizations).
- 4) Ethical corporate governance (detering, detecting and reporting corruption).
- 5) Training of global good practices.
- 6) Method to initiate & sustain initiative to corporate integrity.
- 7) Practice in engaging private companies.
- 8) Conduct of law enforcement.
- 9) Cooperation between law enforcement & corporate.
- 10) Others

Analysis:

- Majority of respondents (15%) selected “ethical corporate governance” as the focus area.
- The highest number of respondents from the compliance legal department chose “Indian/international legislation and white collar crime” as the focus area.



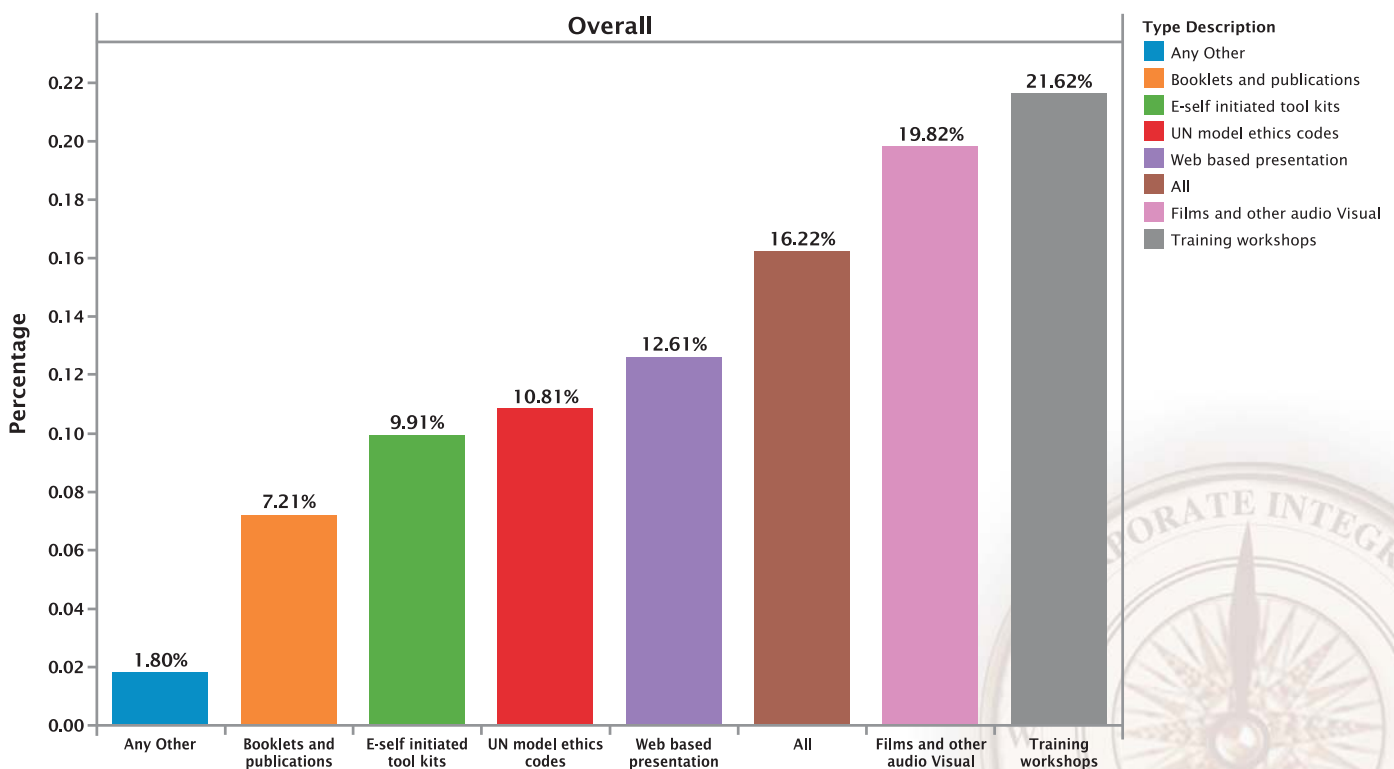
2. *What is the best method to create awareness and sensitization among the corporate sector on incentives to corporate integrity?*

Options:

- 1) Training workshops
- 2) E-self initiated tool kits
- 3) Web based presentation
- 4) UN model ethics codes
- 5) Films and other audio visual
- 6) Booklets and publications
- 7) All
- 8) Any Other

Analysis:

- “Training workshops” and “audio visual” content were identified as the best methods of creating awareness and sensitization by majority of the respondents. Booklets and publications got the least number of responses.



3. What level of employees should take part in these sensitization programs?

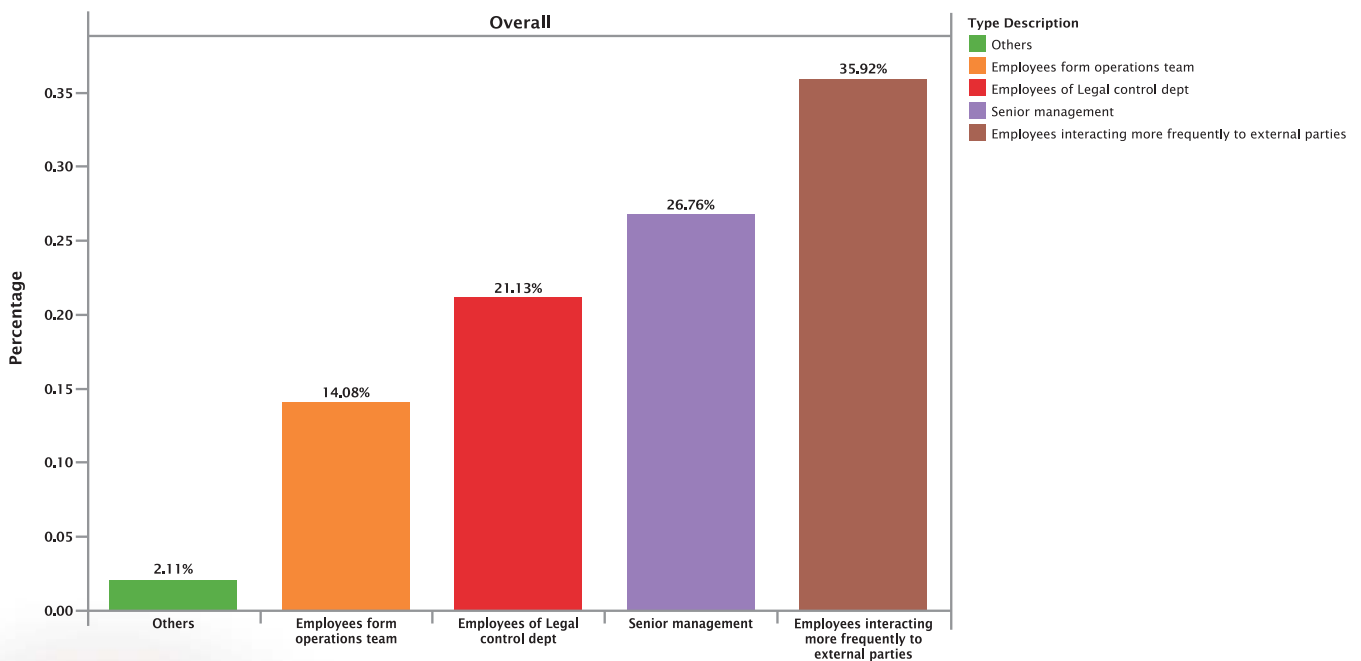
Options:

- 1) Senior management
- 2) Employees of legal control dept.
- 3) Employees from operations team
- 4) Employees interacting more frequently to external parties
- 5) Others

Analysis:

- Most of the respondents felt that “employees interacting more frequently to external parties” should participate most in the sensitization programmes. This goes well with other responses where the respondents identified interactions with the government as more vulnerable as compared to within company activities.

4. What sectors should take part in the sensitization program?

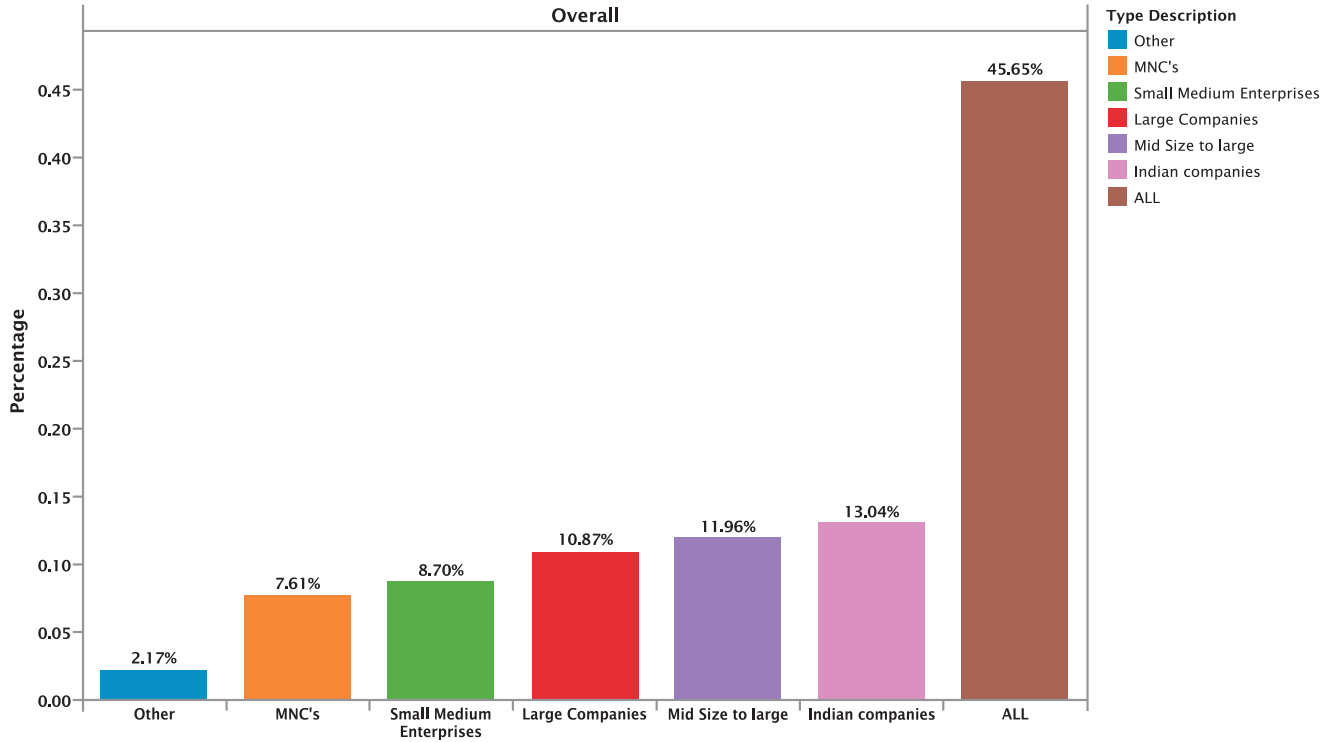


Options:

- 1) Small Medium Enterprises.
- 2) Large companies.
- 3) Mid size to large companies.
- 4) Indian companies.
- 5) MNC's.
- 6) All.
- 7) Others.

Analysis:

- Most respondents pointed out that all types of companies must participate. It shows that respondents believe that the problem of corruption spreads to all sizes of companies (Indian or international).





7 Recommendations

After a review of India's legislation, policy and practice to assess conformity with selected articles of the UNCAC, the following are some of the recommendations of this report. This report however, does not mention or provide an outline of how these can be instituted and this is left to the discretion of national authorities and the Indian State, to be achieved through a consultative process.

1. Recommendations on legislation-

a. Enactment of the Company bill 2012- While the Bill provides a number of important measures in light of the anti-corruption efforts, there is a need to include:

- Liability of legal entities to be separate and additional to the liability of natural and legal persons working in the private sector.
- Reduced fines or penalties for organizations that report corrupt practices in their business and cooperate with investigations.
- Code of conduct to encourage good commercial relations. A close example could be taken from Clause 6 of the Public Procurement Bill 2012 which has laid down a detailed code of conduct for promotion of good business practices involving both public officials and private players. A similar code of conduct is required to regulate business practices between private sector organizations.
- Create mechanisms by which shareholders can look at the financial reports of companies and also seek an explanation of profit and loss. Currently there is a similar requirement for listed companies to share their financial statements with the stock exchange. However, approximately only 1,652 companies are listed on the National Stock Exchange out of 835,860. There is also a provision under the Company bill 2012 to share financial statements with the Registrar of companies. Under both these provisions, it is not clear whether shareholders are allowed access to these documents. A related recommendation of the 'Working Group' for the project has been to provide for an external audit of transactions beyond a certain threshold, i.e. include a provision that auditors disclose their audit findings to the Ministry of Corporate Affairs directly.
- Companies beyond a certain size and scale must mandatorily have an anti-corruption department and a whistleblowing mechanism with the coverage of accountability extended to one of the members of the board of directors. This proposed legislation may also

consider enhancing the responsibility of the directors in light of stronger anti-corruption oversight and those involving the need to disclose to law enforcement authorities the occurrence of corrupt activities.

- With respect to conflict of interest as applicable to public officials, stipulations could be put in place that besides employment, no other forms of engagement (advisory with retainer, subcontract) can exist between former government officials and the private sector without explicit permission from the concerned department authorities or until two years from the last date of government service.
- b. This report supports the enactment of the Prevention of Foreign Public Officials and Officials of Public International Organizations Bill 2011. It also supports the amendment of the Indian Penal Code currently being considered to include private sector bribery as an offence. It is, however, important to ensure that these provisions also include prevention of bribery and bribery for international private sector officials.
- c. For the anti-corruption efforts in India to gain strength and teeth, there is a need for a legislation for the protection of reporting persons, witnesses, experts and victims of corruption.

2. Need for greater awareness and sensitisation -

- i. Common understanding on what acts are tantamount to corruption - Currently there is a perception that only bribery is corruption. Corporate integrity is also often a notion or a statement of intent. There is need for a system of public communication relating to UNCAC and the different acts that it mentions which need to be criminalized as corruption, mentioned in section 1 of the report. Increasing public familiarity and awareness on the same must be initiated in order to be able to build an environment that supports corporate integrity.
- ii. In particular there is a need to build awareness among small and medium sized companies.
- iii. Build greater awareness of economic crimes among law enforcement officials.
- iv. Build greater awareness of the challenges and workings of private sector among government officials and of government sector among private sector officials.
- v. Introduce awareness on anti corruption related issues into the curriculum for management students who will soon join the work force.
- vi. The fact that people and companies are not responding or are unwilling to openly talk about corruption, as seen during the survey, needs to be addressed to awareness and sensitisations.

In view of this, documents and sensitization modules developed by UNODC can also be accessed at <http://www.unodc.org/unodc/en/corruption/publications.html>. Some of these are:

- i. UNODC-UN Global Compact anti-corruption e-learning tool for the private sector
- ii. Anti-Corruption Policies and Measures of the Global Fortune 500
- iii. Corruption Prevention to Foster SME Development (UNIDO/UNODC - 2 volumes) Volume 1
- Volume 2
- iv. Anti-Corruption Compliance Handbook for Businesses (forthcoming)
- v. UNCAC pictorial guide -

3. Need to create a balance between incentives and penalties to encourage corporate integrity-

During the duration of the review, it was seen that there was almost no understanding on what incentives to corporate integrity are. Many argued that providing incentives entails giving cash rewards for following integrity practices, which in a way is a form of corruption in itself. However, as we have seen, incentives can be effective. A system which includes both incentives and sanctions is one which can act as a better deterrent to corruption in the private sector. A small summary on incentives versus sanctions has been provided below for greater clarity.

Sanctions versus Incentives:

Sanctions/disincentives can be punishments for violating anti-corruption standards. The disincentives or penalties for non-compliance to an anti-corruption standards are: termination of contracts, debarments, fines, imprisonments, public naming and shaming. They can apply to a company as a whole or to representatives of the company.

Incentives are rewards or motivations for meeting or exceeding your anti-corruption standards. These do not imply financial gains for meeting or exceeding anti-corruption standards, but rather refer to putting in place those mechanisms that encourage anti-corruption behavior in the environment in which the individual or the company operates.

*For further reference – Humbolt-Viadrina School of Governance. “Motivating Business to Counter Corruption: A Global Survey on Anti-Corruption Incentives and Sanctions”, 2012, for more information on sanctions and incentives, please see. http://www.humboldt-viadrina.org/w/files/anti-corruption/hvsg_acis_motivating-business-to-counter-corruption_report_final.pdf

According to the UNCAC, there is a need for a balance between disincentives/ penalties and incentives.

What is also evident from the analysis above is that representatives from India's private sector are seeking incentives to bolster corporate integrity.

Integrity is a voluntary undertaking for corporates in India. In an environment where bribery and corruption are perceived as business tools or necessary evils that are critical in determining success, corporate integrity is considered utopian and impractical, and therefore, undermined. However, as seen above, representatives from India's private sector are seeking incentives which they believe is a requirement to bolster corporate integrity. Therefore, the purpose of this report is also to delve much more into the aspects of incentives to corporate integrity.

Example from Siemens- For about 2/3 years Managers at Siemens were given an extra bonus for complying and motivating their teams to comply with integrity standards. After a few years this was turned around and in case a manager did not comply with integrity standards, he was penalized.¹²

Some of the incentives that can be considered to better corporate integrity-

Taking cues from the conclusion of the survey, India could explore the creation of a mechanism of incentives to corporate integrity, while strictly enforcing sanctions for non-compliance. The following suggestions also reflect recommendations given by members of the project's Working Group.

- Following clean processes of business despite the presence of competition is professionally recognized rather than concentrating on bottom line for greater profits.
- Better and more regulated commercial practices followed by sectors, including mechanisms to claim compensation in case another organization has claimed business through unfair means.
- Preferred access to business opportunities, globally and among international clients.
- National recognition through greater financial access to finance institutions, such as positive investor perceptions, rebates and favourable commercial conditions (e.g. lower interest rates, tax breaks), and industry chamber membership.
- Lower staff turnover as a result of greater employee morale.
- Government recognition.
- Positive image among customers, media and shareholders.
- Reduced sanctions for self-disclosure, including commercial, operational, legal, and reputational sanctions.

¹² As presented by Siemens representative at project Expert Group Meeting in September 2012.

- Ability of companies to seek compensation for damage caused due to corrupt practices of individuals working in their companies.
- Speedy judicial procedures and non-corrupt judiciary and law enforcement sectors.
- Confidentiality clause with the media when self- reporting.

4. Coordination between private sector, law enforcement officers and among national authorities-

Since a cooperative relationship between the private sector and law enforcement agencies is a recommended and important practice, this could be achieved through increased awareness about corporate affairs and economic crimes, joint and informal interactions and workshops between the private sector and law enforcement.

5. Promote compliance with UNCAC mandatory requirements -

In-line with the Terms of Reference for the UN Convention against Corruption Peer Review Mechanism, India will undergo its peer review in 2014. The review will focus on Chapter 3 (Criminalization and law enforcement) and Chapter 4 (International cooperation). The following are some immediate obligations that India should put in to place as signatories of the UNCAC. While not all are mandatory requirements, they are recommended and considered good practices for States Parties to adopt legislation, in line with domestic principles, to ensure compliance in relation to the following private sector/corporate integrity related provisions:

- Article 21 Bribery in the private sector
- Article 26 Liability of legal persons
- Article 32 Protection of witnesses, experts and victims
- Article 33 Protection of reporting persons
- Article 37 Cooperation with law enforcement agencies
- Article 39 Cooperation between national authorities and the private sector



Annexures

Annexure 1: List of legislation and policy reviewed

Annexure 2: Sampling strategy followed for survey

Annexure 3: Survey questionnaire - Private sector

Annexure 4: Survey questionnaire - law enforcement

Annexure 5: List of working group participants - New Delhi & Bangalore

Annexure 6: Bibliography

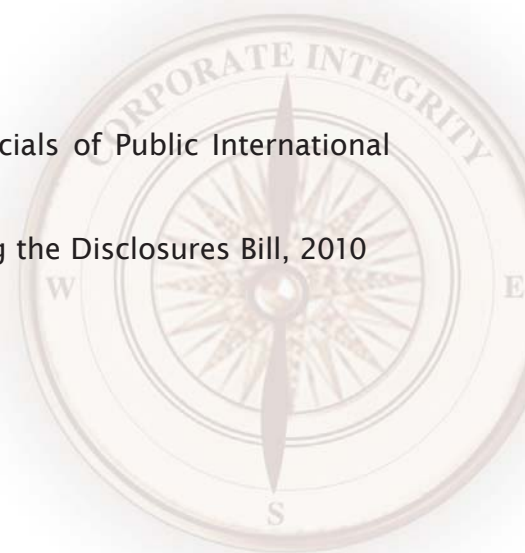




Annexure 1:

List of legislation and policy reviewed :-

- Accounting Standards notified by Min of Corporate Affairs
- Annual Financial Acts
- Code of Criminal Procedure (1973)
- Companies Act 1956
- Companies Bill 2011
- Competition Act, 2002
- Constitution of India
- Foreign Trade Policy
- Govt. of India Resolution on Public Interest Disclosures & Protection of Informer
- Income Tax Act, 1961
- Indian Penal Code (1860)
- Indian Penal Code (Amendments) Bill 2011
- Industrial Licensing policy
- Prevention of Corruption Act, 1988
- Prevention of Money Laundering Act, 2002
- Securities Contracts (Regulation) Act, 1956
- Securities Contracts (Regulation) Act, 1956
- The Benami Transaction (Prohibition) Act, 1988
- The Benami Transactions (Prohibition) Bill, 2011
- The Central Civil Services (Pension) Rules 1971
- The Industries (Development and Regulation) Act, 1951
- The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill, 2011
- The Public Interest Disclosure and Protection of Persons Making the Disclosures Bill, 2010
- The Railways Services (Pension) Rules, 1993



12 entities were identified to conduct the baseline survey and respond to questionnaires:

Company / Industry Body	Sector
Tata Consultancy Services	Information Technology & Services (IT/BPO)
NASSCOM	Information Technology & Services (IT/BPO)
Tata Steel	Manufacturing / Engineering
CII	Manufacturing / Engineering
ONGC	Energy
IPPAI - Independent Power Producers Association of India	Energy
BhartiAirtel	Telecom
AUSPI - Association of Unified Telecom Service Providers of India	Telecom
Hindustan Unilever	Fast Moving Consumer Goods
ASSOCHAM	Fast Moving Consumer Goods
Jones Lang LaSalle	Construction / Real Estate
IFTRT - Indian Foundation of Transport Research and Training	Transport
IATO - Indian Association of Tour Operators	Tourism



Annexure 2:

Sampling strategy followed for the survey:

Sampling strategy:

Survey	Sampling strategy	Sectors identified
Corporate Integrity (CI)	<ul style="list-style-type: none"> • Industry sectors which are vulnerable to fraud and corruption • Industry sectors which have high impact on the Indian economy • Recommendations obtained from the working group • Sectors which have high impact on the Indian economy • Sectors employing large number of personnel 	<ol style="list-style-type: none"> 1. Manufacturing 2. Construction and Real Estate 3. Pharmaceuticals 4. Banking 5. IT / ITES 6. Telecommunication 7. Civil aviation 8. Oil and Gas
Law Enforcement (LE)	<ul style="list-style-type: none"> • National Crime Records Bureau for Prevention of Corruption Act statistics • Providing regional representation 	<ol style="list-style-type: none"> 1. Delhi 2. Maharashtra 3. Andhra Pradesh 4. Gujarat 5. Assam (Mizoram) 6. Chandigarh (Punjab and Haryana)



Annexure 3:

Survey questionnaire: Private sector

India ratified the United Nations Convention against Corruption (UNCAC) in May 2012 joining approximately 160 countries who have ratified this convention. The United Nations Convention against Corruption is the only legally binding international instrument against corruption providing a road map for Governments, private sector and civil society. Hence by ratification, there is an obligation on Governments, private sector, civil society and society at large to respond and address corruption at different levels.

The UNCAC provides a number of standards and suggestions on corporate integrity to address corruption between Government and private sector relations, in private sector to private sector relations and also within each private sector. In addition it also suggests the need to incentivize the environment and ethos of business so that these integrity standards can be maintained. These incentives are not merely in the form of cash or reward incentives but instead aim to re-vitalize sectors and industries where clean business is good and profitable business.

To provide an example- Some of the incentives to integrity standards as follows- Promotion of good commercial practices and transparency among businesses- involving competition in the dialogue against corruption ;Promoting cooperation between law enforcement agencies, national authorities and relevant private sector entities; identifying liability of legal persons; Protection of witnesses, experts and victims;Protection of reporting persons; Compensation for damage.

In India many companies are already following integrity practices and have mechanisms to monitor their achievements in this area which serve as a model for other companies. However, while integrity practices are there, incentives still need to be strengthened in the Indian context to sustain these practices.

The United Nations Office on Drugs and Crime is the lead UN agency mandated to assist countries across the world to implement the UNCAC. In India UNODC, in coordination with the Government of India and regulatory bodies, has initiated a project under which a national survey is being rolled out to companies across the country from June to December 2012.

Objectives of the survey:

1. Understanding good initiatives and practices on corporate integrity that companies are already following.
2. Understanding factors that can promote and serve as incentives to corporate integrity (incentives to employees and organizations)
3. Understanding legal incentives that need to be put in place.

Your feedback is extremely valuable to understand the challenges and perspectives to incentives to corporate integrity in India. The findings of the survey will contribute to the development of a model toolkit on incentives to corporate integrity in India. We request you to kindly take the time to contribute to this important discussion which will take no more than 20–25 minutes. Your responses will be **entirely confidential**. Nothing you say will be attributed either to you or to your organization. **We would like to emphasize that we are not looking for any information that may be considered either financially or commercially sensitive.**



Respondent: Private Company

Understanding the respondent's background

Name (optional)	
Designation	
Name of organization (optional)	
City	
Would you like to keep your responses confidential	

Understanding good practices

1. Does your company have an 'ethics code'?

1. Yes
2. No

If yes, do you believe this code read by all employees-

If No, what time of code or standard is there for employees.

2. The role of the board of directors in fighting corruption is of paramount importance. Which anti-corruption mechanism is the focus of your organization's board of directors?

1. Creating awareness of the importance of fighting corruption among employees, partners and vendors
2. Whistleblower program
3. Independent Audit with a focus on detection and prevention of fraud
4. Awareness to employees regarding practices to be followed while dealing with government authorities, regulators, shareholders, etc.
5. No focus at present
6. Code for dealing with external stakeholders like government, regulators, suppliers.
7. Monitoring mechanisms for dealing with external stakeholders like government, regulators, suppliers.
8. Others, please specify-----

3. What is the best internal mechanism to promote integrity within private companies? (please grade in order of importance)
 1. Strengthening monitoring and detection mechanisms within the organization
 2. Creating awareness of the company's anti-corruption initiatives among its employees, customers, business partners and vendors
 3. Strengthening penalties imposed on vendors and partners for corrupt practices
 4. Meeting an organization's client obligations in relation to anti-corruption (part of contract)
 5. Encouraging and rewarding whistleblowers
 6. Having a fair idea of penalties/punishments/liability
 7. Others, please specify_____
4. In your opinion, what is the best external way of promoting integrity in private companies? (please grade in order of importance)
 1. Making it mandatory for companies to sign agreements, e.g., an integrity pact
 2. Making bribery and corruption in the private sector an illegal activity in India through a dedicated law
 3. Strengthening the role of regulators and industry associations
 4. Creating awareness among all the stakeholders, including shareholders, customers, suppliers, employees, etc. (positive publicity)
 5. Putting in place an index to rate the corporate integrity of organizations
 6. Improving government institutions which assists in doing business with integrity
 7. Pressure from the institutional investors
 8. Having a fair idea of penalties/punishments/liability
 9. Others, please specify_____
5. What practice if followed within an organization can increase your confidence to report fraud, corruption or misuse?
 1. A well laid independent procedure to handle complaints.
 2. Assurance and confidence that seniors/management shall take action.
 3. Scope for open discussion on the subject of integrity.
 4. Past examples of successful handling of complaints.
 5. A separate independent department to handle complaints against lack of corporate integrity.



6. Protection from victimization of the complainant.
7. Reporting of possible frauds to risk management departments.
8. Others, please specify_____

6. In your opinion, is there a need for legislation to address corruption in the private sector -

1. Yes
2. No

What are two important components that you believe the law must contain.

7. What could be the incentives to private companies or employees to adhere to higher levels of integrity? (Kindly grade in order of importance)

1. Recognition - Rebates/financial gains/business preference by the government
2. Industry recognition
3. Clean image and brand to consumers and media.
4. Creating a positive environment within the country which would create additional business opportunities globally
5. No incentives will lead to higher levels of integrity
6. Awards/recognition to the leading private companies with sound anti-corruption initiatives
7. Voluntary disclosures in annual reports of private companies regarding good practices.
8. Credit rating agencies to give weightage to disclosures of good practices.
9. Others, please specify_____

Understanding past experience

8. Are incentives as a mechanism of promoting corporate integrity better than efforts aimed at deterrence through imposition of sanctions or penalties on a person/company?

- Yes
- No



9. Has your organization reported cases related to fraud, corruption or indiscipline to the law enforcement agencies in the past?

- Yes

- If yes, what was the most discouraging factor which could put an end to future cooperation?

1. Delays in the procedures of investigating authorities (e.g., the police)
2. Lack of respect shown to senior management (or harassment) by investigating authorities
3. Negative publicity of the organization
4. Lack of trust in the police
5. Complex legal and police procedures
6. Lack of knowledge of Indian laws
7. Competitive and business environment pressures
8. No cooperation from top management
9. Reputation at risk
10. None — will continue to cooperate with the authorities in the future
11. Others, please specify_____

- No

10. What is the best way of building trust between law enforcement agencies and private companies? (Kindly grade in order of importance and value)

1. Fast-tracking pending investigations and setting fixed timelines for future investigations
2. Building awareness of success stories (or capabilities) relating to solved white-collar crimes
3. Training law enforcement officers on corporate practices
4. Creating citizen police academies (to enable learning of law enforcement laws and operations)
5. Enhancing integrity of police and other investigating authorities
6. Enhancing knowledge of private companies about the penalties/punishments/liability that would be in store in case of known violations
7. Others, please specify _____



11. In what sector, is clean business is more difficult? (Kindly rate in order of most difficult)
- Real Estate
 - Oil and Gas
 - Health
 - Transportation
 - Infrastructure
 - Mining
 - Others, please specify _____
12. Private sector companies seem to follow the FCPA and UK Bribery acts so diligently but the same level of fear or deterrence is not there for Indian laws- Why so?
- Lack of knowledge regarding Indian Laws
 - Fear of loss of international business if FCPA and UK bribery act are not followed.
 - Poor implementation of Indian Legislation
 - No appropriate Indian legislation
 - Notion that the company/individual can bail or bribe themselves out if they are in conflict with Indian legislation while the same is not true for foreign legislation.
 - The top management is required to take the FCPA and UK Bribery Act more seriously and are responsible for its implementation while the same is not true for Indian Legislation.
 - Others....
13. In your opinion, which are the factors that promote corrupt practices in the corporate environment?
1. Challenging periodic targets set by management (e.g., sales, profits, etc.)
 2. Weak internal controls (e.g., inadequate reporting, weak audit function, etc.)
 3. Reduction in senior management's focus on value system (e.g., on ethical conduct)
 4. Weak human resource management (e.g., promotions, recruitment, etc.)
 5. Others, please specify_____
14. What is hindering private companies in their endeavor to raise integrity levels within their organizations?
1. Corrupt practices followed by the competition
 2. Promotion of corrupt practices in awarding business, licenses or subsidies by employer (government or private)
 3. Perception of corrupt judiciary and law enforcement agencies

4. Fear of losing business or slow penetration in market
5. Parallel or undocumented system of subversion of due process in return for favors to key government officials of departments such as income tax, sales and excise.
6. Others, please specify_____

15. Is there a role that government can play in enhancing incentives to corporate integrity?

- Yes
 - Enhanced legislation to encourage and recognize transparent and fair practices.
 - Greater sanctions and recognition to companies that are compliant.
 - Training of their own law enforcement agencies
 - Others, please specify_____
- No

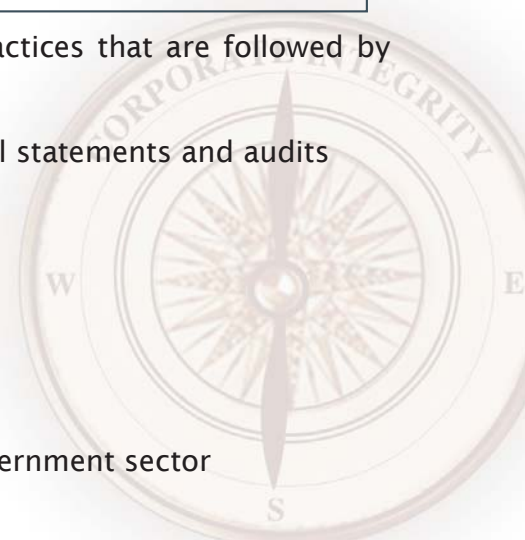
16. Is corruption in the Government/public sector a greater concern or is corruption in the private sector a greater concern for your business?

- Yes, both
- Government to private sector corruption
- Private to private sector corruption
- Within individual private sector organizations

17. In your opinion are the current and on-going measures adequate to address corruption in the private sector? Can you give us a brief description of some innovative mechanisms that are experienced by you?

18. Based on your experience, what are the types of corrupt practices that are followed by private sector companies?

1. Maintaining and preparation of false and incorrect financial statements and audits
2. Payment of bribes within the private sector
3. Bribe to government officials for obtaining contracts
4. Facilitation payments to various public authorities
5. Expensive gifts
6. Embezzlement of property (assets), owned by private/ Government sector



7. Diversion of company funds to private companies/accounts owned by directors
 8. Others, please specify_____
19. Based on your experience, what are the types of actions taken by private sector companies in case they found any corrupt practices?
1. The person is given a warning and allowed to work
 2. His supervisor is held accountable and questioned too
 3. Senior management is informed
 4. Informing law enforcement agencies/regulators
 5. Person or persons is asked to leave the organization
 6. If senior management is involved nothing is done
 7. Police is informed only when it involves violation of law
 8. Police is usually never involved because it is an internal matter and it should not adversely affect the image of the organization
 9. Stricter action is taken for lower level staff
 10. Others....

Understanding respondents' needs

20. As an outcome of this survey, UNODC plans to create awareness to enhance incentives to corporate integrity. Based on your estimation, what should be the best method to create awareness and sensitization among the corporate sector on incentives to corporate integrity?
- Training workshops of 1/2 days
 - E-self initiated tool kits
 - Web based presentation and leading practices
 - UN model ethics codes
 - Films and other audio visual medium
 - Booklets and publications
 - All
 - Any other — please specify _____



21. On which areas would you like us to focus during a training program?

	Key priority: E = Essential, D = Desirable, N = Not necessary
Idea of penalties/punishments/liability	
Indian Legislations and international legislations	
Advantages of cooperating with law enforcement and prosecuting agencies (building trust and confidence among public and private sector organizations)	
Ethical corporate governance (deterring, detecting and reporting corruption)	
Training of Global good practices	
Methods to initiate and sustain incentives to corporate integrity	
Others, please specify	

22. As per your opinion, what level of employees should take part in the sensitization program?

1. Senior management
2. Employees of Legal and Internal control department
3. Employees from operations team
4. Employees interacting more frequently to external Parties (private, public or government authorities)
5. Others, please specify_____
- 6.

23. As per your opinion, what sectors should take part in the sensitization program? (kindly grade in order of importance)

7. Small medium enterprises
8. Large companies
9. Med sized to large
10. Indian Companies
11. MNC's
12. ALL
13. Others, please specify_____



Annexure 4:

Survey questionnaire: Law enforcements officials

India ratified the United Nations Convention against Corruption (UNCAC) in May 2012 joining approximately 160 countries who have ratified this convention. The United Nations Convention against Corruption is the only legally binding international instrument against corruption providing a road map for Governments, private sector and civil society. Hence by ratification, there is an obligation on Governments, private sector, civil society and society at large to respond and address corruption at different levels.

The UNCAC provides a number of standards and suggestions on corporate integrity to address corruption between Government and private sector relations, in private sector to private sector relations and also within each private sector. In addition it also suggests the need to incentivize the environment and ethos of business so that these integrity standards can be maintained. These incentives are not merely in the form of cash or reward incentives but instead aim to re-vitalize sectors and industries where clean business is good and profitable business.

To provide an example- Some of the incentives to integrity standards as follows- Promotion of good commercial practices and transparency among businesses- involving competition in the dialogue against corruption ;Promoting cooperation between law enforcement agencies, national authorities and relevant private sector entities; identifying liability of legal persons; Protection of witnesses, experts and victims; Protection of reporting persons; Compensation for damage.

In India, many companies are already following integrity practices and have mechanisms to monitor their achievements in this area which serve as a model for other companies. However, while integrity practices are there, incentives still need to be strengthened in the Indian context to sustain these practices.

The United Nations Office on Drugs and Crime is the lead UN agency mandated to assist countries across the world to implement the UNCAC. In India UNODC, in coordination with the Government of India and regulatory bodies, has initiated a project under which a national survey is being rolled out to companies across the country from June to December 2012

Objectives:

1. Understanding factors that strengthen the role that law enforcement can play enhancing incentives to corporate integrity (incentives to employees and organizations).
2. Understanding the factors that can increase trust between law enforcement agencies and private companies.

Your feedback is extremely valuable to understand the challenges and perspectives to incentives to corporate integrity in India. The findings of the survey will contribute to the development of a model toolkit on incentives to corporate integrity in India. We request you to kindly take the time to contribute to this important discussion which will take no more than 20-25 minutes.

Your responses will be entirely confidential. Nothing you say will be attributed either to you or to your organization. We would like to emphasize that we are not looking for any information that may be considered either financially or commercially sensitive.

Respondent

Law enforcement (includes CBI)

Understanding respondent's background

Name (optional)	
Designation	
Department	
City	

Understanding past experience

1. During your career, have you interacted with private companies?
 - Yes
 - No
2. Was your interaction with private companies related to corruption (breach of trust! forgery/ fraud/misrepresentation) related case?
 - Yes related to corruption issues
 - No related to issues other than corruption
 - No Interaction with private company
3. During your career, have you come across instances where offences related to corruption/ fraud or improper payments in the private sector have been reported?
 - Yes
 - If yes, under which authority were the offences relating to corruption or improper payments registered? (can select more than one option)
 1. Economic Offence Wing
 2. Crime Branch
 3. Police station
 4. Anti-Corruption Bureau! Vigilance Departments



5. Judiciary, u/s 156(3) of Criminal Procedure Code
6. Economic Intelligence Units
7. Case not registered
8. Others, please specify_____

- No

4. In what sector, do you see large no. of issues being reported related to corruption (Breach of trust, forgery, fraud, misrepresentation)? (can select more than one option)

1. Real Estate
2. Oil and Gas
3. Health
4. Transportation
5. Infrastructure
6. Mining
7. Others, please specify_____

5. Based on your experience, what are the issues that are discouraging private sector companies from cooperating with law enforcement agencies? (can select more than one option)

1. Lack of knowledge of Indian law
2. Perceived complex procedures
3. Competition and market pressures
4. Long delays in processes and harassment by the authorities
5. Top management not agreeing to cooperate
6. Reputation risks of private sector company
7. Unwillingness to report case or don't want to enter into legal tangles
8. Others, please specify_____

6. Has your agency attempted to bridge the knowledge gap with companies and promote cooperation in the past?

- Yes

- If yes, what are the means through which your agency educated private and public companies on cooperating with and reporting internal wrongdoings to the relevant authorities? (can select more than one option)

1. Local conferences
2. Industry bodies such as FICCI, CII, ASSOCHAIVI and NASSCOM
3. Spreading awareness through the media
4. Individual interaction

5. Small group interaction
6. Incident related/post occurrence of any event
7. Others, please specify_____

- No

7. Have you come across any incident/complaint where bribe was allegedly paid/offered to any law enforcement official?

- Yes

- If yes, what actions were taken by you to resolve such issues? (can select more than one option)

1. Reporting to senior officers
2. Departmental Enquiry
3. Warning to the law enforcement officer
4. Report to CBI/Vigilance/Anti-Corruption
5. Registering a criminal case
6. No action
7. Others, please specify_____

- No

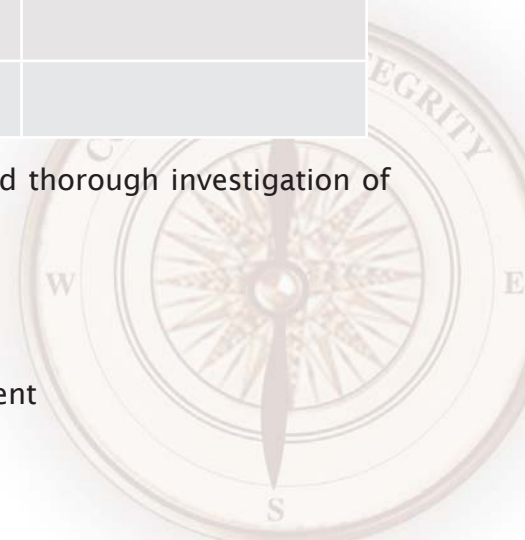
8. Please evaluate your legal, procedural or technical understanding of the following potential areas of investigations relating to corporate bribery or other corruption’?

(G — Good, A — Average, L — Low)

	Audit rules, procedures and auditors' reports	ERP systems including Oracle, BAAN and SAP, etc., being used by private companies	Digital evidence recovery including computer and network forensics
Legal Knowledge			
Technical Knowledge			
Procedural Knowledge			

9. In your view, what are the current impediments to the fair and thorough investigation of white collar crimes? (can select more than one option)

1. Lack of financial systems knowledge
2. Lack of tools and techniques
3. Conflict of interest because of corruption in Law enforcement
4. Unwillingness/ non co-operation of witnesses



5. Lack of laws covering private sector bribery and corruption
 6. Work load (working on multiple investigations)
 7. Loop holes in keeping financial records of company
 8. Lack of material evidence
 9. Changing priority within the department
 10. Others, please specify_____
10. What are current issues within the Police department, which result in a poor perception of the integrity of police personnel? (can select more than one option)
1. Political interference in investigations
 2. Poor working conditions
 3. Inefficient and ineffective human resource management (recruitment and promotions)
 4. Ethical behavior not rewarded; ethical culture not promoted or supported
 5. Widespread petty corruption
 6. Human rights violation (Ill treatment to witnesses/suspects)
 7. Unfairness and lack of transparency
 8. Misuse of legal powers
 9. Others, please specify_____

Understanding good practice

11. What would be the best way of building better understanding and trust between law enforcement agencies and private companies? (can select more than one option)
1. Fast-tracking pending investigations and setting fixed timelines for future investigations
 2. Building awareness of success stories (capabilities) of solved white collar crimes
 3. Training law enforcement officers on corporate practices
 4. Creating citizen police academies (to spread learning of law enforcement and its operations)
 5. Enhancing the integrity of police and other investigating authorities
 6. Mutual understanding of work culture
 7. Others, please specify_____
12. How a better interface can be developed with the private sector companies?
1. Training of officers on corporate culture
 2. Respecting need for privacy and confidentiality of private companies
 3. Police playing advisers role as well
 4. Others, please specify_____

13. In your opinion, what would be the best way of building awareness of white collar crime laws and procedures among private companies? (can select more than one option)

1. Involvement of civil society and NGOs
2. Creation of special guidance manuals to spread awareness of laws and procedures
3. Industry bodies such as FICCI, CII, ASSOCHAM and NASSCOM
4. Spreading awareness through the media
5. Initiatives by Labour Associations/unions
6. Others, please specify_____

14. In your opinion, is there a need to build awareness of white collar crimes within the law enforcement machinery?

- Yes
- No

If yes, what would be the best way of building awareness of white collar crime laws and procedures within the law enforcement? (can select more than one option)

- Sharing facts about known cases informally
- Need for annual orientation programmes
- Interface and interaction with other police departments that have deal with more white collar crimes.
- Creation of special guidance manuals to spread awareness of laws and procedures

15. Is there a role that you believe law enforcement agencies can play in enhancing or supporting corporate integrity?

- Yes
- No

If yes, what would be the best way in which law enforcement can help in enhancing corporate integrity?

- Enhancing integrity of Law enforcement officers
- Frequent informal interactions with private companies
- Small group interactions on a regular basis
- Media



Understanding the respondent's needs

16. As an outcome of this survey, UNODC plans to create awareness to enhance incentives to corporate integrity. On which areas would you like us to focus during sensitization/awareness programs?

	Key priority: E = Essential, D = Desirable, N = Not necessary
Practices in engaging private companies and building trust	
Ways and roles that law enforcement can play in encourage corporate integrity	
Conduct of law enforcement with regard to anti corruption at an individual and institutional level respectively.	
Training of Global good practices	
Methods to initiate and sustain incentives to corporate integrity	
While collar crime laws, International Bribery and Anti-Corruption laws	
Cooperation between law enforcement and corporate sector	
Others, please Specify	

In addition to the above and as per your experience, which areas would you like to suggest to private companies for sensitization/awareness to encourage them to follow more ethical business practices'?

	Key priority: E = Essential, D = Desirable, N = Not necessary
Idea of penalties/punishments/liability	
Indian Legislations and international legislations	
Advantages of cooperating with law enforcement and prosecuting agencies (building trust and confidence among public and private sector organizations)	
Ethical corporate governance (deterring, detecting and reporting corruption)	
Training of Global good practices	
Methods to initiate and sustain incentives to corporate integrity	
Others, please Specify	
Training of Global good practices	

Methods to initiate and sustain incentives to corporate integrity	
While collar crime laws, International Bribery and Anti-Corruption laws	
Cooperation between law enforcement and corporate sector	
Others, please Specify	

17. Based on your estimation, what should be the best method to create awareness and sensitization among the corporate sector on incentives to corporate integrity? (can select more than one option)

1. Training workshops of 1/2 days
2. E—self initiated tool kits
3. Web based presentation and leading practices
4. UN model ethics codes
5. Films and other audio visual medium
6. Booklets and publications
7. All
8. Any other, please specify_____

18. As per your opinion, what level of officers should take part in the sensitization program? (can select more than one option)

1. Sub-Inspectors
2. Inspectors
3. Assistant! Deputy Superintendent of Police
4. Additional! Superintendent of Police
5. Senior Superintendent of Police
6. Others, please specify_____



Annexure 5:

List of working group participants:

Working group participants - New Delhi Three meetings- 29 May- 27 June- 12 July 2012

(The names of all officials mentioned below were collated from the registration forms. The omission of any official or agency from this list is totally unintentional and unintended. The list below indicates a comprehensive list including officials who attended only one meeting.)

Names:	Names:
Mr. A K Aggrawal General Manager Law C/o Dr H.P Kumar Chairman & Managing Director National Small Industries Corporation New Delhi	Mr. A.K. Mirchandani Chairman & Managing Director PEC, LTD New Delhi
Ms. Aishwarya Panicker Research Associate Accountability Initiative New Delhi	Mr. Alok Shrivastawa General Manager Hindustan Steelworks Construction New Delhi
Ms. Anshu Sinha Deputy Secretary(AVD-I) New Delhi	Ms. Anukampa Gupta Gurgaon, Haryana
Mr. Anupam kulshreshtha Former Deputy CAG	Mr. Arpinder Singh Partner & National Director Fraud Investigation & Dispute Services Ernst & Young Pvt. Ltd. Mumbai
Mr. Ashutosh Mishra Deputy Integrity Pact Transparency International India New Delhi	Ms. Ayumi Fujino Representative & Director Regional Office United Nations Industrial Development Organization New Delhi
Aryamala Prasad Consultant – Governance World Bank New Delhi	Ms. Bulbul Sen Indian Revenue Service (Retd) , Consultant Consumer Unity & Trust Society International New Delhi
Mr. CPS Reddy Planning Commission New Delhi.	Mr. David Rebello CEO, Bharti Realty Ltd Gurgaon
Mr. H.C. Awasthy CBI Anti Corruption Branch New Delhi	Dr. H.P. Kumar Chairman & Managing Director National Small Industries Corporation LTD New Delhi

Mr. Hardip Singh Kingra Chairman & Managing Director National Scheduled Castes Finance & Development Delhi	Mr. Hunar Brar ICONGO New Delhi
Dr. Jaya Bhalla National Institute of Financial Management Faridabad	Mr. Jeroninio Almeida Fo ICONGO New Delhi
Dr. Lalit K Panwar Chairman & Managing Director Indian Tourism Development Corporation, LTD New Delhi	Mr. Lalit Kohli Managing Director National Safai Karamcharis Finance & Development Corporation. New Delhi
Mr. Madhukar Sinha Professor Indian Institute of Foreign Trade New Delhi	Mr. Maneesh Bhardwaj Director, Formulation Sourcing Ranbaxy Laboritries Ltd. Gurgaon, Haryana
Mr. Mathew Director Operations Aircraft Divisions, Air Charter Services, Pvt, Ltd	Mr. Mukesh Arya Managing Director & CEO Red Flag Oversight Consultancy Services Pvt Ltd. Gurgaon
Mr. Partha Head of Govt Advocacy Function WIPRO Guargaon	Dr. Paven Singh Chairman & Managing Director PTC India New Delhi
Mr. Prashant Bhushan Senior Advocate, Supreme Court Anti-corruption activist	Mr. R Sri Kumar Vigilance Commisisoner Central Vigilance Commission New Delhi
Mr. Rajan Kohli Advisor Federation of Indian Chambers of Commerce & Industry New Delhi	Mr. Rajiv Datt Managing Director Indian Railway Finance Corporation Ltd New Delhi
Mr. Ramnath Jha Chairman Transparency International India New Delhi	Mr. S Sen Principal Adviser Confederation of Indian Industry Haryana
Mr. S. K. Roongta Chairman Steel Authority of India Ltd. New Delhi	Santosh Kumar Agrawal Vice President Transparency International India New Delhi
Mr. Saurabh Gupta Manager, National Assurance Ernst & Young Private Limited Gurgaon, Haryana	Mrs Shikha Sharma Branch Head Coordinator to Chairman OMAXE. New Delhi

Ms. Shweta Girohtra C/o Mr. David Rebello CEO, Bharti Realty Ltd. Gurgaon	Ms. Sonam Yanchen Rana Director, INOC, UNOPS New Delhi
Mr. Swarn Kant Dass Director Vigilance C/o Mr. Rajesh Khullar Joint Secretary & CVO Dept. Economic Affairs New Delhi - 1	Mr. T.N. Tiwari Joint Secretary & Legal Advisor Department of Legal Affairs Ministry Of Law & Justice New Delhi
Mr. T.R. Raghunandan Center For Policy Research New Delhi	Mr. V. M. Rathnam Deputy Secretary to the Government of India Department of Personal & Training New Delhi.
Sh V.V. Mishra General Manager ONGC New Delhi	Mr. Vineet Mehta Senior Manager Fraud Investigation and Dispute Services Ernst & Young Pvt. Ltd. New Delhi
Ms. Yamini Center For Policy Research New Delhi	



Working group participants - Bangalore

Three meetings- 27 May- 29 June- 18 July 2012

(The names of all officials mentioned below were collated from the registration forms. The omission of any official or agency from this list is totally unintentional and unintended. The list below indicates a comprehensive list including officials who attended only one meeting.)

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Annexure 6:

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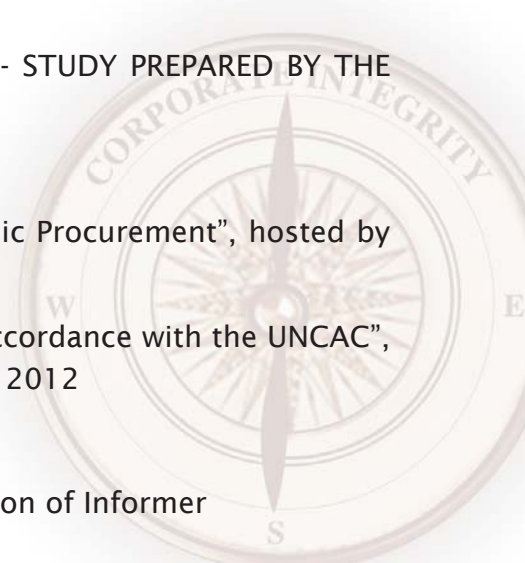
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