

## Ethics-3

### **Ethics of Lobbying**

Lobbying "means the deliberate attempt to influence political decisions through various forms of advocacy directed at policymakers on behalf of another person, organization or group."

There are also points at which the definition of lobbying blurs with other activities. What, for example, is the difference between a consultant and a lobbyist, especially when the person called in to consult is employed by a group with an interest in the policy being debated? If a union official spends a fair percentage of his or her time working to influence labor policy, is that lobbying?

Periodic scandals make many Indians skeptical about the role of lobbying in a democracy. Right to try to influence legislation is protected under the First Amendment to the U.S. Constitution: Congress shall make no law abridging the right of the people "to petition the government for a redress of grievances." This protection assumes that people should be involved in the decisions that affect them and that advocacy for a variety of causes is a crucial part of good decision making.

What ethical dilemmas does lobbying present?

Since the ethical foundation of lobbying is the vigorous public debate necessary for informed decision making, ethical dilemmas related to lobbying tend to arise when various behaviors by lobbyists and lawmakers undermine the fairness and transparency of that process and do not contribute to the common good.

### **Fairness**

The most obviously unethical (and illegal) practice associated with lobbying is paying a policy maker to vote in a favorable way or rewarding him or her after a vote with valuable considerations. If this practice were allowed, people and organizations with money would always win the day. But even with outright gifts to lawmakers outlawed, there are subtler ways to "buy" undue influence. There should be law to disallow lobbyists paying for travel and lavish lodging of the officials.. Local officials are faced with similar temptations-tickets to games or concerts, dinners in expensive restaurants, etc.

Fairness questions also arise when some lobbyists have easier access to lawmakers than others. Frequently discussed is the problem of revolving door lobbyists-those people who once served as public officials who then go into the private sector and work to influence their former colleagues. In addition to relationships with lawmakers, they may, for example, still have access codes to offices, use lawmakers' exercise facilities, or otherwise have easier entrée to the corridors of power. Regulatory capture is also talked about.

### **Transparency**

One way to improve the fairness of the lobbying process is to make sure that possible sources of influence are visible to the public. This goal is behind various state and federal requirements that lobbyists register and file reports on the issues they have discussed with lawmakers. Various proposals have been offered to strengthen these transparency provisions, increasing the

frequency of reporting and the number and variety of organizations that qualify as lobbyists. On the local level, some groups are calling for access to lawmakers' appointment books so that the public can see who they met with and what they discussed.

In the USA, at the federal level, transparency has come up in reference to "earmarks." These are provisions benefiting particular industries or organizations that lawmakers insert into appropriations bills, often at the behest of lobbyists who have made significant campaign contributions. These earmarks are usually added at the last minute so that other members of congress do not have sufficient time to study them. Some reformers have advocated increasing transparency by requiring that earmarks-and the names of their sponsors-be published online at least 24 hours before a bill comes to a vote.

### **Common Good**

Lobbyists are advocates. That means they represent a particular side of an issue. The role lobbyists play in the legislative arena can be compared to that of lawyers in the judicial arena. Just as lawyers provide the trier of fact (judge or jury) with points of view on the legal issues pertaining to a case, so do lobbyists provide local, state, and federal policymakers with points of view on public policy issues.

But what is the lobbyist's obligation to be fair to the other side? In a courtroom, two equally powerful attorneys go before an impartial judge. In the corridors of power, the lobbyist often represents powerful interests, while other people have no representative. An ethical approach to lobbying must ensure that someone stands up for the common good. Lawmakers have an obligation to solicit the views of those who are not represented by powerful lobbying groups.

Lobbying is a meaningful and powerful industry, and should only be considered unethical if certain boundaries are crossed.

The action of businesses lobbying is ethical if respect is given to the people involved and the surrounding environment. Groups' lobbying against the Government by means of releasing researched information and sharing statistics is certainly ethical.

Consequentialism is perhaps the best method of measuring the ethicality of lobbying. Businesses lobbying Government will generally show utilitarianism or altruism, especially if the subject calls for a legislation change. Lobbying is ethical if the outcome of the action will benefit not only the group but is also in the interest of others, including future generations.

Some lobbyists have easier access to the Government than others, and in rare cases money is paid to policy makers by lobbyists to influence that policy maker's decision/vote. Some smaller businesses are unable to do this, and the act of lobbying is unfair in this case. This is where lobbying becomes unethical. When bribery and the abuse of power come into play, it certainly is not ethical. Businesses should have a sense of social responsibility, be honest and possess other essential moral virtues, and have a vision of what outcome they want to achieve from their lobbying.

Lobbying is a basic part of modern democracy and whilst recent acts have proven unethical, the industry as a whole is ethical in moderation. When lobbying is regulated there is a need to make for the Government for setting up a register to track all actions made by lobbyists. The lobbyist should be as transparent as possible. Many rules require lobbyists to register before making contact or very soon after first contact. Some countries have laws to authorize the arrest of an unregistered lobbyist if he or she is caught lobbying.

Sometimes lobbyists attempt to influence policy in luxurious locations. Sometimes lobbyists make campaign contributions and then ask their clients and friends to also make campaign contributions. The ethical problem is that most people view the involvement of money in the system as inherently corrupt. Further, most of the time the relationship between lobbyists and elected officials is opaque.

Fairness questions also arise when some lobbyists have easier access to lawmakers than others. Friends, former employees and colleagues all may appear to have special access to a policy maker.

Ethically, all lobbyists have an obligation to consider the common good.

#### **Regulation of lobbying: India**

In 2013, Kalikesh Narayan Singh Deo, a Lok Sabha MP from Orissa introduced a Private Members Bill to regulate lobbying activities. The Bill required lobbyists to register themselves and defined lobbying as "communication with and payment to a public servant with the aim of influencing" a legislation or securing an award of a contract. Such a definition however blurs the distinction between lobbying and bribery. It may even have the unintended consequence of legitimising bribery prohibited under the Prevention of Corruption Act, 1988. While lobbying without the use of extortive and corrupt means furthers democratic ideals of participation and should be legitimised, bribery is illegal because it prioritises personal gains over public interest.

Most countries require lobbyists to register with an authority and disclose certain information about their clients and the methods they employed to carry out lobbying.

Lobbying in India is unregulated but not illegal. Many interest groups actively lobby with the government for change in laws and policy decisions. Interest groups not only include corporates, but also farmers' associations, women's organisations, trade unions and environmental groups. For example, women's groups campaigned for the Domestic Violence Act; MKSS, a coalition of NGOs, campaigned for a Right to Information Act; Greenpeace lobbies against use of nuclear power plants and other technologies that degrade the environment. However, the public remains unaware of the special interest or advocacy groups that may have influenced a policy decision. Regulation would bring in much-needed transparency in the process but should guard against creating barriers to access for ordinary citizens wanting to engage with their political representatives.

Some questions that India needs to consider before drafting a lobbying law are given below. First, who should be termed as a lobbyist and what kinds of activities should be deemed as lobbying? Given the proliferation of NGOs and advocacy groups, should they be exempted from the law? What is the fallout if they are exempted – would it restrict their access to legislators or

give them undue advantage over groups representing more commercial interests? Should making representations to parliamentary committees be excluded from the definition of lobbying?

Second, how should lobbying be regulated? Should India adopt the mechanism used in most countries, i.e., maintain a register of lobbyists or should it explore alternative options better suited to the country's needs? Which body should be entrusted with the task of registering and regulating lobbyists?

Third, keeping in mind the argument that high disclosure requirements may drive the activity underground, what type of information should lobbyists disclose? Should there be a corresponding requirement for elected officials and government servants to disclose their engagement with lobbyists?

Fourth, what kind of penalties should be imposed on lobbyists for flouting the norms? Would de-registration be sufficient deterrent or is there a need for higher sanctions? Should there be corresponding penalty for the lobbied also?

While formulating a law, lobbying should be treated as a legitimate right of every citizen in a representative democracy. The focus of the law should be to ensure that competing groups have reasonably equal access to policy makers by incentivising groups to register. Such an approach would allow citizens from across the spectrum to participate in the policymaking process thereby strengthening the democratic roots and ensuring transparency in the decision-making process.

The term "lobbyist" comes from a time when people representing special interests cornered lawmakers in the lobby of a legislative chamber to present their case.

Nowadays, a lobbyist is an individual or a firm, not a group, who has access to lawmakers and presents the case of individuals or groups interested in legislation at hand. A lobbyist might seek to visit with lawmakers, testify before committees or any other means to get the message across.

The term lobbyist has something of an unsavory connotation because of news reports and even criminal action against lobbyists and their lawmaking friends for bribery, etc. In fact, however, there is nothing wrong with the principle of lobbying and usually one finds lobbyists working both sides of an issue. In the U.S., most states have enacted laws to control lobbyists and attempt to avoid abuses.

How is a lobbyist different from a pressure group? The former is defined and described above. The latter, however, is as the name implies, i.e. a group. They may hire a lobbyist; might institute letter-writing campaigns, media advertising, word-of-mouth campaigns, etc. As an extreme, they might even organize mass marches on capital cities.

### **Ethics of cloning**

In bioethics, the ethics of cloning refers to a variety of ethical positions regarding the practice and possibilities of cloning, especially human cloning. While many of these views are religious in origin, the questions raised by cloning are faced by secular perspectives as well. As the science of cloning continues to advance, governments have dealt with ethical questions. Cloning, particularly human cloning is highly controversial.

Advocates of human therapeutic cloning (cure) believe the practice could provide genetically identical cells for regenerative medicine, and tissues and organs for transplantation. Such cells, tissues, and organs would neither trigger an immune response nor require the use of immunosuppressive drugs. Both basic research and therapeutic development for serious diseases such as cancer, heart disease, and diabetes, as well as improvements in burn treatment and reconstructive and cosmetic surgery, are areas that might benefit from such new technology. Some believe that "children cloned for therapeutic purposes" such as "to donate bone marrow to a sibling with leukemia" may someday be viewed as desirable.

Proponents claim that human reproductive cloning also would produce benefits. Some scientists hope to create a fertility treatment that allows parents who are both infertile to have children with at least some of their DNA in their offspring.

At present, the main non-religious objection to human cloning is that cloned individuals are often biologically damaged, due to the inherent unreliability of their origin; for example, researchers currently are unable to safely and reliably clone non-human primates. However, it should also be noted that physical abnormalities occur in naturally born humans as well.

Article 11 of UNESCO's Universal Declaration on the Human Genome and Human Rights asserts that the reproductive cloning of human beings is contrary to human dignity.

Scientists pointed out that there is a clear danger of producing clones which are defective. Other arguments against cloning come from various religious orders (believing cloning violates God's will or the natural order of life), and a general discomfort some have with the idea of "meddling" with the creation and basic function of life. This unease often manifests itself in contemporary novels, movies, and popular culture, as it did with numerous prior scientific discoveries and inventions. Various fictional scenarios portray clones being unhappy, soulless, or unable to integrate into society. Furthermore, clones are often depicted not as unique individuals but as "spare parts," providing organs for the clone's original (or any non-clone that requires replacement organs).

U.S. Food and Drug Administration (FDA) approved the consumption of meat and other products from cloned animals. Cloned-animal products were said to be virtually indistinguishable from the non-cloned animals. Companies would not be required to provide labels informing the consumer that the meat comes from a cloned animal.

Critics have raised objections to the FDA's approval of cloned-animal products for human consumption, arguing that the FDA's research was inadequate and of questionable scientific validity. Several consumer-advocate groups are working to encourage a tracking program that would allow consumers to become more aware of cloned-animal products within their food.

### **Regulation of cloning in India**

India entered the clone age having successfully cloned a buffalo (Garima) in 2009 which raised concerns on whether India should indulge in cloning, is it morally and ethically correct to carry out animal or human cloning.

India currently has some well drawn out guidelines in place, but a suitable legislation that can regulate this area of research has been taking time.

In essence should humans start playing God!

Scientists at the National Dairy Research Institute in Karnal created Garima, the country's first cloned animal.

But its birth has also raised many questions: Have Indians also started playing God? Are there regulations in place? Should human cloning be permitted?

In 1996, 'Dolly' the sheep was the first animal to be cloned in Scotland, since then many other animals have been cloned like mice, monkey and even a cat.

Most of the genetically identical animals unfortunately have been known to die young as they suffer from accelerated aging.

India permits cloning of animals, and encourages regulated research in this area.

A few days back when scientists inched closer to reviving an Australian frog species that has been extinct for the last 30 years, they also revived the world's fascination for de-extinction -- a concept that has walked the thin line between science fiction and reality. Bringing to life species that have been wiped off the face of earth is a dream many geneticists have pursued for years.

Cloning research in India is working on reviving at least three extinct species: Asiatic cheetah that went extinct in India soon after Independence; pink-headed duck and the mountain quail.

Indian geneticists have been attempting to clone the Asiatic cheetah - a favourite animal of the Mughal emperor Akbar who reportedly had an army of 1000 cheetahs accompany him on his hunting expeditions. But efforts to recreate the majestic predator have encountered several roadblocks. The biggest hurdle is procuring the cell-line of the cheetah and defining protocols for somatic cell transfer. Once this happens, we have a realistic chance of reviving the cheetah in India: according to the scientists at Centre for Cellular and Molecular Biology (CCMB), Hyderabad.

Somatic cell transfer involves creating a clone embryo with a donor nucleus in a laboratory and is considered as the first step in reproductive cloning. India has recently imported a few cheetahs whose cell lines, CCMB is trying to get. After that, it would be a case of attempting again and again - success rates in reproductive cloning are just about 5% till an Asiatic cheetah cub is born.

De-extinction itself is a subject that has drawn diverse opinions. Those opposing it say that if a species went extinct over a period of time -- Darwin's theory of survival of the fittest propounds this is nature's way of balancing itself -- is it prudent to re-introduce it in an ecosystem where some other species may have taken over its role? However, de-extinction proponents continue to be optimistic about its prospects.

But what about cloning of humans? Till date nobody has succeeded in doing it and the world over it is considered undesirable.

India has guidelines that prohibit any cloning of whole humans.

On an allied research subject, the government has no objections to the use of embryonic stem cells and does allow research on what is called therapeutic cloning, a technique that offers hope for organ replacement.

The LV Prasad Eye Institute in Hyderabad was the first to create eye tissues from stem cells to cure blindness, later the All India Institute of Medical Sciences, New Delhi carried out trials for repairing damaged heart muscles using stem cells.

In 2006, the Indian Council of Medical Research formulated some far-reaching guidelines on biomedical research.

In 2007 another set of guidelines that regulate stem cell research were issued, this specifically bans cloning of humans.

### **Surrogacy: law and ethics**

Surrogacy refers to a contract in which a woman carries a pregnancy "for" another couple. Number of infertile couples from all over the World approach India where commercial surrogacy is legal. Although this arrangement appears to be beneficial for all parties concerned, there are certain delicate ethical and legal issues which need to be addressed through carefully framed laws in order to protect the rights of the surrogate mother and the intended parents.

The ever-rising prevalence of infertility world over has lead to advancement of assisted reproductive techniques (ART). Herein, surrogacy comes as an alternative when the infertile woman or couple is not able to reproduce. Surrogacy is an arrangement where a surrogate mother bears and delivers a child for another couple or person. In gestational surrogacy, an embryo, which is fertilized by in vitro fertilization, is implanted into the uterus of the surrogate mother who carries and delivers the baby. In traditional surrogacy, the surrogate mother is impregnated with the sperms of the intended father artificially, thus making her both genetic and gestational mother. Surrogacy may be commercial or altruistic, depending upon whether the surrogate receives financial reward for her pregnancy.

Commercial surrogacy is legal in India. In Australia, which recognize only altruistic surrogacy. In contrast, countries like Germany, Sweden, Norway, and Italy do not recognize any surrogacy agreements. India has become a favorite destination of fertility tourism. Each year, couples from abroad are attracted to India by so-called surrogacy agencies because cost of the whole procedure in India is as less as one third of what it is in United States and United Kingdom.

At a glance, surrogacy seems like an attractive alternative as a poor surrogate mother gets very much needed money, an infertile couple gets their long-desired biologically related baby and the country earns foreign currency, but the real picture reveals the bitter truth. Due to lack of proper legislation, both surrogate mothers and intended parents are somehow exploited and the profit is earned by middlemen and commercial agencies. There is no transparency in the whole system, and the chance of getting involved in legal problems is there due to unpredictable regulations governing surrogacy in India.

In 2005, ICMR issued guidelines for accreditation, supervision, and regulation of ART clinics in India. Frustration of cross border childless couples is easily understandable who not only have to cope up with language barrier, but sometimes have to fight a long legal battle to get their child. Even if everything goes well, they have to stay in India for 2-3 months for completion of formalities after the birth of baby. The cross border surrogacy leads to problems in citizenship,



motherhood, parentage, and rights of a child. There are occasions where children are denied nationality of the country of intended parents and this results in either a long legal battle like in case of the German couple with twin surrogate children (Refer to the Chapter on Citizenship in the Polity Book).

There are incidences where the child given to couple after surrogacy is not genetically related to them and in turn, is disowned by the intended parent and has to spend his life in an orphanage. If we look upon the problem of surrogate mothers, things are even worse and unethical. The poor, illiterate women of rural background are often persuaded in such deals by their spouse or middlemen for earning easy money. These women have no right on decision regarding their own body and life. In India, there is no provision of psychological screening or legal counseling, which is mandatory in USA. After recruitment by commercial agencies, these women are shifted into hostels for the whole duration of pregnancy on the pretext of taking antenatal care. The real motive is to guard them and to avoid any social stigma of being outcast by their community. These women spend the whole tenure of pregnancy worrying about their household and children.

They are allowed to go out only for antenatal visits and are allowed to meet their family only on Sundays. The worst part is that in case of unfavorable outcome of pregnancy, they are unlikely to be paid, and there is no provision of insurance or post-pregnancy medical and psychiatric support for them. Rich career women who do not want to take the trouble of carrying their own pregnancy are resorting to hiring surrogate mothers. There are a number of moral and ethical issues regarding surrogacy, which has become more of a commercial racket, and there is an urgent need for framing and implementation of laws for the parents and the surrogate mother.

Assisted reproductive technology legislation

**The Indian government has drafted legislation:** ART Regulation draft bill 2010. The bill is still pending with Government and has not been presented in the Parliament. The proposed law has taken consideration of various aspects including interests of intended parents and surrogate mothers. The proposed draft needs to be properly discussed, and its ethical and moral aspect should be widely debated by social, legal, medical personal, and the society before any law is framed.

The bill acknowledges surrogacy agreements and their legal enforceability. The surrogacy agreements are treated at par with other contracts under the Indian Contract Act 1872 and other laws applicable to these kinds of agreements. Both the couple/single parent and surrogate mother need to enter into a surrogacy agreement covering all issues, which would be legally enforceable. Some of the features of proposed bill are that an authority at national and state level should be constituted to register and regulate the I.V.F. clinics and A.R.T centers, and a forum should be created to file complaints for grievances against clinics and ART centers. The age of the surrogate mother should be 21-35 years, and she should not have delivered more than 5 times including her own children. Surrogate mother would not be allowed to undergo embryo transfer more than 3 times for the same couple. If the surrogate is a married woman, the consent of her spouse would be required before she may act as surrogate to prevent any legal or marital dispute. A surrogate should be screened for STD, communicable diseases and should not have received blood transfusion in last 6 month as these may have an adverse bearing on the pregnancy



outcome. All the expenses including insurance of surrogate medical bill and other reasonable expenses related to pregnancy and childbirth should be borne by intended parents. A surrogacy contract should include life insurance cover for surrogate mother. The surrogate mother may also receive monetary compensation from the couple or individual as the case may be for agreeing to act as such surrogate. It is felt that to save poor surrogate mothers from exploitation, banks should directly deal with surrogate mother, and minimal remuneration to be paid to the surrogate mother should be fixed by law.

The surrogacy arrangement should also provide for financial support for the surrogate child in case the commissioning couple dies before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child so as to avoid injustice to the child. A surrogate mother should not have any parental rights over the child, and the birth certificate of the baby should bear the names of intended parents as parents in order to avoid any legal complications. Guidelines dealing with legitimacy of the child born through ART state that the child shall be presumed to be the legitimate child of the married/unmarried couple/single parent with all the attendant rights of parentage, support, and inheritance.

The ART clinics should not be allowed to advertise for surrogacy for its clients, and couples should directly seek facilities of ART Bank. The intended parents should be legally bound to accept the custody of the child/children irrespective of any abnormality in the child/children. Confidentiality should always be maintained, and the right to privacy of the donor as well as surrogate mother should be protected. If a foreigner or NRI is seeking surrogacy, they should enter an agreement with written guarantee of citizenship for the child from their government, and they should also appoint a local guardian who would be legally responsible for taking care of the surrogate during and after the pregnancy till the child is delivered to the foreigner couple or reaches their country. Sex-selective surrogacy should be prohibited, and abortions should be governed by the Medical Termination of Pregnancy Act 1971.

*actual selling and purchasing*

## **NSEL**

National Spot Exchange Limited or NSEL is the national level, institutionalized, demutualised and transparent Electronic Spot Exchange set up by Financial Technologies India Limited (FTIL) and National Agricultural Co-operative Marketing Federation of India Limited (NAFED) to create a delivery based pan India spot market for commodities. In India, Spot Exchanges refer to electronic trading platforms which facilitate purchase and sale of specified commodities, including agricultural commodities, metals and bullion by providing spot delivery contracts in these commodities. Under the Forward Contracts (Regulation) Act 1952 (FCRA), Spot contracts are also known as Ready delivery Contracts. Under the FCRA, a ready delivery contract is one, which provides for the delivery of goods and the payment of price therefore, either immediately or within such period not exceeding 11 days after the date of the contract, subject to such conditions as may be prescribed by the Central Government. A ready delivery contract is required by law to be fulfilled by giving and taking the physical delivery of goods. In market parlance, the ready delivery contracts are commonly known as "spot" or "cash" contracts. This definition is used by FCRA for defining the forward contracts on which Forward Markets Commission has been given regulatory powers. Thus, FCRA defines a commodity derivative / forward contract as "a contract for delivery of goods which is not a ready delivery contract".

This market segment functions like the equity segment in the main stock exchanges. Alternatively, this can be considered as a guaranteed direct marketing by sellers of the commodities. Spot Exchanges leverage on the latest technology available in the stock exchange framework for the trading of goods. This is an innovative Indian experiment in the trading of goods and is distinct from what is commonly known as "commodity exchanges" which trade in futures contracts in commodities.

"Spot Exchange" means a body corporate incorporated under the Companies Act, 1956 and engaged in assisting, regulating or controlling the business of trading in electronic warehouse receipts. (WR is receipt used in markets to guarantee the quantity and quality of a particular commodity being stored within an approved facility.)

However present day spot exchange deals with not just warehouse receipts. This is an electronic market where a farmer or a trader can discover the prices of commodities on a national level and can buy or sell goods immediately to anyone across the country. All contracts on the Exchange are compulsory delivery contracts i.e., here all outstanding positions at the end of the day are marked for delivery, which implies that seller has to give delivery and buyer has to take delivery, but on a net basis. (i.e., intra-day squaring off is allowed.)

The facilities provided by the spot exchange, like a normal stock exchange, include clearing and settlement of trades. Trades are settled on guaranteed basis (i.e., in case of default by any person exchange arranges for the payment of money / good) and the exchange collects various margin payments, to ensure this. The exchange also offers various other services such as quality certification, warehousing, warehouse receipt financing, etc.

*In commodity exchange we mainly exchange contracts. 218  
Often, no actual delivery takes place. (future exchange). Controlled  
by FMC.*

**Advantages of Spot Exchanges**

It can lead to efficient price determination as price is determined by a wider cross-section of people from across the country, unlike the present scenario where price discovery for commodities happens only through local participation. This also ensures transparency in price discovery.

Spot Exchanges can also usher in some best Practices in commodity trading like, system of grading for quality, creating network of warehouses with assaying facilities, facilitating trading in relatively smaller quantities, lower transaction cost etc.

Bank finance available against the goods in the warehouse on easier terms improves holding capacity and can actually incentivize farm production and hence reduce rural poverty.

Since the trades are guaranteed, counter party risk is avoided.

**Spot Exchanges in India**

As on July 2013, there are four spot exchanges currently operating in the country. These exchanges are:

1. The National Spot Exchange Ltd (NSEL) is a national level commodity spot exchange promoted by Financial Technologies (India) Ltd (FTIL) and National Agricultural Cooperative Marketing Federation of India Limited (NAFED). NSEL commenced "Live" trading on October 15, 2008.
2. NCDEX Spot Exchange Limited. (established in October 2006)
3. Reliance Spot Exchange Limited. (Yet to be operationalized)
4. Indian Bullion Spot Exchange limited (they have described themselves as online over the counter spot exchange)

**Regulatory status of Spot Exchanges in India**

Even though Spot exchanges are trading in commodities, the spot trades are not covered under the Forward Contracts (Regulation) Act 1952 (in short FCRA). This Act only covers forward contracts / commodity derivative contracts traded in a commodity derivative exchange like MCX or NCDEX.

Spot Exchange is presently recognized by Ministry of Consumer Affairs, Food & Public Distribution, Government of India. Further the spot exchanges have to obtain licenses from various state governments to facilitate online delivery based trading in various agri-commodities (spot transactions in commodities comes under the regulatory purview of provincial / state governments. In that sense the Exchange operations will be regulated in each state by the respective state governments and will be subjected to various laws of the land like the Companies Act, 1956 Stamp Act, Contracts Act, 1876, APMC Act and others which impinge on its working.).

The spot contracts of one day duration are exempted from the provisions of Forward Contract (Regulation) Act, 1952 (FCRA), by Government of India. Though the spot trades are not covered under the FCRA, the activities of the exchange are monitored by the Forward Market Commission (FMC). For this purpose, the spot exchanges submit a monthly report to FMC about the trading and, delivery and settlement data. However, there does not appear to be any legal or statutory backing for the monitoring by the FMC.

○ Independence of civil servants?  
○ Politicization of Bureaucracy?

