

## ABOUT THIS ISSUE

### THE ANTI-CORRUPTION MOVEMENT IN INDIA AND THE UNITED STATES: UNDERSTANDING THE LANDSCAPE AND AVOIDING PROBLEMS

India and the United States share a common goal of fighting corruption, whether in the public or private sectors. Both countries have experienced too many instances of people taking advantage of their public or private positions to enrich themselves. From the U.S. and Indian perspectives, there are innumerable unfortunate examples available to illustrate this point. In response to these concerns, anti-corruption efforts in the U.S. and India are at an all-time high, as is coordination among the U.S., India, and many other countries fighting corruption.

In the U.S., the Foreign Corrupt Practices Act (“FCPA”) entered the legal landscape in 1977, prohibiting bribery of non-U.S. government officials. In the past 5 years, enforcement by U.S. authorities has sharply increased against both companies and individuals. As a result, compliance with the FCPA is now a top agenda item among corporate management and boards of directors, as well as the lawyers that support them. Companies are working diligently to understand their corruption risks and are taking steps to minimize the potential for liability due to an employee’s misconduct.

In India, the Prevention of Corruption Act was first enacted in 1947, prohibiting bribery of Indian government officials. While there have been a number of significant corruption scandals over the years in India, in recent months the anti-corruption sentiment among the Indian media and popular culture has raised the anti-corruption movement in India to another level. Indian papers report almost daily on developments in a series of official corruption investigations, including one far-reaching investigation involving the issuance of telecommunications licenses, which may have played a part in toppling at least one major political figure.

Given the intense media coverage around such high-profile cases, it would be tempting to focus entirely on corruption at the highest levels and involving large payments. But, as important as these dramatic corruption cases are, the vast majority of instances of corruption in India occur at a much different level. Many of the fundamental tasks necessary to function in India – from checking into a hospital or enrolling a child at school – too often require some form of payment to the individual making the decision about access to that resource. In a country with such inherent optimism and drive, corruption at this level hinders further growth.

In this issue of India Law News, the Section on International Law’s India Committee addresses a number of aspects of the anti-corruption landscape, as it pertains to U.S. and Indian advocates and counselors. First, Rina Pal of The George Washington University Law School and I address the U.S. Foreign Corrupt Practices Act, the original transnational anti-bribery law. We review the fundamental elements of the statute, describe the current state of U.S. enforcement activities, and close with some

## CONTENTS

### OVERVIEW

- 2 *About This Issue*
- 4 *Co-Chairs’ Column*



### COMMITTEE NEWS

- 39 *Submission Requests*
- 40 *India Committee*



### SPECIAL FOCUS

- 1 *U.S. FCPA and Doing Business in India*
- 12 *Prevention of Corruption Act: Closing the Structural Gaps*
- 18 *Developing an Anti-Corruption Compliance Program for India*
- 24 *Enacting Whistleblower Protection Legislation in India*
- 27 *United Kingdom’s New Bribery Statute*
- 29 *Call for India to Join the OECD Convention*
- 31 *Resources on Anti-Corruption Laws and Policies in India*



### FEATURED ARTICLES

- 34 *Highlights of Indian Tax Proposals*



### CASE NOTES

- 36 *Compilation of Significant Recent Case Laws*

observations about the types of corruption U.S. companies and lawyers may face when operating in India.

Following the U.S. perspective, Anand Dayal describes the Indian anti-corruption regime, specifically, the Prevention of Corruption Act. Mr. Dayal's article addresses the elements of the statute, the current enforcement environment, and recent actions taken against Indian and non-Indian companies to illustrate the heightened level of investigative activity and attention being paid to corruption in India.

Next, Aaron Schildhaus, past president of the International Law Section, explains the ways companies operating in India structure their compliance programs to mitigate corruption risks. Companies have many practical compliance tools at their disposal to assess the risks associated with potential corruption, and to lower those risks.

Priyanka Sharma reviews the historical background of whistleblower laws and regulations in India, and provides an important update on proposals being evaluated now. The U.K. perspective always plays an important role in Indian law, and Poorvi Chothani gives an overview on the U.K.'s new Bribery Act.

Anupama Jha, president of Transparency International, India, advocates for India's accession to the United Nations' *Convention against Corruption*, and the Organization on Economic Cooperation and Development's *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Acceding to the UNCAC and the OECD Convention would mark an important milestone in India's role in the global economy. Ms. Jha articulates several compelling arguments why India should pass a transnational anti-corruption statute, addressing the potential that Indian companies operating internationally could contribute to the supply side of the bribery equation.

In addition to the anti-corruption articles featured in this issue of ILN, Arundhati Satkalmi provides ILN readers with a useful list of resources regarding corruption in India, now on the India Committee's website. Also included in this issue is an important update on the tax proposals contained within the Finance Bill, 2011, submitted by Aseem Chawla, Aurica Bhattacharya and Priyanka Duggal. The issue concludes with case notes prepared by Sean Kulkarni and Rina Shah.

Anti-corruption efforts by lawyers working in the United States and India, as well as the clients we serve, will continue to make a real impact on fighting corruption. We hope that you will find the anti-corruption focus of this issue of India Law News to be informative and helpful.

*James Parkinson, Guest Editor  
BuckleySandler LLP  
Washington D.C.*