Criminalization and Law Enforcement
UNGASS Political Declaration

Criminalization and Law Enforcement

- Criminalization
  - Bribery
  - Embezzlement
  - Money Laundering
  - Obstruction of Justice
  - Trading in Influence
  - Abuse of Functions
  - Illicit Enrichment
- Privileges and Immunities
- Capacity Building
- Collaboration & Information Exchange
UNCAC: INDIA

- Convention Signed: 9 December 2005
- Ratification of Convention: 9 May 2011
- Convention into force: 8 June 2011
Indian Legal System

• India Maintains Common Law System
• Constitution of India is the Supreme Law
• Statutory Separation of Powers (Union/State/Concurrent Lists)
  • Delegated Legislation
  • Executive Orders
• Independent Judiciary
• Treaties part of Domestic Law when Parliament enacts relevant Legislation
Institutions

Central Bureau of Investigation

Financial Intelligence Unit - India

Enforcement Directorate

Central Vigilance Commission

Lokpal

State Anti Corruption Units
Anticorruption Laws

1. Prevention of Money Laundering Act, 2002 (PMLA)
2. The Lokpal and Lokayuktas Act, 2013
3. Central Vigilance Commission Act, 2003 (CVC)
4. Indian Penal Code, 1860 (IPC)
5. The Code of Criminal Procedure, 1973 (Cr.PC)
6. The Delhi Special Police Establishment Act, 1946 (DSPE)

The Prevention of Corruption Act, 1988 (PC)
Prevention of Corruption Act

- Bribery
- Trading in Influence
- Illicit Enrichment
- Abuse of Functions
- Attempt, Abetment of offences
- Covers Commercial Organization/Office bearers
- Asset Recovery
- Protection of action in good faith
- Special Courts/Trial in timeframe
Bribery (Article 15)

- Active Bribery Indirectly covered through Abetment
- Protection to Bribe Giver
- Third-party Benefits – Indirectly covered

- Active Bribery Directly Criminalized through Amendment
- Protection to Bribe Giver – Information to LEAs within 7 Days
- Third-party Benefits – Directly covered through Amendment
Embezzlement (Article 17 & 22)

- Embezzlement in Public Sector – PC ACT
- Attempt also covered
- Embezzlement in Private Sector – Indian Penal Code
Trading in Influence (Article 18)

- Indirectly Covered
- No separate offence
- Taking Undue Advantage using Personal Influence
- Direct Offence
Abuse of Functions (Article 19)

• Criminalized through Criminal Misconduct
• Pecuniary advantage
• Undue Advantage
• Obtains or Accepts or Attempts to Obtain
• Motive or Reward
• Improper or dishonest performance of public duty
Illicit Enrichment (Article 20)

- Rule of Evidence – 1947
- Criminalized as offence (Disproportionate Assets) - 1964
- Criminalized as offence (Illicit Enrichment) – 2018
- Broader scope
- Time Tested Practices
Money Laundering (Article 23)

- Comprehensive Definition of Money Laundering – PMLA 2002
- Special Agency to Implement
- Wide definition: Concealment, Possession, Acquisition, Use-Projecting or Claiming, Property as Untainted
Liability of Legal Persons (Article 26)

- Covered through Definition of Person
- Directly Covered
- Commercial organization defined
- Person-in-Charge of Legal Person also liable
CBI Academy

- 2000+ Courses Conducted
- 60000+ Persons Trained (National & International)
Good Practices: Coordination

Central LEAs

State LEAs

NCB - India

INTERPOL

Other NCBs

Foreign LEAs
Investigation
Prosecution
Forensics
Monitoring
Co-ordination
Challenges

• Constructive Liability/ Abetment vs Direct Offence
• Protection to Reporting person (Bribe giver)
• Interpretation of Judicial Pronouncements/ Practice
Thank You