आलोक
Aloke

श्यामा प्रसाद मुखर्जी पोर्ट, कोलकाता

SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Formerly Kolkata Port Trust

Vigilance

Syama Prasad Mookerjee Port, Kolkata

2021

Integrity Pledge for Citizens

I believe that corruption has been one of the major obstacles to economic, political and social progress of our country. I believe that all stakeholders such as Government, citizens and private sector need to work together to eradicate corruption.

I realise that every citizen should be vigilant and commit to highest standards of honesty and integrity at all times and support the fight against corruption.

I, therefore, pledge:

- To follow probity and rule of law in all walks of life;
- To neither take nor offer bribe;
- To perform all tasks in an honest and transparent manner;
- To act in public interest;
- To lead by example exhibiting integrity in personal behavior;
- To report any incident of corruption to the appropriate agency.

सत्यमेव जयते

केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION

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सं./No. 019/VGL/029

दिनांक / Dated 11.10.2021

MESSAGE

Vigilance Awareness Week (26th October to 1st November, 2021)

It is a matter of pleasure that during the current year the Commission has issued the guidelines for observing Vigilance Awareness Week from 26th October, 2021 to 1st November, 2021. The theme for the current year's Vigilance Awareness Week is as under:

"स्वतंत्र भारत @ 75: सत्यनिष्ठा से आत्मनिर्भरता"

"Independent India @ 75: Self-Reliance with Integrity"

Self-reliance and integrity are the two ideals which need focus as they are important for achieving all-round progress and development of the country. During the Vigilance Awareness Week there is an opportunity for all to re-affirm ourselves towards our collective duty and responsibility to ensure transparency and integrity in the systems and procedures.

This year a special initiative has been taken to create awareness for the complaint mechanism available under the Public Interest Disclosure and Protection of Informers (PIDPI) resolution. During the current year, all the organizations have also been requested to focus on improvements in internal processes and other house-keeping activities.

The Commission appeals to all the citizens of the country to come forward, during the 75th year of Independence, and support the drive to achieve self-reliance with integrity.

(SURESH N. PATEL)
Central Vigilance Commissioner

विनीत कुमार, भा.रे.वि.ई.से.
अध्यक्ष
Vinit Kumar, I.R.S.E.E.
Chairman

श्यामा प्रसाद मुखर्जी पोर्ट, कोलकाता
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MESSAGE

Vigilance Awareness Week (VAW) - 2021 is going to be observed in Syama Prasad Mookerjee Port (SMP), Kolkata from 26th October, 2021 to 1st November, 2021. The theme of this year's Vigilance Awareness Week is "Independent India @ 75 : Self Reliance with Integrity ; स्वतंत्र भारत @ 75 : सत्यनिष्ठा से आत्मनिर्भरता". Vigilance Department of SMP, Kolkata is bringing out 5th edition of "ALOKE" to commemorate the occasion.

During VAW - 2021, various activities are being arranged throughout SMP, Kolkata with the objective of bringing together the employees as well as various stakeholders, creating awareness amongst them regarding common issues pertaining to vigilance and fostering an atmosphere conducive to eradicate corruption and unethical practices.

I whole-heartedly congratulate Vigilance Department for the above effort and wish them all the best in their activities.

Date: 22nd October, 2021

(Vinit Kumar) 22/x/21
Chairman

ए. के. मेहेरा, बी.ई., एम.सी.ई.
उपाध्यक्ष
A. K. Mehera, B.E., M.C.E.
Deputy Chairman

श्यामा प्रसाद मुखर्जी पोर्ट, कोलकाता
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
Formerly Kolkata Port Trust

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MESSAGE

The theme of Vigilance Awareness Week (VAW) - 2021 is "Independent India @ 75 : Self Reliance with Integrity ; स्वतंत्र भारत @ 75 : सत्यनिष्ठा से आत्मनिर्भरता". In connection with observance of VAW-2021, from 26th October, 2021 to 1st November, 2021, in Syama Prasad Mookerjee Port (SMP), Kolkata, various activities are being arranged across the Port, involving the employees as well as various stakeholders, which, I feel, is an excellent effort from the organizational perspective.

Vigilance Department of SMP, Kolkata had taken an initiative in the year 2017 to bring out their first ever 'Journal' or 'Year Book' - "Aloke" during VAW-2017. I am extremely happy that Vigilance Department has continued this initiative in the subsequent years, and, this year also, in keeping with the tradition, the 5th edition of "Aloke" is being published.

I congratulate Vigilance Department for their efforts and whole-heartedly wish them all the best in their initiatives.

Date: 22nd October, 2021

(A. K. Mehera)
Dy. Chairman, HDC

सम्राट राही, आई. आर. एस.
उपाध्यक्ष
Samrat Rahi, IRS
Deputy Chairman

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MESSAGE

This year, Vigilance Awareness Week is going to be observed from 26th October, 2021 to 1st November, 2021, with the theme "Independent India @ 75 : Self Reliance with Integrity ; स्वतंत्र भारत @ 75 : सत्यनिष्ठा से आत्मनिर्भरता". I am happy to learn that on the occasion of Vigilance Awareness Week - 2021, Vigilance Department of Syama Prasad Mookerjee Port (SMP), Kolkata is bringing out 5th edition of "ALOKE". I appreciate Vigilance Department for such an initiative.

Like previous year, the Central Vigilance Commission has desired that this year also, all organizations should focus on internal (housekeeping) activities. I feel that while doing so, our focus should be on leveraging our key resources, with special emphasis on technology, for improving our business processes and making them more & more transparent.

I extend my heartiest congratulations to Vigilance Department for the initiatives being undertaken by them and wish them all the best in their activities.

Date: 22nd October, 2021

Samrat.

(Samrat Rahi)
Dy. Chairman, KDS

डॉ. प्रीति महतो, आइ.पी.व टी.ए.एफ.एस.
मुख्य सतर्कता आधिकारी

Dr. Preeti Mahto, I.P.&T.A.F.S.
Chief Vigilance Officer

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Formerly Kolkata Port Trust

MESSAGE

Every year, on the occasion of Vigilance Awareness Week (VAW), Vigilance Department of Syama Prasad Mookerjee Port (SMP), Kolkata brings out the in-house 'Journal' or 'Year Book' - "Aloke". This initiative had started in 2017 and has successfully been continued in the subsequent years. The focus of this publication has always been to not only include articles that are thought provoking, but also appraise the Port fraternity about the areas where Vigilance Department has been able to make specific contribution to systemic efficiency. I am happy to announce that this year, in keeping with the tradition, the 5^{th} edition of "Aloke" has been scheduled for release during VAW-2021.

This year, VAW-2021 would be observed from 26^{th} October, 2021 to 1^{st} November, 2021, with the theme "Independent India @ 75 : Self Reliance with Integrity ; स्वतंत्र भारत @ 75: सत्यनिष्ठा से आत्मनिर्भरता". On this occasion, various activities are being organised throughout Syama Prasad Mookerjee Port (SMP), Kolkata, involving the employees as well as various stakeholders. In my opinion, this is an extremely healthy practice from the organizational point of view, and would go a long way in fostering co-operative and transparent business processes across the Port.

Secondly, in the Run Up Programme to VAW-2021, held on 20^{th} October, 2021, the Central Vigilance Commissioner has given special thrust on PIDPI complaints. It is envisaged by CVC that it will reduce anonymous & pseudonymous complaints and will instil confidence in the Whistle Blower to complain in secured & confident manner against corruption.

I personally feel that each one of us should contribute their own part in fighting corruption and ensure absolute integrity in public life. Only then can we stride into a new era of a self-reliant India.

Date: 22^{nd} October, 2021

प्रीति महतो
(Dr. Preeti Mahto)
Chief Vigilance Officer

FROM THE EDITOR'S DESK

In keeping with the tradition since 2017, the 5th edition of the in-house 'Journal' or 'Year Book' - "Aloke" - of Vigilance Department of Syama Prasad Mookerjee Port (SMP), Kolkata has been scheduled for release during Vigilance Awareness Week (VAW) - 2021. On behalf of Vigilance Department, I would like to sincerely thank all the individuals, who have managed to spare time from their hectic schedules to contribute valuable articles for this edition of "Aloke".

This year, Central Vigilance Commission has desired to spread awareness and campaign about "Complaints under PIDPI (Public Interest Disclosure and Protection of Informers)". In view of the same, an informative article pertaining to PIDPI Resolution and PIDPI Complaints has been included in this edition of "Aloke" to spread awareness regarding the provisions under the PIDPI Resolution as well as other related information.

VAW-2021 would be observed from 26th October to 1st November, 2021, with the theme "Independent India @ 75 : Self Reliance with Integrity ; स्वतंत्र भारत @ 75 : सत्यनिष्ठा से आत्मनिर्भरता". However, India's ranking in the "Corruption Perceptions Index" (an indicator of perceived levels of public sector corruption) of Transparency International continues to slip further, from 80 (CPI - 2019) to 86 (CPI - 2020), while its score out of 100 has fallen from 41 (CPI - 2019) to 40 (CPI - 2019) [0 is highly corrupt and 100 is very clean].

The above scenario calls for serious introspection. Each and every citizen of India must resolve to fight against corruption and ensure absolute integrity in both professional and personal spheres of life. This would be our best contribution towards commemorating 75 years of India's independence and ushering in a new era of a self-reliant India.

Sandip Banerjee
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SMP, Kolkata

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INDEX

A few thoughts . . .

By ***Dr. Preeti Mahto***

Chief Vigilance Officer, SMP, Kolkata

It has been two years since I have been entrusted with the Vigilance Department in a prestigious organisation and watch things from close quarters. The present write up is just a rough note of my thoughts that came through me during the flow of work and thought of sharing the major thoughts.

- Are vigilance people supposed to be introvert, boring, serious, unapproachable, inaccessible types! Can't we have the same emotions as a normal human being? Are we not supposed to congratulate someone's success or express sorrow on one's grief! Are we not supposed to socialize? I personally feel that we are just like any employee of the organisation and do justice with our work profiles for the benefit of organisation. On all formal occasions of celebration and grief, we are a part of the organisation and need not be isolated. Further, mixing with employees of different levels, empathising with them during times of sorrow, illness etc. results in increasing the trust for vigilance wing and in the long run, results in reducing the fear factor of the vigilance department.

- Vigilance Department always keep its eyes and ears open. Even if the complaints are anonymous/pseudonymous, we look for verifiable facts. In cases of genuine complaints, Vigilance wing gives due importance to such cases even though they may look too small. The usual mode for gathering more information is by talking to the complainant in detail, gathering information from its sources and by conducting surprise inspections at the concerned location. There have been instances where complainant has informally given us insight and subsequent surprise inspections help us in comprehending ground realities in better manner. However, in general, it has been found that people fear from lodging complaints. It is expected that with the awareness about PIDPI complaints, an environment will be created where people will feel free and come forward & complain.

- Otto Scharmer and Katrin Kaufer in their book on "Leading from the Emerging Future: From Ego-System to Eco-System Economies" have described the major problem in work front is that it focuses primarily on broadcasting message rather than on something much more important: listening. Listening is the most important gateway to co-sensing and co-creating the emerging future. That means listening with a wide-open mind, heart, and will. It means listening to what is being said as well as to what isn't being said. Therefore, Deep listening is "THE TOOL" for vigilance along with a keen eye for greater understanding of the case.

- If during investigation, corrective actions are proposed by management, then such suggestions should be encouraged. Vigilance should help in taking corrective steps as a preventive tool. Rather than getting demotivated, stop working actively or becoming evasive of work or taking long leave once the investigation starts or not replying to vigilance queries or sharing documents creates more suspicion. The positive sign is to take corrective steps and develop a mechanism that such incidents cannot recur in future.
- Preaching system improvement is not enough. Many a times, the suggestions put forward by the vigilance wing may not be practical as vigilance may not be aware about the technical nitty gritty of the core work being performed especially in an organisation like ours with several departments performing varied and highly complex functions. Thus, the management and the vigilance wing may together discuss the corrective steps to be taken. System improvements should be practical and should have long term positive impact and not merely "run of the mill" suggestions or with a motive of instilling fear for the vigilance wing.

I hope some of the readers may agree with my view points though some may find it revolutionary or off the mark. Thanks for patient reading.

Transparency increases credibility and accountability.

-Park Won-soon

Engagement of a Public Sector Port as PPP Operator - A Concept

*By **A. K. Mehera***
Deputy Chairman, Haldia Dock Complex

The Backdrop

Syama Prasad Mookerjee Port, Kolkata (SMPK), erstwhile Kolkata Port Trust,the only riverine Major Port of India, with an arguably longest navigational channel of the world of 232 km, had started its journey in the 1860s with river moorings and four screw piled jetties before it evolved into a sheltered impounded dock; with the Khidirpur Docks coming into existence in 1892, the Budge Budge jetties for handling liquid cargo in 1886,the Netaji Subhas Docks in 1928, adding further to capacity, in the years succeeding the first World War. The sister dock of Haldia came up much later, post independence, in 1977, with higher draft, accommodating ships of larger parcel loads. While Kolkata Dock System (KDS) became the staple outlet for handling containers and break bulk cargo, Haldia Dock Complex (HDC) specialized in handling dry and liquid bulk cargo carried by vessels of higher dimensions. With gradual jumboisation of vessels as a response to higher shipping freights and to reduce logistics cost of cargo handling, SMPK gravitated southwards as its natural point of destination and has been harnessing its deep drafted facilities at the estuarine anchorages, in terms of transshipment and lighterage operations of dry bulk cargo at Saugar, Sandheads and Diamond Harbour, during the last few years.

For a recap, the KDS unit of the port majorly operates 5 berths at NSD exclusively for containerized cargo, 6 jetties at Budge Budge and one berth at NSD for handling liquid bulk cargo, 22 multipurpose berths at KPD and NSD for multipurpose/break bulk cargo,apart from the anchorage points catering to lighterage traffic. HDC handles Crude oil and POL in its 3 oil jetties, and dry bulk and containerized cargo at its 14 berths inside the impounded dock. The cargo handled by SMPK has been in the region of 60-64 MMT annually, in recent years, peaking in 2018-19, with the share of KDS and HDC, being broadly in the ratio of 1:3.

The Leveraging Factors

SMPK is well-connected to National Highways (NH 2, NH 6, NH 34), railways and national waterways with KDS being connected to Eastern Railway while HDC, to the South Eastern Railway. It is strategically located at the cusp of NW-1 (Ganga), and NW 2 (Brahmaputra) and further linked through the Sundarbans (NW 97) to Bangladesh through the Indo Bangla Protocol route reaching out to the North Eastern States and NW 5 (East Coast Canal integrated with Brahmani - Mahanadi Delta River System) at Geonkhali. The hinterland of SMPK comprises West Bengal, Bihar, Jharkhand, Part of Odissa, eastern part of Uttar Pradesh, the NE states as it acts as a gateway entrepot to the landlocked states of Nepal, and Bhutan. The 'Act East' policy of Govt of India, lends a distinctive advantage to the eastern most port of India to leverage its riverine potential to reach out to the ASEAN countries and NE states through the IBP route and the Multimodal Kaladan project, as also for the BIMSTEC[1], through the transnational corridor. An all weather multi drafted port, with an agile and vibrant workforce and a capability to handle varied cargo through an evolving modal mix, adoption of MHCs for faster cargo handling, extensive use of customer friendly /IT enabled services for cargo accountal, tracking, security, land mapping etc., an entrenched customer base, presence of heavy industries in a radial hinterland of about 400 km² makes it an attractive destination for a diversified cargo and clientele.

The Downsides

However, being a riverine port among other sea ports in the circuit, the port is not in a level playing field as it faces challenges of low draft and huge annual dredging cost, high maintenance cost of the navigable fairway for pilotage and conservancy, vis-a-vis its inability to handle large sized vessels, which eventually makes it a relatively high cost port. As a consequence, there are looming threats of the port losing a substantial chunk of its cargo to the neighbouring private ports of Dhamra and Subarnarekha, (already concession has been awarded yet to commision), in the Odissa Coast, at a distance of about 350 Km and 250 Km respectively. These mostly greenfield ports with relatively high drafts (14 mts plus)and adoption of the state-of-the-art cargo handling systems can handle large size ships at faster rates which significantly reduce the TRT of vessels and commensurately enhance the ship-day productivity. Hence, the main line vessels prefer anchoring at these ports, by-passing SMPK, which even at the estuarine anchorages, cannot offer more than a 9 metre draft. Further, KDS, being a city based

1 Mentioned in L & T Report

2 Heavy industries in Chotanagpur region

port, the evacuation/aggregation rate of cargo from/to the port is often limited by restrictive time windows imposed by the local administrative authorities to ease city traffic. The other issue that SMPK faces is that its cargo handling capacity, particularly with regard to the container berths at KDS and POL/Dry Bulk berths of HDC, is nearing a point of saturation. The berth occupancy rates for the container vessels at KDS exceed 80%, while for HDC, the over-all berth utilisation is almost 70%, while the international best-practices benchmark it at a ceiling of 70%.

Proactive Strategies to Sweeten the Pill

To overcome the problems of low draft and high berth occupancy, SMPK, has started cargo handling at its anchorages, but it is fraught with limitations. The mainline vessels normally unload a predominantly larger portion of their cargo at the deeper drafted Ports like Paradip/Dhamra and then lighter the residuals at HDC/anchorages having a lower draft. Even, as a punitive measure to discourage this practise, a few neighbouring non-major ports, which are not governed by TAMP, are already imposing predatory levies as a penalty on the vessel operator/freight forwarder, for resorting to a 2 port discharge and not handling the entire cargo exclusively at their ports. This results in retaliatory and competitive tariff discounts/rebates by major ports including SMPK, for desperate cargo retention which might upset the natural market freight and logistics chain economics of the maritime trade. Also, for SMPK, the cargo handling operation at the mid-seas is difficult and time consuming and depends on vagaries of weather and synchronous availability of barges/feeder vessels.

SMPK has adopted a slew of measures as an answer to the issues of capacity saturation/faster handling of cargo, like installation of Floating cranes at the Anchorages to handle mainline mother vessels (Cape size vessels) of higher DWT to be lightered by the daughter ships carrying cargo at matching draft at HDC, development of Outer Riverine Terminals outside the impounded docks at HDC to expeditiously handle dry/ liquid bulk cargo being discharged by the daughter vessels with higher parcel loads, off the Anchorage points, Berth mechanization and development of Container Terminals at KPD / NSD at KDS and HDC under PPP route with deployment of MHCs/RMQCs for quicker evacuations and plans to develop an extended freight terminal at Balagarh to offload cargo dispersion through barges, RORO transportation between Kolkata and Howrah as a means of cheaper and faster transit to combat traffic restriction by city Authority and reduced carbon footprint. But these projects involve multiple stakeholder participation and moreover will take time to fructify. SMPK cannot afford this delay and remain a mute witness to a slow but definite erosion of its cargo base to its competing ports, since lost cargo takes a lot of time and marketing drives, if at all, to stage a comeback with the risk of the existing infrastructure turning wasteful or the expenditure incurred going largely infructuous.

Even at HDC, dry bulk cargo being handled inside the impounded docks have capacity constraints. Lock restrictions and low draft imply handling of vessels of lesser parcel load with consequential dead freighting. Building outer liquid and dry bulk terminals outside the impounded docks to serve the sister barges, carrying cargo off the mother vessels transhipped at Sagar/Sandheads, has addressed the problems, as explained earlier, but only partially and temporarily.

Figure 1 : Kolkata , Subarnarekha and Dhamra

Looking Beyond

The nearest major port of SMPK is the Paradip Port, a deep drafted one with a 14-15 metre draft, intending to increase to 20 metre draft, situated at a distance of about 450 Km along Odissa-West Bengal coast, primarily catering to dry and liquid bulk cargo. Its traffic soaredto 112.69 MMT in 2019-20 from 76.39 MMT in 2015-16 (a whopping increase of 47.5 %) with cargo composition being roughly POL-33% , Thermal Coal-24%, Coking Coal-11% and Iron Ore-12%[3] .The port has 21

3 Source: Admin Report of Paradip port 2019-20.

berth/jetties/moorings, SPMs etc. of which 5 are used for handling liquid cargo. The port is well connected with broad-gauge electrified railway system of the East-Coast Railway and is also served by National Highway No. 5A and State Highway No. 12.

The PPP Route : Its Relevance for SMPK

The Government of India in its effort to improving the level and the quality of economic and social infrastructure services across the country, has envisaged a substantive role for Public Private Partnerships (PPPs) as a means for harnessing private sector investment and operational efficiencies in best possible optimisation of public assets and services. India has already witnessed considerable growth in PPP projects in the last one and half decade emerging as one of the key PPP markets, the model being extensively used for development and operation, especially in Highways, Ports, Airports sector. A public–private partnership, as we know, is a concessional arrangement between two or more public and private sectors of a medium or long-term nature, pooling on their competitive reserves for development/maintenance of assets, on well laid fiduciary principles leading to mutual gains. In port sector, it typically involves private capital financing in government projects through facility/equipment up gradation, with collection of the services cost up-front from its users, and then apportioning the proceeds with the concessioning authority through a royalty/revenue share over the entire period of the PPP contract, maintaining its own profitability requirement, as per the norms mandated by TAMP/PPP provisions etc.

The importance of using the PPP model in the port sector is the call of the day as the public sector ports are shifting themselves gradually from “Public Sector Port” model to “Landlord Model”. The landlord port model represents the management vertical where infrastructure, particularly terminals, is leased to private operating companies with the port authority retaining ownership of the land. The most common form of such arrangement is a concession agreement where a private company is granted a long-term license in exchange for license fee which is commonly a function of the size of the facility as well as the investment required to build, renovate or expand the terminal and a portion of its revenue as royalty / revenue share.

Interestingly, SMPK is currently in advanced stage of finalizing two major

PPP projects, one at KDS, for Container& Multipurpose Cargo Handling at KPD-I (West) and the other , viz. , Mechanization of Berth No 2 at HDC, which have received competitive offers from responsive bidders.

A Way Forward - An Out-of-the Box Idea

In order to over come low draft issue and related challenges, SMPK, can offer itself as a bidder in the PPP fray in other neigh boring major ports, like Paradip, subject to requisite enabling changes that may be required in the relevant provisions of Major Port Authority Act/PPP guidelines etc. to ease such participations. Alternatively, SMPK may also form a Special Purpose Vehicle (SPV) among the participating entities/ constitute a viable conglomerate through equity/loan participation with competent back-end stakeholder partners, ready with technical expertise and participate in the PPP process for development/ operation of berths/terminals of other public ports. Other feasible alternate variants of PPP participation may also be thought of where SMPK may form a Joint Venture (JV) with another private entity (to be selected through tendering) to operate a terminal at the neighbouring public port like Paradip. This way SMPK can obviate the draft constraints of KDS & HDC and handle bigger vessels at its own berth at other Port and part cargo may also be sent to KDS / HDC. This way the predatory pricing policy adopted by private non major Port in east coast can be tackled to a large extent. In fact, sometimes back, MoPSW also suggested for two or more major Port to join hand and make strategies to combat such type of predatory pricing policy by neighbouring non-major Ports. Interestingly , SMPK which has an expertise in container handling, may form a JV and can even think of jointly bidding with Paradip, having the requisite wherewithal in bulk cargo handling, for making investments in another public port terminal.

The Positive Spin-offs

SMPK's participation in the PPP process of a neighbouring public port like Paradip may be a feasible way of the ports' extending their respective hinterlands to boost revenues and scale up harnessing national resources from the perspective of a more effective and optimal usage of public sector assets. The concessionaire port can earn vessel and cargo related revenues while sharing a portion of the same as royalty/ proceeds with the concessioning port like Paradip. Paradip Port shall also be a willing beneficiary in this arrangement through sharing of revenues with minimal investments and the process would also imply transfer/ sharing of resources between the two public entities, resulting in a win-win situation for both SMPK and the Paradip Port.

If public ports are allowed to participate in such ventures, the possible benefits are likely to be manifold. It may resolve and find an honourable way of surviving through the “red ocean strategy”, viz. the serial and competitive cut throat competitions often resorted to by public and private ports and even among public ports, vying for the common share of a gradually shrinking hinterland. It will lead to a more competitive participation in the specialized field of port operations, curb duplication of facilities which eventually turn out to be redundant/ avoid idling/ wastage of resources among contending ports vying for the same cargo slice. This will also present the best possible option of a professional, state-of-the art service to the user, the ultimate and vital link in the logistics chain, at a competitive cost and lead to a gradual reduction of monopoly/hegemonistic pricing strategy among the private operators in PPP operation / non major ports.

It is true that this idea is of a public port to act as PPP operator at other port or two public ports joining hand (JV) to operate a terminal at third port etc. may look like absurd, however, one cannot deny the expertise of public ports in developing & operating ports/terminals in the country, which perhaps are the best as these public ports are in this field for decades together. This idea may be debated at appropriate forum thread-barely before any action on the field can be initiated.

Secrecy is the linchpin of abuse of power, . . . its enabling force. Transparency is the only real antidote.

-Glenn Greenwald

Can we equate moss with experience?

By ***Arnab Basu***
Ex - CME (I/C) & EM (R&R), SMPK

Let us start with the well-known English-language writer Stephen Leacock's well-read creation ***Old proverbs made new.*** The writer has dealt with a few proverbs, in his own way and thought, therein. The often-used proverb, ***A rolling stone gathers no moss,*** can be interpretated in the following two contradicting ways :

a) A person who is always moving and does not remain in a single place for too long, will never become stagnant and will always remain active.

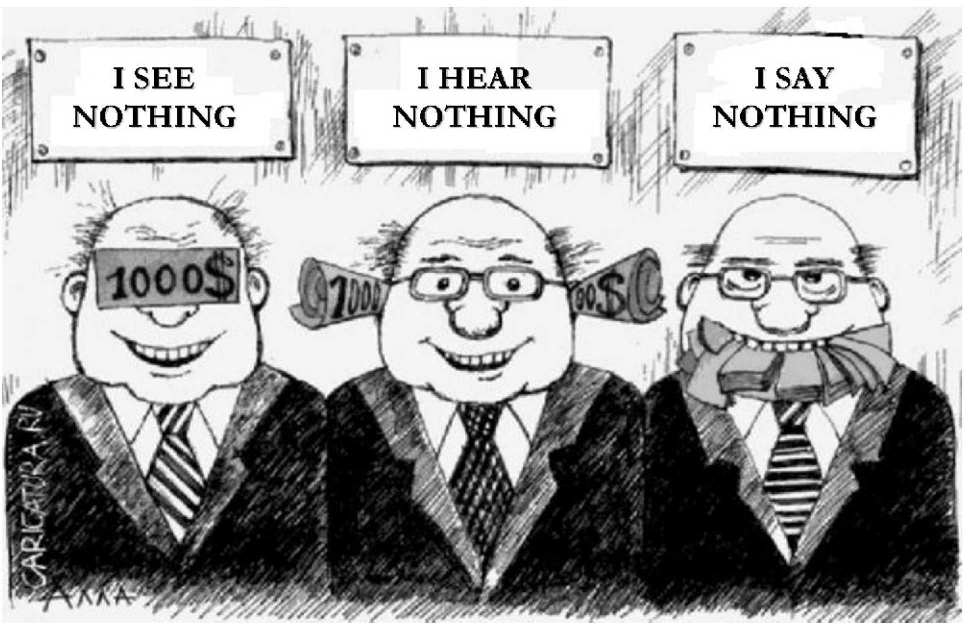
b) A person who is constantly moving and never lives in one place for a long time, can not gain knowledge or wealth.

The stress is on the **growth of moss.** The idea is that moss will only grow on a stone that remains still. During movement of stone, moss, if any, gets knocked off the rock. However, the metaphor likens knowledge to moss. If someone is constantly moving and never stays in one place, he can not acquire requisite knowledge from the surrounding. This way moss has a positive connotation.

Let us now link the aforesaid apparently positive connotation of moss; with the perceived knowledge and experience, officials of multi-disciplinary Port officials are being deprived of due to **Rotation of sensitive posts.** Fully agreeing with the fact that this helps in eradicating corruption to a large extent, the question remains whether it restricts or limits acquiring comprehensive knowledge of the subject.

Let us take the example of SMPK itself, which has got three impounded docks with lock gates, KPD, NSD and HDC, maintenance of which is of paramount importance from the point of view of existence as well as productivity point of view. It may be clearly understood that important and special Civil/Structural/Mechanical/Electrical maintenance/repair works is not regular, but requirement of these jobs arises after an interval of 5/7/10 years or more. Besides, requirement of various special jobs also arises due to Act of GOD, i.e., Cyclones, excessive rains, abnormal rise in river water level, etc., which are also not frequent. To combat such difficult and sensitive situations effectively, it is felt that it is better to have battle-hardened workforce, supervisors and officers, with similar past experience. But under the present rotational transfer system in vogue, it is not feasible and practicable, which may lead to paying a price, by the organisation, as **moss,** the requisite experience, may not be available, either partially or fully.

With the aforesaid scenario in consideration, having complete faith and dependence on the on-going rotational system, may I suggest possibility of exploration for exclusion of one/two most sensitive area(s), of organisation(s), with the approval of the highest authority, from the purview of the above system, to safeguard the interest of organisation(s).



Corruption or No Corruption

By ***J. Sengupta***
Superintending Engineer

A. PROBLEMS WITH THE PRESENT PRACTICE :

Vigilance Department in any organization of our country plays a significant role in two ways – (a) by circulation of guidelines on system improvement on analysis of problems/issues encountered in its day to day dealings of different cases, and (b) by undertaking vigilance enquiries that entail punitive actions as deterrent to fraudulent activities indulged in by the charged officials.

Till now, at least in India, irregularities are enquired into practically with sole emphasis on the gravity and magnitude of the irregularities while concluding on punishment, without regard to the true intent of the charged officials concerned.

Since we hardly distinguish between unintentional mistakes and corrupt deeds, honest efforts of the Vigilance Department fail to achieve its desired goal completely. To accept candidly, it goes on to interfere with productivity owing to the following:

(i) The honest and sincere officials lose confidence more and more and compromise with the pace of work in apprehension of punitive action against them for any mistake whatsoever.

(ii) The evasive lot of officials is gifted with a nice plea of sharking responsibilities to stall the work.

(iii) The corrupt mind is encouraged to seek opportunities to carry out the mischief by posing as ignorant.

B. WAY FORWARD :

Thus, it is essentially required to make out the true intent of the officials concerned during a vigilance enquiry. Indeed, it is very difficult to understand the motive behind an irregular work by officials. Yet, we are in need of trying out the same for reasons as explained above.

Being fortunate enough to serve in different departments of Kolkata Dock System and Haldia Dock Complex of Syama Prasad Mookerjee Port, Kolkata (erstwhile Kolkata Port Trust) as well as being privy to some irregularities of some other major port in India in course of probing on special assignment, I have come across several cases of different types. Relying on those cases, it may be possible to classify the common irregularities of corruption on procurement and work out a structured approach to identify the character of any case in future and put it into any of the classes, whenever possible, and if not, add new classes, while handling.

It may be urgent to mention here that the objective of any organization should not be to wait for some irregularities to take place and expect the Vigilance Department to rise to the occasion to do the needful. With a handful of officers and thin infrastructure, it is next to impossible for the Vigilance Department to act up to the common expectation of ours. Rather, it must be the duty of each officer of any organization to keep this issue in mind in their day to day work, particularly while performing in a team, and play the role of an inhibitor to the extent possible. The collective and combined outcome of all will really help the organization in minimizing corrupt activities within, with much less burden on its Vigilance wing.

C. CLASSIFICATION OF IRREGULARITIES REQUIRING VIGILANCE ENQUIRY WITH EXAMPLES :

(i) **Antecedent of the officials concerned**: Most of the officials do not carry any brand of being honest or dishonest beyond doubt. However, very few officials in any organization may carry the brand of not being honest and by the word of mouth and whispers of his/her colleagues, his/her image is known to all. While dealing with such officials, we should be doubly careful. Actually, persons of this category are habitually corrupt and in every deal they undertake, there is always an attempt of minting money by unfair means. Thus, arresting their attempt will greatly minimize the damage done by them, and if thwarted repeatedly by all around, such persons may eventually lose the zeal in their unholy pursuit.

Example: Once upon a time, there was an officer in a port, who was known for his special skill in adopting different styles to befool others for making money from each tender/work he was into. Due care on several occasions by some other officer helped prevent the misdeeds.

(ii) Emphasis on critical parameter(s) with highest financial **implication within the scope of work**: Corrupt mind mostly settles on areas that appear to be most rewarding to them. It is the magnitude of promise for reward that lures them to take the risk. Considering the natural limitations of time and scope, we can hardly examine each case so exhaustively. Hence, this approach yields results very quickly, enabling us to handle many cases in a given time.

Example: The aforesaid corrupt officer once finalized a tender. It was found that item description and rates for all the items in the tender document were borrowed correctly from the schedule, while only for the costliest item of the work to be carried out with 'Sal' wood, the word 'Sal' was omitted in the description, leaving scope to the contractor to supply any cheap variety of wood at the rate meant for 'Sal' wood. The officer might have expected that the omission of the word 'Sal' would go unnoticed in the lengthy description of so many items in the tender.

(iii) **Requisition for work and prior approval** : In a transparent approach to work, there will always be a proper requisition/assessment of requirement of a work and complete reflection of the same in the proposal seeking administrative approval. Lack of transparency in the above should arouse suspicion.

Example 1: Once upon a time, a proposal was placed for administrative approval for thorough repair of an old tug out of many decommissioned ones as there was shortfall of only one tug in the fleet. On scrutiny of the case, it revealed that the one requiring maximum repair was chosen from the lot of decommissioned ones for maximizing the hidden profit. In the proposal, this issue was suppressed very intelligently and reasons for choosing the particular tug for repair was absent. Interestingly, the said tug was soon condemned and disposed of unlike the other decommissioned tugs.

Example 2: In another tender in a port decades back, an estimate was prepared for repair of a road at an estimated cost of Rs. 9 Lakh. During tender process, the tender committee members carried out a site inspection on receipt of an information and found that the entire stretch of road was in perfect condition. The dealing officer concerned could not overcome the trauma, and soon he succumbed to a massive heart attack.

(iv) **Inconsistency in the Bill of Quantity**: Gross inconsistency and discrepancy are observed in the Bill of Quantity (BoQ) of some tenders prepared in an irregular manner.

Example 1: In a particular tender, it was noticed that the quantities for different items for a road repair tender was inconsistent. While as per one item, the surface area of the road was say, to the tune of x sq. unit, for another costlier item, it appeared to be around 2x sq. unit. Ultimately, it was found that the BoQ was manipulated to pay to the contractor for 2x sq. unit for the costlier item against scope of executable area of x sq. unit. The balance x sq. unit was the hidden profit to be shared between the contractor and the corrupt officials.

Example 2: In quite a few cases, it was found that quantity against unit rate of one or two items was not inserted in the tender, leaving a scope for post tender manipulation.

(v) **Fallacy in tender rates**: In some tenders, we come across unrealistic and unworkable rates that lead to non-performance post procurement.

Example: If in any tender, abnormally low rate for AMC is accepted by the purchaser, it only allows the supplier to sell the product with certainty of no post supply service. A Reach Stacker procured by a port with a very low AMC rate did not perform beyond one year or so. This example is cited here because the officers wanted the Reach Stacker to fail to allow hire of the equipment from contractors of their choice.

(vi) **Fallacy in tender terms**: In some tenders, we come across unworkable terms that lead to non-performance post procurement.

Example: In some cases of procurement, the payment terms is such that about 90% due is paid to the party prior to commissioning. Considering the margin of profit generally retained in any contract, the contractor, in such a situation, secures 90% dues till when the supply is not tested through successful commissioning. Such terms of payment only allow the unscrupulous parties to supply sub-standard materials and as a result, the project ultimately fails.

(vii) Late submission of proposal for excess/extra work for post facto approval: The cause of the delay in submission of proposals must be carefully ascertained to determine any hidden cause. It happens at times that when a proposal is returned with unanswerable audit query, the unscrupulous officers wait for the opportunity for fresh submission of the proposal, even suppressing the past reference, at a time when the auditing/approving official is busy, replaced or expected to have forgotten the earlier submission.

Example: Once a proposal was returned with an audit query as it seemed to be not at all recommendable. After a lapse of one year or so, the same proposal was received for administrative approval without an iota of past reference. Soon, memory reminded the auditing officer about the earlier proposal he had returned and this second proposal was also returned by him with the same set of queries. Another unsuccessful attempt was, however, made after another one year by the same corrupt official, needless to say, without success.

(viii) **Waiver of liquidated damage**: This is a gray area and care should be taken to analyze the causes of delay with time.

Example 1: In case of proposals of LD waiver, the delay not attributable to the contractor is shown as number of days for each cause of delay and at times separately even for overlapping period of two different causes, and added arithmetically to unduly favour the contractor. This is a common irregularity and observed in some proposals of LD waiver.

Example 2: In a particular contract, there was a provision that the contractor will arrange for a costly machine to keep the surface dry even during heavy rain. In the LD waiver proposal, one of the reasons for delay was wet surface due to heavy rain and the proposal, being a very high value contract, was required to be sent to the Board of the Port for approval. The Board returned the proposal for some apparent inconsistency with the advice for resubmission after doing the needful. During the second time, the proposal was closely scrutinized by an auditing officer. After going through the tender document, he found that the aforesaid provision was completely suppressed to favour the contractor unduly. The amount of waiver proposed was huge. The bottom line of this case is that the contract provision should be read thoroughly while auditing a proposal.

(ix) **Basis of first estimate of work of renewal nature**: If the first estimate is higher, the subsequent estimates prepared with due escalation on the rate received in the first attempt of the work will be perpetually higher in the same proportion.

Example: There was a yearly work of repetitive nature. In the first attempt, the estimate for the unit rate was fixed at Rs. 100/- as per advice of the prospective contractor having an unholy relation with the officer concerned and without proper assessment. 10,000 units were operated per month. The said contractor became lowest with a quoted rate of Rs. 101 per unit.

Next year, the estimate was revised to Rs. 110 per unit, the third year to Rs. 120 per unit and in the fourth year to Rs. 130/- per unit, with the lowest rate quoted by this particular contractor being always in close proximity of the estimate. The said contractor was very powerful and was able to ensure that no new bidder could quote.

Unfortunately, in the fifth year, a new player joined and quoted Rs. 84 per unit!!

The result was a court case and the rest is not worth discussing here.

(x) **Improper execution of work**: There are cases where the authority executing the contract allows the contractor to execute the work in an irregular manner and by then allows the contractor the stage payments as per tender terms. Ultimately the work fails and the contractor leaves.

Example: After the first crane was commissioned in a procurement contract of three cranes by a port, the next two cranes were supplied and erected. Both these cranes had one common costly unit defective during supply. The authority allowed commissioning of these two cranes by cannibalizing the said component from the first crane and declared all three cranes commissioned and proceeded for payment to the contractor. Crores of Rupees went down the drain and the case finally landed at the office of CVC.

D. IRREGULARITIES APPARENTLY REQUIRING ADMINISTRATIVE ACTION:

There are many other instances of irregularities, which would at once appear to be arising out of ignorance, haste or lack of structured approach by the officials concerned and not indicating any ill motive on their part. Cases falling under this category need to be dealt administratively first and if anything requiring vigilance enquiry surfaces thereafter, appropriate mode of enquiry including change of mode of enquiry may be considered. Action on system improvement may be required for such cases.

E. CONCLUSION:

If we can appreciate the need of distinguishing between these two categories and treat the officials concerned accordingly, a better outcome is expected to be achieved by each organization without wasting any extra resource with simultaneous easing of burden on the Vigilance department.

To be a good boss, you must be transparent. There's a correlation between worker happiness and workplace transparency. Leaders and managers who offer transparency will earn the respect and devotion of their team.

-David Niu

स्वतंत्र भारत @75 : सत्यनिष्ठा से आत्मनिर्भरता

ओ पी राय

उप प्रबन्धक(प्रशासन), हलदिया गोदी परिसर

गांधीजी के मूल दर्शन का यह एक महत्वपूर्ण पहलू है कि जीवन में किसी लक्ष्य की प्राप्ति के लिए उसे प्राप्त करने के साधन/माध्यम में नैतिकता, पवित्रता एवं शुद्धता होनी चाहिए । वे कहा करते थे कि अगर किसी लक्ष्य की प्राप्तिमेंअगर साधन मेंपवित्रता नहीं है तो साध्य भी शुभ नहीं हो सकता । उनके अनुसार साध्य और साधन में कोई भिन्नता नहीं होनी चाहिए। उनके जीवन दर्शन में साधन और साध्य संपरिवर्तनीय शब्द हैं, न केवल साध्य ही नैतिक, पवित्र, शुद्ध और उच्च होना चाहिए बल्कि साधन भी उसी मात्रा में नैतिक, पवित्र और शुद्ध होना चाहिए । वह दोनों को अविभाज्य समझते थे. उनके लिए साधन एक बीज की तरह है और साध्य एक पेड़ । साधन और साध्य में वही सम्बन्ध हैं. जो बीज और पेड़ में हैं। अगर कोई व्यक्ति साधनों का ध्यान रखता हैं तो साध्य स्वयं अपना ध्यान रखेगा। अत: सम्बृध भारत एवं आत्मनिर्भर भारत के निर्माण में साधन की शुचिता, पवित्रता एवं नैतिकता का महत्वपूर्ण योगदान होना चाहिए।

अब प्रश्न यह है कि नैतिकता, पवित्रता एवं शुद्धता है क्या ?अगर इन्हे किसी एक शब्द में परिभाषित करना हो तो वह शब्द है सत्यनिष्ठा । सत्यनिष्ठा का तात्पर्य यह है कि नैतिक कर्त्ता अपनी अंतः मान्यताओं के अनुसार कार्य करता है। उसका काम पाखंड या धोखे से मुक्त होता है और साथ ही, उसके द्वारा निर्धारित मूल्यों के अनुरूप होता है। वहीं ईमानदारी नैतिक चरित्र के एक पहलू को संदर्भित करती है और सकारात्मक एवं पवित्र गुणों जैसे-सच्चाई, सरलता, वफादारी, निष्पक्षता आदि मूल्यों से जुड़ी है। सच्चाई का साथ न छोड़ना, मर्यादाओं का पालन करना या फिर अपने मूल्यों के साथ बने रहना ईमानदारी है, लेकिन विपरीत परिस्थितियों में भी अपने नैतिक प्रतिमानों के साथ दृढ़ता से जमे रहना सत्यनिष्ठा है।

सत्यनिष्ठा और ईमानदारी, विशेषकर एक लोक सेवक के लिए सर्वोच्च महत्त्व के हैं। एक लोक सेवक का कार्य क्षेत्र लोगों के लिए कार्य करने से जुड़ा है और उसकी क्रियाएँ लाखों लोगों के जीवन को प्रभावित करती हैं। ये क्रियाएँ अनेक फैसलों, दिन-प्रतिदिन का प्रशासन और लोगों के विकास में वृद्धि करने से संबंधित हैं जिनकी सफलता लोक सेवक की सत्यनिष्ठा और ईमानदारी से जुड़ी है।

यदि लोक सेवक में इन मूल्यों का अभाव है तो गरीब, अशिक्षित, सीमांत और कभी-कभी सम्भ्रांत वर्ग भी इससे प्रभावित होता है। उदाहरणस्वरूप, सड़क निर्माण में अनियमितता, कम गुणवत्ता की सड़क के निर्माण का कारक बन सकती है। ऐसी स्थिति में एक लोक सेवक को सत्यनिष्ठा और ईमानदारी के प्रति हमेशा जागरूक रहना चाहिए। लोक सेवक में इन मूल्यों का होना भ्रष्टाचार जैसी समस्या के समाधान में सहायक होगा जिससे संविधान में उल्लिखित 'न्याय' की प्राप्ति हो सकेगी। वैसे तो देश के पहले गृह मंत्री, सरदार पटेल ने संयुक्त भारत के साथ-साथ देश की प्रशासनिक प्रणाली के वास्तुकार के रूप में ऐसी

व्यवस्था बनाने का प्रयास किया, जो देश के आम आदमी के लिए हो और जहां नीतियां सत्यनिष्ठा पर आधारित हों। बस आवश्यकता है तो इन मूल्यों को बढ़ाए जाने के उपाय करने की क्योंकि इन मूल्यों के अनुपालन से ही समाज प्रत्येक क्षेत्र में प्रगति कर सकता है। आत्मनिर्भर भारत के निर्माण में सरकार एवं संस्थानों की एक महत्वपूर्ण भूमिका होती है। विगत वर्षों में सरकार द्वारा इस क्षेत्र में कई सकारात्मक कदम उठाए गए हैं।

2014 के बाद से देश में बैंकिंग क्षेत्र, स्वास्थ्य क्षेत्र, शिक्षा, श्रम, कृषि आदि सहित कई क्षेत्रों में सुधार किए गए। इन सुधारों के आधार पर देश अब अपनी पूरी ताकत के साथ आगे बढ़ रहा है ताकि आत्मनिर्भर भारत अभियान को सफल बनाया जा सके। भविष्य में भारत के दुनिया के अग्रणी देशों में से एक बनने की उम्मीद भी जगी है।

प्रशासनिक व्यवस्था को पारदर्शी, जिम्मेदार, जवाबदेह, जनता के प्रति उत्तरदायी बनाने पर जोर दिया गया है। भ्रष्टाचार एक तरफ देश के विकास को नुकसान पहुंचाता है और दूसरी तरफ यह सामाजिक संतुलन और उस भरोसे को खत्म कर देता है, जो लोगों का सिस्टम के प्रति होना चाहिए और इसलिए, भ्रष्टाचार से निपटना किसी एक एजेंसी या संस्था की जिम्मेदारी नहीं है बल्कि यह एक सामूहिक जिम्मेदारी है। भ्रष्टाचार से स्टैंड-अलोन अप्रोच से नहीं निपटा जा सकता है।

जब देश का सवाल आता है तो सतर्कता का दायरा बहुत विस्तृत हो जाता है। यह भ्रष्टाचार हो, आर्थिक अपराध, ड्रग नेटवर्क, धन शोधन, आतंकवाद, या टेरर फंडिंग, बहुत बार ऐसा देखा गया है कि ये सभी जुड़े होते हैं। ऐसे में भ्रष्टाचार से लड़ने के लिए एक समग्र दृष्टिकोण के साथ व्यवस्थित जांच, प्रभावी ऑडिट, और क्षमता निर्माण व प्रशिक्षण की आवश्यकता है। यह समय की जरूरत है कि सभी एजेंसियां तालमेल और सहयोगात्मक भावना के साथ काम करें।

उदाहरण स्वरूप सरकार के प्रयास से दशकों से गरीबों को जो उनका हक नहीं मिला था लेकिन अब डीबीटी के कारण गरीबों को सीधे उनका लाभ मिल रहा है। अकेले डीबीटी के कारण 1.7 लाख करोड़ रुपये से अधिक की राशि को गलत हाथों में जाने से बचाया गया। संस्थानों में लोगों का भरोसा फिर से बहाल हो रहा है।

सरकार की ओर से न तो ज्यादा हस्तक्षेप होना चाहिए और न ही पूरी तरह से दूरी। सरकार की भूमिका उस सीमा तक सीमित होनी चाहिए, जितनी आवश्यकता हो लोगों को यह महसूस नहीं होना चाहिए की सरकार अनावश्यक रूप से हस्तक्षेप कर रही है या जरूरत पड़ने पर सरकार कार्य नहीं कर रही है।

पिछले कुछ वर्षों में 1500 से अधिक कानूनों को समाप्त कर दिया गया है और कुछ नियमों को सरल बनाया गया है। आम लोगों की परेशानी को कम करने के लिए पेंशन, छात्रवृत्ति, पासपोर्ट, स्टार्टअप आदि कई आवेदन ऑनलाइन किए गए हैं।

इसी तरह निवारक सतर्कता, दंडात्मक सतर्कता से बेहतर है। अतः भ्रष्टाचार को बढ़ावा देने वाली परिस्थितियों को दूर करने की जरूरत पर बल दिया जाना अपेक्षित है।

कई कानूनी सुधार भी किए गए हैं और देश की सतर्कता प्रणाली को मजबूत करने के लिए नए कानून पेश किए गए। काले धन, बेनामी संपत्तियों, भगोड़ा आर्थिक अपराधी अधिनियम जैसे कानूनों को सतर्कता प्रणाली को मजबूत करने के लिए बनाया गया। भारत दुनिया के उन चुनिंदा देशों में शामिल है जहां फेस-लेस कर-मूल्यांकन प्रणाली लागू की गई है। भारत उन चंद देशों में शामिल है, जहां भ्रष्टाचार को रोकने के लिए तकनीक का अधिक से अधिक इस्तेमाल किया जा रहा है। सरकार की प्राथमिकता सतर्कता से संबंधित एजेंसियों को बेहतर प्रौद्योगिकी, क्षमता निर्माण, नवीनतम बुनियादी ढांचा और उपकरण उपलब्ध कराना है ताकि वे अधिक प्रभावी ढंग से काम कर सकें और बेहतर परिणाम दे सकें। अगर देश भ्रष्टाचार को हरा दे तो मजबूत हो सकता है और समृद्ध व आत्मनिर्भर भारत बनकर सरदार पटेल के सपने को साकार भी किया जा सकता है।

सत्यनिष्ठा से आत्मनिर्भरता कैसे प्राप्त हो इसके लिए संस्थानों को भी कुछ बुनियादी बदलाव करने की आवश्यकता है जो इस प्रकार हैं :-

- संस्थानों को व्यावसायिक उत्कृष्टता प्राप्त करने हेतु अपनी बुनियादी सुविधा तथा डिजाइन, विनिर्माण एवं सेवा–कौशल का इष्टतम उपयोग करते हुए ग्राहकों को श्रेष्ठतर प्रौद्योगिकी समाधान प्रदान करने के लिए प्रतिबद्ध होना चाहिए।
- संस्थानों कोअपने ग्राहकों से संबंध स्थापित करने के प्रति समर्पित होना चाहिए तथा उनकी लक्ष्यपूर्ति में भी भागीदार होना चाहिए। ग्राहकों की जरूरतों को समझने और उनकी सभी आवश्यकताओं को पूरा करने तथा उससे अधिक ऊंचे स्तर के उत्पादों और सेवाओं को प्रदान करने का प्रयास होनाचाहिए।
- सभी कार्य-कलापों में निरंतर सुधार के प्रति वचनबद्ध होना चाहिए। इस प्रकार के उत्पाद और सेवाएं प्रदान करना, जो डिजाइन, विनिर्माण, विश्वसनीयता, अनुरक्षणीयता और दृढ़ता की दृष्टि से ग्राहक द्वारा वांछित सर्वोच्च स्तर के अनुरूप हों।
- संस्थानों की सफलता अपने उत्पादों और सेवाओं की लागत को निरन्तर कम करने और आपूर्ति समयावधि में कमी लाने की हमारी योग्यता पर निर्भर करती है। हम अपने कार्य के हर क्षेत्र की सभी प्रक्रियाओं का निरंतर विकास करते हुए, सभी कार्य-कलापों में व्यर्थ प्रयासों को समाप्त कर इसे हासिल करना चाहिए।
- उत्कृष्टता और प्रतियोगिता की भावना को हासिल करने के उद्देश्य से कम्पनी में सभी स्तरों पर जोखिम उठाने, प्रयोगशीलता तथा सीखने की भावना को बढ़ावा देते हुए, हम अपने व्यवसाय से

संबंधित हर कार्यकलापों में सुधार करने हेतु प्रयत्नशील रहने में विश्वास रखते हैं।

- परस्पर विश्वास, पारदर्शिता, सहयोग तथा अपनेपन की भावना से कार्य क्षेत्र में समरसता लाने में विश्वास रखना होगा ।संस्थागत लक्ष्यों को हासिल करने के लिए कार्य करने हेतु सशक्त समूहों के निर्माण का प्रयास करना चाहिए।
- संस्था में कार्यरत कार्मिकों को महत्व देना,एक-दूसरे के प्रति आदर और सम्मान का व्यवहार करना और हर व्यक्ति के निजी विकास तथा उनकीसम्पूर्ण क्षमता के उपयोग का प्रयास करना चाहिए।
- इस प्रकार सभी कार्यों में ईमानदार, विश्वसनीयता और न्यायपूर्ण रहने की वचनबद्धता में विश्वास रखना। अपने संस्थान के प्रति निष्ठावान और समर्पित रहने के प्रति वचनबद्धता आत्मनिर्भर भारत के निर्माण में अहं भूमिका अदा करेगा।

इस प्रकार सरकार एवं संस्थानों के साथ-साथ हर जिम्मेदार नागरिक अगर सत्य निष्ठा का सहारा लेकर आत्मनिर्भरता की ओर अपने कदम बढ़ाए तो देश को रोजगार उपलब्ध होगा, देश में भ्रष्टाचार का विनाश होगा व हर क्षेत्र में पारदर्शिता आएगी। सत्यनिष्ठा से आत्मनिर्भर बनना एक व्यक्ति ही नहीं अपितु संपूर्ण राष्ट्र के लिए कारगर साबित होगा और फिर वह दिन दूर नहीं जब आत्मनिर्भर भारत विकसित देश के रूप में गिना जाएगा।

सतर्क भारत, समृद्ध भारत

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भ्रष्टाचार पर अंकुश लगाने के लिए भारत सरकार ने हमेशा सतर्कता पर ज़ोर दिया है । श्री संथानम की अध्यक्षता में ,"भ्रष्टाचार निवारण समिति" की सिफारिशों के आधार पर, 1964 में केन्द्रीय सतर्कता आयोग की स्थापना की गई । इस वैधानिक संस्थान पर, केंद्र सरकार और उसके संगठनों में, सतर्कता प्रशासन की जिम्मेदारी सौंपी गई है । वर्ष 2020 में, केन्द्रीय सतर्कता आयोग ने 27 अक्टूबर से 02 नवम्बर तक सतर्कता जागरूकता सप्ताह 2020 मनाया , जिसका विषय था, "सतर्क भारत ,समृद्ध भारत" ।

लोक प्राधिकारियों में सावजाइनिक संपत्ति उपस्थित है और यहाँ दुर्नीति की संभावना है। जब एक सार्वजनिक प्राधिकरण का कर्मचारी , व्यक्तिगत लाभ के लिए , अपनी आधिकारिक क्षमता का लाभ उठाता है, तो राजकोष का नुक्सान होता है और राष्ट्र के धन पर प्रतिकूल प्रभाव पड़ता है । रिशवत काले धन को उत्पन्न करता है और राष्ट्र के संपत्ति और समृद्धि में नुकसान पहूँचाता है । सभी सरकारी संगठन में एक सतर्कता विभाग है, जो भ्रष्टाचार का जांच , भ्रष्ट कर्मचारी का जवाबदेही करना और भ्रष्टाचार रोकने की तरीकों का अध्ययन और सुझाव देते हैं । हर सरकारी संगठन को , अपने काम-काज़ अनुसार कुछ तौर तरीके अपनाना चाहिए, ताकी भ्रष्टाचार निवारण हो और देश की संपत्ति सुरक्षित रहे । मैं इस विषय पर आपके साथ कुछ विचार और सुझाव बाँट रही हूँ ।

(1) **जवाबदेही स्थिरीकरण द्वारा भ्रष्टाचार निवारण और समृद्धि**

कार्यालय मैनुअल में संगठन के सभी पद की शक्तियों और जिम्मेदारियों का उल्लेख होनी चाहिए , ताकि प्रत्येक कर्मचारी अपनी नौकरी के मापदंडों के भीतर ही अपने कर्तव्य का निर्वहन करें । प्रबंधन के वरिष्ठ स्तरों पर कुछ विवेकाधीन शक्ति प्रदान की जाती है और अक्सर इन शक्तियों का दुरुपोयोग होता है । विवेकाधीन शक्तियों के प्रयोग की आड़ में नियमों का हेरफेर कर, अधिकारी व्यक्तिगत लाभ उठातें हैं और राजकोष का नुकसान पहूँचाते हैं । यदि विवेकाधीन शक्तियों में की गई कार्रवाई की संगठन के वेबसाइट पर प्रकटीकरण हो, तो नियमों का हेरफेर रोका जा सकता है । इस तरह की सतर्कता से निजी लाभ और सार्वजनिक संपत्ति की चोरी बंद होगा ।

(2) **सतर्कता के माध्यम से प्रणालीगत सुधार और समृद्धि**

सरकारी संगठन के विभिन्न कार्यक्षेत्रों का अध्ययन उनका सतर्कता विभाग करता है। इनकी भूमिका है, न केवल यह सुनिश्चित करना की भ्रष्ट दंडित हो ,बल्की प्रणालीगत सुधार भी हो। कार्य प्रणाली में सुधार के उपाय पर सुझाव , सतर्कता जांच रिपोर्ट में उल्लेख किया जाता है। संगठन के मुख्य कार्यकारी अधिकारी और सतर्कता विभाग को , भ्रष्टाचार निरोधक उपाय सुनिश्चित करना चाहिए ,

ताकी भ्रष्टाचार की घटनाएं का पुनरावृत्ति न हो; अन्यथा सतर्कता जांच और दंडात्मक कार्रवाई , व्यर्थ है। यदि सुधारात्मक उपाय कार्यान्वित किए जाए , तो निश्चित रूप से सार्वजनिक धन और संपत्ति सुरक्षित होंगे और संगठन के धन में वृद्धि होगा।

(3) व्यक्तिगत लाभ हेतु सार्वजनिक संपत्ति का दुरुपोयोग बंद करना

कभी-कभी सरकारी संगठन के कोष की मनमानी ढंग से दुरुपोयोग किया जाता है । उदाहरण के लिए, एक महंगी मोबाइल या लैपटॉप या आफिस कार की सुविधा एक अधिकारी को प्रदान की जाती है, जो उनके सहकर्मी को नहीं दी गई । ऐसी सुविधाएं उस अधिकारी के वेतन में भी प्रतिबिंबित नहीं होता है । ऐसे मामले भी हो सकतें हैं , जहां कोई अधिकारी बिना न्यायोचित कारण अलग-सा भत्ता ले रहा है। इस तरह के अतिरिक्त सुविधाएं /भुगतान, कंप्यूटरीकृत बिलों से नहीं दी जाती । ये हाथ से किया हुआ बिलों (manual bill) के माध्यम से, लेखा खातों के अनावश्यक कोने में छिपा रहता है। इस प्रकार के मामले सतर्कता जांच के दौरान प्रकाश होता है। सतर्कता ही इस तरह की सार्वजनिक निधि का दुरुपोयोग पर रोक लगा सकता है । अगर किसी अधिकारी या कर्मचारी को विशेष सुविधा संगठन से मिल रहा है, तो उस सुविधा का विवरण अनिवार्य रूप से संगठन की वेबसाईट पर दिखाया जाए । ऐसे सतर्क पदक्षेप निजी लाभ हेतु सार्वजनिक संपत्ति की चोरी में रुकावट लाएगी और हमें समृद्धि की ओर ले जाएगा । निवारक सतर्कता एक महावपूर्ण और मजबूत उपाय है, जिसके ज़रिए भ्रष्टाचार पर लगाम लगा सकतें हैं ।

(4) सरकारी संपत्ति की रक्षा हेतु आंतरिक और बाहरी ऑडिट

हर सरकारी कर्मचारी लेखा परीक्षा यानि ऑडिट से डरता है ! सार्वजनिक प्राधिकरणों के खातों प्रक्रियाओं और कार्यों की नियमित आंतरिक और बाहरी परीक्षा , सरकारी संपत्ति के रक्षा का एक साधन है । ऑडिट रिपोर्ट व ऑडिट आपत्तियों अक्सर भ्रष्ट्र कार्य का खुलासा करते हैं, और प्रणालीगत सुधारों का सुझाव देते हैं । इस तरह ऑडिट अरकारी संपत्ति की समृद्धि की साधन बन जाता है ।

(5) इलेक्ट्रानिक प्रौद्द्योगिकी सतर्कता का एक साधन और सार्वजनिक संपत्ति में वृद्धि की मार्ग

इलेक्ट्रानिक प्रौद्द्योगिकी का उपयोग सार्वजनिक लेनदेन में भ्रष्टाचार रोकता है और धन बढ़ती है। उदाहरण के लिए– आयकर रिटर्न और आयकर का ई-रिफंड , नगरपालिका को देय कर, जीएसटी कर,बाहन-कर आदि, नेट बैंकिंग , रेल या हवाई यात्रा की टिकट की खरीद,विभिन्न प्रकार के सरकारी भुगतान इलेक्ट्रानिक माध्यम से प्रदान आदि । इलेक्ट्रानिक प्रौद्द्योगिकी का उपयोग अब इन क्षेत्रों में रिशवत का लेनदेन बंद कर दिया है । इलेक्ट्रानिक प्रौद्द्योगिकी का इस्तमाल जितना फैलेगा , उतना ही भ्रष्ट्राचार निवारण संभव होगा । धन सार्वजनिक रूप से प्रबहित होता है , अवैध नहीं ।

निष्कर्ष

सतर्कता कर्मठता के परिणामस्वरूप राष्ट्र के संसाधनों में वृद्धि आता है । निवारक सतर्कता या भ्रष्टाचार रोकने की उपाय निकालना, दंडात्मक सतर्कता से बेहतर है । क्योंकि दंड देने से पूर्व दुराचारण हो चुका है और सार्वजनिक संपत्ति का नुकसान हुआ है । उचित तो यही है की हम भ्रष्ट्राचार को थामने की उपाय निकालें । हम सतर्क रहकर अपने राष्ट्रीय संसाधनों की चोरी पर रोक लगा सकतें हैं। अर्थात –" सतर्क भारत ,समृद्ध भारत" । इस लेख में व्यक्त विचार लेखक के अपने हैं।

By the way, your predecessor, who was sacked for alleged corruption, has joined my business.

PIDPI – An important tool in fighting corruption

By ***Sandip Banerjee***
Assistant Manager, Vigilance Department

[Source of factual information: All the factual information contained in this write-up has been collected from information available in public domain, viz. , websites of Central Vigilance Commission (CVC), Wikipedia, etc. as well as Vigilance Manual 2017 and CVC Annual Report 2020.]

The MOVIE (portraying an apparent analogy with PIDPI):

I presume that many of us have seen the Ajay Devgn - starrer Hindi movie, Raid, which was released on March 16, 2018. I have taken reference of this particular movie, since I feel that it has an apparent analogy with "Public Interest Disclosure and Protection of Informers" (PIDPI) Resolution 2004, commonly known as "Whistle Blower" Resolution.

For those who haven't, the plot of the aforementioned movie is given below, in brief.

After receiving an anonymous tip about black money hoarded by Rameshwar Singh (Saurabh Shukla), the don of Sitagarh, who had evaded Income Tax for a long time, IRS Officer Amay Patnaik (Ajay Devgn), Deputy Commissioner of Income Tax, Lucknow conducts an Income Tax raid on the property of Rameshwar.

Even after searching every nook and corner of the said property, success eludes the Income Tax team. Just when the scenario looks bleak, Amay receives an anonymous letter, along with a map, indicating the locations of the money and the other illegal items hidden in the premises. With the help of the same, finally Amay and his team is able to find assets worth Crores hidden behind walls, above ceilings, in the well, and where not.

At the very end of the movie, when Rameshwar is finally arrested and before being led away in handcuffs, he asks Amay about the identity of his informer. Amay refuses to divulge that information.

It is later seen that Rameshwar's youngest daughter-in-law was the informer; she and her lover wanted revenge on Rameshwar for forcing her to marry his impotent son as part of a political deal. Rameshwar keeps wondering about the informer's identity in prison, while Amay gets transferred to another city.

In the aforesaid movie, Amay was able to keep the identity of his informer secret, so that no harm came upon her. But, as we all know, real life hardly resembles happy endings portrayed in movies.

The WHERE (it all began):

Shri Satyendra Dubey (1973 – 2003) joined the Indian Engineering Service (IES) and in July 2002, went on deputation to the National Highway Authority of India (NHAI). Shri Dubey became the Project Director at Koderma, Jharkhand, responsible for managing a part of the Aurangabad-Barachatti section of National Highway 2 (The Grand Trunk Road).

This highway was part of the Golden Quadrilateral (GQ) Corridor project, which aimed to connect many of the country's major cities by four-lane limited-access highways totalling 14,000 km, at an overall cost more than US$10 billion. During this period, Shri Dubey got the contractor of the project to suspend three of his Engineers, after exposing serious financial irregularities. At one point, he had the contractor rebuild six kilometres of under-quality road, a huge loss for the road contract mafia.

Shri Dubey was murdered on November 27, 2003 in Gaya, Bihar, reportedly for exposing corruption in the GQ Corridor construction project.

The murder of Shri Dubey was a watershed event, which not only ignited tremendous public hue and cry, but also compelled the Legislature, the Executive, the Judiciary and the Media to take a fresh look at the scenario of anti-corruption in India. This is evident from the Resolution No. 89 dated April 21, 2004 published in the Gazette of India, which inter alia reads “No. 371/12/2002-AVD-III. – Whereas while hearing Writ Petition (C) No. 539/2003 regarding the murder of Shri Satyendra Dubey, the Supreme Court desired that pending enactment of a suitable legislation, suitable machinery should be put in place for acting on complaints from "whistle-blowers". And whereas the `The Public Interest Disclosure and Protection of Informers' Bill, 2002, drafted by the Law Commission is under examination. Now, therefore, the Central Government hereby resolves as under:”

The above was the genesis of PIDPI Resolution 2004.

The WHEN (did PIDPI have its beginning):

Department of Personnel and Training (DoPT), under Ministry of Personnel, Public Grievances and Pensions, Government of India, had passed Resolution No. 89, published in the Gazette of India, on April 21, 2004, known as the Public Interest Disclosure and Protection of Informers (PIDPI) Resolution, commonly known as “Whistle Blower” Resolution. A Corrigendum to this Resolution had been published vide Gazette Notification dated April 29, 2004.

Subsequent to the Resolution of 2004, the DoPT vide Notification No. 371/4/2013-AVD.III dated August 14, 2013 (published on August 29, 2013) partially amended the PIDPI Resolution.

The amendment, inter alia, authorised the Chief Vigilance Officer of the Ministries or Departments of Government of India to act as the designated Authority to receive written complaint or disclosure on any allegation of corruption or misuse of office by any employee of that Ministry or Department or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government and falling under the jurisdiction of that Ministry or Department. The amendment also authorised the Central Vigilance Commission to supervise and monitor the complaints received by the designated authority. The amendments have the following provisions:

(a) Para 1A - The Chief Vigilance Officers of the Ministries or Departments of the Government of India are also authorised as the designated authority to receive written complaint or disclosure on any allegation of corruption or misuse of office by any employee of that Ministry or Department or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government and falling under the jurisdiction of that Ministry or the Department.

(b) Para 7A - Either on the application of the complainant, or on the basis of the information gathered, if the designated authority is of the opinion that either the complainant or the witnesses need protection, the designated authority, shall take up the matter with the Central Vigilance Commission, for issuing appropriate directions to the Government authorities concerned.

(c) Para 11A - The Central Vigilance Commission (CVC) shall supervise and monitor the complaints received by the designated authority.

The WHY (does one need to resort to PIDPI complaint):

Firstly, it is quite natural that if the identity of a whistle blower is revealed, s/he can face harassment/victimisation and in certain cases, dire consequences. This may be the major reason why people refrain from exposing corruption by reporting the same to the appropriate authority. It is here that the importance of PIDPI comes in as a tool to fight corruption. The entire system pertaining to PIDPI complaints, right from the process of filing the same to handling such complaints, has been designed in such a way as to ensure that the identity of the complainant does not get revealed at any stage. Thus, the salient reason for resorting to PIDPI complaint is the assurance that the identity of the complainant would be kept secret. This allays the fear of retribution.

Secondly, the procedure of handling PIDPI complaints has made it mandatory to address the PIDPI complaints in a time bound manner. This encourages the whistle blowers to lodge complaints under PIDPI, since they are hopeful that the issues would be addressed within some specific time limit.

Initially, CVC, vide its Office Order No. 4/2/09 dated February 27, 2009, had stipulated that the CVOs of the Ministries/Departments/ Organizations were required to submit their investigation report on complaints/disclosures forwarded by the Commission under PIDPI Resolution within a period of 1 (one) month from the date of receipt of the PIDPI reference. However, CVC, vide its Circular No. 12/09/18 dated September 28, 2018, has extended the time limit for submission of reports to be within a period of 12 (twelve) weeks from the receipt of reference seeking reports on PIDPI complaints/ disclosures from the Commission.

The WHAT (is a PIDPI complaint):

Any complaint lodged under Public Interest Disclosure and Protection of Informers (PIDPI) Resolution is known as a PIDPI complaint or a “Whistle Blower” complaint.

The complaint should be in a closed/secured envelope and should be addressed to Secretary, Central Vigilance Commission. The envelope should clearly be inscribed with “Complaint under the Public Interest Disclosure” or “PIDPI”. The complainant should give his/her name and address in the beginning or end of complaint or in an attached letter. The name and address should NOT be mentioned on the envelope.

Complaints should be sent via post only. Complaints received through emails, Complaint Management Portal or any other electronic medium will not be entertained. The complaints should have vigilance angle and should not be for grievance redressal. PIDPI complaints should not include details that identify the complainant. If the inclusion of such details is unavoidable then a normal complaint may be lodged in the CVC portal.

Complaints received from the Commission under the PIDPI Resolution are not required to be verified for genuineness by the CVO as the process of verification/confirmation is completed in the Commission on receipt of the complaint under the PIDPI Resolution. Therefore, these should be taken up for investigation by CVO on their receipt from the Commission. Such complaints shall, in other words, be treated as registered, immediately on receipt.

The different Press Releases/Public Notices/Office Orders/Guidelines/ Instructions, pertaining to PIDPI, are available on the website of CVC [https://cvc.gov.in]. However, a summary of the same is furnished here under for reference:

Sl. No.	Date	Title
1.	30/07/2021	Processing of PIDPI Complaints by the Screening Committee of the Commission - Reg.
2.	03/03/2021	D/o Post instruction for non-disclosure of the identity of the complainant under 'PIDPI Resolution'.
3.	24/04/2019	Processing of PIDPI complaints by the Screening Committee of the Commission.
4.	28/09/2018	GOI PIDPI Resolution - revised timeline for submission of report.
5.	16/06/2014	Guidelines issued by DoPT on PIDPI Resolution vide O.M. dated 16.06.2014 authorising CVOs as Designated Authority to receive complaints under PIDPI Resolution.
6.	03/09/2013	DoPT instruction on PIDPI Resolution dated 03-09-2013 forwarding Gazette Notification dated 29-08-2013.

Sl. No.	Date	Title
7.	13/02/2012	Whistle Blower Complaints – Guidelines.
8.	21/04/2004 29/04/2004 14/08/2013	GOI PIDPI Resolution dated 21.04.2004 & corrigendum dated 29.04.2004 and amendments dated 14.08.2013.
9.	17/05/2004	Office Order No.33/5/2004 dated 17-05-2004 and Press Release/Public Notice issued by the Commission.
10.	-	Important Features of the Whistle-Blowers Resolution.
11.	-	How to lodge Whistle Blower complaints under Public Interest Disclosure and Protection of Informer (PIDPI) Resolution - Public Notice.

The HOW (can one lodge a PIDPI complaint):

DoPT vide O.M. No. 371/4/2013-AVD-III dated 16.06.2014 has laid down the detailed procedure for handling of complaints under the PIDPI Resolution by the Designated Authorities in the Ministries/Departments of the Central Government.

The Commission, in keeping with the spirit of PIDPI Resolution, and in public interest, has laid down a detailed procedure for lodging and handling of complaints. This has been given wide publicity, in order to create awareness and to encourage the public to make complaints/disclosures against corrupt practices.

The detailed guidelines for lodging PIDPI complaints have been provided in the website of Central Vigilance Commission (CVC) [https://cvc.gov.in], under "Home/Citizens Corner/Whistle Blower Complaints". However, the same are reproduced here under for ready reference:

GUIDELINES FOR LODGING PIDPI COMPLAINT

1. The complaint should be in a closed/secured envelope and should be addressed to Secretary, Central Vigilance Commission. The envelope should clearly be inscribed with "Complaint under the Public Interest Disclosure" or "PIDPI".
2. The complainant should give his/her name and address in the beginning or end of complaint or in an attached letter. The name and address should NOT be mentioned on the envelope.

3. Only complaints pertaining to employees of the Central Government or of any corporation established by or under any Central Act, Government companies, societies or local authorities owned or controlled by the Central Government fall under the jurisdiction of the Commission. Personnel employed by the State Governments and activities of the State Governments or its Corporations etc. will not come under the purview of the Commission.
4. Complaints should be sent via post only. Complaints received through emails, Complaint Management Portal or any other electronic medium will not be entertained.
5. In order to protect identity of the person, the Commission will not issue any acknowledgement and the whistle-blowers are advised not to enter into any further correspondence with the Commission in their own interest. The Commission assures that, subject to the facts of the case being verifiable, it will take the necessary action, as provided under the Government of India Resolution mentioned above.
6. The complaints should have vigilance angle and should not be for grievance redressal.
7. PIDPI complaints should not include details that identify the complainant. If the inclusion of such details is unavoidable then a normal complaint may be lodged in the CVC portal.
8. Previous circulars and letters on PIDPI are available on the website of the Commission and may be referred to for further details.

The WHO (can lodge a PIDPI complaint):

Any public servant or a person including an NGO can make written disclosure to the designated agency, except those referred in clauses (a) to (d) of Article 33 of Constitution. However, as already discussed earlier, any complaint under PIDPI Resolution should be lodged following the guidelines provided by CVC.

The complainants who want to make whistle blower complaint under PIDPI Resolution are also expected to familiarise themselves with the proper procedure as enumerated in various Press Releases/Public Notices/Office Orders/Guidelines/Instructions pertaining to complaints under PIDPI Resolution.

If these procedures are not followed, then the complaints made there under will be treated like a general complaint and the identity of the complainant may get revealed. This may put the complainant in a disadvantageous position.

Apart from the above, it is to be borne in mind that the complaints should have vigilance angle and should not be for grievance redressal. Moreover, it is to be noted that the Commission can also take action against complainants making motivated/ vexatious complaints under PIDPI Resolution.

The STATISTICS (related to PIDPI complaints during 2020):

The Annual Report 2020 published by CVC contains the following Table that gives the nature of complaints received under PIDPI Resolution and action taken by the Commission on them during the year 2020.

Complaints Received and Disposed under PIDPI during 2020

Complaints Received and action taken	Nos.
Number of complaints pending as 01.01.2020	75
No. of complaints received during the year	480
Total number of complaints	555
Total number of complaints disposed, of which	520
No. of complaints filed	207
Non-vigilance (Forwarded for necessary action to Departments/ Organizations)	252
Taken up for inquiry/investigation by CVO/CBI	61
Pending as on 31.12.2020	35

The WHAT ELSE (should we know):

In this regard, the following points mentioned in Page Nos. 298 & 299 of Vigilance Manual 2017 are also worth remembering:

Article 33 of United Nations Convention Against Corruption provides for protection of Whistle Blower which says that "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".

The ratification of United Nations Convention Against Corruption by India necessitated creation of an appropriate whistle blowing mechanism and review of the existing Prevention of Corruption Act, 1988. Accordingly, the Whistle Blowers Protection Act, 2011 was enacted in May, 2014. The same however, is not in force as the Govt. of India aims to modify certain provisions of Whistle Blowers Protection Act, 2011. A Bill to this effect has been introduced in the Parliament to carry out the amendments. The PIDPI Resolution 2004 contains provisions regarding protection to whistle blowers. It is described in detail in Chapter IV of the Manual.

The Whistle Blowers Protection Act, 2011 is an Act "to establish a mechanism to receive complaints relating to disclosure on any allegation of corruption or wilful misuse of power or wilful misuse of discretion against any public servant and to inquire or cause an inquiry into such disclosure and to provide adequate safeguards against victimization of the person making such complaint and for matters connected therewith and incidental thereto".

India being one of the signatories to the United Nations Convention Against Corruption has displayed its commitment to implement the provisions of the same, in order to fight corruption and prevent inappropriate activities in public life. A step in this direction was to amend some of the provisions of Prevention of Corruption Act, 1988 by bringing out the Prevention of Corruption (Amendment) Bill, 2013.

IT Act and IT related Controls

By ***R. Minima Basu***

In today's digital world, it is extremely important to establish a framework on Information Governance and Information Security that serves as an effective tool for the organisation to achieve its objectives and comply with the statutory and regulatory requirements with regard to Information Security. It is felt that it is the responsibility of the Officers of SMP, Kolkata to monitor compliances in the area of IT Operations to ensure effective management of information risks. In this context, I would like to emphasize the need to adhere to some of the critical points pertaining to IT Act :

1. **Management of Electronic Records:** Applicable to the records, which are required to be generated/sent/retained as per the applicable statutes. Electronically signed documents shared with external parties and statutory authorities are to be retained in an electronic form.

2. **Management of Electronic Signature Certificates:** It is extremely essential to ensure that Electronic Signature Certificates are obtained only from the Certifying Authorities authorized by Government of India. It is applicable to both individual as well as system-based certificates. It is important to ensure that a person can sign a document electronically by using the Electronic Signature Certificate on behalf of the Company only if s/he is vested with the authority to sign the relevant document/record. In case of Individual Electronic Signature Certificates, the concerned Electronic Signature Certificates owner shall ensure secure access and usage of the Electronic Signature Certificate. In case of System Based Electronic Signature Certificates, applications making use of such Certificates should be designed to verify the Electronic Certificate being used with the system. Any loss of such signatures should be immediately reported to the concerned authority, as it may lead to misuse and pose a risk to Information Security.

3. **E-waste Management:** It needs to be ensured that all IT E-waste storage and disposals are done as per the applicable statutory and regulatory norms in force. E-waste materials should be disposed through authorized E-waste recycler(s) only.

4. **Protection of Sensitive Personal Data & Information (SPDI):** SPDI of a person means such personal information which consists of information relating to:
   - password;
   - financial information such as Bank Account or Credit Card or Debit Card or other payment instrument details;
   - Physical, physiological and mental health condition;
   - Medical records and history;
   - Sexual orientation;
   - Biometric information;
   - any detail relating to the above clauses as provided to the Company; and
   - any of the information received under above clauses by the Company for processing, stored or processed under lawful contract or otherwise:

Provided that, any information that is freely available or accessible in public domain or furnished under the Right to Information Act, 2005 or any other law for the time being in force shall not be regarded as SPDI.

Collection of SPDI should be done in accordance with the recommendations made in IT Act.

5. **Computer Related Offences:** We, as end users, must refrain from any act that may lead towards Computer Related Offences. An end user should not store, process or transmit material which is - unlawful, defamatory, harassing, invasive of any individual's privacy, abusive, harmful, threatening, vulgar, pornographic, obscene or otherwise objectionable, offends religious sentiments or promotes racism. A Computer user should not attempt to initiate activities using information processing resources or equipment leading to abusive, unethical or inappropriate use of the Internet facility provided by the company. To maintain harmony, e-mail users shall not create or forward e-mail messages that can cause harassment to a certain sex, race and religion.

Password Management

Another critical area in IT Operations is "Password Management". A password is a “key” to the information and should be managed with acute care. Users need to ensure that passwords are:

- Not shared for individual user ids;
- Not easily guessed or obtained using person related information, e.g., names, telephone numbers and dates of birth, etc.;
- Not written down or stored electronically without adequate protection;
- Changed whenever there is any indication of possible system or password compromise;
- Not stored in automated logon processes like browsers and forms that allow users to store their credentials for replaying later.

System Access Control/Process Automation

As a part of IT enablement, SMP, Kolkata has taken a major step to develop and deploy an ERP system to meet its operational requirement and address confidentiality, integrity, availability and auditability. In this context, a robust and comprehensive access control mechanism should be put in place for such critical ERP systems. In order to strengthen the controls and prevent misuse of responsibilities, there should be a defined procedure to manage access rights, segregation of duty and the role of System Administrator.

A robust Information Technology Governance should be put in place. It needs to be ensured that the Information Assets of the company shall be used solely for the company’s business and users shall be solely responsible for the use of such assets provided by the company.

Accordingly, a framework should be put in place to define the IT Continuity and Data protection strategy.

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

-Barack Obama

Preventive Vigilance

By ***Shashwat Sankrit***

Asst. Manager, Haldia Dock Complex

“He is most free from danger, who even when safe, is on his guard.” - Publilius Syrus (1st Century B.C.)

Corruption is a malice, which is eating into very ethos of our society and taking heavy toll on our economy. People lose trust and belief in the administration due to corruption. Corruption in daily life is linked to human greediness, an overdrive to achieve and outdo one another going beyond his means.

Mahatma Gandhiji often said “There is enough for everyone’s needs but not for greed of even single individual”. No campaign to fight and eradicate corruption can be achieved without community participation. It is therefore necessary to motivate the citizens, as stakeholders in nation building, to collectively combat corruption at all levels. It is an effort to raise public awareness against the threat posed by corruption and to make citizens conscious of their right to live in a corruption free society. Fight against corruption is seen as the job of a few anti-corruption agencies, whereas in reality, it is the responsibility of every citizen and every employee of an organisation.

The common causes of corruption, inter alia, could be:

a) Excessive regulations & licensing.
b) Complicated rules and regulations.
c) Monopoly over delivery of goods/services.
d) Lack of transparency.
e) Lack of accountability.
f) Too much discretionary power.
g) Poor regulatory framework.
h) Poor grievance redressal mechanism.
i) Very low rate of detection of corruption.
j) Lack of condemnation of corrupt practices by the public.
k) Absence of a formal system of inculcating values, ethics & integrity.
l) Inadequacy of regular/periodic/surprise checks.
m) Rigid bureaucratic framework/processes.
n) Lack of awareness about rights, duties, rules, laws etc.

Vigilance, defined as action or state of keeping careful watch for possible danger or difficulties, takes several forms, including preventive, detective and punitive vigilance.

Preventive vigilance is aimed at reducing the occurrence of a lapse (violation of a law, a norm, or, broadly speaking, a governance requirement).

Detective vigilance is aimed at identifying and verifying the occurrence of a lapse.

Punitive vigilance is aimed at deterring the occurrence of a lapse.

Speaking at a conference at the Central Vigilance Commission (CVC) on 'Preventive Vigilance, The Key Tool of Good Governance at Public Sector Institutions', the then RBI Governor Sri Urjit Patel said:

Quote…

Detective and punitive vigilance are strategic complements. The greater the punishment, the more useful it is to detect. Conversely, having a high penalty is ineffective when the quality of detection is poor. Preventive and detective (as well as punitive) vigilance are strategic substitutes, that is the lower the detection and punishment, the more useful it is to prevent lapses at the outset since detective and punitive vigilance do not provide adequate incentives. Preventive vigilance dominates other forms for dealing with lapses outside of control. In public sector institutions, punitive vigilance is difficult as rewards are low to start with, thereby limiting the possibility of downward revisions, and disciplinary actions that limit the chances of career progression are often the preferred punishment. However, this has the misfortune of demotivating employees beyond the point of their career when punitive vigilance action is undertaken. Detective vigilance too is rendered somewhat ineffective. While there is a need to engage in some detective and punitive vigilance, preventive vigilance is conceptually likely to be the most effective governance mechanism.

…Unquote

Preventive Vigilance is adoption of a package of measures to improve systems and procedures to eliminate/reduce corruption, promote transparency and ease of doing business. It is aimed at identifying tackling/addressing the root cause of corruption within the organisation. Preventive vigilance is aimed at tackling the areas vulnerable to corruption within the organisation which need special attention.

PREVENTIVE VIGILANCE MEASURES

Preventive vigilance measures can broadly be categorized as:

(a) Simplification and standardisation of rules: Simplification and standardisation of rules and procedures result in elimination of discretion and arbitrariness, which in turn reduces corruption.

(b) Leveraging technology: Technology as an enabler for fighting corruption has been effectively demonstrated. E-procurements, E-payments, use of websites for dissemination of information and creating awareness, use of CCTV in places of public dealing, receiving tenders online, use of appropriate analytical tools are examples of how technology strengthens the system of preventive vigilance.

(c) Transparency and Accountability: Transparency removes the information gap between the public and public officials which in turn reduces corruption. A system with clear accountability and assigned responsibility at each level is necessary not only for smooth functioning but increased transparency, efficiency and for ensuring effective punitive action in case of misconduct.

(d) Control & Supervision: Regular and routine inspections, surprise inspections, audit and reviews keep a check on corrupt practices.

(e) Early detection of misconducts: Early detection of misconduct will enable recouping the loss wherever possible and facilitate control of further damage.

(f) Time-bound and effective punitive action: Punitive action within short period of occurrence of misconduct and award of exemplary and adequate punishment deters others from committing such misconduct.

(g) Training & Awareness: Public officials should be made aware of their duties and responsibilities, code of conduct, rules and regulations through regular training and awareness programmes. A list of Dos & Don'ts for employees/ officials is a simple yet effective tool.

(h) Awareness among public: If public is made aware of their rights, and also of the rules and regulations, then they are able to resist unfair treatment and arbitrary behaviour by public officials.

Vigilance guidelines issued by the CVC are aimed at greater transparency, promoting a culture of honesty and probity in public life, and improving the overall vigilance administration in the organizations within its purview. Preventive vigilance measures emanating from these guidelines are enforced partly at the individual level and organizational level. At the individual level, instructions are in place requiring an officer to obtain prior permission for certain transactions (acquisition of immovable property and taking a loan from a financial institution); reporting of certain transactions (acquisition of movable assets above a monetary limit and employment of family members in financial); and upfront disclosure when the employee has a personal interest in any official transaction which (s)he is dealing with. At the organizational level, the preventive vigilance measures in place include identification of sensitive posts, surprise visits by senior officers to vigilance sensitive areas, incorporating vigilance related sessions in the human resource related training programmes at its training establishments, sensitizing new recruits on various aspects of vigilance and proper conduct, periodical rotation of staff, well laid down recruitment procedures and procurement policies.

As a step towards strengthening preventive vigilance in the area of procurement of goods and services, the concept of Integrity Pact (IP) for large value procurement (exceeding 5 Crore) has been introduced and the pact is overseen by Independent External Monitors (IEMs). To ease lodging of vigilance related complaints, the name, address, telephone/fax number and e-mail address of the CVO are displayed on the official SMPK website.

In short, Preventive Vigilance is a key to good governance.

A Vigil Eye on Estimates

*By **Subrata Das***
Asst. Manager, Haldia Dock Complex

"Without solid foundation, you'll have trouble creating anything of value" - Erika Oppenheimer

This might not be an exaggeration if someone replaces the word 'foundation' with 'estimate' in the context of public procurement, which has its inbuilt accountability to comply with the canons of 'value for money', 'transparency', 'level playing field' and 'ensuring widest competition'.

An estimate for a subject procurement shows the future financial commitment of the procuring organisation. It basically sets the mood of the procurement in the public procurement system. All the vital steps involved in public procurement are directly related to the estimated cost of the procurement. Therefore, to bring transparency in the life of public procurement, one must start by reflecting light upon the ways and means of preparation of estimates for the impending procurement activities. From setting the level of estimate approving authority to setting up of Minimum Eligibility Criteria (MEC) for the intended tender, all are dependent upon the estimated value. Hence, methodology applied to draw an estimate is probably one of the most sensitive stages, considering level playing field and value for money in public procurement.

This has been observed that Ports invite budgetary offers, by means of budgetary enquiry, for preparation of estimates in connection with the procurement of goods & works for which standard rates are not readily available. The following are mentioned in a typical budgetary enquiry :

Quantity of goods/works, specifications of materials, scope of work, category wise minimum number of workmen that must be deployed [if applicable], delivery/completion period, Liquidated Damage amount, Security Deposit amount, Delivery type (ex. F.O.R / F.O.B destination/ex-works), Electricity charges & water charges (if applicable), any other special conditions, validity of offer, etc.

Changing any of the above parameters can make the estimate prepared based upon the offers received against budgetary enquiry questionable.

Following are the scenarios that may be noticed:

Changing specifications / scope of work in NIT (from budgetary enquiry) : This has been noticed many times that the scope of work / specifications have been revised after approval of the estimate and prior to inviting tender. Any changes in specifications and or scope of work have an impact upon the cost. Therefore, inviting tenders implementing changes in specifications and/or scope of work with the unaltered estimate is an act of shifting the level playing field (offsetting minimum eligibility criteria for the tender) and undermining transparency.

Changing delivery period/completion period : It is obvious that to complete a certain work, be it manufacturing something or fixing something, on a different time requires different amount of man hours, different level of workmanship or skills and different level of machines and/or equipment. Therefore, changing delivery period or completion period from the budgetary enquiry, on the basis of which the estimate has been prepared and approved, overrides the estimate. Thus, the estimate stands void.

Changing quantum of work/incidental work : Changing the quantum of work, including incidental work, again, can completely change the estimate, and can leave it as void.

Changing delivery types : This has been observed many times that the delivery location and type of delivery has been changed in NIT. For example, by modifying delivery type of goods from F.O.R/F.O.B to ex-works, cost involvement of the bidders can substantially be offset. Therefore, estimates prepared and approved based on offers received for F.O.R destination basis must be reframed and approved prior to issuing NIT for ex-works delivery. The same situation may arise in case of changing delivery location.

Inviting tender beyond validity period of budgetary offer : The minimum validity period of the invited offers must be mentioned in the enquiry. Every effort should be made to publish NIT within the offer validity period. If due to some unavoidable circumstances, it is not possible to publish the NIT within the validity period of the budgetary offer, the estimate must be revised by factoring the relevant price trends or re-inviting fresh budgetary offers.

In addition to the above, it is also observed that the Ports are, in many cases, preparing and finalising estimates based upon the lowest (L-1) budgetary offer. The estimates must be prepared as per 'Manual for Procurement of Goods, 2017', by averaging the offers, which reduces variations and fluctuations. Therefore, the current practice of preparing estimates based upon L-1 offer is in direct contravention to the laid down guideline. This (estimate based on L-1 offer) has the potential to lower the entry barrier for firms having inferior credentials for the intended procurement. This tantamount to offsetting the pre-qualification criteria of the tender.

This has again been witnessed that in many cases, budgetary offers are being received by the Ports from the firms that are not at all involved in the similar business and/or product and/or work for which the offers have been requested for. This issue has its merit to draw the much needed attention, as this may be an attempt of genuine interested firms to rig the estimate. It is worthy to reiterate that estimate is the foundation of the procurement process upon which the cardinal criteria are rest.

Conclusion :

The process and intricacies involved in preparation of estimates need our sincere attention. The above elaborated situations may be ward off by implementing the following :

1. Preparing estimates, if done based on budgetary offers, by averaging the offers instead of L-1 offer, as per the laid down guideline.
2. Accepting budgetary offers only from the firms involved in similar business. Any supporting documents indicating credential of the offeree may be requested to submit along with the offer.
3. The NIT issuing authority must ensure that no material changes from the enquiry, on the basis of which the estimate has been prepared and approved, have been incorporated in the tender that may fetch any cost differentiation.
4. The validity period of the requested offer must be mentioned in the budgetary enquiry. Every effort must be made to ensure the publishing of the NIT within that time period. If due to any unavoidable circumstances, the NIT is being published after the original validity period of the offers / estimate, appropriate revision of the estimate should be incorporated considering relevant price trends. As an alternative option, fresh budgetary offers may be requested at the discretion of the NIT issuing authority.

Recommendation for systemic improvement pertaining to deployment of Grab Dredger/Floating Crane/ Deck Top Crane Barge, etc.

The issue of execution of maintenance dredging at HDC was examined by Vigilance Department and following systemic improvements are recommended with the agreement of Chairman.

Systemic improvement recommended :

1. If the intending work requires deployment of Grab Dredger/ Floating Crane/ Deck Top Crane Barge etc. technical details of the Grab Dredger/ Floating Crane/ Deck Top Crane Barge as proposed by the bidder, including capacity of grab and load chart of the crane(s) are to be obtained along with the bid.
2. Before deployment of the Grab Dredger/ Floating Crane/ Deck Top Crane Barge statutory certificate(s) of the vessel, validity of such certificate(s) are to be obtained from the successful bidder to ensure fitness of vessel for plying. Periodical load test certificate(s) of the lifting appliances, crane, etc. issued by the appropriate authority should also be obtained to ensure fitness of the same.
3. A Technical Committee is to be constituted by the Engineer of Contract for conducting trial run of the Grab Dredger/ Floating Crane/ Deck Top Crane Barge before its deployment and will review the technical parameters of the Grab Dredger/ Floating Crane/ Deck Top Crane Barge and the lifting appliances, crane, etc. based on the aforementioned documents, as mentioned at Sl. No. 2 above, to ascertain suitability of equipment in SMP's system.
4. Quality of work, as intended, to be ensured by concerned Division/Department of SMP, Kolkata. Further regular, periodic as well as surprise inspections should be scheduled to keep a check on performance of work.

In view of the above, circulars for the aforementioned System Improvement please be issued to the HoDs of Department concerned at HDC & KDS, i.e. , GM(Engg.), GM(Marine)(I/C), DMD, CHE, CME(I/C), CE(I/C), as applicable, with a copy to this office.

Recommendation for systemic improvement pertaining to engagement of different categories of labourers and security personnel through contractors

A complaint pertaining to engagement of different categories of labourers and security personnel through contractors, at HDC, was received by Vigilance Department. The issue was examined and following systemic improvement was suggested by CVO, SMP, Kolkata and the same was approved by Chairman on 12.10.2020. Copies of the relevant pages of note sheet are enclosed herewith.

Systemic improvement suggested by CVO :

1. The contractual labourers, in new system of EPF, can register their mobile numbers under their UAN and can get regular updates about their deposits. The contractual labourers may be made aware of the same by the Principal Employer/Contractor.
2. Bank Account Number may be sought from contractors in the bills for all the contractual labourers to confirm that all the outsourced workers are having Bank account. As preventive check, sample test may be made to confirm that the wages are being credited in the bank account and the wages credited are as per the terms and conditions of the contract. Periodic checking may be carried out to ensure the compliance of statutory and contractual obligations pertaining to engagement of contract labourers and private security personnel by the authority concerned.
3. As per the austerity measures and due to pandemic situation, right sizing and optimization of the requirement for outsourcing may also be considered.

In view of the above, systemic improvement as suggested by CVO, may kindly be communicated to all HoDs under KDS, SMP, Kolkata with a copy to this office.

Recommendation for systemic improvement pertaining to work contract

In connection with a CTE type Intensive Examination of work at HDC by Vigilance Department, the following systemic improvements are recommended with the kind approval of Chairman.

Systemic improvement recommended :

1. While framing the technical specification, provisions of GFR, procurement manuals, various guidelines of CVC and purchase preference policy of Govt. of India should be considered. However, if site conditions as well as quality of work requires any special brand(s)/make then necessary administrative approval should be obtained after giving proper justification /reasons for such requirement.
2. While preparing estimate actual site conditions should be properly examined. In case of any work which was not carried out earlier and estimate is prepared based on the budgetary offers, the firms/organizations who are requested for budgetary offers, if required, may also be invited for site visits for ascertaining actual requirement of work considering prevailing site conditions, to prepare a realistic estimate.
3. In case of involvement of civil structure, joint inspection with Civil Engineers of I&CF Division of HDC/Civil Engineering Department of KDS, as applicable, may be carried out for preparation of realistic estimate in order to avoid cost overrun and/ or time overrun, by executing extra/additional work, after placement of order. Similarly, in case of involvement of any electrical system/installation joint inspection with Electrical Engineers of P&E Division of HDC/Mechanical & Electrical Engineering Department of KDS, as applicable, may be carried out.
4. An engineer may be sent to visit other ports or organizations where such work has been done in past to see how it is done and what all is needed.
5. Interactions with OEMs may also be done on zoom or other virtual platform.

In view of the above, circulars for the aforementioned System Improvement please be issued to the HoDs of Department concerned at HDC & KDS, i.e. , GM(Engg.), CME(I/C) & CE(I/C), as applicable, with copy to this office.

"Well, it looks like everyone is buying into the changes."

PIDPI COMPLAINTS: WHAT ARE THEY? & WHEN SHOULD YOU MAKE THEM?

1. Complaints made under Public Interest Disclosure and Protection of Informers Resolution are termed as PIDPI complaints
2. If any complaint is made under PIDPI, the identity of the complainant is kept confidential
3. The complaint should be addressed to the Secretary, Central Vigilance Comission and envelope should be marked as "PIDPI"
4. Only complaints against Central Governement officials (including PSBs, PSUs and UTs) will be taken into cognizance
5. For more details visit http://www.cvc.gov.in.

A VIGILANCE AWARENESS WEEK 2021 INITIATIVE

CENTRAL VIGILANCE COMMISSION

PUBLIC INTEREST DISCLOSURE AND PROTECTION OF INFORMER RESOLUTION, 2004 (PIDPI)

IS THERE CORRUPTION AROUND YOU? LODGE A COMPLAINT UNDER PIDPI.

YOUR IDENTITY SHALL BE KEPT CONFIDENTIAL

A VIGILANCE AWARENESS WEEK 2021 INITIATIVE

SEND COMPLAINTS IN WRITING TO:
The Secretary, Central Vigilance Commission
Satarkta Bhavan , Block-A
GPO Complex , INA
New Delhi - 110 023

(MARK THE ENVELOPE AS "PIDPI". COMPLAINTS SHOULD ONLY BE AGAINST CENTRAL GOVERNMENT EMPLOYEES, INCLUDING PSUs, PSBs AND UTs etc.)

सत्यमेव जयते

केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION

सतर्कता भवन, जी.पी.ओ. कॉम्पलैक्स,
ब्लॉक–ए, आई.एन.ए., नई दिल्ली–110023
Satarkta Bhawan, G.P.O. Complex,
Block A, INA, New Delhi-10023

सं./No. 015/VGL/091

दिनांक / Dated 14.09.2021

CORRIGENDUM

Circular No. 17/09/21

Subject:- **Adoption of Integrity Pact-Revised Standard Operating Procedure:- regarding.**

Reference is invited to Commission's Circular No. 06/05/21 dated 03.06.2021 on the aforementioned subject.

2. In Para 5.13 of the above cited circular the words 'financial year' may be read as 'calendar year'. The relevant sentence may be read as *"The fees for such meetings shall be same as fee payable to IEMs otherwise and in addition to the fees for the regular meeting of IEMs, to be held otherwise and over and above the ceiling of Rs, 3,00,000/- annually, to be calculated as per **calendar year**"*.

(Rajiv Verma)
Officer on Special Duty

To

(i) All Secretaries of Ministries/Departments.
(ii) All CMDs/Head of CPSUs/Public Sector Banks/Organizations.
(iii) All CVOs of Ministries/Departments/CPSUs/Public Sector Banks/Organizations.
(iv) All Independent External Monitors.

Telegraphic Address :
"SATARKTA: New Delhi

E-Mail Address
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Website
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सत्यमेव जयते

केन्द्रीय सतर्कता आयोग
CENTRAL VIGILANCE COMMISSION

सतर्कता भवन, जी.पी.ओ. कॉम्पलैक्स,
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Block A, INA, New Delhi 110023

सं./No. 015/VGL/091

दिनांक / Dated 03.06.2021

Circular No. 06/05/21

Subject:- **Adoption of Integrity Pact-Revised Standard Operating Procedure:- regarding.**

The Commission has reviewed the Standard Operating Procedure (SOP) for adoption of Integrity Pact (IP) by all Government Organizations, Public Sector Enterprises, Public Sector Banks, Insurance Companies, other Financial Institutions and Autonomous bodies etc. A copy of the revised SOP is enclosed, which would be applicable for adoption and implementation of the IP by the organizations concerned.

2. The present SOP would replace the earlier SOP issued vide Circular No. 02/01/2017 dated 13.01.2017.

(Rajiv Varma)
Officer on Special Duty

Encl.: As above.

To

(i) All Secretaries of Ministries/Departments. **(The revised SOP may also be shared with the existing IEMs in the organizations concerned)**
(ii) All CMDs/Head of CPSUs/Public Sector Banks/Organizations. **(The revised SOP may also be shared with the existing IEMs in the organizations concerned)**
(iii) All CVOs of Ministries/Departments/CPSUs/Public Sector Banks/Organizations. **(The revised SOP may be brought to the notice of the Chief Executive of the organization concerned)**
(iv) All Independent External Monitors.

STANDARD OPERATING PROCEDURE FOR ADOPTION OF INTEGRITY PACT

1.0 BACKGROUND

1.1 In order to ensure transparency, equity and competitiveness in public procurement, the Commission recommends adoption and implementation of the concept of Integrity Pact (IP) by Government organizations, Public Sector Enterprises, Public Sector Banks, Insurance Companies, other Financial Institutions and Autonomous Bodies etc.

1.2 Vide Circular No. 02/1/2017 dated 13.01.2017, the Commission issued a Comprehensive Standard Operating Procedure (SOP) for adoption and implementation of Integrity Pact.

Further, vide Circular no. 15/10/20 dated 20.10.2020, the eligibility criteria for consideration for empanelment as Independent External Monitor (IEM) was reviewed and revised.

1.3 Deptt. of Expenditure vide OM dt. 19.7.2011, issued guidelines to all Ministries/ Departments/Organizations including their attached/subordinate offices and autonomous bodies for implementation of IP. Also, vide OM dated 20.7.2011 Deptt. of Expenditure requested Department of Public Enterprises for directions to Central Public Sector Enterprises for use of IP.

1.4 Further, in view of the increasing procurement activities of Public Sector Banks (PSBs), Insurance Companies (ICs) and Financial Institutions (FIs), the Commission vide Circular No. 02/02/2015 dated 25.02.2015 advised that all PSBs, PSICs and FIs shall also adopt and implement the Integrity Pact.

2.0 INTEGRITY PACT

2.1 The Pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- Promise on the part of the principal not to seek or accept any benefit, which is not legally available;
- Principal to treat all bidders with equity and reason;
- Promise on the part of bidders not to offer any benefit to the employees of the Principal not available legally;
- Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.
- Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC/ IPC Act;
- Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;
- Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;
- Bidders to disclose any transgressions with any other company that may impinge on the anti corruption principle.

Any violation of Integrity Pact would entail disqualification of the bidders and exclusion from future business dealings, as per the existing provisions of GFR, 2017, PC Act, 1988 and other Financial Rules/Guidelines etc. as may be applicable to the organization concerned.

2.2 Integrity Pact, in respect of a particular contract, shall be operative from the date IP is signed by both the parties till the completion of contract. After award of work, the IEMs shall look into any issue relating to execution of contract, if specifically raised before them. As an illustrative example, if a contractor who has been awarded the contract, during the execution of contract, raises issue of delayed payment etc. before the IEMs, the same shall be examined by the panel of IEMs.

However, the IEMs may suggest systemic improvements to the management of the organization concerned, if considered necessary, to bring about transparency, equity and fairness in the system of procurement.

3.0 IMPLEMENTATION PROCEDURE

3.1 As stated in Department of Expenditure's O.M. dated 20.7.2011, Ministries/Departments may, in consultation with the respective Financial Adviser and with the approval of the Minister-in-charge, decide on and lay down the nature of procurements/contracts and the threshold value above which the Integrity Pact would be used in respect of procurement transactions/contracts concluded by them or their attached/sub-ordinate offices.

In case, any individual organization desires to lower the threshold value, they may do so with the approval of the competent authority of the organization.

Procurements/contracts would cover procurement of works, goods and services by the organization concerned.

3.2 The above provision is also applied for procurements/contracts made by autonomous bodies for which the Administrative Ministry/Department concerned should decide the type of procurement activities and the threshold value above which the Integrity Pact would be applicable.

The procurements/contracts would cover both purchases and works/services contracts being entered into by the organization concerned.

3.3 The provision for the Integrity Pact is to be included in all Requests for Proposal/Tender documents issued in future in respect of the procurements/contracts that meet the criteria decided in terms of para 3.1and 3.2 above.

3.4 In all tenders covered under the Integrity Pact, particulars of all IEMs, including their email IDs, should be mentioned, instead of mentioning details of a single IEM.

3.5 The Purchase / procurement wing of the organization would be the focal point for the implementation of IP.

3.6 It has to be ensured, through an appropriate provision in the contract, that IP is deemed as part of the contract so that the parties concerned are bound by its provisions.

3.7 IP would be implemented through a panel of Independent External Monitors (IEMs), appointed by the organization. The IEM would review independently and objectively, whether and to what extent parties have complied with their obligations under the Pact.

3.8 A clause should be included in the IP that a person signing IP shall not approach the Courts while representing the matters to IEMs and he / she will await their decision in the matter.

3.9 In case of a joint venture, all the partners of the joint venture should sign the Integrity Pact. In case of sub-contracting, the Principal contractor shall take the responsibility of the adoption of IP by the sub-contractor. It is to be ensured that all sub-contractors also sign the IP.

3.10 A summary of procurement/contract awarded, which are covered under the IP shall be compulsorily shared with the IEMs on quarterly basis, during the meeting. Based on the specific requirement of the organisations and the no. of tenders floated, the meetings may be held on monthly or bi-monthly basis, instead of quarterly periodicity.

3.11 The final responsibility for implementation of IP vests with the CMD/CEO of the organization.

4.0 ROLE AND DUTIES OF IEMs

4.1 The IEMs would be provided access to all documents/records pertaining to the contract for which a complaint or issue is raised before them, as and when warranted. However, the documents/records/information having National Security implications and those documents which have been classified as Secret/Top Secret are not to be disclosed.

4.2 It would be desirable to have structured meetings of the IEMs with the Chief Executive of the Organisation on a half yearly basis to discuss / review the information on tenders awarded during the preceding six months' period. Additional sittings, however, can be held as per requirement.

4.3 The IEMs would examine all complaints received by them and give their recommendations/views to the Chief Executive of the organization, at the earliest. They may also send their report directly to the CVO in case of suspicion of serious irregularities requiring legal/administrative action. Only in case of very serious issue having a specific, verifiable Vigilance angle, the matter should be reported directly to the Commission. IEMs are expected to tender their advice on the complaints, within 30 days.

4.4 For ensuring the desired transparency and objectivity in dealing with the complaints arising out of any tendering process or during execution of contract, the matter should be examined by the full panel of IEMs jointly, who would look into the records, conduct an investigation, and submit their joint recommendations to the Management.

4.5 IEM should examine the process integrity, they are not expected to concern themselves with fixing of responsibility of officers. Complaints alleging malafide on the part of any officer of the organization should be looked into by the CVO of the concerned Organization.

4.6 The advisory role of IEMs is envisaged as that of a friend, philosopher and guide. The advice of IEM would not be legally binding and it is restricted to resolving issues raised by a bidder regarding any aspect of the tender which allegedly restricts competition or bias towards some bidders. At the same time, it must be understood that IEMs are not consultants to the Management. Their role is independent in nature and the advice once tendered would not be subject to review at the request of the organization.

4.7 Issues like warranty/guarantee etc. should be outside the purview of IEMs.

4.8 All IEMs should sign non-disclosure agreements with the organization in which they are appointed. They would also be required to sign a declaration of absence of conflict of interest.

4.9 A person acting as an IEM shall not be debarred from taking up other assignments such as consultancy with other organizations or agencies subject to his declaring that his / her additional assignment does not involve any conflict of interest with existing assignment. In case of any conflict of interest arising at a later date from an entity wherein he is or has been a consultant, the IEM should inform the CEO and recuse himself/herself from that case.

4.10 All organizations may provide secretarial assistance to IEMs for rendering his/her job as IEM.

4.11 In case of any misconduct by an IEM, the CMD/CEO should bring it to the notice of the Commission detailing the specific misconduct for appropriate action at the Commission's end.

4.12 The role of the CVO of the organization shall remain unaffected by the presence of IEMs. A matter being examined by the IEMs can be separately investigated by the CVO in terms of the provisions of the CVC Act or Vigilance Manual, if a complaint is received by him/her or directed to him/her by the Commission.

4.13 All the deliberations during the IEMs' meetings should be minuted and in the next meeting, the IEMs should confirm the recorded minutes of the previous meeting.

5.0 APPOINTMENT OF IEMS

5.1 The IEMs appointed should be eminent personalities of high integrity and reputation. A periodical notice inviting applications from eligible persons will be published on the Commission's website. After due scrutiny and verification of the applications and accompanying documents, as may be deemed appropriate by the Commission, the name(s) would be included in the panel for consideration for nomination as IEM.

All applications received after due date of notice issued by the Commission, shall be considered alongwith applications received in response to the subsequent notice.

5.2 The zone of consideration of eminent persons for empanelment as IEMs would consists of:-

(i) Officer who have held the post of Secretary to Govt. of India or were in equivalent pay scale, at the time of retirement.
(ii) Officer who have held the post of Chief Secretary of any state of Union of India or were equivalent pay scale, at the time of retirement.
(iii) Officers who have held the post of Director General of Police or were in apex pay scale, at the time of retirement.
(iv) Persons who have held the post of CMD of Schedule 'A' Public Sector Enterprise and were equivalent to Additional Secretary to Govt. of India, at the time of retirement.
(v) Persons who have held the post of CMD/MD and CEO of Public Sector Banks, Insurance Companies and other Financial Institutions, at the time of retirement.
(vi) Chief Executive Officer of an organization [other than listed above and were equivalent to Secretary to Govt. of India, at the time of retirement.

(vii) Officers who were in the apex pay scale at the time of retirement in Central Government/State Government/Forest Service.

(viii) Officers in the apex pay scale in all three Armed Forces.

5.3 The Commission would not include a retired person in the panel being maintained by it for consideration for nomination as IEM, if that retired person had accepted a full time assignment, post retirement, either in government sector or private sector or elsewhere. All those empanelled persons have accepted full time employment elsewhere, would cease to remain on the panel, from the date on which they have accepted the said assignment.

5.4 The Commission would nominate IEMs for an organization, from the panel of IEMs maintained by it.

5.5 The Commission would not consider the name of a retired officer/ executive for nomination as IEM in a particular organisation, in case that person has retired from the same organization or has conflict of interest in any form.

However, in case the person being appointed as IEM in a particular organization has a conflict of interest, which may have gone unnoticed, despite best efforts, he/she should inform the Appointing Authority about the same at the time of offer of appointment being given to him/her and should not accept the offer for appointment as IEM in that particular organization.

5.6 Three IEMs shall be nominated for appointment in Maharatna and Navratna PSUs and two IEMs shall be nominated in all other organizations.

5.7 A person may be appointed as an IEM in a maximum of three organizations at a time.

5.8 An empanelled person cannot be appointed in one organization for a period of more than three years.

5.9 Age should not be more than 70 years at the time of appointment.

5.10 In any organization, the IEMs shall be paid per sitting a fees of Rs. 25,000/- or fees as payable to Independent Board Members, whichever is less. However, in case, in any organization, the fee payable to Independent Board Members is less than Rs. 25,000/-, the organization concerned may, after due deliberation increase the fees payable to IEM, subject to the ceiling of Rs. 25,000/- per sitting.

However, the maximum amount payable to IEMs in a calendar year shall not exceed Rs. 3,00,000/- with respect to sitting fees.

Expenses on travel and stay arrangement of IEMs shall be equal to that of Independent Board Member of that organization.

5.11 The terms and conditions of appointment, including the remuneration payable to the IEMs, should not be included in the Integrity Pact or the NIT. This may be communicated individually to the IEMs concerned.

5.12 At the time of appointment of an IEM, a copy of SOP should be made available to the person being appointed by the organizations concerned. A copy of Commission's guidelines on "Illustrative check points for various stages of public procurement", available on Commission's website, i.e., www.cvc.gov.in, under CTE's corner may also be provided to the IEMs at the time of their appointment, for guidance purpose.

5.13 In the event of any dispute between the management and the contractor relating to those contracts where Integrity Pact is applicable, in case, both the parties are agreeable, they may try to settle dispute through mediation before the panel of IEMs in a time bound manner. If required, the organizations may adopt any mediation rules for this purpose.

In case, the dispute remains unresolved even after mediation by the panel of IEMs, the organization may take further action as per the terms & conditions of the contract.

The fees for such meetings shall be same as fee payable to IEMs otherwise and in addition to the fees for the regular meeting of IEMs, to be held otherwise and over and above the ceiling of Rs. 3,00,000/- annually, to be calculated as per financial year. The travel and stay arrangement for such meetings shall be equal to that of Independent Board Member of the organization concerned. However, not more than five meetings shall be held for a particular dispute resolution. The fees/expenses on dispute resolution shall be equally shared by both the parties.

5.14 The names of all the IEMs of the organization should be available on the website of the organization concerned.

6.0 REVIEW SYSTEM

6.1 All organizations implementing IP would undertake a periodical review and assessment of implementation of IP and submit progress reports to the Commission. CVOs of all organizations would keep the Commission posted with the implementation status through their annual reports and special reports, wherever necessary.

6.2 All organizations are called upon to make sincere and sustained efforts to imbibe the spirit and principles of the Integrity Pact and carry it to its effective implementation.

Ethics & Governance – A Perspective

It is a well known fact that management plays a vital role in shaping the future of any organization as the optimum utilization of all resources hinges upon the efficacy of the management. The core of a successful management lies in its Clarity of Vision, Plan of Action and more importantly Execution of the Plan of Action – the real gamut of operations as it were, and it is here that the importance of Corporate Governance and Ethics comes into being. Our Hon'ble Prime Minister, Dr. Manmohan Singh has said that whereas our policies and systems are good but the implementation needs much to be desired. Organisations are managed by Policies, Guidelines and Systems. These are dynamic instruments, and therefore need to be reviewed from time to time to gauge their efficacy to the said organization. This review is all the more necessary when a lapse or an untoward incident takes place. It could happen that the review undertaken reveals that the said policy is very much sound and in place, however over a period of time wrong practices have come into being, and which are the reasons for the problems that have occurred, therefore corrective steps need to be taken forthwith.

A review could also reveal that the problems have occurred in spite of the policy in place, and which means that the policies would need to be modified or amended as the case may be in the best interest of the organization. Normally, decisions are being taken within the framework of the policies and guidelines in place. Now, there could be critical situations wherein the policy in question would need to be slightly deviated from, in order to take the right decision, in the best interests of the organization. In such situations, a very clear and precise note should be brought out giving the reasons which necessitated the said deviation from the policy. The said note should also contain the implications to the organization if the decision was not taken. This would serve as a very Transparent and an Objective analysis, bringing out the need for deviation from the policy on this "case specific" issue, whereas the said policy in principle would continue on an as is where is basis.

1. Experience has taught us that it is the Economic Downturn, as we witness world wide today, rather than Up Swing, which raises sharp focus on issues relating to Ethics & Corporate Governance.

2. The two Major Reasons for Corporate failures have been “Greed” and “Excess Leverage”. The moot point is whether these two need to be completely done away with? If so, what is the Incentive for Aggressive growth and competition? If not, how are these to be kept within controllable limits and yet higher growth achieved? It is here that Business Ethics & Corporate Governance need to be focused on.
3. Whether it was abroad in the U.S. earlier, or more recent, and nearer home, it is seen that a “slip” in Corporate Governance is always initiated by the Promoters themselves.
4. Independent Directors are expected to be “Watch Dogs”. They can at best be accused either of ‘Lack of application of mind’ or of, consciously or otherwise overlooking the “slip” that has taken place. But not necessarily initiating the actual wrong doing, conspiracy, collusion or fraud as such. It has to be understood that they, the Independent Directors, cannot work as investigators as they are very much part of the decision making process in the Company.
5. Having said this, Each Member of the Board has a Key Role to play and an Important/Sacred Responsibility to deliver, and therefore they need not get unduly overawed or paranoid by size of the Company or any extraneous situation that they are faced with. They need to bring their Special Expertise and Experience on Corporate issues to the Board, and always, to keep “Broad Stakeholder Interest” in mind.
6. They need to Set & Follow Policies pertaining to “Conflict of Interest”. All Directors must therefore be “above Board”.
7. They would be required to diligently & keenly watch the changes in Assets & Liabilities in the Balance Sheet, to ensure quick corrective action if needed.
8. The Board Agenda should be circulated well in time. Though this may appear to be an elementary and fundamental requirement, it is very significant, the Directors of the Board must have “sufficient time” to go through the papers and to apply their mind, and come duly prepared to the Board Meeting. The various issues deliberated upon, queries raised, clarifications given must be precisely minuted in a chronological manner.

9. Table Agenda to be only taken up on emergent issues and not be made into a routine affair. There must be adequate time for discussion of the Table Agenda to ensure an indepth deliberation. So also for an agenda put up for Ratification to the Board. This also needs proper understanding and also as to why the decision needed to be taken by the company. Questions to be raised when in Doubt by the Independent Directors.
10. It is extremely important to ensure Auditor Independence. The Audit firm assigned to the company should fulfill its mission in a Competent & Independent manner. Further, Effectiveness of Audit Committee of the Board is of Paramount Importance. It should exhibit the same in its functioning and should properly guide the Board.
11. It is vital that the Independent Directors understand the Impact and Consequences of the proposals they are clearing in the Board Meetings. They should not forget that they would be held responsible were things to go wrong and they should also remember that they have a right under the Company Law to put up a note of dissent (of course for valid reasons) as per their own judgment. This does not mean that a 'Confrontation' is created between the Promoters and the Directors. Infact, both should clearly put forth their point of view backed by facts and supportive data. They need to deal with adequate Patience. After all, the Promoters have got the Independent Directors on Board to 'add value' and to contribute with their distinct individual expertise and experience. The goals of the Promoters and Directors being the "Long Term Sustainable Well Being" of the Company, why should there be friction of any kind? Of late, since January 2009, we have been hearing that some Independent Directors have chosen to resign. This is certainly not a healthy trend and should be discouraged.
12. Finally, Board Members must embrace Corporate Ethics by creating a climate of Integrity and Responsibility within the company, expressed in both the written code and by living example i.e. both Directors & Promoters need to come together to Build a strong Ethical Culture for the Company, that would ensure Correct Behaviour/ the Right Behaviour, when policies are either unwritten, unclear or are unenforced.

13. "Ethics & Corporate Governance" are not just Moral or Compliance Issues. In the long term they are Essential Behavioural Traits for the Organisation, that strengthen the Organisation's "Brand Equity" and help ensure Stable Sustainable Growth. Finally, the world over people have been talking about "Self Regulation" being an Integral part of Corporate Governance stating that it has to come from within. But of late, experience has shown that this has not really worked, so people are now talking of Rule Based Regulations i.e. need to be more specific, where Dos & Don'ts are Specified.

Which of the two should we follow?

Well it is for the individual company to decide.

SD/-

(RANJANA KUMAR)

VIGILANCE COMMISSIONER

Vigilance as a Management Function – Leveraging Technology

By ***Balwinder Singh***
Addl.Secretary, CVC

Vigilance is not a stand-alone activity. It has to be seen as part of the overall risk management strategy of an organization wherein the structures, systems and processes are built in such a manner so as to prevent leakages which adversely affect productivity and profitability. A number of organizations both in public and private sector are re-engineering their processes by leveraging information technology. It will be in the organizational interest that when they are reorganizing business processes they should identify the likely risks like fraud, corruption, other malpractices and build in the required risk management tools in the new processes. Recently a write-up has appeared in the Economic Times under the heading "Fuel for e-commerce at HPCL". This article explains how HPCL has networked all its petrol pumps in and around Mumbai for the purposes of inventory control and supply chain management. The same process also indirectly helps in curbing adulteration and under measurement. These malpractices are in turn connected with corruption. The system automatically detects any tampering with the fuel dispensers. It enables the company to monitor every outlet. Similarly providing global positioning system on the tankers for transporting fuel, the management can detect diversion of tankers to dubious destinations. This technology while providing solution for efficient supply chain management also helps in risk management thus strengthening the internal vigilance. There is need to integrate vigilance activity as a part of overall risk management strategy which in turn has to be integrated in the main stream operations of organizations. The Central Vigilance Commission has been wrestling with the idea of identifying areas where generic solutions to the problems of vigilance administration can be applied across wide spectrum of government organizations. A number of areas have been identified where use of information technology can bring efficiency, economy as well as transparency thus curbing corruption. Some of these ideas are as follows:

E-Procurement

It has been the experience of a large number of organizations worldwide both in public and private sectors that e-procurement can bring in economy and efficiency in the procurement of goods, works and services. Apart from these benefits, the process also brings in greater transparency, thus reducing opportunities for corruption. Some of the State Governments like Andhra Pradesh, Karnataka as well as some Public Sector Undertakings like SAIL are already making use of e-procurement systems. The Central Vigilance Commission has issued a directive that all Govt. organizations over which the Commission has jurisdiction should publish their tenders and complete bid documents along with the application forms on the website. This is the first step towards e-procurement and would help in curbing mal-practices prevailing in various Govt. organizations where competition is sought to be restricted.

E-Payment

Another directive of the Central Vigilance Commission regarding leveraging technology pertains to introducing e-payment. Here again, the intention is to bring economy and efficiency, while at the same time, reducing corruption. The banking industry in the last one decade has made rapid technological advances in India. The directive of the Central Vigilance Commission for introducing e-payment is to leverage these technological advances in banking sector for the benefit of rest of the governmental set up. This system will help in significantly reducing transaction costs involved in making payments by way of cheques and sending the payment through couriers. It will also curb corruption which accompanies handing over cheques to contractors, suppliers and others like persons receiving refunds from income tax and other departments. Apart from the above mentioned two specific directives which the Central Vigilance Commission has already issued there are very many other areas where technology can be leveraged simultaneously for efficiency, economy and corruption control. The key idea being that risk management tools are made integral part of the main business processes. For example, there are frequent cases of frauds in availing various employee benefits like medical expenses, LTC, TA/DA etc. The accounting softwares can be built in such a manner that the computer system generates '**exception report**' and gives **alerts** wherever there are significant deviations from certain benchmarks and norms. Similarly, the same accounting software system can make inter unit/inter location comparisons of expenditure on these items. Similarly, softwares can be developed with regard to procurement with in built features for making inter unit/inter office comparisons of rates and consumption patterns. Extensive use of website can be made both as a tool for communication with the stake holders as well as for curbing corruption. Right to information and transparency are the biggest tools for fighting corruption and website as a tool for such communication can have very extensive application across the entire spectrum of Govt. activity. Contractors and suppliers can know where their bills are held up, applicants for passport can know where their passport application is held up or whether police is taking abnormally long time in issuing NOC, beneficiaries of public distribution system can know whether wheat, rice and sugar is being diverted by the ration shop owner. Municipal corporations and other civic agencies can get feedback from public whether repairs to roads or drainage pipes is actually being carried out or only fake bills are being prepared without actually undertaking the works. Some Govt. organizations have already taken initiatives in this direction but the complete potential of website/portal as a tool for fighting corruption is yet to be made.

In addition to generic issues pointed out above, there can be a large number of organisation specific solutions where risk management tools can be integrated in the business processes. Customs & Central Excise, Income Tax, Employee Provident Fund Organisation and certain other organizations are learnt to have already undertaken such exercises in their computerization projects and business process re-engineering efforts. The aim is to gradually integrate preventive vigilance in the business processes and reduce our dependence on a complaint driven vigilance administration which is the present scenario.

Transparency is not the same as looking straight through a building: It's not just a physical idea; it's also an intellectual one.

-Helmut Jahn

Doctrine of Contra- Proferentem in Contracts Management

*By **Nirmal Goel***
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Occurrence of disputes is common feature in civil construction contracts. Often the disputes arise because of contract clauses which can be interpreted in more than one way. The job of arbitrator/court becomes more difficult when various interpretations argued by the parties to the dispute are equally good, reasonable and plausible. In such circumstances, the Doctrine of Contra- Proferentem becomes a handy tool to the arbitrator or the judge to decide the matter in accordance with principles of equity, good conscience and justice. This doctrine, which originated from insurance contracts, states that when a contract provision can be interpreted in more than one way, the Court will prefer that interpretation which is more favourable to the party who has not drafted the agreement (or simply that interpretation which goes against the party who has inserted/insisted on inclusion of the alleged ambiguous clause in the agreement).

The rationale behind this doctrine emanate from the fact that parties to the agreement are often not in equal position. One party dominates the execution of the agreement while the other party merely signs on the dotted line. Such contracts are mainly "standard form take it or leave it" contracts e.g. in insurance contracts, an individual usually has to accept all terms and conditions of insurance policy document framed by the insurer company with no liberty on part of the individual to negotiate or alter the conditions of the contract. Similar is the situation in Government contracts, wherein the tender notices floated by Government agencies prescribes that the bidder will not put any condition in the tender. The bidder is simply made to sign on the dotted lines and no deviation from the tender conditions is permitted. Therefore, this doctrine is very much applicable in the contracts entered into by the State with various private parties / contractors.

Another underlying philosophy behind this doctrine is that one should not be rewarded for his own fault. Contra- Proferentem places the cost of losses on the party who was in the best position to avoid the harm. The Courts / Arbitrators expect that the party who drafts the agreement shall take due care and caution and shall not insert ambiguous provisions in the agreement. The doctrine seeks to encourage clear, explicit and unambiguous drafting of the agreement and to avoid latent and hidden meanings of its clauses.

However, this doctrine is not to be construed to encourage unreasonable or inequitable interpretation against the drafter of agreement. It is applicable only when the various interpretations are equally sound, reasonable and plausible and no clear intention contrary to the interpretation being adopted on this principle is prima facie evident in the contract document.

Unconditional tenders are unavoidable necessity in Government contracts. In such scenario, it becomes an added responsibility on the part of NIT framers, checkers and approvers to read, re-read and re-re-read the various provisions of the tender document and ensure that its various provisions are clear, explicit and unambiguous. For carrying out this responsibility, a) the latent, hidden or implied meanings to contract clauses are to be avoided; b) the contract conditions need to be realistic; c) all information required for working out rates by prospective bidders needs to be given in the tender document; d) technical specifications and mode of measurements should be clear; and e) the tender document should take care of various contingent event. Since many of the construction disputes are repetitive in nature, one should take lessons from them and prescribe proper provision in the tender documents to deal with them.

Besides above discussion, this doctrine has got vigilance connotation also. Many a times, ambiguous provisions are interpreted in favour of contractors. In such case, the Vigilance Organization first dispute the ambiguity itself and try to assert that there has been an attempt to create ambiguity when there was none and then tries to search malafide angle in such interpretation especially when such an interpretation has resulted into passing of undue benefits to the contractor or has caused loss of public money. So by carefully preparing tender documents, NIT framers, its checkers and approvers can protect their officials from unnecessary vigilance scrutiny also. In essence, the doctrine of Contra-Proferentem puts an added responsibility on framer, checkers and approvers of tender documents and emphasizes additional efforts on their part to avoid ambiguities and to make contract documents clear, explicit and unambiguous in nature. Further, it requires tender documents to be complete ones so as to take care of not only foreseeable but unforeseen circumstances also.

Note : This Article has been published in the Magazines :

1. Crystal Clear, Airports Authority of India Vigilance Magazine (Oct. 2010 issue)
2. Civil Engineering & Construction Review (Dec. 2010 issue).
3. Indian Institute of Arbitration and Mediation (IIAM) Magazine "The Indian Arbitrator" – (January 2011 issue)

Integrity Pledge for Organizations

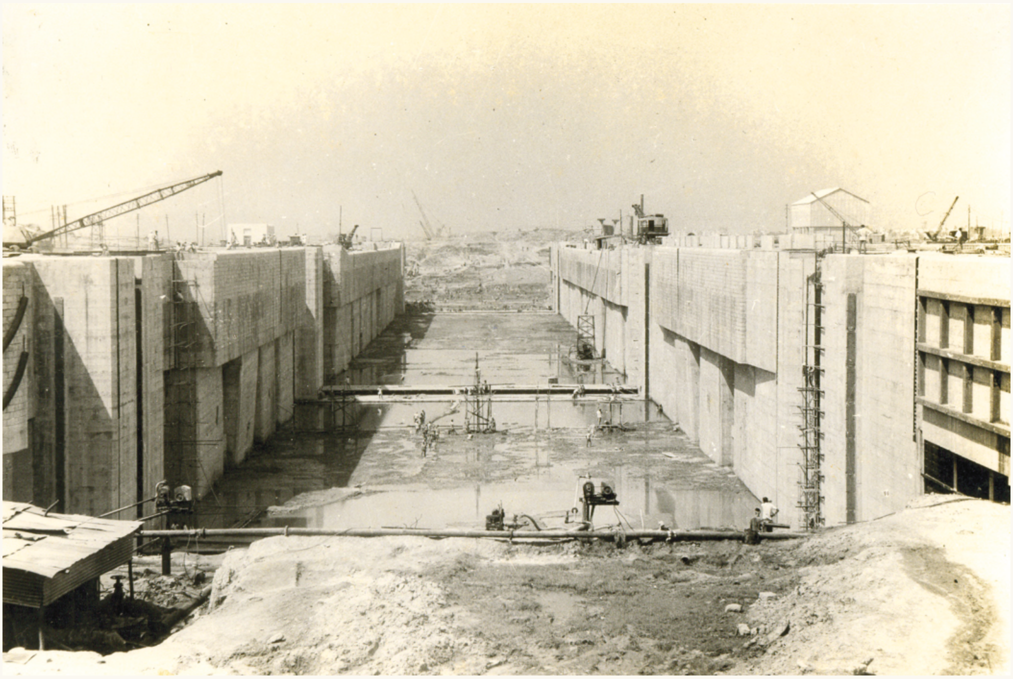
We believe that corruption has been one of the major obstacles to economic, political and social progress of our country. We believe that all stakeholders such as Government, citizens and private sector need to work together to eradicate corruption.

We acknowledge our responsibility to lead by example and the need to put in place safeguards, integrity frameworks and code of ethics to ensure that we are not part of any corrupt practice and we tackle instances of corruption with utmost strictness.

We realize that as an Organization, we need to lead from the front in eradicating corruption and in maintaining highest standards of integrity, transparency and good governance in all aspects of our operations.

We, therefore, pledge that:

- We shall promote ethical business practices and foster a culture of honesty and integrity;
- We shall not offer or accept bribes;
- We commit to good corporate governance based on transparency, accountability and fairness;
- We shall adhere to relevant laws, rules and compliance mechanisms in the conduct of business;
- We shall adopt a code of ethics for all our employees;
- We shall sensitize our employees of laws, regulations, etc. relevant to their work for honest discharge of their duties;
- We shall provide grievance redressal and Whistle Blower mechanism for reporting grievances and fraudulent activities;
- We shall protect the rights and interests of stakeholders and the society at large.



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