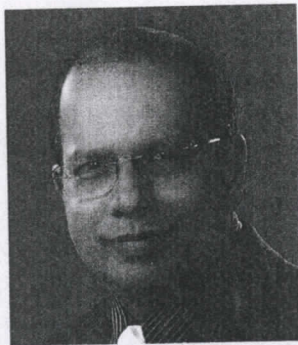


Vigilance Management in Public Sector Enterprises

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The ultimate objective of vigilance administration should be empowering PSEs to do business within the extant framework of systems, rules and procedures more efficiently, effectively, ethically, equitably, economically and profitably by optimum utilization of productive resources in a transparent, objective and stakeholder centric approach.

Every year, on the vigilance awareness day, all the public servants pledge solemnly, "we shall continuously strive to bring integrity and transparency in all spheres of our activities. We also pledge that we shall work unstintingly for eradication of corruption in all spheres of life."

The World Bank defines 'Corruption' as the abuse of public office for private gain. And bribe is an amount received by a public servant other than legal remuneration for the performance of official duties. The major causes of corruption as identified by Santhanam Committee constituted by the Government of India on anti-corruption are red tape and administrative delay, complex regulations cumbersome procedures, scope of personal discretion, scarcity of goods and services and lack of transparency. Section 161 of IPC describes corruption as:

'Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept, or attempts to obtain gratification whatever, other than legal remuneration as a motive or a reward for doing or for bearing to do any

official act or for showing or for bearing to show, in the exercise of his official functions favor or disfavor to any person with the Central or State Government or Parliament or Legislature of any State or with any public servant as such.

Central Vigilance Commission (CVC)

The CVC was set up by the Government of India in 1964 consequent to the recommendation of the Committee on Prevention of Corruption, known as the Santhanam Committee. CVC is the apex body exercising general superintendence and control over vigilance matters in administration and probity in public life. The Commission was accorded statutory status in 1998 by "The Central Vigilance Commission Ordinance, 1998" and in 2003 the Central Vigilance Commission Act, 2003 came into effect.

The Commission's jurisdiction is co-terminus with the executive powers of the Union and can undertake any inquiry into any transaction in which 'a public servant is suspected or alleged to have acted for an improper or corrupt purpose; or cause such an inquiry or

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investigation to be made into any complaint of corruption, gross negligence, misconduct, recklessness, lack of integrity or other kinds of mal-practices or misdemeanors on the part of a public servant.' to avert ad-hoc decision-making and non-transparent style of functioning. The Commission tenders appropriate advice to the concerned disciplinary authorities in all such matters. As decision-making in most of the PSEs is related to two levels - below the Board level, the CVC's jurisdiction may be restricted to that level and cases involving vigilance angle in respect of all employees who are two levels below the Board level may not ordinarily be referred to CVC.

Chief Technical Examiner's Organization (CTEO) is the Technical Wing of Central Vigilance commission. It undertakes intensive technical inspection of major Civil, Electrical and Horticulture works, selected at random, under execution by the Central Governments Departments, Public Sector Undertakings and Central financial Institutions / Banks etc. CTEO submits reports on intensive examination of works for necessary action in respect of infirmities, irregularities and malpractices noticed.

Changing Role of Vigilance Administration

To have a clear understanding of vigilance administration aimed at elimination of corruption in public life, it is imperative to go through the vigilance manual, related publications and material available on the website of Central Vigilance Commission (CVC), the apex autonomous body, entrusted with policy,

planning, implementation, monitoring and continuous review of the vigilance administration. It is important to remember that the role and responsibilities of Public Sector Enterprises (PSE) have been gradually evolving over the years. While becoming self-reliant and profitable ventures, contributing substantially for nation's Gross Domestic Product, taking on ever increasing competitive challenges from the multinationals and private sector in a liberalized economy, the focus of PSEs has shifted towards greater autonomy and transparency in their functioning. Therefore, CVC has been increasingly pro-active and it emphasizes not only detective and punitive vigilance but also corrective, predictive and preventive vigilance measures.

Detective Vigilance

It includes

- Effective use and scan of Complaints, Inspection Reports, Audit Reports, Press Reports, CBI Reports, Judicial Remarks, source Information;
- Detection of Corrupt practices, Malpractices, Negligence, Misconduct;

- Better surveillance of public contact points;
- Close watch on officers at sensitive posts, of doubtful integrity and detect fraud;
- Scrutiny of decisions taken by officials having discretionary powers; and
- Organizing traps/ raids with the help of Police/CBI

Punitive Vigilance

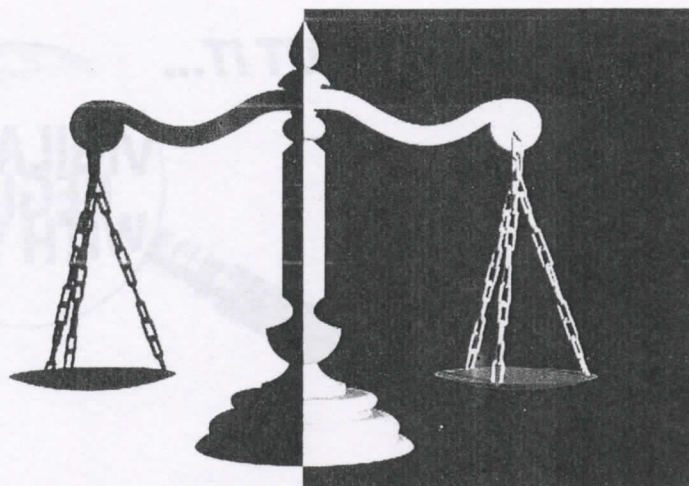
Punitive vigilance flows out of Detective Vigilance. It includes:

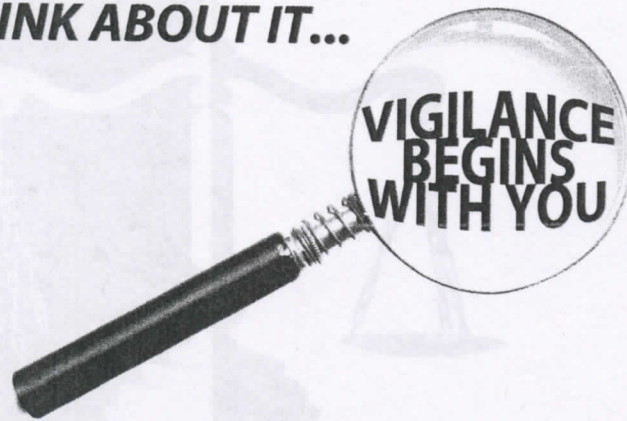
- Investigation and collection of evidence and speedy departmental inquiries;
- Swift and deterrent action against the real culprits;
- Strong action against the corrupt official who brings political, communal and unethical influences;
- Appreciation of vigilance for taking action against corrupt officials;
- Wide publicity of punishment meted to the corrupt officials.

Corrective Vigilance

It includes

- Analysis of results of detective vigilance;



THINK ABOUT IT...

- Exploration of the reasons and contributory factors;
- Finding solution to stop recurrence and activate alarm signals;
- Updating the practices to keep pace with times;
- Transparency in procedures & decision making;
- Plugging of the loopholes and updating and building in new whistle blowing arrangements;
- Prepare case study and educate employees; and
- Attempt to bring in transparency in procedures and decision making.

For Corrective Vigilance to be effective the organization has to have an effective Vigilance network and the Management has to have respect for the advice of the Vigilance Department.

Predictive Vigilance**It includes**

- Foreseeing in activity prejudicial to the interests of the organization;
- Suggesting in advance corrective measures to be taken by the management against acts of

misconduct, corruption, lapses which may occur in the wake of modification of rules, regulations, technology, circumstances etc.

Preventive Vigilance**It includes**

- Analysis of rules and regulations of the organization;
- Identifying complexities in the procedures;
- Identification of sensitive areas;
- Identification of corrupt officials/ practices;
- Reduce/Eliminate multiplicity of decision making levels;
- Preparation of best practices charts & manuals;
- Review of Annual Property Returns;
- To ensure rotation of officials in sensitive positions;
- Regular/ Surprise checks and inspections;
- Reduce areas of discretion and patronage; and
- Vigilance Awareness Programmes – To educate officers to take clean, honest, effective and transparent decisions.

In the changed liberalized Indian

economic scenario, the vigilance has a proactive role. The objective of vigilance administration in PSEs is being perceived by the Central Vigilance Commission (CVC) as more of managerial function rather than an inhibiting administrative hindrance: "Vigilance is basically and admittedly a managerial function and, therefore, it is an integral part of the duties of an executive. Vigilance departments of PSEs should work in cooperation with other Divisions/Units of the Corporation at all levels. Besides, the vigilance departments of PSEs should also work in coordination with the CVC, the administrative ministry and the CBI."

Need for Simplification of Systems, Rules and Procedures

In order to avert ad-hoc decision-making process and non-transparent style of functioning in PSEs, CVC has been emphasizing to codify the systems, rules, procedures and criteria in critical domains like award of contracts, purchases, stores, operations, finance and human resources management. To ensure transparency in public procurement, it is important to adopt benchmarked best practices in procurement with added emphasis on strengthening e-procurement process.

Application of Communication and Information Technology is inevitable for improving vigilance administration. In the changed scenario, PSEs have to be increasingly customer centric, performance driven, result oriented, and ensuring value for money by optimum utilization of productive resources, quality service delivery and enhanced bottom line. While adhering to ethical

business practices PSEs must operate efficiently, effectively and economically by continuously learning, adopting appropriate modern technology in all areas of manufacturing and operation, being innovative and reformative in its ways of doing business strictly within the prescribed framework of systems, regulations and procedures.

Many PSEs have identified deficiencies in systems and procedures including failure in contract management during preventive vigilance inspection and taken measures to amend rectify them. Online Vigilance Clearance System based on digital signature by competent authorities available through Intranet in PSEs like CONCOR enhances the credibility and transparency of vigilance administration as Non Objection Certificate is required for various purposes like confirmation, promotion, voluntary retirement, deputation, issue of passport and foreign visit.

In PSEs vigilance should be an integral part of the managerial function with a view to enhance managerial efficiency, effectiveness and productivity. As risk taking is an integral part of business decision making, every loss caused to the entity may not become the subject matter of a vigilance inquiry. It would be unfair to question the technical merits of managerial decisions on hindsight, but motivated or reckless decisions that adversely impacted the organization should be investigated. It is important to ask the fundamental question: Did the business loss arise in spite of bona-fide commercial or operational decision or due to any mala fide, motivated or reckless performance of duties? Would

a person of common prudence, working within the framework of the prescribed rules, regulations and procedures take the decision taking into account the prevailing circumstances? Considering the complexities involved in commercial decision making process, it may be desirable for the investigating agency CBI to obtain expert advice. A Central Advisory Board constituted to assist CBI for this purpose, with the approval by CVC can provide considered opinion within reasonable time, failing which the CBI would be competent to decide the matter without advice.

What is Vigilance Angle?

A vigilance angle could be perceptible in cases characterized by:

- commission of criminal offences like demand and acceptance of illegal gratification, possession of disproportionate assets, forgery, cheating, abuse of official position with a view to obtaining pecuniary advantage for self or for any other person; or
- Irregularities reflecting adversely on the integrity of the public servant; or
- lapses involving any of the following;

Gross Negligence

- a. recklessness;
- b. failure to report to competent authorities, exercise of discretion/powers without or in excess of powers/jurisdiction;
- c. cause of undue loss or a concomitant gain to an individual or a set of individuals/a party or parties; and
- d. flagrant violation of systems and procedures.

The Chief Vigilance Officer (CVO)

in an organization is authorized to decide whether there exists a vigilance angle in a particular case.

Investigation by the Central Bureau of Investigation (CBI)

The Special Police Establishment (SPE), Central Bureau of Investigation, constituted by the Government of India, under the DSPE Act, 1946, inquires and investigates into offences pertaining to corruption and other malpractices involving public servants. The SPE takes up cases based on information collected by them or received from the public and also investigates cases referred to them by CVC and the administrative authorities. If the information discloses, prima - facie, commission of a cognizable offence, a regular case (RC) is registered under section 154 of the Criminal Procedure Code (Cr.P.C) and if the information prima facie discloses commission of irregularities, warranting further enquiry, a preliminary enquiry (PE) is first registered. If the PE reveals commission of a cognizable offence, a regular case is registered for further investigation with a copy thereof is sent to the Head of Department and/or the administrative ministry as well as the Commission if the public servant concerned comes within the advisory jurisdiction of the Commission. The SPE generally does not take up inquiries into or register a case where minor procedural flaws are involved and expected to take note of an individual officer's positive achievements while recommending RDA so that a single procedural error does not cancel out a life time's good work.

Cooperation with CBI

The CVOs in PSEs and the concerned officer in the CBI should interact as frequently and effectively depending on the exigencies of work. There should be a quarterly meeting between the CBI and CVO at the level of Zonal Joint Director of CBI to monitor and to take stock of the cases and exchange information for expeditious investigation and preparation of the 'Agreed List'.

Standard tender procedure, policy guidelines and manuals may be supplied to the CBI to decide whether criminal or departmental misconduct is committed. Such standardized procedures and guidelines should also be updated periodically to help judging criminal liability, misconduct or innocence of an official in a particular case. The CVO should screen all the complaints before sending the same to the CBI and CBI should ordinarily be sent only cases involving transactions not less than Rs. 25 lakhs or otherwise possessing national or international ramifications. Other cases may be sent to the local police. Public Sector Enterprises should cooperate with CBI during the course of investigation making available the requisite documents promptly and directing the concerned employees to appear before the investigating officer. Assistance of technical experts to the Investigating Officer, if considered necessary, may also be provided to the extent possible in accordance with extant instructions on the subject.

CBI generally recommends prosecution in cases of bribery, corruption or other criminal misconduct; it also considers making similar recommendations in cases involving a substantial loss to the

Government or a public body. The Commission's advice for prosecution, however, is required only if the sanction for prosecution is necessary under any law promulgated in the name of the President.

Prosecution proposals should be able to meet the legal and technical requirements laid down by the Courts. In cases, where the CBI recommends regular departmental action (RDA) for major/minor penalty action or 'such action as deemed fit' against the officials and the Commission is to be consulted, the CVO should ensure that the comments of the department/PSE on the CBI report are furnished to the Commission within one month of the receipt of the CBI's investigation report, failing which the CVC will proceed to examine the case and tender advice. Further action in such cases may be taken as per the Commission's advice.

Action on Complaints

Information about corruption, malpractices or misconduct on the part of public servants may come to the CVO's notice through various sources including complaints received from the public, or through the administrative Ministry, CBI and the CVC; departmental inspection reports and stock verification surveys, scrutiny of property returns and the transactions reported by the concerned employee under the CDA Rules, audit reports, reports of parliamentary committees and information received. In the first instance, the decision with regard to the existence of a vigilance angle in a case may be taken by the CVO. The CMD or his nominee, may, if there are valid reasons, within a period of 15 days, differ

from the CVO. In case of difference between CVO and CMD, the matter may be referred to the Commission. After registering the information as a complaint in the Vigilance Complaint Register, he would then process the matter further to decide as to whether the allegations are general or vague and deserve to be filed or the matter requires further investigation. In the latter case, he would also have to decide as to whether the investigation into the allegations should be entrusted to the CBI or local police or taken up departmentally.

The case may, with the approval of the CMD, be entrusted to the CBI, if the allegations:

- are criminal in nature (e.g. bribery, corruption, forgery, criminal breach of trust, possession of assets disproportionate to known sources of income, cheating, etc.; or
- require inquiries to be made from non-official persons; or
- involve examination of private records; or
- need expert police investigation for arriving at a conclusion; or
- need investigation abroad.

In exercise of its extraordinary jurisdiction, the Commission has the power to call for a report in respect of any case with a vigilance angle of any public servant belonging to an organization falling within its jurisdiction. A complaint involving a Board-level appointee, alone or with others, may be forwarded to the CVO of the administrative ministry, who would decide whether the information involves a vigilance angle or not and would process the matter further. He would also decide

whether the investigation into the allegations should be entrusted to the CBI or taken up departmentally. No action should be taken on any anonymous or pseudonymous complaints.

If the allegations contained in a complaint should be looked into departmentally, the CVO should proceed to make a preliminary enquiry by himself or entrust it to one of the Vigilance Officers or suggest to the administrative authority to entrust the investigation to any other suitable officer. The objective is to determine whether, prima-facie, there is some substance in the allegations. During the course of preliminary enquiry, the concerned employee may be given an opportunity to tender his version of the facts. In the absence of such an explanation, the concerned employee may be proceeded against unjustifiably.

After the preliminary enquiry has been completed, the investigating officer should prepare a self-contained report, containing inter alia the material to controvert the defense, and his own recommendations. Where a case involves both criminal misconduct as well as flagrant violation of systems and procedures, further investigation should be done by the CBI. The PSE concerned may simultaneously initiate appropriate disciplinary proceedings. The CBI's focus will limit to the criminal aspects of the case.

Investigation of Complaints against Board Level Appointees

If a complaint against a Board-level appointee is directly received by the PSE, the CVO shall send the same to the CVO of the ministry for consideration. In cases where CVC calls for investigation

and report against a Board-level appointee, the CVO of the ministry shall initiate inquiries and may in this regard obtain factual information from the CVO of the PSE. Thus, CVO of the PSE under no circumstances should initiate action against the Board-level appointee on his own initiative.

The disciplinary authority would consider the investigation report and the first stage advice of the CVO and decide, on the basis of the facts disclosed in the preliminary enquiry, whether the complaint should be dropped or warning administered or regular departmental proceedings launched. If any of the employees involved in the case falls within the Commission's jurisdiction, the latter's advice would be required and any decision of the disciplinary authority at this juncture may be treated as "tentative".

Before making references to the Commission, the CVO may classify references into Vigilance A and B. Vigilance-A comprises cases where the lapses committed are serious and a prima-facie case exists for initiation of RDA for major penalty proceedings; Vigilance-B are less serious cases

involving primarily procedural lapses, which in the opinion of the CVO, do not reflect adversely on the integrity of the official concerned. Vigilance-B cases ordinarily will not invite any administrative disabilities normally associated with the registration of a vigilance case against an official, though these cases will continue to be monitored through the Vigilance Complaints Register till their disposal. They cases technically fall within the ambit of the term 'vigilance' though the official is not accountable for a serious misdemeanour or negligence. An official can be proceeded against for a minor penalty but may not suffer any disability by way of posting, training, placement on 'Agreed List' during the pendency of the disciplinary proceedings. If he is found accountable in the disciplinary proceedings, he will be duly punished but for all other purposes (except promotion for which a separate sealed cover procedure exists) he will be treated at par with other comparably placed employees facing minor penalty proceedings in a non-vigilance case.

CVO may identify sensitive posts



and ensure rotation of staff in such posts every three years. The CVO may also review the functioning of public dealing departments. Each PSE may also draw up a Citizen's Charter prescribing time-limits for processing of applications and various categories of work involving public dealings. CVO may monitor the implementation of the Citizen's Charter and furnish a compliance report in this regard to the CVC.

Investigation /Inquiry Report

The Investigating Officer (IO) should indicate the allegations contained in the complaint, the gist of the investigation carried out by him as well as documentary and oral evidence that he has relied upon. The IO should detail the procedure and guidelines which the Suspected Public Servant (SPS) was required to comply with and should give his findings in the last paragraph of the report clearly bringing out the accountabilities of the officials. Seized documents and statements of the witnesses and the SPS recorded during the investigation should accompany the investigation report. The report of the IO should thus be comprehensive and well documented. As per the current instructions of the Government, the preliminary inquiry should be completed within three months.

Complaints against the CVO in a PSE may be investigated by the CVO of the administrative ministry and a report along with the original record together with comments of the Secretary of the Ministry/Department may be referred to the CVC for proper and

independent examination of the case. Complaints against vigilance executives other than the CVO of the PSE may be investigated by the CVO of the PSE and a final decision may be taken with the approval of the CMD. If the allegations are prima facie established against such vigilance functionaries, they should be shifted to non-sensitive positions and if on deputation should be repatriated to the parent organizations with appropriate recommendation to their disciplinary authorities with regard to the disciplinary action to be initiated against them.

New Initiatives towards Anti-Corruption Strategy

The Commission has been issuing various circulars and guidelines for improving the vigilance management in public service. Some of the initiatives deal with rotation officials working in sensitive areas, disclosure of information under Right to Information Act (RTI) in compliance with Delhi High Court decision, conduct of CVOs functioning, transparency in works, purchases, consultancy contracts awarded on nomination basis, second stage consultation with CVC in disciplinary cases, submission of Annual Report of vigilance work by CVOs, revised threshold values for submission of Quarterly Progressive Reporting, adoption of Integrity Pact, Standard Operating Procedures, Constitution of Committees of Experts for scrutiny of prosecution sanctions, reporting of fraud cases and whistle blowing complaints.

With the advent of Companies Act, 2013, a new investigation procedure has been provided

under Section 210 to 229. The new act also includes whistle blowing provisions ensuring anonymity of the whistle blower. The act also provides statutory backing to the Serious Fraud Investigation (SFIO) under Sections 211 and 212. Even after adoption of best systems of Internal Control (IC), Internal Audit and Information Communication Technology based best benchmarked practices like COSO and COBIT frameworks or Enterprise Risk Management (ERM) may not absolutely safeguard against fraud, it is important for PSEs to incessantly concentrate on effective monitoring, inspection and audit to improve the control environment oriented towards reducing the circumstances conducive for occurrence of fraud triangle.

As the famous criminologist Donald R. Cressey points out, fraud takes place when there is a fraud triangle. The three essential factors for an ordinary person or an employee to commit fraud are motivation, rationalization and opportunity. Appropriate vigilance management system should thus drive PSEs to ensure application of effective internal controls, enterprise risk management system, aiming at prevention of formation of fraud triangle in an organization. The ultimate objective of vigilance administration should be empowering PSEs to do business within the extant framework of systems, rules and procedures more efficiently, effectively, ethically, equitably, economically and profitably by optimum utilization of productive resources in a transparent, objective and stakeholder centric approach. ■■■