



सत्यमेव जयते

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भारत सरकार  
केन्द्रीय सतर्कता आयुक्त

GOVERNMENT OF INDIA  
CENTRAL VIGILANCE COMMISSIONER

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20 Oct 09

### Message from the Central Vigilance Commissioner

Creation of awareness is an important means of preventing corruption. Creating awareness among public servants about rules and procedures, their underlying principles and purpose; and their correct application in practical situations would definitely increase the degree of adherence to these rules and procedures. Lack of clear understanding of rules and procedures often emanates from absence of user friendly and easily accessible guidelines and manuals. It should be borne in mind that good documentation promotes good governance. I am glad that the Vigilance Department of Hindustan Aeronautical Limited is bringing out a set of manuals not only covering all aspects of vigilance but also clarifying procedures applicable to activities vulnerable to corruption. I consider this as an important step in preventive vigilance and hope that these manuals would go a long way in guiding the organisation towards better corporate governance.

(Pratyush Sinha)

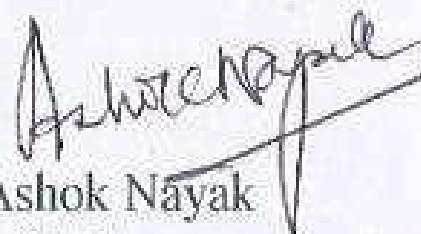
## FOREWORD



I am pleased to note that the Vigilance Department has undertaken the task to revise and update the Vigilance Manuals issued by the Department during November 2001. This edition is contemporary which includes the current instructions on vigilance matters issued by the DOPT, CVC directives and company policies. I also find that the contents of the Vigilance Manuals are logically arranged in a very simple format to be used as reference. The instructions and guidelines contained in the Manual are applicable to all employees and are required to be adopted and practiced in letter and in spirit.

I compliment Shri Anurag Sahay, IRS, CVO and his team of officers for their proactive initiative and positive contribution towards a more effective and vibrant vigilance administration.

Nov 2009  
Bangalore – 560001

  
Ashok Nayak  
Chairman



## PREFACE

Vigilance Department has undertaken to revise the Vigilance Manuals in order to make them contemporaneous and a Ready reckoner for references on Vigilance matters. This has been necessitated due to the new and emerging directives and instructions issued by the DOPT and the CVC.

This new edition of the Vigilance Manual will be a useful reference and guide to the Vigilance functionaries in discharging their responsibilities. It will also be of assistance to the Management in dealing with Vigilance matters. The instructions contained in the Manual are mandatory and it is expected that the officers at various levels will refer to the Manual for guidance in making HAL a completely transparent organization.

My Compliments to Lt Col (Retd) D Banerjee, DGM(Vig) ,Lt Col (Retd) Pradeep Khare, CM (Tech) Vig, Shri Mani Bhushan , SM(Vig) HC, Shri Christopher Jacob,Mgr (Vig), Shri Prem Sagar, VO and Shri HK Kamath, VO, and the staff in their efforts to bring out this Manual.



Anurag Sahay, IRS  
Chief Vigilance Officer

## **ABOUT THIS VOLUME**

An ideal business organization would combine entrepreneurial excitement with rectitude and Vigilance. Vigilance is an attitude which must be integral to the way we work and it should not be construed in a narrow, negative, or punitive connotation. Vigilance is an aid to managerial competence, commercial success, social efficiency and robust image.

HAL has grown from strength to strength to become one of the largest public enterprise in the country. It has therefore the largest accountability towards the people of India in terms of efficient and appropriate resource utilization. We must integrate the system of vigilance with our business which is nothing but rationality and morality codified and formalized. Effective steps towards Preventive Vigilance are most essential as observed by the Santhanam Committee.

The Vigilance Manual Vol-I focuses on Organisation and Policies of the Vigilance Department which has been carefully devised keeping in mind not only the latest developments in the field of Investigation, Leveraging of Technology which is so essential for meaningful Vigilance work, but also the Goals and Objectives, Mission and Core Values of HAL.

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## **CHAPTER I - HAL**

***“Knowledge without integrity is dangerous and dreadful” – Samuel Johnson***

### **1. HAL – a brief history**

In December 1940, a farsighted Industrialist Late Sri Walchand Hirachand set up a Company called Hindustan Aircraft Limited in association with Government of Mysore for overhauling of aircraft. It was registered on 23<sup>rd</sup> Dec 1940 as a Private Ltd Company with an authorized Capital of Rs.4 Crores.

With the dawn of Independence HAL redefined its objective to work as an instrument of the National Policy of achieving self reliance in Defence production and took up design and development of Aircraft and Aeronautical Development along with licence production. Over the years HAL grew into a high technology vertically integrated Aeronautic Industry with 19 manufacturing divisions and 10 R&D Centres spread over the length and the breadth of the country. The annual turn over of the company has been increasing continuously at steady pace and has attained a figure of 2400crores by the year 2000. The space agencies of the country are heavily relying on the production capabilities of the company for manufacturing various types of Aerospace equipment. The shift in manufacturing aircraft and helicopters for civil purpose is in the anvil.

Hindustan Aeronautics Limited is a Navaratna Defence Public Sector Unit and is presently ranked 34<sup>th</sup> among the global Defence companies. It has witnessed a steady growth over the years and achieved a turnover of over Rs.8625 Crores. The turnover during 2008-09 was Rs.10, 373 Crores.

The product portfolio emanating both from indigenous in-house design and license production, meets almost all the requirements of Indian Defence services through Fighter Aircraft, Trainer Aircraft and Helicopters.

Major products currently in the production range are SU-30MK1, Jaguar, Hawk, Dornier 228, Dhruv (Advanced Light Helicopter) Cheetal and Chetak helicopters, the Limited Series Production of Light Combat Aircraft (LCA), Intermediate Jet Trainer (IJT) The Light Combat Helicopter (LCH) which is in an advanced stage of development will be inducted into services shortly.

### **2. Core Business:**

- Design, development and production of fixed wing aircraft (fighters, trainers and transport) and helicopters, their engines, avionics and accessories.
- Life cycle customer support through maintenance, repair and overhaul of aerospace products.
- Manufacture of structures and integrated systems for space launch vehicles and satellites.

### **Exports:**

HAL has emerged as a globally competitive aerospace company. With the emerging opportunities in the aviation sector and the scope in expanding HAL's business spectrum, export thrust is expected to reach new heights progressively.

HAL has established its credibility for supply of high structural work packages to aviation majors like Airbus and Boeing Companies. Follow-on orders from Airbus & Boeing Companies reaffirm customer's confidence in HAL's export quality and reliability.

Recent contracts concluded for supply of Dhruv to Ecuador and Turkey helped HAL to attain global presence. Towards this, HAL is in the process of setting up a regional maintenance centre for Dhruv to cover after-sales logistic support in the entire Latin American region.

HAL has been participating in outsourcing programmes of renowned aerospace companies and is manufacturing structural and composite work packages of aircraft/helicopter. HAL is also exporting rolled rigs, forgings and castings for civil aircraft engine programmes. As an export initiative towards new market/product development, agreements have been concluded for supply of TPE 331 – 12 Garrett Engines, structural components and assemblies for DO – 228-212 aircraft and critical engine module components. Dedicated facilities are being set up to address these new project requirements.

HAL's expertise in software, design and analysis has also resulted in export orders from reputed aerospace companies. HAL has also made a major foray into civil aviation by joining a prestigious project for conversion of Boeing 737 – 300 to freighter version.

### **3. Mission**

“To become a globally competitive aerospace industry while working as an instrument for achieving self-reliance in design, manufacture and maintenance of aerospace defence equipment and diversify to related areas, managing the business on commercial lines in a climate of growing professional competence.”

#### **Core Values**

**Customer Satisfaction** – We are dedicated to building with our customers where we become partners in fulfilling their mission. We strive to understand our customer's needs and to deliver products and services that fulfill and exceed all their requirements.

**Commitment to Total Quality** - We are committed to continuous improvement of all our activities. We will supply products and services that conform to highest standards of Design, Manufacture, Reliability, Maintainability and Fitness for use as desired by our customers.

**Cost and Time Consciousness** – We believe that our success depends on our ability to continually reduce the cost and shorten the delivery period of our products and services. We will achieve this by eliminating waste in all activities and continuously improving all processes in every area of our work.

**Innovation and Creativity** – We believe in striving for improvement in every activity involved in our business by pursuing and encouraging risk taking, experimentation and learning at all levels within the company with a view to achieving excellence and competitiveness.

**Trust and Team Spirit** – We believe in achieving harmony in work-life through trust, transparency, co-operation and a sense of belonging. We will strive for building empowered teams to work towards achieving organizational goals.

**Respect for the individual** – We value our people. We will treat each other with dignity and respect and strive for individual growth and realization of everyone's full potential.

**Integrity** – We believe in a commitment to be honest, trustworthy, and fair in all our dealings. We commit to be loyal and devoted to our organization. We will comply with all requirements so as to ensure that our organization is always worthy of trust.

### **Citizens Charter for HAL**

This Charter is a declaration of our commitment, expectations and highest standards with total quality to achieve excellence in Design, Manufacture and Maintenance of Aerospace defence equipment, Software development for Aerospace application and Design Consultancy by managing the business on commercial lines in most fair, honest and transparent manner, with corruption free service for the benefit of the customers who are our partners in progress to ensure safe custody of public money.

(a) **Commitment**

We shall accomplish our mission with

- (i) **Absolute integrity and dedication**
- ii) Total customer satisfaction
- (iii) Honesty and transparency
- (iv) Courtesy and promptness
- (v) Fairness
- (vi) Total quality
- (vii) Innovation and creativity
- (viii) Trust and team spirit
- (ix) Respect for the individual
- (x) Humility
- (xi) Compassion
- (xii) Commit ourselves to do our duties to the best of our ability, integrity and efficiently with the prime motto of fulfilling the customers and shareholders requirements and to rise to their expectations and beyond.



(b) Our expectations

We expect you to

- (i) Be prompt and reasonable
- (ii) Be fair, honest and transparent in dealings
- (iii) Adhere to time and delivery schedules
- (iv) Extend your cooperation in all our endeavours
- (v) Provide us detailed specifications
- (vi) Acquaint with the systems, maintenance procedures, and product performances criterion
- (vii) Indicate realistic schedule and make prompt payment
- (viii) Comply with the service instructions and timely maintenance procedures

(c) Standards

We shall:-

- (i) Strictly adhere to the standards, specifications stipulated in ISO-9001.
- (ii) Ensure our products reflect the state-of-art technology at competitive prices.
- (iii) Deliver our products according to agreed delivery schedules.
- (iv) Produce goods and services of highest standards to fulfill all your requirements.
- (v) Declare that our products have gone through the strictest quality control norms and guarantee total technical life of the product.
- (vi) Assure you of the highest standard of service and are ever willing to share our knowledge and expertise with you.
- (vii) Acknowledge all correspondence within ten working days of its receipt.
- (viii) Respond to all communication within twenty working days of its receipt.
- (ix) Clear your financial dues within thirty working days from receipt of genuine and bonafide claims.
- x) Strictly adhere to the delivery schedules committed by us to you.

- (xi) Work as an instrument of self-reliance in aerospace defence equipment.
- (xii) We shall strive to attain international standards to become globally competitive. Our R&D efforts should enable us to be a strong force to reckon within the global scenario.
- (xiii) Make sincere efforts to meet our social obligations towards the community in general.
- (xiv) Always strive to maintain cordial relations with the community.

(d) Cost and Time

We shall:-

- (i) Always be sensitive to our social obligations and maintain the highest ethical standards in all our endeavours, business and economic activities.
- (ii) Always strive to achieve economy in all our products and services without compromising the quality standards.
- (iii) Always remain competitive in the market through continuous improvement in our technology.
- (iv) Always strive to reduce the cost and shorten the delivery schedules of our product and services, eliminate wasteful practices and continuously improve in all areas of work. We shall hold our capital assets in the public money in absolute trust and commit ourselves to achieve economic progress competently by adopting socially acceptable standards.
- (v) Provide international competitive prices.

(e) Corruption Free Services

We shall:-

- (i) Adopt systems and procedures which leave no scope for any corrupt practices.
- (ii) Maintain absolute confidentiality of the information/ complaints.
- (iii) Believe means and ends cannot be separated. Good ends call for good means. Good means cannot but lead to good ends. There shall be no need for any one at any time to offer bribe or any other inducement for doing business with us. We shall promptly and expeditiously enquire into all genuine and legitimate complaints of corruption against any employee of our organization.
- (iv) Always be honest and transparent and would like to be seen as honest. We shall not claim any judicial privilege for our documents

and records except in rare cases that too in the interest of national security.

- (v) Implement all the policies and directives of Central Vigilance Commission.

(f) Complaints and grievances

We shall:-

- (i) Keep our complaint and grievance redressal machinery open and receptive to you.
- (ii) Acknowledge your complaints and commit ourselves to redress them within a period of thirty working days on receipt of the complaints.
- (iii) Should you still have any complaint or grievance you may take up the matter with the designated officer heading the Public Grievance Committee at our Corporate and Divisional offices.
- (iv) Acknowledgement of grievances and disposal thereof within 30 days. In case of any complaint or grievance, please take up the matter with the officer nominated by the division for redressal of public grievance in the division which is headed by an officer of the DGM rank.
- (v) Promptly take action against the complaints by going into the genuineness and roots of the complaints and within a time frame attend to the grievances.

(g) Helpline

- (i) All our Divisions, Service Stations and Corporate Office are committed to provide all assistance in the selection, design, manufacture and maintenance of our products and services.
- (ii) We shall equip our public relations department shall render necessary information which are of common interest.
- (iii) You are also welcome to visit us at our website [www.hal-india.com](http://www.hal-india.com) for immediate help and assistance to meet your product and service requirement.
- (iv) A network of help line personnel has been identified in each Division/Complex, which will provide immediate assistance in various matters.

## **Chapter II – CONCEPT OF VIGILANCE**

***“The condition upon which God hath given liberty to man is eternal Vigilance” – John Philpot Curran.***

### **1. Introduction:**

One of the main functions of the State is maintenance of law and order, right of equality before law and to prevent abuse of power given by law and ensuring correct application of law. This can be ensured by watchfulness, caution and vigilance.

In primitive and medieval society the scope of public authority was minimum. Many of the matters that were looked after by the community have now become a function of the State. During the pre-independence days corruption was confined to lower ranks of the official machinery.

After independence, the emerging Indian Society placed emphasis on rapid industrialization leading to urbanization. This resulted in materialism, growing impersonal, importance of status of possessing money; economic power etc. added to this the decline of the real income or purchasing power especially that of the salaried classes encouraged those who had the opportunities to succumb to greed.

Due to the cumbersome and dilatory procedures and practices and the anxiety to avoid delay, has encouraged the growth of dishonest practice of speed money and it has become fairly common type of corrupt practice, particularly in matters relating to grant of license, permits, processing tenders, accepting supplies etc. the scope for corruption is greater where substantive/discretionary decisions are taken in matters like approval of works, award of contracts etc.

There are two major contributory factors for the growth of corruption, i.e. unwillingness on the part of authorities to deal drastically with corrupt and inefficient public servants and systemic loopholes in delaying and escaping prosecution and punishment.

Corruption has been defined by the Chambers Dictionary as ‘rottenness, putrid matter, impurity and bribery’. Thus the presence of corruption would affect the health of an organization. Whatever be the causes of corruption, its impact on society is devastating. Corruption distorts competition and market forces, resulting in loss to the honest entrepreneur, consumer, and the state exchequer. In a Society characterized by asymmetry of power, corruption leads to serious extortion and impoverishment of the weak and the underprivileged. It undermines the self-esteem of a citizen and leads to a vicious cycle of errant behaviour. The sense of common fate, which is so vital for a society to thrive, is eroded by corruption. Corruption strengthens the undesirable elements and weakens the worthy citizens. Corruption distorts all incentives in politics and public office. As UN Secretary General Kofi Annan pointed out “ Corruption is an insidious plague that has wide range of corrosive effects on societies, it undermines democracy and rule of law, leads to violation of human rights, distorts markets, erodes quality of life, and allows organized crime, terrorism and other threats to human societies to flourish”.

According to the Special Chapter on ‘Vigilance Management in Public Sector Enterprises’ published by the Central Vigilance Commission, PSE’s account for a public investment of Rs.2, 04,054/- Crores, spread over 240 Enterprises. The original purposes, for which these Enterprises were set up, varied and included such objectives as:

- (a) setting up of an infrastructure for rapid industrial growth;
- (b) creation of additional employment opportunities;
- (c) facilitation of balanced regional development;
- (d) generation of surplus funds for further investment for economic development;
- (e) Reduction in disparities in income and wealth through prevention of concentration of economic power in private hands.

Even though profit making was considered as the major objective of the PSEs, they were entrusted with more social responsibilities rather than profit making as the prime objective. Therefore, Public Sector Enterprises, in the hands of the Government were considered as the only means for economic development of the nation in the post-independence era in India.

It was till the time of economic reforms in the early 90s followed by the liberalization processes, the onus of economic development of the country lay with the Government. However, with these reforms and liberalizations having got shapes, they facilitated the entry of global companies, multi-national investors and other private sector companies. With these developments, the main function of economic development of the nation, till then with the government, got a tilt and the onus got a shift towards the non-governmental sectors. Thus, not only in India, but also all over the world a significant transformation in the role of non-governmental sectors i.e. private sectors in the economic development were witnessed. The basic objectives, for which the public sector undertakings were set up namely industrial growth and employment opportunities etc., were taken over slowly by the private sector. Therefore in an era of liberalization the PSUs have also started equipping themselves to be competitive and efficient.

In the changed economic scenario, the vigilance function itself has thus become complex. Questions are often raised with regard to consistency and credibility of decisions. In this context the CVC has stressed that PSUs should codify their rules, procedures, norms and systems in key areas such as purchases stores operations finance award of contracts and personnel management. Hence Vigilance is basically and admittedly a managerial function and therefore it is an integral part of the duties of an executive.

Vigilance is an important tool in the hands of the Management to increase productivity and profitability by plugging seepage in resources. Thus Vigilance acts as a profit centre for the PSU concerned. The function of the Vigilance Department is to supplement and complement the functioning of the Management and to ensure that the same is achieved by optimum honesty and obtain the maximum profit possible to the PSU. Therefore Vigilance Department in a PSU is like a watchtower or a light house to guard the interests of the PSU and not as an obstacle to their functioning.

## **2. Genesis of Vigilance in India:**

Vigilance means 'watchfulness' or to bring awareness. It is an integral part of all Government Institutions. Mere development will not be enough; its fruit should be shared equitably. Public Servants with inadequate strength of character tend to succumb to temptations by traders who are willing and capable to corrupt public servants.

Vigilance is the eyes and ears of the Management functions, to maintain a healthy organization of men and women of absolute integrity. The modern concept of integrity of public servants is that they should not use their official position to obtain any kind of financial or other advantage for themselves, their families or friends.

The clouds of corruption started gathering over India's socio-economic horizon as early as the 1950s and the Government took cognizance of its dangerous portents for future, when it set up an expert committee known as 'Committee on Prevention of Corruption', under the Chairmanship of Shri K Santhanam, a well known scholar-politician of his time to suggest measures necessary to curb corruption in Central Government services as well as in Public Undertakings. The Committee suggested that a Central Vigilance Commission headed by a Central Vigilance Commissioner be set up. The Committee's recommendations were accepted by the Government and the Central Vigilance Commission was established in February 1964. The Commission was given independent status and its functions inter alia are to advise Government in matter relating to corruption, misconduct, lack of integrity or other malpractice or misdemeanor on the part of public servants under the executive control of the Central Government.



### 3. **Central Vigilance Commission**

**Set-up:** In terms of the provisions made in the CVC's Act, the Commission consists of a Central Vigilance Commissioner [Chairperson] and not more than two Vigilance Commissioners [Members]. Presently, the Commission is a three member Commission consisting of a Central Vigilance Commissioner and two Vigilance Commissioners. The Central Vigilance Commissioner and the Vigilance Commissioners are appointed by the President by warrant under his hand and seal for a term of four years from the date on which they enter upon their offices or till they attain the age of sixty-five years, whichever is earlier.

#### **Functions and Powers of Central Vigilance Commission:**

The functions and powers of the Commission, as defined in the CVC Act, are as under:

(a) To exercise superintendence over the functioning of Delhi Special Police Establishment [DSPE] insofar as it relates to investigation of offences alleged to have been committed under the PC Act or an offence with which a public servant belonging a particular category [i.e. a member of All India Services serving in connection with the affairs of the Union; or Group 'A' officer of the Central Government; or an officer of the Central Public Sector enterprise/autonomous organization etc.] may be charged under the Code of Criminal Procedure at the same trial;

(b) To give directions to the DSPE for the purpose of discharging the responsibility of superintendence. The Commission, however, shall not exercise powers in such a manner so as to require the DSPE to investigate or dispose of any case in a particular manner;

(c) To inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the PC Act; or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

(d) To inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to the following categories of officials, wherein it is alleged that he has committed an offence under the PC Act:

- (i) Members of All India Services serving in connection with the affairs of the Union;
- (ii) Group 'A' Officers of the Central Government;
- (iii) Officers of Scale-V and above of public sector banks;
- (iv) Such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the

Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf, provided that till such time a notification is issued, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in this clause.

- (e) To review the progress of applications pending with the competent authorities for sanction of prosecution under the PC Act;
- (f) To review the progress of investigations conducted by the DSPE into offences alleged to have been committed under the PC Act;
- (g) To tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, the said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise; and
- (h) To exercise superintendence over the vigilance administration of various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.

Clause 24 of the CVC Act empowers the Commission to discharge the functions entrusted to it vide Government of India's Resolution dated 11.02.1964, insofar as those functions are not inconsistent with the provisions of the Act. Thus, the Commission will continue to perform following functions in addition to the functions enumerated above.

(a) Appointment of CVOs:

The Commission would convey approval for appointment of CVOs in terms of para 6 of the Resolution, which laid down that the Chief Vigilance Officers will be appointed in consultation with the Commission and no person whose appointment as the CVO is objected to by the Commission will be so appointed.

(b) Writing ACRs of CVOs:

The Central Vigilance Commissioner would continue to assess the work of the CVO, which would be recorded in the character rolls of the officer concerned in terms of para 7 of the Resolution.

(c) Commission's advice in Prosecution cases:

In cases in which the CBI considers that a prosecution should be launched and the sanction for such prosecution is required under any law to be issued in the name of the President, the Commission will tender advice, after considering the comments received from the concerned Ministry/Department / Undertaking, as to whether or not prosecution should be sanctioned.

(d) Resolving difference of opinion between the CBI and the administrative authorities:

In cases where an authority other than the President is competent to sanction prosecution and the authority does not propose to accord the sanction sought for by the CBI, the case will be reported to the Commission and the authority will take further action after considering the Commission's advice. In cases recommended by the CBI for departmental action against such employees as do not come within the normal advisory jurisdiction of the Commission, the Commission will continue to resolve the difference of opinion, if any, between the CBI and the competent administrative authorities as to the course of action to be taken.

(e) Entrusting cases to CDIs:

The Commission has the power to require that the oral inquiry in any departmental proceedings, except the petty cases, to be entrusted to one of the Commissioners for Departmental Inquiries borne on its strength; to examine the report of the CDI; and to forward it to the disciplinary authority with its advice for further action.

(f) Advising on procedural aspects:

If it appears that the procedure or practice is such as affords scope or facilities for corruption or misconduct, the Commission may advise that such procedure or practice be appropriately changed, or changed in a particular manner.

(g) Review of Procedure and Practices:

The Commission may initiate at such intervals as it considers suitable review of procedures and practices of administration insofar as they relate to maintenance of integrity in administration.

(h) Collecting information:

The Commission may collect such statistics and other information as may be necessary, including information about action taken on its recommendations.

(i) Action against persons making false complaints:

The Commission may take initiative in prosecuting persons who are found to have made false complaints of corruption or lack of integrity against public servants.

(j) Jurisdiction:

Clause 8(1) (g) of the CVC Act requires the Commission to tender advice to the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government on such matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the Central Government or otherwise. Thus, the types of cases to be referred to the Commission for advice, and also the status of officers against

whom the cases would be referred to the Commission, may require a notification by the Government in the rules to be framed under the Act or through administrative instructions on the recommendation made by the Commission.

### **CTE Organization:**

The Committee on Prevention of Corruption had recommended that the **Chief Technical Examiner's Organization** [hereinafter referred as CTEO], which was created in 1957, in the Ministry of Works, Housing & Supply for the purpose of conducting a concurrent technical audit of works of the Central Public Works Department with a view to securing economy in expenditure and better technical and financial control, should be transferred to the Central Vigilance Commission so that its services may be easily available to the Central Bureau of Investigation or in inquiries made under the direction of the Central Vigilance Commission. The recommendation was accepted by the Government of India and the Chief Technical Examiner's Organization now functions under the administrative control of the Central Vigilance Commission as its technical wing, carrying out inspection of civil, electrical and horticulture works of the Central Government departments, public sector undertakings/enterprises of the Government of India and central financial institutions/banks etc. The jurisdiction of the organization is coextensive with that of the Commission. The works or contracts for intensive examination are selected from the details furnished by the CVO in the quarterly progress reports sent to the CTEO. The intensive examination of works carried out by the organizations helps in detecting cases related to execution of work with substandard materials, avoidable and/or ostentatious expenditure, and undue favours or overpayment to contractors etc. At present, information in respect of civil works in progress having the tender value exceeding Rupees One Crore, electrical/mechanical/ electronic works exceeding Rupee fifteen lakhs, horticulture works more than Rupee two lakhs and store purchase contracts valuing more than Rupee two crores are required to be sent by the CVOs of all organizations. However, the Chief Vigilance Officers are free to recommend other cases also, while submitting the returns for examination of a particular work, if they suspect any serious irregularities having been committed.

Out of the returns furnished by the Chief Vigilance Officer, the Chief Technical Examiners select certain works for intensive examination and intimate these to the CVOs concerned. The CVO is expected to make available all relevant documents and such other records as may be necessary, to the CTE's team examining the works. After intensive examination of a work is carried out by the CTE's Organization, an inspection report is sent to the CVO. The CVO should obtain comments of various officers at the site of work or in the office at the appropriate level, and furnish these comments to the CTE with his own comments. In case the CTE recommends investigation of any matter from a vigilance angle, such a communication should be treated as a complaint and dealt with appropriately. The investigation report in such cases should be referred to the Commission for advice even if no vigilance angle emerges on investigation.

The Chief Technical Examiner's Organization constitutes the technical wing of the CVC and is manned by two engineers of the rank of Chief Engineers (designated as Chief Technical Examiners) with supporting engineering staff. The main functions assigned to this organization are:-

- Technical audit of construction works of Government organizations from Vigilance angle.
- Investigation of specific cases of complaints relating to construction works;

- Extension of assistance to CBI in their investigations involving technical matters and for evaluation of properties in Delhi; and
- Tendering of advice/assistance to the Commission and Chief Vigilance Officers in Vigilance cases involving technical matters.

### **CDIs Unit**

To assist the disciplinary authorities in the expeditious disposal of oral inquiries, the Ministry of Home Affairs appointed Officers on Special Duty [later redesignated as Commissioners for Departmental Inquiries] on the strength of the Administrative Vigilance Division. On the recommendation of the Committee on Prevention of Corruption, the Commissioners for Departmental Inquiries were transferred to work under the control of the Central Vigilance Commission.

4. **Vigilance Angle:**

Vigilance angle is obvious in the following acts:

- (i) **Demanding and/or accepting gratification other than legal remuneration in respect of an official act or for using his influence with any other official.**
- (ii) **Obtaining valuable thing, without consideration or with inadequate consideration from a person with whom he has or likely to have official dealings or his subordinates have official dealings or where he can exert influence.**
- (iii) **Obtaining for himself or for any other person any valuable thing or pecuniary advantage by corrupt or illegal means or by abusing his position as a public servant.**
- (iv) **Possession of assets disproportionate to his known sources of income.**
- (v) **Cases of misappropriation, forgery or cheating or other similar criminal offences.**

2(a) \*\* There are, however, other irregularities where circumstances will have to be weighed carefully to take a view whether the officer's integrity is in doubt. Gross or willful negligence; recklessness in decision making; blatant violations of systems and procedures; exercise of discretion in excess, where no ostensible public interest is evident; failure to keep the controlling authority/ superiors informed in time – these are some of the irregularities where the disciplinary authority with the help of the CVO should carefully study the case and weigh the circumstances to come to a conclusion whether there is reasonable ground to doubt the integrity of the officer concerned.

2(b) Any undue/unjustified delay in the disposal of a case, perceived after considering all relevant factors, would reinforce a conclusion as to the presence of vigilance angle in a case.

The raison d'être of vigilance activity is not to reduce but to enhance the level of managerial efficiency and effectiveness in the organization. Commercial risk taking forms part of business. Therefore, every loss caused to the organization, either in pecuniary or non-pecuniary terms, need not necessarily become the subject matter of a vigilance inquiry. Thus, whether a person of common prudence, working within the ambit of the prescribed rules, regulations and instructions, would have taken the decision in the prevailing circumstances in the commercial/operational interests of the organization is one possible criterion for determining the bona fides of the case. A positive response to this question may indicate the existence of bona- fides. A negative reply, on the other hand, might indicate their absence.

Absence of vigilance angle in various acts of omission and commission does not mean that the concerned official is not liable to face the consequences of his actions. All such lapses not attracting vigilance angle would, indeed, have to be dealt with appropriately as per the disciplinary procedure under the service rules.

**(CVC Office Order No.74/41/2005 dated 21<sup>st</sup> Dec 2005)**



Matters pertaining to disciplinary issues like proxy attendance, long absenteeism, and disorderly behaviour do not come under the purview of Vigilance angle and needs to be handled by the concerned Administrative Authority as per the extant rules of the Company.

It is therefore incumbent on part of all the Vigilance Officials to clearly understand the scope of Vigilance angle so that only those issues bearing **clear cut** Vigilance angle are taken up during vigilance work, lest the resources and time is spent in unproductive and non-core area defeating the scheme and purpose of vigilance in the Company.

**Association of Chief Vigilance Officer with work of Departmental Duties handling sensitive matters**

Vide Office Memorandum No.321/77/91-AVD.III dated 3<sup>rd</sup> June 1992 Department of Personnel & Training has decided that vigilance functionaries should not be party to processing and decision making processes or in other similar administrative transactions of such nature which are likely to have a clear vigilance sensitivity.

## **5. Central Bureau of Investigation**

The Central Bureau of Investigation traces its origin to the Special Police Establishment (SPE) (Hindi: *Vishesh Police Sansthan*) which was set up in 1941 by the Government of India. The functions of the SPE then were to investigate cases of bribery and corruption in transactions with the War & Supply Deptt. of India during World War II. Superintendence of the SPE was vested with the War Department. Even after the end of the War, the need for a Central Government agency to investigate cases of bribery and corruption by Central Government employees was felt. The Delhi Special Police Establishment Act was therefore brought into force in 1946. This Act transferred the superintendence of the SPE to the Home Department and its functions were enlarged to cover all Departments of the Govt. of India. The jurisdiction of the SPE extended to all the Union Territories and could be extended also to the States with the consent of the State Government concerned.

As the CBI over the years established a reputation of being India's premier investigative agency with adequate resources to deal with complicated cases, demands were made on it to make it take up investigation of more cases of conventional crime such as murder, kidnapping, terrorism etc. Apart from this, the Supreme Court and even the High Courts of the Country also started entrusting such cases for investigation to the CBI on petitions filed by aggrieved parties. Taking into account the fact that several cases falling under this category were being taken up for investigation by the CBI, it was found expedient to entrust such cases to the Branches having local jurisdiction.

It was therefore decided by Govt. of India in 1987 to constitute two investigation Divisions in CBI, namely Anti-Corruption Division and Special Crimes Division, the latter dealing with cases of conventional crime, besides economic offences. The CBI is a Central Subject under the Constitution of India, meaning that it reports to the Indian Government and not to the individual States.

### **Role and functions**

In view of the increasing corruption in civil services, the Government of India set up a committee headed by Shri K Santhanam, the then member of Parliament to study the circumstances leading into the increase in the corruption and make suitable recommendations for curbing it. The committee recommended constitution of The Central Bureau of Investigation on the pattern of Federal Bureau of Investigation of United States of America. Thus Central Bureau of Investigation was constituted under the Government of India, Ministry of Home Affairs Resolution No.4/31/61-I dated 1<sup>st</sup> April 1963. The investigation work is done through SPE Wing of the CBI which derives its police powers from the Delhi SPE Act 1946 to inquire and investigate into certain specified offences or classes of offences pertaining to corruption and other kinds of malpractices involving public servants. The Director CBI also functions as the IGP in charge of SPE under section 4(2) of Delhi SPE Act 1946.

### **Anti-Corruption Division**

The Anti-corruption Division investigates all cases registered under the PC Act and sections 161 to 165 - A and 168 IPC. The Anti corruption Division investigates cases against Public Servants in the PSU under the control of Central Government and cases against the Public Servants of State Governments entrusted to CBI by the State Governments. The Special Crimes Division handles cases relating to national security including terrorism and espionage, conventional crimes, human rights crimes and cases

relating to forgery and cheating. The Economic Crimes Division deals with Bank frauds, narcotics, antiques and counterfeit currency, etc.

Every year the organization prepares a programme for Vigilance and Anti Corruption work. The object is to produce a noticeable impact of the problem in a short time. CBI collects intelligence regarding corrupt public servants. All anti-corruption branches are required to collect intelligence on the basis of intelligence collected internally or references having been received from the Ministries or CVC or from other reliable sources, CBI registers preliminary enquiry (PE) and regular cases (RC) against corrupt public servants. CBI essentially handles three types of anti-corruption cases in the framework of PC Act 1988.

- (a) Demand and acceptance of bribe money.
- (b) Showing undue favours by a public servant for consideration.
- (c) Possession of disproportionate assets.

Besides, it takes up cases relating to Bank Securities, frauds and the criminal breach of trust by the public servants.

#### **Liaison between CBI and Vigilance Dept officials**

The need for close liaison and co-operation between the Vigilance Department and the CBI, during the course of an inquiry and investigation and the processing of individual cases, hardly needs to be emphasized. Both, the CBI. and the Chief Vigilance Officer, receive information about the activities of the public servants from diverse sources. As far as possible, the information could be crosschecked at appropriate intervals to keep officers of both the wings fully apprised with the latest developments.

The Superintendent of Police of CBI Branch frequently calls on the Head of the Department/Office etc., and discusses personally matters of mutual interest, particularly those arising from enquiries and investigations. Periodical meetings between the Chief Vigilance Officers and the Officers of the Central Bureau of Investigation helps to a great extent in avoiding unnecessary paper work and in eliminating unnecessary delay at various stages of processing cases. Such meetings are held once a quarter or more frequently. The Central Bureau of Investigation takes up the cases for investigation coming to their knowledge from many sources, such as information collected from their own sources; that received from members of public or individual public servants or public organizations; or cases referred to them by the administrative authorities or the Central Vigilance Commission. The administrative authorities and the individual public servants are expected to extend full cooperation to the CBI during the course of investigation.

The Inspector General, CBI and his staff are authorized to inspect all kinds of official records at all stages of investigation. The Heads of Departments/Offices etc. have to ensure that the Superintendent of Police of the CBI, or his authorized representatives, are given full cooperation and facilities to scrutinize all relevant records during investigation, whether preliminary or regular. If the C.B.I. wishes to check the veracity of information in their possession from the official records, even before registration of a P.E. or R.C., they may be allowed to see the records on receipt of a request from the S.P., CBI.

Investigations are often held up or delayed on account of reluctance or delay on the part of departmental authorities to make the records available for various reasons. Sometimes, departmental authorities express their inability to release the records without the prior permission of the superior authority or the Special Police Establishment is requested to take photostat or attested copies of documents without realizing that the CBI necessarily require the original records for purpose of investigation, as the authenticity of attested or photostat copies could be contested by the delinquent officials, thereby hampering the progress of investigation. In asking for original documents, particularly those forming part of current files, the CBI exercises due consideration so as to ensure that day to day work is not impeded. The Vigilance Dept officials may thus ensure that the documents asked for by the CBI are made available to them with the least possible delay. Where necessary, the departmental authorities may keep attested or photostat copies of the records for meeting urgent departmental needs or for disposing of any action that may be pending on the part of the Department, without prejudice to the investigation being carried out by the CBI.

The records required by the CBI should be made available to them ordinarily within a fortnight, positively within a month from the date of receipt of the request. If, for any special reasons, it is not possible to hand over the records within a month, the matter should be brought to the notice of the Superintendent of Police of the Branch concerned, by the authority in possession of the records, pointing out the reasons for not making available the records within the specified period; and also to the notice of the Chief Vigilance Officer of the administrative Ministry concerned for such further direction as the Chief Vigilance Officer might give.

The request of the C.B.I. for information relating to pay and allowances drawn by the public servants over a certain period, in cases where such public servants are alleged to have possessed disproportionate assets, should be furnished to them within a month of receipt of requisition from the C.B.I. In cases, where it is not possible to supply this information to the Central Bureau of Investigation within the specified period, the position may be suitably indicated to the Central Bureau of Investigation and simultaneously necessary steps taken to obtain and furnish the particulars to them as expeditiously as possible. In the case of officers having served in more than one department/organization during the period under review, the Central Bureau of Investigation may address all the administrative authorities concerned simultaneously for furnishing the required information for the relevant period(s). Copies of such communications is required to be endorsed to the Chief Vigilance Officer of the Ministry concerned for furnishing information about honoraria, etc., if any, received by the suspect/delinquent officer(s).

Thus, all Vigilance Officials will render full cooperation to CBI under the supervision of Chief Vigilance Officer.



### **Chapter – III – VIGILANCE IN HAL**

***“But democracy isn’t a state of perfection. It has to be improved and that means constant Vigilance” – Antonio Talucchi***

#### **1. Establishment and set up of Vigilance in HAL**

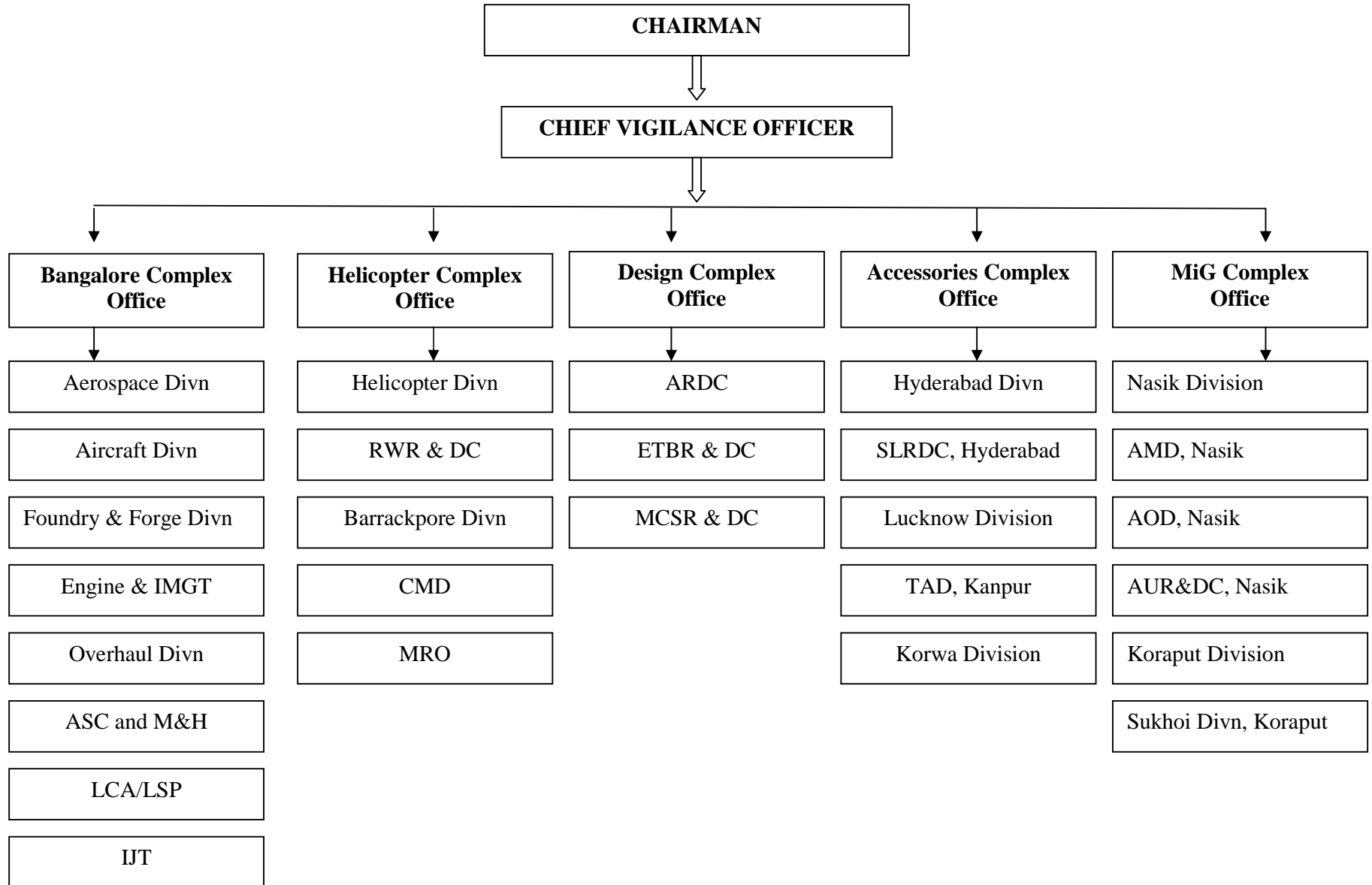
The Vigilance scheme of HAL was drawn on the model recommended by the Central Bureau of Investigation. The Board of Directors of HAL approved the scheme vide item No.19 in the 21<sup>st</sup> Meeting of the Board of Directors dated 26<sup>th</sup> February 1967 held in Bangalore.

Ever since its inception, the Vigilance Department co-existed with Security Department and was generally identified as S&V Dept. Based on the outcome of the Regional Workshop of Chief Vigilance Officers held in Bangalore on 10<sup>th</sup> and 11<sup>th</sup> December 1997, action was taken by HAL Management for bifurcation of Security and Vigilance Department in the Company, with a view to strengthen and focus only on anti-corruption activities.

With a view to tackle corruption and making the functioning of investigating and Vigilance agencies more independent, effective, credible and prompt, the Department of Public Enterprises (Govt. of India), vide their letter No 5(7)/98(GL-009) GM dated 25<sup>th</sup> September 1998, has recommended model vigilance set-up for the PSE’S as a broad guideline to be adopted with such modifications as may be appropriate in the case of an individual undertaking. Based on the recommendations made in the above letter of DPE the vigilance setup in HAL was recognized and the present set-up established.



## VIGILANCE SET-UP IN HAL



**With a view to codify all the work processes of Vigilance Department and to adopt and execute high standards of professionalism in every sphere of anti-corruption activity, Vigilance Department of HAL has adopted Quality Policy and Quality Objectives. Vigilance Department was accredited with ISO 9001-2000 Certification in the year 2003 which is being reviewed periodically by the Certifying Agencies for continual improvement and commitment to Quality Standards. Vigilance Department is now accredited with ISO-9001-2008.**

### **Quality Policy**

POLICY of the Vigilance Department of Hindustan Aeronautics Limited is to make an endeavour to achieve customer's total satisfaction through result oriented Quality Anti-Corruption Services with Trust, Integrity and Efficiency.

The vigilance department will consistently strive to exceed the customer's expectations through continual improvements by meeting all applicable Regulatory requirements.

### **Quality Objectives**

1. To meet customer needs and expectations by attending to all anti-corruption issues judiciously and expeditiously in a climate of absolute professional competence and honesty by meeting all applicable regulatory requirements.
2. To sustain and maintain the highest standard of quality management system in anti-corruption services in conformity with the policies/guidelines of Government of India, CBI, CVC and HAL, with Trust Integrity Efficiency and timely completion of tasks.
3. To critically examine various systems and procedures of the Company to ensure their conformity to policies and norms of Government of India CVC and HAL with a view to bring in transparency and expeditiousness in adherence by all employees.
4. To strive for continual improvements to achieve ultimate goal of Total Quality Management in Anti-Corruption Services.

The Department has Quality Manual in two Parts, viz; Part – I contains scope, QMS, Management Responsibility, Resources Management etc. Part – II contains the detailed Procedures and Work Instructions.

All the Vigilance Officers of the Department are adequately trained to understand, implement and guide the subordinate staff in the implementation of the Quality Standards as per the laid down procedures. They are also trained as Qualified Internal Auditors to carry out Internal Audit periodically of each and every Complex /Division Vigilance Unit to ensure that the Quality Management Procedures are properly implemented.

## **2. Charter of Duties of Vigilance functionaries**

### **(a) Duties of Chief Vigilance Officer**

- (i) To act as a link between HAL and Central Vigilance Commission on the one hand and HAL and Ministry of Defence on the other. To investigate and report on the complaints forwarded by the Central Vigilance Commission/ Ministry against officials of HAL. Also to assist/advise the Chairman HAL, in combating corruption.
- (ii) To ensure that assessments are made of the scope and modes of corruption and malpractices in the HAL and to suggest measures to check them.
- (iii) To examine rules and procedures/ to remove loopholes and defects with a view to eliminate or minimize factors, which provide opportunities for corruption and malpractices.
- (iv) To plan and enforce regular inspections, surprise checks for detecting failures in quality or speed of work, which be indicative of the existence of corruption or malpractice.
- (v) To scrutinize all complaints and information received in the Corporate Office having vigilance angle and to arrange for adequate enquiries to be made and action to be taken on the reports received.
- (vi) To refer to Central Bureau of Investigation in consultation with Chairman those complaints and information which require enquiries by them and to ensure that Central Bureau of Investigation is given all the assistance in all enquiries by way of arranging production of records files, etc.
- (vii) Maintain proper surveillance on officers of doubtful integrity and officers who are on the Agreed List.
- (viii) Ensure prompt observance of Conduct Rules regarding integrity covering
  - (a) statements of assets and acquisitions
  - (b) gifts
  - (c) relatives employed in private firms or doing private business
  - (d) benami transactions.
- (ix) To ensure speedy processing of vigilance cases at all stages. About cases requiring consultation with CVC, a decision whether the case has vigilance angle shall in every case be taken by CVO.
- (x) To ensure that the competent disciplinary authorities do not adopt a dilatory or lax attitude in processing vigilance cases, thus knowingly or otherwise helping the suspect, particularly in case of those officers/workmen who are due to retire.

- (xi) To scrutinize final orders passed by the disciplinary authority with a view to see whether a case for review exists or not.
- (xii) To ensure that charge sheet, statement of imputations, list of witnesses and documents, etc are carefully prepared and to ensure that the time period from the date of serving of charge sheet in a disciplinary case to the submission of the report by the enquiry officer should ordinarily not exceed six months.
- (xiii) To collect and maintain, for the information of Chairman statistics and other particulars about vigilance and anti-corruption work done in various units of HAL.
- (xiv) To place before the Chairman a list of Executives having a bad reputation or a dubious past for suitable action.
- (xv) To supervise timely submission of various Reports & Returns those need to be submitted to CVC/Ministry/CBI.
- (xvi) To ensure adequate training in anti-corruption measures are imparted to the officers and staff of the Department.
- (xvii) To draw up a plan for the manpower requirements of the Vigilance Department and ensure that vacancies are filled up from time to time at various levels.
- (xviii) Periodic interaction with SP, CBI/ACB of the concerned Branch for anti-corruption work.
- (xix) The CVO will assess the performance of the Vigilance officers in the capacity of Initiating Authority/Reviewing Authority as the case may be and would be responsible for the general administration (including detailing for training, transfer/job rotation, promotion, sanction of leave, disciplinary action etc) of the Vigilance officers and workmen in the Divisions and Corporate Office.
- (xx) The CVO is vested with the financial powers within the sanctioned budget for the Vigilance Department and administrative authority equivalent to that of the Functional Director of HAL for the smooth functioning of the Vigilance Department.

**(b) Duties of DGM/Chief Manager (Vigilance) at Corporate Office**

- (i) He will assist CVO for ensuring implementation of Corporate Policies and CVC on the vigilance matters in the Company.
- (ii) He will be responsible for collection/collation of all vigilance reports & returns from all the divisions including Corporate Office and further onward submission to the Ministry.

- (iii) He will assist the CVO in the training of all the officers of the vigilance department including nominating them on Govt. and privately sponsored training programmes.
- (iv) He will attend/ depute officers of Corporate Office to attend the vigilance committee meetings in the divisions based on the directions of the CVO.
- (v) He will follow up the cases pending for disciplinary actions in the divisions with the divisional HOD's.
- (vi) He will assist CVO in liaising with CBI for expediting the pending cases.
- (vii) He will carry out any other task given by the CVO.

**(c) Duties of Chief Manager/Senior Manager (Technical - Vigilance) at Corporate Office**

- (i) He will advise the CVO on all vigilance matters involving technical Works and Contracts.
- (ii) Give expert opinion related to technical works and contracts on investigation reports.
- (iii) Scrutinize all reports pertaining to CVC (CTE'S Organization) on works contracts undertaken by the Divisions for onward submission to CVC.
- (iv) Scrutinize observations /actions recommended by the CTE on examination of works contracts of all Divisions of HAL. Coordinate replies by the Engineering Works Department of all Divisions for satisfactory settlement of observations.
- (v) Advice CVO on amendment of Works and Contracts procedure from time to time following instructions of CVC/CTE and other Govt. Departments, including monitoring of revision of Works and Contracts Manual.
- (vi) Carry out inspection of selected works contracts of all divisions of HAL and recommend actions on irregularities in coordination with Vigilance HODs in the Divisions.
- (vii) Study Contracts from Vigilance angle and other systems for works Engineering Department and advice CVO for amendments to existing procedures/ systems and issuance of instructions.
- (viii) He will be responsible for anti-corruption work including investigations of Corporate Office and Management Academy and study of investigation reports received from Divisions and take action as per laid down rules for disciplinary action.

(ix) He will carry out any other task given to him by CVO.

**(d) Duties of Manager /Deputy Manager (Vigilance) at Corporate Office**

(i) He will assist the CVO in the preparation of Reports & Returns to be forwarded to the Ministry and C V C.

(ii) He will scrutinize all the reports & returns received from the Divisions/ Complexes.

(iii) He will analyze and process all the investigations reports of the divisions and review disciplinary proceedings when called for.

(iv) He will be responsible for Anti Corruption work of Corporate Office/ HAL Management Academy.

(v) He will carry out any other task given to him.

**(e) Duties of Deputy Manager (Vigilance) / Vigilance Officer at Corporate Office**

(i) He will be responsible for compilation of the articles for Department Publications/Magazines.

(ii) He will assist the Manager (Vigilance) in Anti Corruption work of Corporate Office and HAL Management Academy.

(iii) He assist the Manager (Vigilance) to analyze and process all the investigations reports of the divisions and review disciplinary proceedings when called for.

(iv) He will be responsible for ISO related work.

(v) He will be responsible for timely compilation and onward transmission of Reports & Returns.

(vi) He will ensure the discipline of the Vigilance staff under him for the time being.

(vii) He will carry out any other task given to him.

**(f) Duties of Chief Manager/Senior Manager (Vigilance) at Complexes**

(i) He will be responsible for all the Vigilance matters of the Complex.

(ii) As Head of Vigilance Dept at the Complex level, he will maintain and supervise the functioning and discipline of HODs positioned in the Divisions under the respective Complex.

(iii) As HOD of Complex he will report to CVO.

- (iv) He will be responsible for move of subordinate staff to cover Liaison office under jurisdiction for vigilance inspection and to other stations for vigilance investigation.
- (v) He will supervise and analyze all reports and returns and investigation reports submitted by HODs of Divisions and forward the same to the CVO with his comments/recommendations if any.
- (vi) He will participate in the Quarterly Vigilance Committee Meetings of the Divisions.
- (vii) He will scrutinize and analyze those complaints specific to the Complex and information containing allegations of corruption and malpractice and investigate the matter and forward a report to the CVO.
- (viii) He will maintain liaison with various law enforcement agencies including Anti Corruption Branch of the CBI in anti-corruption work.
- (ix) He will liaise with Complex Head of HR Department in ensuring speedy/timely disposal of Vigilance Cases.
- (x) He will issue Vigilance Clearance in respect of officers in Grade – IV to VI of officers from Division and his own Complex.
- (xi). He will ensure that HODs in the Division carry out tasks as enumerated in the Action Plan.
- (xii) He will carry out other duties entrusted to him by the CVO.

**(g) Duties of Heads of Departments of Vigilance Department in the Divisions**

- (i) He will be responsible for all the Vigilance matters of the Division
- (ii) He will maintain and supervise the functioning and discipline of his Department.
- (iii) As Divisional Head he will report to Complex Head of Vigilance.
- (iv) He will scrutinize and analyze all complaints and information containing allegations of corruption and malpractices and investigate the matter and forward a report to the CVO without any delay.
- (v) He will examine selected works Contracts executed by the Works Engineering Department for determining irregularities in tendering process, quality of work and payments, in coordination with an experienced and qualified Engineer of the required discipline i.e. Civil/Electrical/Mechanical, etc from within the Division or with the technical officer (Vigilance) of the Corporate Office.

- (vi) He will refer to the CBI with approval of the CVO those complaints or information that require enquiries to be made by the CBI and assist them in all their enquiries.
- (vii) He will liaise with the HR Dept regarding the progress of departmental enquiries in vigilance cases.
- (viii) He will report instances where officers acquire assets disproportionate to their known sources of income or in any other corrupt practices.
- (ix) He will be responsible for the timely submission of reports & returns.
- (x) He will monitor the activities of the subjects placed in the ODI list.
- (xi) He will recommend cases for inclusion in the Agreed List.
- (xii) He will maintain effective vigilance informant network in the Division.
- (xiii) He will maintain regular liaison with CBI and other investigation agencies to provide effective coverage in Anti- Corruption work under the supervision of Complex Head.
- (xiv) He will organize regular Quarterly Vigilance Committee meetings in the Division.
- (xv) He will be responsible for vigilance investigations in the Division.
- (xvi) He will monitor all pending Vigilance related Departmental Enquiries and take suitable measures for expeditious disposal.
- (xvii) He will ensure that Preventive Vigilance including action plan is carried out in a most sincere and systematic manner.
- (xviii) He will be responsible for the general administration of the Dept and safe custody of the assets of the Department under his custody for the time being.
- (xix) He will carry out other duties entrusted to him by the Complex Head/CVO.

**Duties of Officers assisting the HODs in Divisions**

- (i) He will be responsible to HOD Vigilance for all vigilance matters.
- (ii) He will maintain the imprest account and furnish the details as per the format vide letter No HAL/CO/VIG/47 /2000/1221 dated 29-11-2000
- (iii) He will investigate Vigilance cases suo-moto and as directed by the HOD (V).
- (iv) He will examine selected Works & Contracts executed by the Works Engineering Department for determining irregularities in tendering



process, quality of work and payments, in coordination with an experienced and qualified Engineer of the required discipline i.e. Civil/Electrical/Mechanical, etc from within the Division or with the Technical Officer (Vigilance) of the Corporate Office

- (v) He will conduct surprise inspections and also arrange for similar inspections and checks by his assistants.
- (vi) He will create effective vigilance informant network in his area of responsibility.
- (vii) He will assist the HOD (V) in the work done by the Vigilance Staff.
- (viii) He will carry out other duties as entrusted to him by the HOD.

#### **Duties of Vigilance Staff in Corporate Office**

- (i) They will be responsible to Vigilance Officer/Assistant Vigilance Officer as the case may be in all-official matters.
- (ii) They will collect information on corrupt activities of the employees of Corporate Office/HMA.
- (iii) They will assist concerned HOD in investigation of Vigilance Cases.
- (iv) They will assist the concerned Vigilance Officer in investigation of vigilance cases.
- (v) They will be responsible for the efficient maintenance of official records and documentation and the proper maintenance of vehicles of the Department.
- (vi) They will carry out all vigilance checks/ inspections as instructed.
- (vii) They will be responsible for conducting surveillance.
- (viii) They will be fully conversant with the office procedures, typing, and computer operation.
- (ix) They will be proficient in driving of all types of Vehicles held in the department.
- (x) They will assist the Vigilance Officer in compilation and preparation of all Reports and Returns in a time bound manner.
- (xi) They will maintain daily activity register/roster of the vigilance staff, showing duties carried out during the day and put up to their superior daily.
- (xii) They will ensure proper house keeping and security of the office premises and files in their custody for the time being.

- (xiii) They will carry out any other tasks as assigned by the officer concerned.

**Duties of Vigilance Staff in Complex/Divisions**

- (i) They will be responsible to HOD Vigilance in all official matters.
- (ii) They will collect information on corrupt activities of the employees of the Complex/Division.
- (iii) They will assist concerned HOD in investigation of Vigilance Cases.
- (iv) They will maintain discipline in the discharge of their duties.
- (v) They will be responsible for the efficient maintenance of official records and documentation.
- (vi) They will carry out all vigilance checks/ inspections as instructed.
- (vii) They will be responsible for conducting surveillance.
- (viii) They will be fully conversant with the office procedures, typing, and computer operation.
- (ix) They will be proficient in driving of all types of Vehicles held in the department.
- (x) They will maintain daily activity register/roster of the vigilance staff, showing duties carried out during the day and put up to their superior daily.
- (xi) They will be responsible for the proper housekeeping and safety of the office premises and the security of its assets.
- (xii) They will assist the HOD in all general administration work.
- (xiii) They will carry out any other task as assigned by the HOD.

### **3. Authority for carrying out Vigilance Work in HAL**

The Chief Vigilance Officer and the Vigilance Officials (posted in the Complex/Division) are the extended arms of the Central Vigilance Commission and are duty bound to implement the anti-corruption measures of the Government in HAL, completely and effectively. In order to achieve the above objectives all Vigilance Officials are duly empowered by the Chief Vigilance Officer with the following authority:-

- (a) All vigilance officials will have unrestricted access (including their official vehicles) to any location in the factories/departments/hangars/ Complex/Divisions/Office and their premises, Estate including buildings/ shops/establishments/welfare units/township/residential Quarters/sports & entertainment amenities, ancillary units/liaison offices/RM Offices/Guest Houses etc., at any time for carrying out Vigilance work.
- (b) All Vigilance Officials are empowered to seize records/ documents/ files/information (contained in any electronic storage device in any form)/ articles, for the purpose of vigilance investigation;
- (c) All Vigilance Officials are empowered to examine employees of HAL for vigilance enquiries/investigation, record their statement, obtain their signature on such statements/obtain their signature on the samples etc.
- (d) All Vigilance Officials are empowered to conduct surprise/random / routine checks/inspections etc of the points/places etc in any Department/ Office/Hangar/Premises/Estate/Township including shops / establishments / residential quarters etc as part of either Preventive or Punitive Vigilance activity.
- (e) All Vigilance Officials are empowered to collect/obtain samples of materials (in any form) for the purpose of testing etc during the course of inspection of civil/mechanical/electrical works and obtain photographs if required of the articles/points/places in question.
- (f) All Vigilance Officials are empowered to draw inspection/surprise/ routine check report at the points/places of check and to obtain signature of the concerned in-charge, user/operator/custodian etc. as a token of confirmation that the same was carried out in their presence and that they are party to the details recorded.
- (g) All Vigilance Officials and their vehicles are empowered for unrestricted movement (entry and exit) at their place of work at any time for the purpose of vigilance activities.
- (h) All Vigilance Officials are empowered to meet their sources, or any officials of government/non-government/private/public etc. for vigilance verification/work or for liaison.

- (i) All Vigilance Officials are empowered (under the supervision of CVO) for carrying out detective/surveillance as part of Vigilance work.

A photo identity card summarizing the above will be issued to each and every Vigilance Official. Non cooperation/obstruction to Vigilance Officials in discharge of their duties by any employee of the Company would be deemed as misconduct and liable for disciplinary action as per the Rules of the Company.

4. **Protection to Vigilance Officials for acts done in good faith**

The Vigilance functionaries conduct enquiries/investigations on behalf of the CVO/Management. During the course of investigations/enquiries to unearth, the facts of the case or which is warranted to bring the case to a logical conclusion the acts of the functionary should not be treated prejudicial to good order and discipline or malafide intention. The acts of the Vigilance functionaries are to be treated as in good faith and in the best interests of the Company and no Disciplinary Action should be initiated against the Vigilance Functionary. Whenever disciplinary action against Vigilance Officer is contemplated, authority to sanction is the Chairman through CVO and in case of Vigilance Workmen; CVO will be the sanctioning authority.

**Functional and Administrative control over Vigilance Officials:**

All matters pertaining to functional and administrative control over vigilance officials like, recruitment, induction, grant of leave, training, transfer/job rotation, promotion, movement/temporary duty/forwarding of applications/writing of Performance Appraisal Reports/Disciplinary action etc. would be exercised by the Chief Vigilance Officer.

5. **Administrative facilities to be extended to Vigilance Officials:**

Residential Accommodation

Vigilance officers and staff will be provided with accommodation within the townships of HAL on out of turn basis. The officers will be provided with one-step higher accommodation than their entitlement.

Transport

The Vigilance departments of the Divisions / Complexes will be provided with one Gypsy or an equivalent vehicle and 2 x Motor cycles/ Scooters. The vehicles will be used for investigations and inquiries and for day to day vigilance work.

Telephones

A P&T line with STD facility will be provided to the Head of the Vigilance Department of the Divisions / Complexes both at Office as well as Residence. HOD will be provided Fax machine connected to the office telephone (P&T line). Provision of telephones to Vigilance Officials other than HOD's will be decided and approved by CVO based on operational requirements.

Imprest Amount

HOD's in Divisions /Complexes are authorized imprest money as per the limits sanctioned by CVO from time to time. Any additional requirement will be forwarded to the CVO by HOD's. The imprest account will be utilized for the following purpose.

- (a) For the purpose of liaison with Government and other outside agencies.
- (b) Handling sources related to vigilance work.
- (c) For vigilance related enquiries and investigations.
- (d) For purchase of essential vigilance related compendiums and stationery.

Budgeting

The annual budget for the Vigilance Departments of the Divisions/Complexes will be prepared by the HODs for both Capital items and Revenue expenditure. It should include projections for RE, BE & FE. The budget requirements will be forwarded to the Corporate Office well in advance for inclusion in the Company's Performance Budget. A consolidated budgetary requirement would be compiled at Corporate Office and put up to Chairman by CVO for sanction. On according of sanction, the same would be conveyed to Divisional/Complex HODs who in turn need to take up the matter with the concerned authorities for necessary procurement action.

### Training

A yearly training programme will be prepared by the Corporate office for the Executives and staff separately. The training will be imparted to the staff centrally in the form of training capsules atleast twice a year. For the Executives, the Corporate Office will organize Workshops.

The Executives will be deputed to various training courses conducted by Government Institutes, CBI Academy, Central Forensic Science Laboratory, Central Detective Training School, and other training institutes of the State / Central Govt. Besides these Officers may be deputed to attend Seminars and Workshops organized by Universities/ private establishments.

### Quality

The Vigilance Department shall strive to maintain the highest standards of quality in its investigations, conduct and reporting.

### Productivity

The Vigilance Department will contribute towards increased productivity by studying various systems and procedures. Identify time consuming, laborious and cumbersome procedures in consultation with the concerned departments and recommend changes where required.

## **6. Detailing of Vigilance Staff in Committees and Non-Vigilance activities**

The role of the vigilance staff in the Divisions/Complexes is to study systems and procedures, which include surprise and regular inspections/ checks and anti-corruption work. **Vigilance staff will not be engaged in activities such as gathering information on union activities, investigation on industrial relations, verification of firms and individuals in non vigilance cases.** The government in consultation with the Central Vigilance Commission has issued guidelines Vide O.M. No 321/77/91-ADV.III dated 9 June 1992 that the Vigilance functionaries should not be a party to processing and decision making process or any other similar administrative transactions of such nature which are likely to have clear vigilance sensitivity.

### Appointment of Vigilance officers in Departmental Enquiry Committee.

Vigilance Officers will not be appointed as Enquiry Officer, Presenting Officer, and Co-Officer. In exceptional cases they may be appointed as Presenting Officer with the concurrence of the CVO.

### Duties of the Vigilance Officers and Staff in Departmental Enquiry Committees:

The Vigilance Officers and the Vigilance staff play a vital role in the Departmental Enquiry Committee proceedings. The onus of proving the charges is on the prosecution. The prosecution is based on the investigation report prepared by the Vigilance Department. It is imperative that the Vigilance Officers and the Vigilance staff should collect all the evidence before an investigation report is finalized and recommend the prosecution of the defaulting employees.

The Vigilance officers and staff must provide all assistance and evidence gathered by them to the Presenting Officer



## 7. SCOPE FOR VIGILANCE WORK IN HAL

HAL is a Government Company (as defined in Section 617 of the Companies Act of 1956) under the Ministry of Defence, Department of Defence Production spread over the length and breadth of the country.

By virtue of being a Govt. Company it is also a 'State' by legal entity and therefore it has a greater responsibility of ensuring accountability, transparency, equality, fairness and value for money in all its dealings by one and all.

**The Hon'ble Supreme Court of India observed in the case of *Eurasian Equipment and Chemicals Ltd. V/s. State of West Bengal, AIR 1975 SC 266 & 269.***

*"The Government is a Government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into contract but they are entitled to equal treatment with other who offers tender or quotation. This privilege arises because it is the Govt., which is trading with the public. The democratic form of Government demands equality and absence of arbitrariness and discrimination in such transaction. The activities of Government have public element and therefore should be fair and equal. The state must do it so fairly without discrimination and without unfair procedure"*

This landmark judgment underlines the very ethos of public procurement or any public activity by Government and its instruments. In HAL, huge amount of public funds is invested in planning and execution of various projects. Needless to state that utmost vigilance and financial propriety is required for prudent utilization of the available resources. HAL as a Company has devised for itself various systems and procedures in almost every sphere of its activity, right from conceptualization to the final realization of the product. Being a Govt. Company it is also bound by the rules and procedures formulated by Govt. of India/Ministry/CVC etc. from time to time on issues concerning various facets of management.

If the goals and objectives of HAL have to be realized in an atmosphere of ethical governance and sustained development, the need for a presence of a strong Vigilance Department cannot be overemphasized. Thus there is a need for constant and effective Vigilance mechanism in HAL to undertake anti-corruption measures to increase the confidence of the stake holders in a challenging and changing global economy.

Due to the delegation of powers both financial and administrative, there is hardly any Department now, which does not afford opportunities for corruption. However, in some departments these opportunities are greater when compared to others. These departments can be termed as **sensitive departments**, from the vigilance angle viz;

- (a) Purchase Department
- (b) Works and Contracts Department
- (c) Plant Maintenance

- (d) Sub Contract/External Sourcing
- (e) Medical Department
- (f) Design & Development
- (g) Human Resources Department
- (h) Stores Department
- (i) Accounts Department (Finance, Pay rolls, Bills payable)
- (j) Township Administration, Welfare

Familiarity with the Rules, Regulations, Procedures as laid down by HAL as also the established ethical principles, enables the employees generally and the supervisory personnel in particular to perform their day-to-day functions within the laid down procedures in a free, fair, transparent and cohesive manner. This is expected to ensure proper compliance of the system and judicious exercise of the delegated powers; which in turn would appropriately take care of prescribed quality standards and vigilance health of an organization. However some of the common points of irregularities in various sensitive departments are enumerated below.

#### Purchase Department

- (a) Sending Request For Quotation (RFQ) to firms non-existing to satisfy the requirement of number of firms and at the same time not sending RFQ to those firms not favoured.
- (b) Not maintaining updated Vendor Registry. (Over a period of time certain firms close down/stop dealing with the required items or change their location. Due to non maintaining of updated vendor registry, the possibilities of obtaining competitive offers from firms actually dealing with the required items become less or nil). This may be due to ulterior motive to favour particular firms only.
- (c) Issuance of Proprietary Certificates indiscriminately, to thwart competition.
- (d) Certification of bills that come to Purchase Department (for recommendation of payments) without minimum scrutiny, thereby putting the company to wrongful loss and the vendor/supplier to wrongful gain with ulterior motives.
- (e) Giving insufficient time for submission of quotations.
- (f) Cartel formation of tenderers.
- (g) Wrong practices while preparing comparative statements.
- (h) Non-linking of payments of performance in the case of Trial Orders.
- (i) Issue of tenders to blacklisted firms.
- (j) Concealing and manipulating critical information while preparing proposals.

- (k) Repetitive emergency procurement.
- (l) Issue of inspection certificates without adequate checks and in some cases waiving inspection altogether.
- (m) Splitting orders to reduce the level of approving authority.
- (n) Certification of escalation of payments by manipulating records;
- (o) Indiscriminate local purchase without proper justification or need;
- (p) Change in specifications after tender is released.
- (q) Not mentioning/enclosing General Conditions / special conditions /technical specifications etc.
- (r) Leaking out information in advance to supplying firms regarding the requirements of HAL or, subsequently, information regarding developments in respect of the deal.
- (s) Demand for illegal gratification on percentage basis in respect of bills passed for payment.
- (t) Defective preparation of tender notices by omitting to mention complete specification of materials.
- (u) Preparation of tender specifications tailor made to suit a particular firm.
- (v) Non inclusion of standard terms like Liquidated Damages so as to favour firms.
- (w) Limiting the deal to a single tender contractor or a selected few by standardizing specifications whereas a general specification could have invited more competition.
- (x) Rejecting lowest quotations on unjustified and flimsy grounds.
- (y) Re-tendering frequently by changing the specifications with a view to scuttle the award of tender to L1.
- (z) Assistance to the supplying firms in the preparation of quotations or dispatching enquiry notices to firms not favoured, after date for submission of tender expires.
- (aa) Making local purchases at higher rates by obtaining ghost quotations.
- (ab) Alteration of rates after opening tenders.
- (ac) Splitting up of requirements to bring them within the limits of local tender purchase.
- (ad) Substitution of superior approved samples by inferior type after decision on the tender is taken.
- (ae) Acceptance of material and stores, which are below standard specifications.

- (af) Inserting papers of favoured firms in the correspondence files to benefit the firm.
- (ag) Setting up friends and relatives as the agents of the supplying firms and procuring for them certain commission over the business deals and thereafter sharing the commission with the agents.
- (ah) Harassing firms by not passing their bills in time, or putting hurdles in their way, if gratification is not paid
- (ai) Favours certain supplying firms by issuing them repeat orders for machinery and other stores.
- (aj) In collusion with Technical Section, insistence on purchase of particular type of machinery/equipment to favour a particular firm.
- (ak) Favours certain firms by repeatedly purchasing small quantities falling within the purview of an individual officer.
- (al) By-passing purchase committees by making small purchases more frequently instead of bulk purchases.
- (am) Acceptance of unsolicited offers.
- (an) Non refund or delay in refund of security deposit/Earnest Money to unsuccessful tenders;
- (ao) Non recovery of money against defective supplies;
- (ap) Unauthorised passing of information on tenders/requirements /rates/ estimates etc to persons who would be acting as agents/middlemen for some considerations and thereby cheating HAL.
- (aq) Non incorporation of Liquidated Damages (LD) Clause in the terms and conditions. Failure to invoke the LD Clause wherever applicable. Waiving off LD without Competent Authority's approval or waiving off without proper justification.

#### Stores Department

- (a) Holding up receipt note of supplies without any justification.
- (b) Giving receipt for larger quantities than actually received.
- (c) Pilferage and theft of stores lying in the salvage.
- (d) Delivery of reduced quantities of stores on requisitions or retail issues and disposing or misappropriating the resultant surplus stocks.
- (e) Excess delivery after auction of materials.
- (f) Sale to favoured buyer of goods and serviceable material by showing it as scrap.
- (g) Misappropriating stores by showing excess issue of materials in the office copy of the inventory.

- (h) Non disposal of Non-Moving inventory
- (i) Manipulation of reserve price during auction of scrap;
- (j) Fixing of reserve price lower than the best bids obtained in previous auctions;
- (k) Clubbing of lots making them beyond the reach of smaller buyers thus restricting the competition to a few bigger purchasers who form a pool and give lower bids;
- (l) Disclosing of particular lots containing better quality scrap to favoured firms and changing of lot of number plates;
- (m) Affording opportunity to take out more weight by recording the tare weight of trucks less than actual;
- (n) Unauthorized mixing of high value scrap in the scrap allotted in connivance with buyer in consideration of benefits.

#### Works and Contract Section

- (a) Site leveling : Manipulation in initial levels before the actual work starts, so that the agencies would get more quantities in excavation, back filling etc. during site leveling where cut and fill operations are involved lead charts are manipulated. While the actual traverse-route is only say 0.8 KM, in the sketch it can be indicated as 1.2 KM thus giving extra undue benefit.
- (b) While executing piling work, the rates are different for boring of soil, soft rock, hard rock. False records can be created to benefit the agencies.
- (c) Pilfering of cement.
- (d) Not adhering to volumetric/gravimetric batching system so that right proportion of cement, sand and aggregate are not used during concreting.
- (e) During construction, allowing substandard bricks, sand, aggregates, wood, paint, cables, earth-strips, waterproofing materials, fuses, welding electrodes, etc.
- (f) Indiscriminate payment of advances;
- (g) Payment for incomplete work;
- (h) Postponing penal recoveries;
- (i) Certification of sub-standard work
- (j) Demanding and accepting of illegal gratification in respect of bills passed for payment.
- (k) Favouritism by rejecting the lowest tender and awarding the contract at a higher rate, on flimsy grounds.

- (l) Favours certain contractors by entrusting them some small works initially, but later allowing them to execute big works in continuation of the earlier contract without calling for tenders.
- (m) Showing large number of work force at the rolls in connivance with the contractors and sharing the excess wages.
- (n) Grant of extension of time beyond the provisions of the Contract.
- (o) Payment of higher rates than the prevalent market rates for labour or material.
- (p) Misappropriation or pilferage of building materials, like cement, steel etc.
- (q) Recording false measurements.
- (r) Issuing false certificates such as test checks without verifying the basis for entries in the measurement books
- (s) Excess payments to the contractors in connection with supply of materials.
- (t) Delaying payments of bills/final bills beyond the time schedule of contract without any justification.
- (u) Making payments for items not replaced after rejection or supplied.
- (v) Non-deployment of qualified engineers at site and non-recovery of penalties towards such non-deployment.
- (w) Releasing tender without proper working drawings and detailed estimates. It is essential to prepare Market Rate Analysis to check the reasonability of the tenders.
- (x) Ambiguous and inadequate contract documents that permits the contractor to do sub standard work and get away with payment at full rates.
- (y) Granting of secured advances for the materials brought by contractor to the site much in excess of actual quantities of materials brought.
- (z) Unsound designs: sometimes unsound structural design is found to be inadequate and not in conformity with IS Codes or Practice. This may result in unsound structures.
- (aa) Infructuous constructions: the designs or specifications do not serve the purpose for which a structure is built. This results in infructuous expenditure.
- (ab) Acceptance of conditional offers.

- (ac) Pre-Qualification of Contractors: No proper Pre-Qualification of contractor often gives scope for malpractices, favouritism and corruption.
- (ad) Abnormal high and low freak rates: very often it is seen that contractors quote speculative rates with the intention of getting the quantities of abnormally high rates items increased and the quantities of abnormally low rated items decreased. This results in undue favour to the contractor and a loss to the organization. For this purpose the market rate estimate is very helpful in pinpointing the abnormally high and low rated items.
- (ae) Very often Bank Guarantees are taken from the Contractor before the mobilization advance or security deposit is released. It is often found that these Bank Guarantees are not got revalidated on the due dates and the organization is unable to recover the advance or deposit.
- (af) Granting various interest free advances such as mobilization advances, secured advances, adhoc advances, advances for purchase of materials etc. when such advances are not permissible under the terms of the contract.
- (ag) Payment of bonus to architects or contractors when such payments are not admissible under the terms of the contract.
- (ah) Changing the specifications or nature of work to be done without making corresponding financial adjustments;
- (ai) Allowing 'rate only' items without any quantities in the tender documents. Contractors invariably quote exorbitant rates for such items because amounts corresponding to such rates are not reflected in the comparative statement. After the contract is awarded these alternate 'rate only' items are operated to give a huge undue benefit to the contractor.
- (aj) Poor control and inadequate supervision;
- (ak) The existing buildings and structures are demolished by the contractor and the serviceable materials are taken away resulting in considerable loss to the organization.

#### Human Resources Department

- (a) Manipulation of number of vacancies (selection posts) so as to bring the favoured candidate within the field of choice;
- (b) Postponement of regular selection on flimsy grounds so as to permit continuance of ad-hoc promotees;
- (c) Discrimination in the treatment of candidates during examination;
- (d) Discrimination in awarding marks under 'Record of Service' weightage being given to seniority;
- (e) Manipulations in transcribing marks from written papers to the tabulation sheets;

- (f) Not following any rational basis in deciding inter-se seniority of candidates for promotion to general selection posts;
- (g) Deliberate violation or non-observance of prescribed Selection Board procedure;
- (h) Failure to conduct proper trade tests for posts in skilled category;
- (i) Not giving sufficient publicity in the Employment Notice regarding recruitment to certain category of posts;
- (j) Deliberate failure to preserve or keep proper record of application received;
- (k) Purposely violating instructions regarding minimum qualifications and experience;
- (l) Arbitrary screening of applications received, better qualified candidates not called for selection;
- (m) Not offering employment in the order of merit from the list of duly empanelled candidates;
- (n) Failure to observe instructions regarding medical examinations and verification of antecedents;
- (o) Accepting of late applications by pre-dating them;
- (p) Demand and acceptance of illegal gratification during the recruitment process;
- (q) Impersonation of candidates in the written test;
- (r) Leakage of question papers/answers before conduct of a written test;
- (s) Leaking information about recruitment at various stages to vested interests for considerations;
- (t) Holding of answer books for long periods without evaluation;
- (u) Fabrication of answer sheets and insertion of duplicate answer sheets with same roll numbers;
- (v) Absence of signature of invigilator/supervisor on the answer sheet;
- (w) Non-maintenance of list of examiners;
- (x) Incompetent Examiners;
- (y) Awarding of marks for incorrect answers;
- (z) Absence of distribution register of the answer sheets distributed by the organization to the examiners;
- (aa) Increase of marks by examiners or others, subsequent to evaluation of answer sheets;



- (ab) Deliberate change in the tabulation sheets to qualify certain candidates for interview;
- (ac) Deliberate tampering in the award of marks in viva voce.
- (ad) Malpractices in service matters, deputation of personal abroad for training.
- (ae) Deliberate failure to preserve or keep proper records of applications received.
- (af) Intentionally violating instructions regarding minimum qualification
- (ag) Arbitrary screening of service records and purposely ignoring better qualified and experienced candidates.
- (ah) Connivance of staff concerned who deliberately do not enter penalties, suspension etc in the relevant column of service records.
- (ai) Deliberately ignoring orders of penalty of withholding increments.
- (aj) Violating terms and conditions of the Company in granting various loans/grants/incentives;

#### Accounts Department

- (a) Delay in payment of bills to the contractors to cause harassment to the latter by calling for clarifications on minor points.
- (b) Non verification of Bank Guarantees.
- (c) Passing of bills without exercising necessary and adequate checks;
- (d) Not effecting recoveries promptly, regularly and correctly in case of advances.
- (e) Non-refund or delay in refund or security deposit/earnest money to unsuccessful tenders;
- (f) Non-recovery of rent, electric charges or water charges in respect of such facilities extended to contractors;
- (g) Misappropriation of cash by cashiers;
- (h) Misappropriation in the payment of unpaid wages, settlement dues, PF withdrawals etc;
- (i) Non-maintenance of leave accounts;
- (j) Tampering of leave records (for encashment purpose);
- (k) Non-recovery of money against defective supplies;
- (l) Duplicate payments made against same supply order;
- (m) Non-observance of instructions about percentage check of vouchers;

### Welfare Department

Misappropriation of money and commodities earmarked for providing amenities to the employees and their children, in schools, sports clubs, canteens, etc.

### Transportation

- (a) Favouritism in allocation of routes
- (b) Misuse of bus coupons
- (c) Collection of fares from un-authorized passengers
- (d) Diesel/petrol siphoning /illegal sale
- (e) Misusing HAL vehicles to teach driving.
- (f) Shift allocations
- (g) Covering up of minor accidents
- (h) Misuse of new spare parts
- (i) Repeated/unwanted repairs by outside agencies

### Township Administration

- (a) Out of turn allotment of quarters
- (b) Unauthorised permission for running shops etc.
- (c) Non-recovery of rent due
- (d) Failure to take action for eviction when necessary
- (e) Allotment of shops by deviating from the existing procedures.
- (f) Allowing sub-letting.
- (g) Unauthorised construction on company land
- (h) Allowing encroachment of HAL land by distorting land records in connivance with land grabbers with ulterior motives;
- (i) Not presenting the case before the competent court in case of litigation arising out of encroachment of HAL.
- (j) Tampering/manipulation of electricity charges/meter readings.
- (k) Turning a Blind Eye to Unauthorised Constructions/Additions /Modifications to Company's Quarters.
- (l) Under recovery/Non recovery of Electricity Bills from Occupants.

### Training Schools

- (a) Irregularities in selection of Trade Apprentices.
- (b) Malpractices in valuation of examination papers.
- (c) Misuse of stores, instruments and equipment.

### Medical and Health Department

- (a) Purchase of medicines whose shelf life is very less.
- (b) Resorting to frequent small order purchases to avoid tendering process.
- (c) Purchase of spurious quality of medicines.

The above instances are illustrative and not exhaustive. The above compendium of common irregularities has been made as a result of experiences gained/irregularities detected by the Vigilance Department of HAL over the years.

8. **Vigilance Check List for some sensitive Departments:**

**Procurements:-**            **Check**

- Material Purchase Request is a genuine source/authorized source
- Selection of sources is not spurious and deliberately included.
- if MPR is approved by Competent Authority.
- if Competent Authority has waived off newspaper advertisement.
- Competent Authority's approval for mode of tendering
- whether the tender calls for a two-bid system.
- to ensure specification in MPR have been correctly dispatched to sources.
- the list of firms for having approved by the Competent Authority.
- whether a proper tender summary sheet is prepared.
- if tenders are opened on the tender opening date.
- constitution of committee for tender opening.
- if tenders are opened as per purchase manual
- if quotations are accompanied by sealed covers.
- the mode of receipt of quotations
- if proper endorsements are made on the cover.
- if comparison statements are correct.
- comparative statements are properly vetted
- for endorsement of delayed tender and late tender are properly made in the comparative statement.
- for analysis on like to like basis in case of confusing offers.
- if tenders with conditional offers are rejected.
- to ensure the terms and conditions are stipulated as per rules and regulations.
- if the payment terms and conditions are in the interests of the company.
- to ensure proper deductions are mentioned for short fall in contract.

- to ensure Security Deposit and Bank Guarantee are provided by the tenderer.
- to ensure that the rates fixed are maintained throughout the contract.
- for experience of tenderer in performing similar contract wherever called for.
- to ensure that correct EMD is submitted by the firm.
- to ensure that the Purchase Order contains all the rules and regulations of company (Standard Terms and Conditions/Special Conditions etc) apart from tender specifications.
- to ensure that the contract has been adhered to as per the terms and conditions before payment.
- to check tender box is placed at the entrance / security gate and is easily accessible to all vendors.
- to ensure closing date and opening date of tender are same.
- to ensure contractor is remitting PF/ESI wherever applicable.
- for genuineness of various challans submitted by the contractor.
- to ensure acceptance of PO/Contract from the firm.
- to ensure that the Tender Opening Committee has been properly constituted
- to open the Tenders on the opening date.
- for availability of Proprietary Certificate issued by proper authority.
- the urgency for spot tenders.
- in case of single response, proof of delivery to other firms.
- if reasonable time is provided for submission of offers.
- if laid down procedures are followed for quotations received via fax/e-mail.
- if postponement of tenders is informed to all firms.
- if tender box is maintained as per regulations.
- for any alteration in the specification subsequent to receipt of tenders.
- if LD clause is properly incorporated and invoked wherever called for.

**Sub-Contracts - Check**

- ❖ if press advertisement was issued for registration of vendors of various categories in accordance with CO letter No.HAL/CO/1702/2002 dated 19<sup>th</sup> March 2003 by Finance Dept

- ❖ if Material Sub Contracting (MSR) is properly raised and approved.
- ❖ if efforts are made to develop number of sources as per CO guidelines.
- ❖ if materials are issued to Sub contractor on indemnity bond covering the cost of the material in favour of HAL.
- ❖ if the vendor has taken comprehensive insurance policy covering all the risks including fire, theft, damages, loss of materials etc while HAL's materials are in his custody.
- ❖ if rework is carried out by HAL appropriate recoveries/deductions are made on the vendor.
- ❖ to ensure raw material issued by HAL is properly accounted including wastages, balance material if any.
- ❖ to ensure that no post tender price make is done on flimsy grounds such as lack of understanding of drawings, technical requirements etc.
- ❖ to ensure that the tooling cost is properly amortized and should cease after
- ❖ the cost is reimbursed to the vendor.
- ❖ if material cost is recovered from the vendor for rejection due to faulty manufacturing.
- ❖ if the cost of sub-contracted item is less than in-house manufacturing cost to compare the man-hour rate of the firm with that of the Division.
- ❖ if rejections are repeated, orders are still placed.
- ❖ if tools/jigs/fixtures obtained from HAL by the sub-contractor are returned in time.
- ❖ if vendor directory is updated
- ❖ if vendor evaluation is properly carried out.
- ❖ if vendor rating is taken into account while finalizing orders.
- ❖ If alternate vendors are also available and efforts are made to empanel them.

**Recruitment: - Check**

- ✓ whether sanction and approval of Competent authority obtained for recruitment.
- ✓ if reserved vacancies are operated if applicable.
- ✓ if recruitment is internal or external.

- ✓ if advertisement/employment exchange/ZSB/ or other relevant authorities are intimated as per company norms.
- ✓ details like eligibility, age, qualification, experience and reservation are addressed and advertised.
- ✓ if Government guidelines on reserved vacancies are followed.
- ✓ for receipt of applications and records.
- ✓ for the basis for short listing the applicants for written test.
- ✓ to ensure the confidentiality of answer papers (wherever applicable).
- ✓ for correction of papers in ink and signatures of the evaluators.
- ✓ for procedures adopted for declaration of results within the stipulated time duration.
- ✓ for preparation of list of successful candidates and if any undue delay in declaration of written results.
- ✓ for method of intimation for interview sent to candidates.
- ✓ for retention of rating sheets for interview in original or not.
- ✓ for submission of caste certificates of concerned candidates.
- ✓ for display of Statutory Notice Board during various recruitment related tests/interviews.
- ✓ for medical examination of the concerned candidates.
- ✓ for photocopies of all relevant documents regarding qualification, education, date of birth, experience/caste certificate at the time of interview as well as joining by the candidates with those of originals.
- ✓ for verification of character, antecedents and other mandatory certificates.

Civil Works: - **Check**

Estimate Preparation :

- if items are defined properly.
- if quantities of the items are calculated properly.
- if estimates are prepared on the basis of latest edition of MES-SSR/market rates/approved labour rates.

- if escalation is incorporated in rates as per standard practice/as per existing market rate.
- if rates considered and their source for the items not covered in MES-SSR.
- If whether financial concurrence is accorded for estimates.
- if approval is accorded by Competent Authority to invite tender and type of tendering being adopted.

Tendering: - **Check**

- if estimates are concurred by finance department
- if competent authority has approved the proposal.
- for eligibility of the bidders for open tender
- if tender documents are dispatched by Registered Post.
- if procedures laid down in Work and Service Contract is followed.
- if CTE guidelines are followed.
- if approval of next higher authority is obtained for re-tendering.
- for any ambiguity in terms and conditions of the tender.
- if the specification/technical specification for all materials to be used in the work is well defined.

Execution: - **Check**

- If random test checks for high value materials are carried out.
- if concerned departments/officials make proper quality check and maintain record thereof.
- for records pertaining to quality of material supplied.
- if the work is executed as per specification.
- if the work conforms to the provisions of relevant IS standards.
- if manufacturers' test/quality certificate is available.
- laboratory test has been carried out and reports are obtained.
- if running account payment is permissible.
- for periodicity of RAR.



- if RAR bills are signed by all concerned officials/supervisors.
- whether the measurements are taken for various items vis-à-vis the items in Running bills.
- if the materials are perishable in nature.
- if materials are physically brought to the site.
- if materials are stored properly.
- for materials are insured.
- if materials are hypothecated.
- if advance paid is adjusted against the bills payable to the contractor.
- if defects occurred during construction/execution are recorded.
- if defects occurred during construction/execution are rectified.
- If defects occurred after construction/execution are recorded.
- If defects after consultation/execution are rectified.
- If sufficient amount is held for defect liability.
- If cement register is maintained properly.
- If material passing register is maintained properly.
- If site order book is maintained properly.
- If site order book is maintained properly.
- If daily work is maintained properly.
- If hindrance register is maintained properly
- If attendance is marked as per physical verification.
- If measurement book is maintained as required
- If contractor furnished no claim and no demand certificate
- If contractor has furnished Income Tax/Sales Tax Clearance certificate
- To ensure all recoveries are made.

9. **Canons of Financial Propriety :**

Every Officer / employee or authorizing expenditure from public funds should be guided by high standards of financial propriety (meaning of 'propriety – fitness, rightness, correctness of behaviour or morals – Oxford Dictionary)

The principles on which emphasis is generally laid are the following:-

- (a) Every public employee should exercise the same vigilance in respect of expenditure incurred from public moneys as a person of ordinary prudence would exercise in respect of expenditure of his/her own money.
- (b) The expenditure should not be *prima facie* more than the occasion demands.
- (c) No authority should exercise its powers of sanctioning expenditure to pass an order which will be directly or indirectly to its own advantage.
- (d) No authority should sanction expenditure which is not as per the approved scheme of the Company.
- (e) The amount of allowances, such as traveling allowance, granted to meet the expenditure of a particular type, should be so regulated that an allowance is not on the whole a source of profit to the recipient.
- (f) Public Moneys should not be utilized for the benefit of a particular person or section of the community unless:
  - (i) The amount of expenditure involved is insignificant, or;
  - (ii) A claim for the amount could be enforced in a Court of Law, or;
  - (iii) The expenditure is in pursuance of a recognized policy or custom.



## **Chapter – IV – OPERATIONAL ASPECTS OF VIGILANCE**

***“No person is entitled to the blessings of freedom unless he be vigilant in its preservation” – General Douglas Mac Arthur***

### **1. Functions of Vigilance**

The functions of Vigilance can be broadly classified into Preventive, Punitive and Detective or Surveillance.

#### **Preventive Vigilance**

“Punitive action alone need not be the main function of Vigilance organizations. ‘Prevention is better than cure’ is a common adage, which is very relevant in the working of all Government organizations.”

Message from CVC while releasing the book on ‘Common Shortcomings observed in Contracts’ published by the CTE during 2001.

So preventive vigilance is also a pro-active vigilance which is the need of the hour. In the words of Dr. Samuel Johnson, “to punish and not to prevent is like labouring at the pump, leaving open the leak”. (unquote). From Vigilance perspective, toiling at the pump indicates high morale, motivation, hard work, creativity, team work, leadership, management and all that modern management teaches – the leak represents wastages, seepages, negligence, and even criminality. Vigilance is not a tool left to be operated by Vigilance functionaries alone but every employee including line Managers have to perform this responsibility.

Santhanam Committee while outlining the preventive measures, that should be taken to significantly reduce corruption had identified four major causes of corruption, viz;

- (i) Administration delays;
- (ii) Government taking upon themselves more than what they can manage by way of regulatory functions;
- (iii) Scope for personal discretion in the exercise of powers vested in different categories of government servants;
- (iv) Cumbersome procedures of dealing with various matters which are of importance to citizens in their day to day affairs. The salient features of Preventive vigilance as suggested by Santhanam Committee are as follows:-
  - (a) To undertake a study of existing procedure and practices prevailing in the organization with a view to modifying those procedures or procedures or practices which provide a scope for corruption, and also to find out the causes of delay, the points at which delay occurs and device suitable steps to minimize delays at different stages;
  - (b) To undertake a review of the regulatory functions with a view to see whether all of them are strictly necessary and whether the manner of discharge of those functions and exercise of powers of control are capable of improvement;

- (c) To device adequate methods of control over exercise of discretion so as to ensure that discretionary powers are not exercised arbitrarily but in a transparent and fair manner;
- (d) To educate the citizens about the procedures of dealing with various matters and also to simplify the cumbersome procedures as far as possible;
- (e) To identify the areas in the organization which are prone to corruption and to ensure that the officers of proven integrity only are posted in those areas;
- (f) To prepare a list of officers of doubtful integrity- The list would include names of those officers who, after inquiry or during the course of inquiry, have been found to be lacking in integrity, such as
  - (i) officer convicted in a Court of Law on the charge of lack of integrity or for an offence involving Moral turpitude but who has not been imposed a penalty of dismissal, removal or compulsory retirement in view of exceptional circumstances;
  - (ii) awarded departmentally a major penalty on charges of lack of integrity or gross dereliction of duty in protecting the interest of government although corrupt motive may not be capable of proof;
  - (iii) against whom proceedings for a major penalty or a court trial is in progress for alleged acts involving lack of integrity or moral turpitude; and
  - (iv) who was prosecuted but acquitted on technical grounds as there remained a reasonable suspicion about his integrity;
  - (v) To prepare the “agreed list” in consultation with the CBI- This list will include the names of officers against whose honesty or integrity there are complaints, doubts or suspicions;
  - (vi) To ensure that the officers appearing on the list of officers of doubtful integrity and the agreed list are not posted in the identified sensitive/corruption prone areas;
  - (vii) To ensure periodical rotations of staff; and
  - (viii) To ensure that the organisation has prepared manuals on important subjects such as purchases, contracts, etc. and that these manuals are updated from time to time and conform to the guidelines issued by the Commission.

Vigilance should be a cerebral Department in the Management of the organization and not as a stand alone activity. The main objective of Preventive Vigilance can be summed up as follows:-

- (a) To assist and help the Management in bringing about and sustaining propriety and integrity concurrently with efficiency in HAL at all levels of working;

- (b) To function as a service/cerebral organization to the Management to help identify black spots and to make fair, objective and prompt investigations;
- (c) Suggest ways and means of qualitative improvement in administration by plugging loopholes.
- (d) Improving/simplifying procedures to curb scope for malpractices and corruption;
- (e) To suggest ways and means to plug deliberate leakages of public funds;
- (f) To conduct regular and surprise checks/inspections on its own or in association with CBI at sensitive spots with a view to detecting cases of malpractices, corruption, misuse of authority and other irregularities involving misconduct;
- (g) To spread awareness among all the workforce of HAL about the cardinal principle that Vigilance is a management function and every one has responsibility in his/her sphere of activity;
- (h) To protect and strengthen the hands of those that is efficient, honest and law abiding but who may be the victims of malicious complaints and also to correct gently and constructively those who may have committed genuine mistakes without malafide intention.
- (i) To ensure implementation of the directives/guidelines of the Central Vigilance Commission in the matters of tenders/contracts/disciplinary matters etc received from time to time.
- (j) To lay emphasis on improving Vigilance administration by leveraging technology in areas like tenders/contracts etc.
- (k) To ensure that Integrity Pact is implemented wherever the requirement arises in consonance with Govt. Of India/CVC guidelines issued from time to time.
- (l) To ensure that all tenders/contracts/payments made to suppliers/contractors are put up periodically on the official website of HAL.
- (m) To ensure that e-Payments and e-Procurements/e-Tenders are implemented in its entirety.
- (n) To periodically conduct awareness sessions on vigilance matters to employees and other stake holders (as and when opportunity arises).
- (o) To undertake a review of bills (of six months duration). The review should be meant to primarily determine the time taken in clearing the bills.

- (p) To conduct an exercise to identify the weaknesses in the existing systems and policies and the lapses that may have arisen or like to arise due to the systemic flaws noticed.

### **Punitive Vigilance**

Punitive Vigilance deals with actual Vigilance cases, which is investigated, enquiry is held and penalty is imposed. Following actions are to be taken on the punitive vigilance aspects:

- (i) Upon the receipt of a complaint forward the same to Corporate Office under intimation to Complex HOD.
- (ii) To maintain and reflect the complaints in appropriate registers and update them from time to time. To follow the guidelines of CVC while handling complaints.
- (iii) To investigate into such specific and verifiable allegations as involved a vigilance angle in accordance with the requirements as laid down in the ISO Manual;
- (iv) To investigate into the allegations forwarded by the Commission or by the CBI;
- (v) To complete investigations in a time bound manner as laid down by CVC.
- (vi) To process the investigation reports expeditiously for obtaining orders of the competent authorities about further course of action to be taken and also obtaining Commission's advice on the investigation reports where necessary;
- (vii) To ensure that the charge sheets to the concerned employees are drafted properly and issued expeditiously;
- (viii) To ensure that there is no delay in appointing the inquiring authorities where necessary;
- (ix) To adduce required/relevant evidence, (oral/documentary/material) in the Departmental Enquiry as and when called upon as Management Witness.
- (x) To provide full assistance to the Presenting Officer appointed for DEC in Vigilance Cases.
- (xi) To examine the inquiry officer's report, keeping in view the evidence adduced by the prosecution and the defence during the course of inquiry, and obtaining orders of the competent authority about further course of action to be taken and also obtaining the Commission's second stage advice, where necessary;
- (xii) To ensure that the disciplinary authority concerned, issues a speaking order, while imposing a punishment on the delinquent employee. The order to be issued by the disciplinary authority should show that the disciplinary authority had applied its mind and exercised its independent judgment;

- (xiii) To ensure that rules with regard to disciplinary proceedings are scrupulously followed at all stages by all concerned as any violation of rules would render the entire proceedings void;
- (xiv) To ensure that the time limits prescribed for processing the vigilance cases at various stages are strictly adhered to;
- (xv) To take up review of final orders of disciplinary authority wherever felt justified;
- (xvi) To be well versant with Court/Legal proceedings and their implications with respect to disciplinary matters, as there are possibilities that some employees affected by the action of vigilance may involve the Management in litigation.

### **Detective Vigilance**

Detective vigilance deals with detection of cases in three ways.

- (i) Better surveillance and intelligence coverage of areas /points which are susceptible to corruption.
- (ii) Close watch over employees of doubtful integrity.
- (iii) Verification and check of moveable and immovable assets of persons of doubtful integrity.

### **Administrative Vigilance**

Administrative Vigilance encompasses conduct of Quarterly Vigilance Committee Meetings in the Divisions. Issuance of No-Objection Certificate/Vigilance Clearance for various purposes and timely submission of Reports and Returns.

### **Constitution of Vigilance Committee Meeting**

In accordance with instructions existing in Para (7) of HAL Vigilance Manual (2004), Vigilance Committee is required to be constituted in every Division. The Composition should be as under: -

- |        |                         |   |   |
|--------|-------------------------|---|---|
| (i)    | General Manager         | - | Chairman  |
| (ii)   | A G M                   | - | Member (To be nominated by the General Manager) |
| (iii)  | HOD - HR                | - | Member  |
| (iv)   | HOD - Finance           | - | Member  |
| (v)    | HOD - Civil Engineering | - | Member  |
| (vi)   | HOD - Maintenance       | - | Member  |
| (vii)  | HOD - IMM               | - | Member  |
| (viii) | HOD - VIGILANCE         | - | Member Secretary                                |
| (ix)   | Representative of C.O.  | - | Member  |



Where the permanent incumbent is not available due to any reason the person officiating in his place will represent. In case of the absence of General Manager, the officiating General Manager will be the Chairman of the Committee. An officer against whom Disciplinary Enquiry is pending shall not be a member of the Vigilance Committee. The representative from the Corporate Office will attend the Vigilance Committee Meeting of the Division.

The committee shall meet once in a quarter and should strictly adhere to the time schedule with reference to this periodicity. The HOD of the vigilance department should draw an agenda well before the meeting in consultation with the GM. The agenda should be circulated to all the members of the committee in advance to give sufficient time to the members to prepare for a discussion on the agenda. The agenda points could cover review of pending vigilance cases i.e. from the stage of issue of Charge Sheet, constitution of DEC and conclusion of the enquiry, job rotation of employees working in sensitive departments, vigilance inspections, stream lining of procedures, progress in CBI cases, reply to the observations of CTE and any other subject felt necessary by the members. At the end of meeting, the committee should also draw out action plan/ agenda for the next three months to progress vigorously by the concerned departments and monitor the same. A report on the proceedings of the meeting shall be forwarded to the Corporate Office. The members of the committee are responsible for initiating actions on the discussions /recommendations of the meeting. The members will prepare a progress report on the action taken on the points of the previous meeting. The subsequent meetings should always review the progress of the agenda of the previous meetings and emphasize on adhering to the schedule of action plan.

The general guidelines for Vigilance Committee Meeting are as follows:-

(a) General:

The Vigilance Committee constituted should strictly adhere to the time schedule with reference to the periodicity fixed for the meeting, draw out agenda points well before the meeting/decide the same for the next meeting before conclusion of the current meeting so that fruitful purpose is served by holding such important meetings. While the committee may include any other relevant agenda points, some of the points which should be discussed are given in the subsequent paragraphs.

(b) Agenda Points:

(i) Review of pending Vigilance Cases: The Committee should identify the problem areas in various vigilance cases, find a solution for speedy disposal and if required may call the Enquiry Officer to attend such meeting with a view to ensuring that the Disciplinary proceedings are finalized within the stipulated time frame viz; six months from the date of appointment of Enquiry Officer.

(ii) Scrutiny of Annual Property Returns: Subsequent to the issuance of instructions from the CVC, Corporate Office has issued a communication to the Vigilance Officers to scrutinize the Property Returns which the Committee can discuss particularly non-filing of Property Returns and makes such suggestions/comments on the issue which would improve the functioning of the existing system.

(iii) Streamlining of procedures : There are numerous cases pertaining to false LTC, TA/DA, Medical Claims etc. similarly numerous lacunae observed in purchases and contracts etc, could be discussed by the Vigilance Committee during the meeting. The Chairman of the Committee can also ask Vigilance dept to study problem areas for improving effectiveness through the laid down procedures and suggest remedial measures to plug the loopholes in the system. This will go a long way in improving the effectiveness of work being carried out in the Company.

(iv) CTE's observations: CVC/CTE's Organization carries out Intensive Examination on various works under execution/executed in HAL and they forward observations/irregularities noticed by the team, for rectification. It has been noted that undue time is taken by the Divisions concerned to settle those observations. Vigilance Committee could therefore discuss such issues and find solution to such observations so that the matter could be settled well in time which will not only bring about necessary improvement in our functioning in all important matters concerning the organization but also enhance the image of the Company in the eyes of the Commission. The committee may also go into the irregularities pointed out, which may be addressed in the respective procedures for future implementation by the Purchase/Works Dept as the case may be.

(v) Job Rotation: This is a very important aspect and requires particular attention. Due to non implementation of Job Rotation policy, not only there are increased chances of malpractices but also non-implementation of the same acts as a hindrance to individual employee's growth and organizational development. Annual programme of Job Rotation should therefore be drawn in the Corporate Office which should be monitored/reviewed during the Vigilance Committee meeting.

(vi) Vigilance inspection/surprise checks: Observations made by Vigilance dept during the inspections/checks if discussed comprehensively will ensure that the concerned Departments follow the laid down procedure more scrupulously; and also act as an effective feed-back mechanism for carrying out necessary corrections.

(vii) Progress in CBI Cases: It is noticed that cases taken up for investigation by CBI are generally left to be handled/finalized by the agency. An all out effort to be made to expedite pending CBI Cases by adhering to time limits.

(c) Conclusion:

At the end of the meeting, the Committee could also draw out action plan/agenda for the next two months to be progressed vigorously by the Corporate Office and to monitor the same. A six monthly report would be prepared by CVO highlighting the action plan made for each period of two months vis-à-vis performance achieved.

Reasons/constraints for not achieving targets/action plan and measures to be taken to overcome the same also need to be laid down. The minutes of the deliberations and decisions arrived at in the meeting would be drawn by HOD (Vigilance) and put up to Chairman for approval and subsequently for circulation amongst the members.

Issuance of No Objection Certificate/Vigilance Clearance for various purposes as prescribed in the Rules of the Company.

Timely submission of various Reports and Returns

## **2. Improving Vigilance Administration by Leveraging Technology & Increasing Transparency in Public procurements**

Information Technology (IT) is defined as the technology required for information processing. In particular the use of computer and computer software to convert, store, process, transmit and retrieve information.

Information Technology is currently taking center stage. The enormous advantages it has in easing the delivery of information around the world, as well as the central role of information in the new global economy means that information technology will shape the dynamics of the new millennium.

Information Technology is playing a crucial role in contemporary society. It has transformed whole world into a global economy which is increasingly dependant on the creative management and distribution of information. Globalization of world economies has greatly enhanced the values of information to business organizations and has offered new business opportunities. Today, IT provides the communication and analytical power that organizations need for conducting trade and managing business at global level with much ease.

E-Governance is the effective way of governance utilizing IT to enhance efficiency of Government offices. Government of India is devising new policies to envisage a **SMART – simple, moral, accountable, responsible and transparent** governance to bring nationwide reforms.

Transparency and ethical values form the core of a democratic system. Corruption flourishes where there is a lack of transparency. There is scope for patronage and corruption particularly in matters relating to tenders, where there is discretion to confer out of turn privileges. Public procurement is one area where huge public expenditure is incurred. Due to involvement of huge money and private interests this area is naturally corruption prone.

The Central Vigilance Commission is promoting e-Governance to improve transparency in government functioning. As regards public procurement, the modern IT tools can be leveraged in enhancing transparency in the form of e-Tendering, e-Procurements, e- Payments, e-Auction and uploading/posting of tender details on the official website of the Company.

The Commission is of the opinion that in order to bring about greater transparency in the procurement and tendering processes there is need for widest possible publicity. Improving vigilance administration is possible only when system improvements are made to prevent the possibilities of corruption. In order to bring about greater transparency and curb the malpractices the CVC in the exercise of powers conferred on it under Section 8 (1) (h) issued the following instructions for compliance by all Govt. Departments over which the Commission has jurisdiction.:-

- (a) In addition to the existing rules and practices regarding giving publicity of tenders through newspapers, trade journals and providing tender

documents manually through post etc, the complete bid documents alongwith application form shall be published on the web site of the organization. It shall be ensured by the concerned organization that the parties making use of this facility of web site are not asked to again obtain some other related documents from the department manually for the purpose of participating in the tender process.

- (b) The complete application form should be available on the web site for purposes of downloading and application made on such a form shall be considered valid for participating in the tender process;
- (c) The concerned organization must give its website address in the advertisement/NIT published in the newspapers.
- (d) if the concerned organization wishes to charge for the application form downloaded from the computer then they may ask the bidding party to pay the amount by draft/cheques etc at the time of submission of the application form and bid documents.

Issues like size of documents, issues connected with data security, legality and authenticity of bid documents, short term tenders, limited tenders etc. were further clarified by CVC by its office order No.43/7/04 dated 2<sup>nd</sup> July 2004.

Further vide its office order No.9/02/05 dated 28<sup>th</sup> Feb 2005, the CVC has given detailed instructions on use of web site for tenders containing classified / secret documents.

Vide Office Order No.13/3/2005 dated 16<sup>th</sup> March 2005 CVC has desired that all organizations must post a summary every month of all the contracts/purchases made above a certain threshold value to be decided by the CVO in consultation with the head of the organization, i.e. CEO/CMD in the prescribed format. Subsequently the following details should also be given:-

- (a) Actual date of work
- (b) Actual date of completion
- (c) Reasons for delays if any.

Vide Circular No.98/ORD/1 dated 30.3.2006, CVC has emphasized that adequate security features like use of Digital Signatures and encryption is provided for in the e-Procurement/e-marketing processes to ensure that no manipulation/unauthorized access is feasible.

Vide Circular No.40/11/06 dated 22<sup>nd</sup> Nov 2006, CVC has issued instructions on 'improving vigilance administration by leveraging technology: increasing transparency through effective use of website in discharge of regulatory, enforcement and other functions of Govt. organizations. As regards HAL, Vigilance functionaries are enjoined upon to ensure that the concerned Departments post forms/applications for vendor registration etc on the website in downloadable form and update the same from time to time.

Vide Office Order No.41/12/2007 dated 4<sup>th</sup> Dec 2007, CVC has recommended the concept of adoption of Integrity Pact in major Government Procurement activities.

Vide Circular No.01/01/09 dated 13.1.2009, CVC has clarified that all organizations should invariably follow a fair, transparent and open tendering procedure to select the application service provider for implementing e-tendering solutions.

While emphasizing increasing transparency and cutting delays by e-Payments and e-receipt by Govt. organizations etc, CVC has directed as follows:-

- (a) The payment to all suppliers/vendors refunds of various nature and other payments which the organizations routinely make shall be made through electronic payment mechanism at all centres where such facilities are available in the banks.
- (b) Salary and other payments to the employees of the concerned organizations at such centres shall also be made through electronic clearing system (ECS) wherever such facilities exist.
- (c) As the organizations will have to collect bank account numbers from the vendors suppliers employees and others who have interface of this nature with the Govt. organizations, the concerned organizations may plan to switch over to e-Payment system in a phased manner starting with the transactions with the major suppliers in the beginning or in whatever manner is found more convenient.
- (d) The departments, PSUs etc should also provide an enabling environment and facilities so that businessmen and other citizens can make payments of Govt. dues and payments to PSUs etc electronically.
- (e) In addition to significantly reducing processing costs in preparation and dispatch of cheques, the above measures also reduce the risk of frauds by providing speed, efficiency and easier reconciliation of accounts.

Vigilance functionaries being the extended arms of the CVC have an important role in ensuring implementation of leveraging technology in all public dealings. As CVC has visualized that all Govt. organizations should eventually switch over to total e-Procurement.

### **3. Integrity Pact**

Originally called the “Island of Integrity”, the Integrity Pact (IP) was designed and launched by Transparency International in the 1990s with the primary objective of safeguarding public procurement from corruption. “Integrity Pact” is a process in which voluntary agreements are made, involving bidders and the Government, to restrict opportunities for corruption in a particular project. Central Vigilance Commission through its Office Order No.41/12/07 dated 4.12.2007 has emphasized the importance of adoption of Integrity Pact in Government procurement activities.

It contains rights and obligations to the effect that neither side will pay, offer demand or accept bribes, or collude with competitors to obtain the contract, or while carrying it out. Also that bidder will disclose all commissions and similar expenses paid by them to anybody in connection with the contract; and that sanctions will apply when violations occur. These sanctions range from loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, to blacklisting for future contracts on the side of the bidders and criminal or disciplinary action against employees of the Government .

IP allows companies to refrain from bribing in the knowledge that their competitors are bound by the same rules. It allows governments to reduce the high cost of corruption on procurement, privatization and licensing. The IP has shown itself to be adequate to many legal settings and flexible in its application. Since its original conception, the tool of IP has now been used in more than 14 countries worldwide and has benefited from the feedback of a variety of individuals and organizations.

#### **Primary Objectives of IP**

IP is intended to accomplish the following primary objectives:-

- (a) To enable companies to abstain from bribing by providing assurances to them that
  - (i) Their competitors will also refrain from bribing and
  - (ii) Government procurement, privatization or licensing agencies will undertake to prevent corruption including extortion, by their officials and to follow transparent procedures and
  - (iii) To enable governments to reduce high cost and the distortionary impact of corruption on public procurement, privatization or licensing. Beyond the individual contract in question, the IP is of course also intended to create confidence and trust in the public decision making process procurement, privatization and licensing programmes.

#### **Operation of IP**

- a) IP covers all the activities relating to the contract from pre-qualification of bidder, bidding and contracting proper, implementation and completion and operation.

- b) IP will cover planning, design, construction, installation or operation of the assets by the authority, the issuing by the Authority of licenses and concessions, as well as the corresponding services such as consulting services and similar technical, financial and administrative support.
- c) IP begins when the bidder submits and Expression of Interest or purchases the bid document. It ends after the execution of the contract when payments have been made to the satisfaction of the contracting authority.

#### Effects of IP

- a) It helps Governments, businesses and civil society which are prepared to fight corruption in the field of public contracting – both for procurement and works.
- b) It enhances public trust in government contracting.
- c) It improves the credibility of government procedures and administration.
- d) It achieves maximum transparency all along various steps leading to the contract and throughout the implementation which calls for extensive and easy access to the relevant information.

#### Need for implementation of Integrity Pact in India

- a) It is essential that IP is implemented in India as corruption is a great problem in India.
- b) There are frequent complaints about corruption at various levels and it delays large contracts and large and small Government procurements.
- c) Corruption at all levels significantly increases the cost of procurement and works and causes delays in important public projects.
- d) The IP programme offers preventive way to supplement existing methods and make the total effort more effective in reducing corruption.

#### Potential benefits of IP

- a) It would help in speeding up and streamlining the contract management process.
- b) It would lower the cost of procurement and works.
- c) It reduces harassment faced by honest officials.

### Benefits to the contractors/suppliers

Contractors and suppliers are also benefited by implementation of IP as it makes processes more efficient and reduces the business cost.

### Key features of IP

- a) The Commitments and obligations of the Principal (the concerned PSU/ Govt. agency)
- b) The Commitments and obligations of the counter party (i.e. the bidder, contractors, suppliers of goods and services)
- c) Consequences of violation of the commitments and obligations.
- d) The role and responsibilities of the Independent External Monitors (IEM).
- e) Implementation Steps.
- f) Periodic review of effectiveness.

### Commitments and obligations of Principal

- (i) The Principal will commit to have ethical and corruption-free business dealings with counter parties.
- (ii) The Principal will value its relationship with all counter parties and will deal with them in a fair and transparent manner.
- (iii) The Principal and/or its associates (employees, agents, consultants, advisors etc) will not seek any favour, undue benefit or accept bribes for themselves or for third parties.
- (iv) will deal with all counterparties with equity, reason and fairness.
- (v) will exclude all associates who may be prejudiced or have a conflict of interest in dealings with counter parties.
- (vi) will honour its commitments and make payments in a timely manner.
- (vii) Will initiate action and pursue it vigorously whenever corruption or unethical behaviour comes to notice.

### Commitments and obligations of counter party

- a) Counterparty directly or indirectly (through agent, consultant, advisor etc) will not pay any bribe or extend illegal benefit or provide undue advantage to any one dealing with the Principal.
- b) The counterparty will not engage in collusion, price-fixing etc. with other counterparties in dealing with the principal.



- c) The counterparty will not pass to any third party any information unless authorized by the principal.
- d) The counterparty will disclose all commissions and similar expenses paid by them to anybody in connection with the contract.
- e) The counterparty will promote and observe best ethical practices within its organization.
- f) The counterparty will not make any false statement or allegation against the principal.

The counterparty will inform the IEM

- a) If it receives demand for a bribe or illegal payment/benefit favour.
- b) If it comes to know of any unethical or illegal practice of the principal.
- c) Of all payments it makes to the associates of the principal.

Violations and consequences

- a) If a counter party commits any violation of the IP it may lose bid security and performance bond. In addition the Principal may terminate any current contract and business relationship with such counterparties and their associates.
- b) The Principal would ban the business and exclude the counterparty from future dealings until the IEM is satisfied that the counterparty will not commit any violation in future.
- c) The counterparty will be liable to damages as determined by the IEM.
- d) The Principal may initiate criminal proceedings against violating counterparties.

Independent External Monitors

- a) The Principal in consultation with CVC will appoint an IEM to oversee IP program implementation and effectiveness.
- b) IEM will be a person of impeccable integrity and knowledgeable of Government tendering/contracting processes.
- c) IEM preferably should have domain knowledge/experience of the principal's work area.
- d) The major role of IEM will be to prevent/reduce/eliminate corruption, bribes and other unethical practices.

- e) IEM will not have any administrative, implementation or enforcement responsibilities. He will coordinate with other anti-corruption organizations such as CVC. He may engage services of outside agencies such as accounting firms, law firms etc., if required in discharge of his responsibilities.
- f) IEM will have access to all offices and internal records of the principal. He will also have access to counterparties records and information regarding their dealings with the principal.
- g) IEM will have the right to attend any meeting between Principal concerned and the counterparties as well as internal meetings of principal.
- h) If the IEM observes or suspects any irregularity, he will inform appropriate senior most officer of Principal concerned. He may also inform CVC and make the information public.
- i) IEM can be removed from his office by the Principal concerned with the consent of CVC through an open and transparent process.
- j) IEM will be a voluntary and non-salaried position.

#### Implementation Steps

- a) To get commitment from all Senior-level officials of Principal to implement the program.
- b) To identify Nodal Officer and Nodal Department.
- c) To develop a phased implementation program, initially all contracts worth over a threshold limit and more should be covered under this Program.
- d) To select and appoint IEMs in consultation with CVC.
- e) To develop detailed implementation plans and modify the Integrity Pact document in consultation with the TI India and/or IEM.
- f) To notify all senior staff members and major contractors about the plans to implement Integrity Pact Program.
- g) To include it in the web-site and publicize this initiative through the media.
- h) To modify the Integrity Pact Document in consultation with Transparency International India and IEMs.
- i) To notify all senior staff members and major contractors about the plans to implement the Integrity Pact Program.

### Periodic Review and Evaluation

The Principal periodically reviews the effectiveness of Integrity Pact Program through all or some of the following:

- a) IEM will have to submit a Quarterly Report on the progress and effectiveness of Integrity Pact Program.
- b) IEM and senior leadership of the Principal will do a self-assessment of Integrity Pact Program's effectiveness and identify areas / ways to improve.
- c) Principal will have to conduct a complete and periodic review by an outside agency, including Government Officials, suppliers, Independent Observers etc. about IP's effectiveness in reducing corruption.
- d) Principal will have to meet with CVC and TI-India on an annual basis to discuss the above.

### Experience of implementation of Integrity Pact world over

The global overview of experience of implementation indicates that IP concept is sound and workable.

One of its strengths is that it is flexible enough to adopt to many local legal structures and requirements as well as to different degrees in which the governments are willing to proceed.

Integrity Pact has already been implemented in Ministry of Defence, Public Sector Units such as ONGC and RINL. Many PSUs and other organizations are also in the process of implementation of Integrity Pact in their organizations.

**Integrity Pact in HAL** (Through Materials Management Circular No.36 (issued vide Circular No.HAL/CD/617/2008/ dated 04<sup>th</sup> November 2008), HAL has adopted that Integrity Pact would be signed with vendors in case estimated value of each contract exceeds Rs.20 Crores.

Only those vendors/bidders who have entered into such an Integrity Pact with the buyer (HAL) would be competent to participate in bidding with HAL wherever the value of each contract exceeds Rs. 20 Crores.

This Pact is a preliminary qualification for entering into any contract with HAL. The Pact will be effective from the stage of Invitation of Bids till the complete execution of the Contract.

The Central Vigilance Commission (CVC) has considered the proposal of names for appointment as Independent External Monitors (IEM) in HAL and has appointed S/ Shri Subir Datta, IAS Retd. and S C Tripathy IAS Retd for appointment as IEMs in HAL.

#### 4. Complaint Handling

Receipt of information about corruption, malpractice or misconduct on the part of public servants, from whatever source, would be termed as a complaint.

Dictionary definition of complaint is that statement that one is aggrieved or dissatisfied; formal protest; illness. In official parlance, complaints are communications reporting grievances of malpractices and are the starting point of punitive vigilance work. Complaints are an important source of information about the corruption, malpractice and misconduct on the part of public servants.

However, before initiating any action on oral complaints, their identity should be verified. Any allegation having a scope of corruption or corrupt practices has a "Vigilance Angle". The purpose of a complaint may be to settle scores. Complaints can be screened as under: -

- (a) Whether the subject matter is within the executive power of the Central Government, or Organisation.
- (b) Having vigilance or non-vigilance angle.
- (c) Pertains to misconduct having rational connection with the present employment.

The following is the procedure of handling complaint as per CVC:-

- (a) Every Vigilance Section/Unit in the Division/Complex will maintain a vigilance complaints register in Form CVO-1, in two separate parts for category 'A' and category 'B' employees. Category 'A' includes such employees against whom Commission's advice is required whereas category 'B' includes such employees against whom Commission's advice is not required. If a complaint involves both categories of employees, it should be shown against the higher category, i.e. category 'A'.
- (b) Every complaint, irrespective of its source, would be entered in the prescribed format in the complaints register chronologically as it is received or taken notice of. A complaint containing allegations against several officers may be treated as one complaint for the purpose of statistical returns.
- (c) Entries of only those complaints in which there is an allegation of corruption or improper motive; or if the alleged facts prima facie indicate an element or potentiality of a vigilance angle should be made in the register. Complaints, which relate to purely administrative matters or technical lapses, such as late attendance, disobedience, insubordination, negligence, lack of supervision or operational or technical irregularities, etc. should not be entered in the register and should be dealt with separately under "non-vigilance complaints".

- (d) A complaint against an employee of a public sector enterprise or an autonomous organization may be received in the administrative Ministry concerned and also in the Central Vigilance Commission. Such complaints will normally be sent for inquiry to the organisation in which the employee concerned is employed and should be entered in the vigilance complaints register of that organisation only. Such complaints should not be entered in the vigilance complaints register of the administrative Ministry in order to avoid duplication of entries and inflation of statistics, except in cases in which, for any special reason, it is proposed to deal with the matter in the Ministry itself without consulting the employing organisation.
- (e) Each complaint will be examined by the chief vigilance officer to see whether there is any substance in the allegations made in it to merit looking into. Where the allegations are vague and general and prima facie unverifiable, the chief vigilance officer may decide, with the approval of the head of his department, where considered necessary, that no action is necessary and the complaint should be dropped and filed. Where the complaint seems to give information definite enough to require a further check, a preliminary inquiry/ investigation will need to be made to verify the allegations so as to decide whether, or not, the public servant concerned should be proceeded against departmentally or in a court of law or both. If considered necessary, the chief vigilance officer may have a quick look into the relevant records and examine them to satisfy himself about the need for further inquiry into the allegations made in the complaint. The information passed on by the CBI to the Ministry/Department regarding the conduct of any of its officers should also be treated in the same way.
- (f) A complaint which is registered can be dealt with as follow:
  - (i) File it without or after investigation;
  - (ii) Or to pass it on to the CBI for investigation/appropriate action;  
or
  - (iii) To pass it on to the concerned administrative authority for appropriate action on the ground that no vigilance angle is involved; or
  - (iv) To take up for detailed investigation by the departmental vigilance agency.

An entry to that effect would be made in columns 6 and 7 of the vigilance complaint register with regard to “action taken” and “date of action” respectively. A Complaint will be treated as disposed for monthly/annual returns either on issue of charge-sheet or final decision for closing or dropping the complaint. If a complaint is taken up for investigation by the departmental vigilance agency or in cases in which it is decided to initiate departmental proceedings or criminal prosecution, further progress would be watched through other relevant registers. If there were previous

cases/complaints against the same officer, it should be indicated in the remarks column, i.e. column 8.

The Commission has issued instructions that no action is to be taken by the administrative authorities, as a general rule, on anonymous/pseudonymous complaints received by them. When in doubt, the pseudonymous character of a complaint may be verified by enquiring from the signatory of the complaint whether it had actually been sent by him. If he cannot be contacted at the address given in the complaint, or if no reply is received from him within a reasonable time, it should be presumed that the complaint is pseudonymous and should accordingly be ignored. However, if any department/organisation proposes to look into any verifiable facts alleged in such complaints, it may refer the matter to the Commission seeking its concurrence through the CVO or the head of the organisation, irrespective of the level of employees involved therein.

Although, the Commission would normally also not pursue anonymous/pseudonymous complaints, yet it has not precluded itself from taking cognizance of any complaint on which action is warranted. In the event of the Commission deciding to make an inquiry into an anonymous or pseudonymous complaint, the CVO concerned, advised to look into the complaint, should make necessary investigation and report the results of investigation to the Commission for further course of action to be taken. Such complaint should be treated as a reference received from the Central Vigilance Commission and should be entered as such in the vigilance complaints register and in the returns made to the Commission.

Where the Commission asks for an inquiry and reports considering that the complaint is from an identifiable person, but it turns out to be pseudonymous, the administrative authority may bring the fact to the notice of the Commission and seek instructions whether the matter is to be pursued further. The Commission will consider and advise whether, notwithstanding the complaint being pseudonymous, the matter merits being pursued.

Sometimes, the administrative authority may conduct investigation into a pseudonymous complaint under the belief that it is a genuine signed complaint, or for any other reason. The Commission need not be consulted if it is found that the allegations are without any substance. But if the investigation indicates, prima facie, that there is some substance in the allegations, the Commission should be consulted as to the further course of action to be taken if it pertains to category "A" employee.

Vigilance Officials in the Divisions/Complex should ensure that they invariably forward a copy of complaint received by them directly from any source to the Office of the CVO. A separate register/file to be maintained for anonymous/pseudonymous complaints.

Vide Circular No.3 (v)/99/2 dated 29<sup>th</sup> June 1999, CVC had categorically directed that no action was to be taken on anonymous/pseudonymous petitions/complaints.

Vide Circular No.98/DSP/9 dated 31.1.2002, the Commission reiterated the directions given on 29.6.99.

Vide Circular No.98/DSP/9 dated 11.10.2002, the Commission has reiterated that no action was to be taken on anonymous/pseudonymous petitions/complaints. However if any Department/organization proposes to look into any verifiable facts alleged in such complaints, it may refer the matter to the Commission seeking its concurrence through the CVO or the head of the organization irrespective of the level of employees involved therein.

Vide Circular No.25/7/06 dated 6<sup>th</sup> July 2006; the Commission issued detailed clarification on some of the select issues raised in the Annual Zonal Meetings and interactive sessions of CVOs including issues pertaining to Complaints.

Vide Office Order No.12/3/2005 dated 16<sup>th</sup> March 2005, Commission directed that no complaint is to be closed by the Department on its own without consulting the Commission in case the same has been forwarded by the Commission for a report.

Vide Office Order No.57/8/04 dated 31.8.2004, the Commission has decided that:-

- (a) As a rule complaints/cases which are more than 5 years old and no action has been taken till then, should not be investigated. However the time limit of 5 years will not apply to cases of fraud and other criminal offences: and
- (b) No cognizance should be taken of any complaint which is received 6 months prior to the initiation of selection process for senior posts.

The Govt. of India has authorized the Central Vigilance Commission as the designated agency to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action. Vide Office Order No.33/5/2004 dated 17.5.2004; CVC forwarded a Public Notice published by it on the subject 'Govt. of India Resolution on Public Interest Disclosure & Protection of Informer'.

Important features of the Public Notice under GOI Resolution on Public Interest Disclosure and Protection of Informer:

- (i) The Complaint should be in a closed/secured envelope
- (ii) The envelope should be addressed to Secretary, Central Vigilance Commission and should be superscribed "Complaint under the Public Interest Disclosure". If the envelope is not superscribed and closed, it will not be possible for the Commission to protect the complainant under the above resolution and the complaint will be dealt with as per the normal complaint policy of the Commission. The complainant should give his/her name and address in the beginning or end of complaint or in an attached letter.
- (iii) Commission will not entertain anonymous/pseudonymous complaints.
- (iv) The text of the complaint should be carefully drafted so as not to give any details or clue as to his/her identity. However the details of the complaint should be specific and verifiable.

- (v) 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. If any further clarification is required, the Commission will get in touch with the complainant.
- (vi) The Commission can also take action against complainants making motivated/vexatious complaints under this Resolution.

*(Issued in Public Interest by the Central Vigilance Commission, INA Satarkata Bhavan, New Delhi)*

Vide Office Order No.16/3/04 dated 1.4.2004, issued instructions regarding handling/closure of complaints which either do not attract vigilance angle or the issue is of petty nature, and the complaints which are set for action and report.

Vide Circular No. HAL/P&A/27(1)/Policy/2009/251 dated 13<sup>th</sup> May 2009, HAL has adopted a Complaint Handling Policy.

Vide Circular No.15/7/09 dated 1.7.2009 CVC issued instructions regarding access of complaints to CVOs.

The ISO 9001-2008 Quality Manual Part – II of Vigilance Department contains the flow chart regarding handling of complaints and check lists that need to be maintained for complaint verification.

#### False Complaints

Action against persons making false complaints has been mentioned in detail vide Para 26 of Special Chapter on Vigilance Management in Public Sector Enterprises,

Section 182 IPC provides for prosecution of a person making a false complaint. Therefore if a complaint against a public servant is found to be malicious, vexatious or unfounded, serious action should be considered against the complainant.

Under Section 195 (e) Cr.P.C. a person making a false statement can be prosecuted on a complaint lodged with a court of competent jurisdiction by the public servant to whom the false complaint was made or by some other public servant to whom he is subordinate.

Alternatively if the complainant is a public servant it may also be considered whether departmental action should be taken against him as an alternative or in addition to prosecution.

HAL CDA Rules and Standing Orders deems making of false complaints as misconduct and disciplinary action can be initiated thereto in such cases.



5. **Investigation**

**Investigate:** “to carefully examine the facts of a situation, an event, a crime etc., to find out the truth about it on how it happened.”

**Investigation:** “an official examination of the facts about a situation, crime etc., a scientific or academic examination of the facts of a subject or a problem.”

**Or**

“Systematic examination by experiment or mathematical treatment: to investigate or to inquire into something systematically” Therefore the stress is on the word systematic. This is the key to successful investigation.

**Basis for conduct of investigation - Complaints**

The initiation of an investigation is mainly based on a complaint. Information about corruption/ malpractices on part of public servants may come to light from any source such as:-

- a) Complaints received by an administrative authority;
- b) Complaints received in the Central Vigilance Commission
- c) Complaints received or intelligence gathered by CBI and by Police authorities;
- d) Departmental inspection reports and stock verification surveys;
- e) Scrutiny of Annual Property Returns;
- f) Scrutiny of transactions reported under the Conduct Rules;
- g) Reports of any irregularities in accounts revealed in the routine audit of accounts e.g. tampering with records, over-payments, misappropriation of money or materials etc;
- h) Audit reports on Government accounts and on the accounts of public undertakings and other corporate bodies;
- i) Report of parliamentary committees like the Estimates Committee, Public Accounts Committee and the Committee on Public Undertakings;
- j) Proceedings of the two Houses of Parliament;
- k) Complaints and allegations appearing in the press, etc.
- l) Apart from information gathered from outside sources, the Vigilance Officials should devise and adopt such other methods as they may consider appropriate and fruitful in the context of the nature of work handled in HAL for collecting information about any possible malpractices and misconduct among the employees of the organization. Information gathered in such a manner will also be reduced to writing and registered in the Vigilance Complaints Register at a suitable stage with the approval of the CVO. Generally, Vigilance

investigations into matters affecting HAL would be taken based on the following:-

- (i) At the request of the Management
- (ii) On the instructions from Corporate Office (CVO)
- (iii) On suo-moto basis.
- (iv) On receipt of complaint/source information
- (v) After conduct of preventive vigilance inspection/checks, where prima facie it is found that employees are indulging in malpractices etc.

#### Preliminary Inquiry/Investigation

Agency for conducting enquiries:

As soon as a decision has been taken to have an inquiry made into allegations contained in a complaint, it will be necessary to decide whether the allegations should be inquired into departmentally or whether a police investigation is necessary.

Preliminary enquiry by departmental agencies (Vigilance Dept)

After it has been decided that the allegations contained in a complaint should be looked into departmentally, the Vigilance Officer proceeds to make a preliminary enquiry to determine whether prima facie there is some substance in them.

The preliminary enquiry may be made in several ways depending upon the nature of the allegations and the judgment of the Vigilance Officer, e.g.:

- (a) If the allegations contain information which can be verified from any documents or files or any other departmental records, the Vigilance Officer, without loss of time, secures such records, etc., for personal inspection. If any of the papers examined is found to contain evidence supporting the allegations such papers are taken over by him for retention in his personal custody to guard against the possibility of available evidence being tampered with. If the papers in question are required for any current action, it may be considered whether the purpose would not be served by substituting authenticated copies of the relevant portions of the record, the original being retained by the Vigilance Officer in his custody. If that is not considered feasible for any reason, the officer requiring the documents or papers in question for current action should be made responsible for their safe custody after retaining authenticated copies for the purpose of the enquiry.
- (b) In case where the alleged facts are likely to be known to any other employees of the department, the Vigilance Officer interrogates them orally or asks for their written statements. The Vigilance Officer makes a full record of the oral interrogation which the person interrogated is asked to sign in token of confirmation. Whenever necessary, any important facts disclosed during the oral interrogation or in written statements are verified by documentary or collateral evidence to make sure of the facts.

- (c) In case it is found necessary to make enquiries from the employees of any other Government department or office, the Vigilance Officer will seek the assistance of the department concerned for providing facility for interrogating the person or persons concerned and/or taking their written statements.

In certain types of complaints, particularly those pertaining to works, the Vigilance Officer will find it helpful to make a site inspection or a surprise check to verify the facts on the spot and also to take suitable action to ensure that the evidence found there in support of the allegations is not disturbed.

If during the course of investigation it is found that it will be necessary to collect evidence from non-official persons or to examine any papers or documents in their possession, further investigation in the matter is entrusted to the Central Bureau of Investigation.

If the employee complained against is in charge of stores, equipment, etc., and there is a possibility of his tampering with the records pertaining to such stores or equipment, the Vigilance Officer may consider whether the employee concerned should not be transferred immediately to other duties and seek the assistance of the head of the department or office in doing so.

During the course of preliminary enquiry, the employee concerned may be given an opportunity to say what he may have to say about all allegations against him to find out if he is in a position to give any satisfactory information or explanation. In the absence of such an explanation, the employee concerned is likely to be proceeded against unjustifiably. It is only proper, therefore, that the investigating officer tries to obtain the suspect employee's version of "facts" and why an inquiry should not be held. There is no question of making available to him any document at this stage. Supplying with documents arise only when a decision is taken to proceed with Departmental Enquiry.

#### Purpose of investigation

Vigilance Investigation is concerned primarily with obtaining enough evidence to convict a person (on enquiry). On the other hand the purpose of an investigation is to supply the Disciplinary Authority with sufficient factual information to enable him to deal with the case, as felt appropriate. Regardless of the time or effort put into the investigation, if the needed information to take action is not forthcoming, the investigation is a failure. In order to eliminate incomplete and poorly conducted investigation a well-organized procedure or a systematic approach must be followed.

An investigation must aim at establishing the following:-

- (a) Was the offence/misconduct actually committed? If so who committed it?
- (b) Modus operandi used.
- (c) What means were employed?

Another way of stating this is that the investigation is aimed at finding:-

- (a) Motive

- (b) Opportunity
- (c) Means
- (d) Perpetrator

### Types of Investigations

Investigation may take any of the following forms:-

- (a) Overt investigation
- (b) Covert investigation

The majority of Vigilance investigations are concerned with the following:-

- (a) Commission of criminal offences like demand and acceptance of illegal gratification, possession of disproportionate assets, forgery, cheating, and abuse of official position with a view to obtaining pecuniary advantage for self or for any other person.
- (b) Irregularities reflecting adversely on the integrity of the public servant.
- (c) Lapses involving any of the following:
  - (i) Gross negligence
  - (ii) Reckless decision.
  - (iii) Failure to report to competent authorities, exercise of discretion / powers without or in excess of powers /jurisdiction
  - (iv) Cause of undue loss or a concomitant gain to an individual or a set of individuals/a party or parties; and
  - (v) Flagrant violation of systems and procedures

### Systematic conduct of investigation

#### Stage – I – Initial Planning

Whatever be the type of investigation, the following should be considered during the initial planning:

- a) reasons for the investigation, which is based on background data.
- b) is it a company matter.
- c) whether it is to handled overtly or covertly
- d) anticipated duration for completion of investigation
- e) study data available and rules/regulations connected with the case.
- f) list out papers, files, documents and personnel required for investigation
- g) whether association of CBI/local police/ is considered essential

- h) whether the case is required to be handled exclusively by outside agency, e.g. CBI etc.

#### Stage – II - Collection of relevant data

The second step is to collect all the relevant data for successful completion of the investigation. In order to conclude what is to be collected, an investigation plan must be made to include the following:-

- (a) Information needed.
- (b) Methods to be used to collect the relevant data (documents, sample, recording of statement etc,)
- (c) Sources to be used
- (d) Extensive groundwork may be done to collect enough evidence in terms of sample, photographs and documentary proof as corroborative evidence. The investigation plan serves as guide during the investigation. The plan should be in writing and too much reliance should not be placed on memory.

Methods of collection and sources to be used:

- (a) Observation – this can be done by surveillance, searches and visits to the place.
- (b) Study of documents and records - records should be verified, where required seized/photocopies taken duly authenticated by the departmental heads, if the relevant files are required by the departments for their day to day functioning.
- (c) Interrogation and statements – witnesses and suspected employee(s) should be listed and questioned. Wherever possible written statements should be recorded, signatures obtained in the presence of independent witnesses if possible.
- (d) Discussion with informants
- (e) Liaison
- (f) Special investigations with the help of experts/agencies where required.

#### Collection, Marshalling and Presentation of evidence in Vigilance Cases

Punitive Vigilance is all evidence. It is true that in Departmental cases the principle followed is of 'preponderance of probability' rather than 'proof beyond doubt' but even for this some evidence would certainly be required before a delinquent is punished. Suspicion how-so-ever strong, cannot take place of evidence. Evidence has as such to be collected, marshaled and then presented for taking proper action in a Vigilance case.

### Type of evidence:

Evidence can mainly be of the following types:

Oral evidence – of witnesses personally aware of any facts or circumstances of the case,

Documentary evidence – comprising documents or records relating to the case,

Physical evidence – comprising any material exhibits relating to the case and;

Circumstantial evidence – relating to any circumstances relevant to or corroborative of the facts of the case.

The type of evidence that may have to be collected or be available in any vigilance enquiry would depend on the nature of operations or allegations.

The best way is to chalk out a priority-wise plan of investigation keeping the following objectives in view:-

That there is no premature leakage of information or opportunity to the suspect official to tamper with the evidence, particularly the oral witnesses and the documents/records.

That adequate evidence is collected to:

Come to a clear finding about the allegations as far as possible;

- ❖ Enable specific and clear charges being framed in subsequent departmental enquiry in case of the allegations being proved during the vigilance investigation.
- ❖ That the investigation is completed without any avoidable delay under a predetermined schedule.
- ❖ For the purpose of actual collection of evidence, any or all the following steps may have to be taken;
- ❖ Collection and scrutiny of relevant documents/records and obtaining expert opinion in case of suspected forgery etc.
- ❖ Collection of physical evidence/material exhibits and obtaining expert opinion where called for.
- ❖ Scrutiny of property returns and verification of assets/liabilities and sources of funds (special returns may be called for in case of need regarding moveable and immovable assets).

### Watch/surveillance

Laying of trap, if necessary with the help of CBI.

Examination of complainant/aggrieved persons and other oral witnesses.

The exact sequence in which these steps would be taken would depend on the facts and circumstances of each case, the basic principle being to avoid premature leakage and prevent tampering with the evidence.

Certain precautions are necessary with regard to various types of evidence as follows:-

#### Oral evidence

Oral evidence is becoming the least dependable type of testimony because of its vulnerability to contradictions and influence by the delinquents as also gradual loss of interest due to usual delays etc. Very often the persons concerned are themselves abettors for corruption and as such naturally reluctant and non-cooperative. Such reluctance may also arise out of the fear of harassment from the delinquent or even his colleagues if the person has to continue dealings with the organization. It is however helpful if the aggrieved person or the witness is examined as early as possible after the event and is given requisite assurance against harassment etc. Efforts as far as possible should also be made to examine different witnesses either simultaneously or any one after the other without giving opportunity to compare notes. The statements recorded could be attested by an officer not less than the rank of a Deputy Manager from HR Dept to the effect that the statement was recorded in his presence and the person making the statement has signed only after reading and understanding the contents as correct.

#### Documentary and physical evidence

Such evidence should be collected under proper recovery memo and under attestation by independent witnesses and even by the suspect, where possible. Care should also be taken for their safe custody to prevent subsequent tampering with or disappearance. In case of vital records / documents it may be worthwhile keeping their photo copies.

#### Marshalling of evidence

A plethora of evidence is usually collected during vigilance investigation often disjointed and some of it even sometimes irrelevant, particularly in the oral evidence. Such evidence in its raw form may not serve much purpose. It has to be properly marshaled to establish co-relation between various types of evidence, side and with different allegations on the other. The marshalling has to be done allegation wise and in a manner which would help in coming to a well reasoned finding about the allegations, and formulating a proper enquiry report for the disciplinary authority. The defence if any offered by the suspected official or otherwise the possible line of defence should also be kept in view in marshalling the evidence.

The concept of Panchanama or Mahazar is one of the documents prepared generally during the course of any seizure/check.

A Panchanama is as good as a photograph of a particular incident, answering basic queries of 5 Ws and 1 H, i.e. who, what, when, where, why and if possible, how. Normally a Panchanama will contain the following information:

- (a) Date and place of the incident
- (b) Brief details of the matter which is going to be taken up, information like incident or seizing of certain materials/documents etc
- (c) Brief description of the incident/occurrence

- (d) The Name/Designation/Badge No. of the suspect.
- (e) Brief description of the materials in case of seizure like documents/material objects etc
- (f) The Panchanama should be signed by atleast 5 persons including the drawer and the suspect.
- (g) Witnesses, preferably independent.
- (h) In case of seizing the materials/documents the packet/cover of the seized items should also be signed by all the witnesses who are signatories to the Panchanama.
- (i) Ambiguous terms like etc, may be, should not be used.
- (j) All corrections in the Panchanama should be attested by the suspect
- (k) In case of refusal to sign the Panchanama by the suspect, an entry to the effect has to be made and attested by the accompanying witnesses
- (l) In case a photograph is arranged, a mention to that effect is to be made.
- (n) Units of measurement/quantity/Nos. wherever not possible for immediate ascertaining, and the recording of time should be preceded by the word 'about'.

The ISO 9001-2008 Quality Manual Part – II of Vigilance Department contains the formats for Enquiry Notice, which the Vigilance Officer is expected to issued while summoning HAL employees for examination/recording of statement. It also contains standard format wherein the documents/files/records etc are requested.

The format for requisitioning files/records etc can be used both for checks/inspections/scrutiny that is carried out as part of Preventive Vigilance Check/Action Plant etc., as well as during vigilance case investigations. However timely securing of files/records is very vital. In case of deliberate delay on the part of the custodian in making available the files/records/documents/information etc, efforts to be made to take up the matter with concerned HOD.

However if the Vigilance Official during the course of a Vigilance Investigation genuinely apprehends that all reasonable efforts to secure the file/record/document/information has not yielded any result and that there is possibility of tampering/destruction of evidence then he would proceed to seize the record/file/document etc from the custodian after following the procedure laid down in the Seizure Report/Panchanama.

### **Guidelines for check, seizure of digital evidence**

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#### Activities/Procedures

#### For securing a suspected computer incident scene

- pre search preparation
- securing the scene



- shutting the computer
- items to be seized
- documenting the evidence
- transporting the evidence

#### Pre search preparation

- An adequate tool kit – containing flat and cross head screwdrivers, a small pair of pliers, and wire cutters for cutting cable ties.
- A search kit – this should comprise an array of plastic paper and padded bags, adhesive and tie on labels, tape and elastic bands for securing leads, plastic crates and flat pack boxes for removal of items and blankets or foam sheets for padding during carriage.
- Sketch plan sheets – a sketch plan identifying the locations of the items seized should always be made, and a master property form with associated numbering should be used to list and identify items against the labels placed on them.
- Still and video cameras – screenshots of operating machines are useful to prove correct shutdown procedures and in situ pictures are a boon to proving later the proximity of items to suspects and the general layout of the premises.
- Disk boxes – these are for the removal of floppy disks found on the premises. It is essential to ensure that all floppy disks can be identified as to their exact location at seizure.
- Mobile telephone – this is useful to obtain further assistance or advice while on-site.
- Blank floppy disks – a number of clean, blank, floppy disks should be prepared beforehand and thoroughly erased to ensure that no previous data is present. These may be used to save files prior to switching off on computers found running.

#### Securing the scene

- The entire work area, office or cubicle is a potential misconduct scene, not just the computer itself.
- No one should be allowed to touch the computer including shutting the computer down or exiting from any programs/files in use at the time or remove anything from the scene.
- All individuals should be interviewed to determine their access to the computer and work area before asking them to leave.
- The scene should not be left unattended or unsecured until the processing of the scene is completed.
- Notes should be maintained regarding how scene security was established to include the identification of persons at the scene.

## SHUTTING DOWN THE COMPUTER

The following table provides shutdown procedures for various operating system

Operating system	Shut down procedures
MS DOS	Pull power cord from wall
UNIX/Linux	<ul style="list-style-type: none"><li>• Right click to the menu</li><li>• From menu click console</li><li>• If root user prompt (#) not present, change user to root by typing <b>su -</b></li><li>• if root password not available pull power cord from the wall</li><li>• if password is available enter it. At the # sign type <b>sync;sync;halt</b> and the system will shut down</li><li>• pull power cord from the wall.</li></ul>
Mac	<ul style="list-style-type: none"><li>• click Apple logo</li><li>• click shutdown</li><li>• The window will tell you it is safe to turn off the computer.</li><li>• Pull power cord from the wall.</li></ul>
Windows 3.X/95/98/NT	<ul style="list-style-type: none"><li>• Pull power cord from wall</li></ul>

### Items to be seized

- The main system unit
- The key board and mouse
- Any external expansion units or cards
- All connecting leads
- Any dongies
- Power supply units, particularly for laptops

### In addition the following peripherals items may be taken if deemed relevant

- External back up devices such as jazz, zip and tape drives.
- Printers. It may be possible to associate output documents with particular printers.
- Modems. Some of these can contain a memory of telephone numbers.
- Scanners.
- Digital cameras.
- PCMCIA cards and leads.

All electronic media found should be taken for examination. In this case the exhibit bags should be labeled rather than the items themselves. Typical items are:-

- All floppy disks, hard disks not fitted with machines
- Any CD-ROM and CD-RW discs.
- Back up tapes and cartridges of whatever format.
- Video tapes if a video backup system is fitted.

### Other items that may be considered for seizure are as follows

- Personal organizers, palmtops, PIMs and PDAs

- Mobile telephones. Most of these have a memory of numbers and other data.
- Landline telephones. Some of these have a memory of numbers.
- Answering machines. Some of these have memory.
- Fax machines. Some of these have memory, some retain a duplicate record.
- Dictating machines and tapes.
- Multi-purpose units. That is, combination of some of the above.

#### Documentation

- All connections and plugs should be labeled and marked for evidence prior to disassembly using tape and/or tags to mark each end.
- The configuration should be documented and photographed prior to removal.
- Detailed notes should be maintained during all aspects of the scene of processing. This not only includes the usual who what where when but overall observations of the scene.
- An evidence/property document should contain entries with a description of the items (model and serial number), any visible markings present on the item, the condition of the item, the manner it was marked for evidence and the location from within the scene it was seized.

#### Transporting the hardware from the scene

- It is important to remember that most IT equipment is susceptible to magnetic fields and therefore removal and storage methods should be such as to avoid exposure to them.
- Investigators must determine which drives, disks and other magnetic media need to be protected.
- Protect floppy disk drives according to manufacturer's recommendations.
- Diskettes have fragile magnetic media. If they are packed loosely and allowed to strike each other repeatedly during transit, the media could be damaged and the data lost.
- Although magnetic media has often been taken through airport, metal detectors and X-ray machines without damage, it is wiser not to take magnetic media through these devices.
- All hardware and software should be transported in dust-free, climate controlled environments. Computer related evidence is sensitive to heat and humidity and should not be stored without special precautions.
- A safe range for storing magnetic media is between 40°-90° and 20-80% humidity, free of dust and smoke.

#### **CHECK LIST FOR SYSTEM DISCOVERY**

- The layout of the computer system including the number and types of computers and the types of operating systems and application software packages used.

- The structure of any electronic mail system, including software used the number of users, the location of mail files, and password usage.
- The structure of any network including the configuration of network servers and workstations and the brand and version number of the network operating system in use.
- Specific software used
- The personnel responsible for ongoing operation, maintenance, expansion and upkeep of the network.
- The personnel responsible for administering the e-mail system.
- The personnel responsible for maintenance of computer-generated records and the manner in which such records are organized and accessed.
- Back up procedures used on all computer systems in the organization. This should include descriptions of all devices (e.g. tape drives) and software used to create backups, the personnel responsible for conducting the backups, what information is backed up, backup schedules and tape rotation schedules.
- The process for archiving and retrieving backup media both on and off site.
- The procedures used by system users to log on to computers and into the network. This includes use of passwords, audit trails and other security measures used to identify data created, modified or otherwise accessed by particular users.
- Whether and how access to particular files is controlled. Information such as access control list identifies which users have access to which files.
- How shared files are structured and named on the system.
- Routines for archiving and purging different types of data.

#### Electronic media collection checklist

- Data files
- Office desktop computer/workstation
- Notebook computer
- Home computer
- Computer of personal assistants/secretary/staff
- Palmtop devices
- Network file servers/mainframes/mini-computers

\* To assure that all data including residual data, is captured an image copy is recommended when copying data from local computer-hard disks.

#### Back up tapes

- system-wide backups (monthly/weekly/incremental)
- Disaster recovery backups (stored offsite)
- Personal or 'ad hoc' backups (look for diskettes and other portable media)

### Other media sources

- Tape archives
- replaced/removed drives
- Floppy diskettes and other portable media (e.g. CDs, Zip Cartridges)

Once all the above formalities are completed then the same could be handed over to competent Computer Forensic Division (GEQD)/ or such other agencies for expert opinion on points sought for.

### Stage - III

#### Analysis and verification

The third step is analysis & verification of the information gathered. The results should be studied from the standpoint of whether or not it is complete, whether it answers all the questions set out in the investigation plan & whether the information is actual. All doubtful information should be verified/re-verified.

A proper analysis will enable the Vigilance staff to determine what further information is needed.

One should never be content with the obvious explanation until convinced that it is the correct one. This demands cross checking, checking against record & knowledge of persons, organizations & places.

Side issues must not be allowed to confuse the aim. If the side issues merits follow up, a separate investigation can be started once the aim has been achieved.

Vigilance staff must always be looking for behaviour or other facts, which are out of character. Character weakness or domestic troubles may provide a clue. Also holding of too much property, living extravagantly, etc will also provide hint about the involvement of employee(s) in corrupt activities/malpractices.

Assistance must be taken when required from other agencies for technical or forensic information on subjects such as fingerprints, document verification, technical analysis, etc.

Vigilance staff must not be put off by the designation, influence or apparent respectability of the persons involved. Corrupt activities are not crimes committed by one class of persons only.

#### Recording Information

Experience has long emphasized the wisdom & necessity of recording information and facts in preference to relying on memory. For this purpose it is advisable to maintain notebook, maintenance of note book has the following advantages:

It can be used as a constant reference during the investigation.

It serves as a basis for written reports of the investigation.

Helps in refreshing memory when there is a requirement to testify the same.

### Qualities of an investigator

- ✓ A thorough knowledge of operational practices and procedures, including system of maintenance of records etc., rules and regulations applicable to the area of operations under investigation.
- ✓ Keen observation and power of distinguishing between normal and unusual.
- ✓ Properly developed imagination to be able to visualize the source and areas where to look for evidence and also the likely relevance or implications of whatever comes his way, even when seemingly trivial.
- ✓ Tenacity to pursue his objective even in the face of set backs or lack of success initially.
- ✓ Total objectivity to be able to take a rational and realistic view of facts and analyse the evidence without being affected or misguided by any pre-conceived notions.
- ✓ A controlled imagination, an acute sense of anticipation unencumbered by any tendency to romanticize.
- ✓ A flair on its own is not enough. It must be supported by a good knowledge of the profession, rules & regulations.
- ✓ An ability must be acquired & developed by applying oneself conscientiously to develop certain senses & the requisite mental outlook.
- ✓ Coolness & firmness.
- ✓ Patience.
- ✓ Perseverance
- ✓ Analytical & good Judgment.
- ✓ Courage & Confidence.
- ✓ A deliberate but not evident distrust of people & things, until they have been cleared.
- ✓ Receptivity
- ✓ Good liaison & wide circle of contacts.
- ✓ Basic knowledge of elementary human psychology & behaviour.
- ✓ Effective communication skills – both verbal & written.
- ✓ Reproachless integrity/character.
- ✓ Sense of professionalism

### Investigation of Vigilance Cases

The four elements of successful investigation are as follows:-

- (a) Establish prima-facie.

- (b) The modus operandi or the manner in which the violation was caused.
- (c) The means or instruments used.
- (d) Accurate identification of the individual or individuals involved.

### **INVESTIGATION / INQUIRY REPORT**

The Investigating Officer (IO) should indicate the allegations contained in the complaint in the first paragraph of his report. The next paragraph should contain the gist of the investigation carried out by him as well as documentary and oral evidence that he has relied upon. The IO should then detail the procedure and guidelines which the Suspected Public Servant (SPS) was required to follow/comply with. After reporting the SPS's explanation, the same along with evidence on record should be discussed and assessed by the IO. Finally, he 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 be comprehensive and completely documented so as to enable the CVO and DA to form an opinion whether any disciplinary or any other action is called for or not.

The report is forwarded to the disciplinary authority through the CVO. The disciplinary authority / CVO make a meticulous evaluation of the actions of various officials with reference to the nature of their duties. They also assess the gap between what the managers at different levels of the decision-making hierarchy actually did and what they were required to do in accordance with manuals / guidelines / orders. They may follow the following criteria for the purpose and highlight in their reports if the answer to any of the questions is in the affirmative:-

- (a) Can malafide be inferred or presumed from the actions of any of the concerned officials?
- (b) Could any of the officials be said to have engaged in a misconduct or misdemeanour?
- (c) Was the conduct of any of the officials reflective of lack of integrity?
- (d) Did the official(s) act in excess of their delegated powers/jurisdiction and failed to report the same to the competent authority?
- (e) Did they or any of them show any gross neglect of their official functions?
- (f) Is there any material to indicate that any of them acted recklessly?
- (g) Has the impugned decision caused any **undue** loss to the organization?
- (h) Has any person/party or a set of persons/parties either within the organization or outside it been caused any **undue** benefit?

- (i) Have the norms or systems and procedures of the organization been flagrantly violated?
- (j) Misconduct, lack of devotion to duty or integrity, as the case may be, could be inferred illustratively in the following circumstances, where the employee concerned:-
  - (i) has not acted in accordance with rules and his recommendations are not in the public interest; or
  - (ii) has failed to conduct himself in such a manner that his decisions or recommendations do not appear objective and transparent and seem to be calculated to promote improper gains for himself or for any one else; or
  - (iii) has acted in a manner to frustrate or undermine the policies if the organization or decisions taken in the public interest by the management; or
  - (iv) seems to have complied with unauthorized and unlawful oral instructions of his seniors without bringing them to the notice of the CMD;
  - (v) has exceeded his discretionary powers and his actions do not appear justifiable or to serve any organizational interests; or
  - (vi) has abused or misused his official position to obtain benefit for himself or for another; or
  - (vii) has not reflected intellectual honesty in his decisions and recommendations.

Timeliness in the conduct of the preliminary inquiry cannot be overemphasized. Both the courts as well as administrative instructions have indicated that there should not be an inordinate delay between the occurrence of the impugned events and the issue of the charge-sheet. The current instructions of the Government are that the preliminary inquiry should be completed within three months. In the State of M. P. Vs. Bani Singh, 1990 Suppl. S.C.C. 738 it was held that an inordinate and inexplicable delay in finalization of the charge sheet can itself be a ground for quashing of the same on the ground of denial of reasonable opportunity. Similarly, delayed charge sheets can also be legally challenged on grounds of staleness. Further, in State of Punjab Vs. Chaman Lal Goyal SLR (1995) (1) 700 S.C. it was held that in the case of inordinate delay the burden of proving that the delay was due to a reasonable cause would be on the department.



The Vigilance Dept should ensure that the following time limits are strictly adhered to:

S. No.	State of Investigation or inquiry	Time Limit	Responsible Authority
1.	Decision as to whether the complaint involves a vigilance angle.	One month from receipt of the complaint.	CVO/CMD
2.	Decision on complaint, whether to be filed or to be entrusted to CBI or to be taken up for investigation by departmental agency or to be sent to the concerned administrative authority for necessary action.	-do-	CVO/CMD
3.	Conducting investigation and submission of report.	Three months	IO/CVO
4.	Department's comments on the CBI reports in cases requiring Commission's advice.	One month from the date of receipt of CBI's report by the DA.	CVO Adm. Ministry/CVO/PSE
5.	Referring departmental investigation reports to the Commission for advice.	One month from the date of receipt of investigation report.	CVO
6.	Reconsideration of the Commission's advice, if required.	One month from the date of receipt of Commission's advice.	CVO/CMD/Ministry's CVO
7.	Issue of charge-sheet, if required.	(i) One month from the date of receipt of Commission's advice. (ii) Two months from the date of receipt of investigation report	D.A.
8.	Time for submission of defence statement.	Ordinarily ten days or as specified in CDA Rules	CO
9.	Consideration of defence statement.	15 (Fifteen) days.	DA
10.	Issue of final orders in minor penalty cases.	Two months from the receipt of defence statement.	DA
11.	Appointment of IO/PO in major penalty cases.	Immediately after receipt and consideration of defence statement.	DA
12.	Conducting departmental inquiry and submission of report.	Six months from the date of appointment of IO/PO	IA
13.	Sending a copy of the IO's report to the CO for his representation.	i) Within 15 days of receipt of IO's report if any of the Articles of charge has been held as proved; ii) 15 days if all charges held as not proved. Reasons for disagreement with IO's findings to be communicated	DA

All facts unearthed during an investigation should be recorded in writing. Everything noted down need not be included in the final report. It will depend upon its relevance & the necessity for inclusion. It is important to remember that the person receiving the report will rely on what is contained in it & may have to take action on it. The facts must, therefore, be set out clearly & logically with no irrelevancies or omissions & no verbosity. The report must put the recipient clearly "in the picture" & have no confusion in his mind.

A report should cover the following details:-

- (a) Introduction/Background
- (b) Gist of allegations
- (c) Allegations wise report in a narrative form (with Appendices/ Annexure referred appropriately)
- (d) Findings (Allegation wise)

Presentation of evidence

The evidence collected has to be presented in the form of any enquiry report. The disciplinary authority is supposed to take a decision regarding further action against the suspect official on the basis of such enquiry report. It is as such necessary that the enquiry report is self contained logical and clear to enable the DA to form his own judgment on the basis of facts as presented in the report. The evidence should be properly assessed and analyzed to show clearly whether or not sufficient evidence is available to support the allegation (s). if the allegations investigated are large in number, in order to avoid repetition and make the report more intelligible, it would be best to deal with the evidence and result of enquiries allegations-wise. The report should also indicate any procedural weaknesses which might have come to light during the enquiries with suggestions for improvement.

The suspect himself should be examined about the allegations and the facts as proved during the investigation and his defence version verified with an open mind. It may sometimes be necessary to re-examine the witness or carry out further investigation after examination of the suspect. Both for examination of the material witnesses as well as the suspects, a questionnaire should normally be prepared in advance which can however be modified as necessary as the examination of the person proceeds.

(e) Recommendations

- (i) Disciplinary action against individuals involved: This should properly indicate the specific clauses of HAL CDA Rules/Standing Orders as the case may be.
- (ii) Suggested improvement in systems/ procedures.
- (iii) Action against outside parties (like vendors, suppliers etc.) if involved.

(f) Disposal of the report.

## Conclusion

A systematic approach is essential to vigilance investigations to avoid missing out important leads, which may be vital to the eventful success of the investigation. In order to conduct a successful investigation, the Vigilance staff must;-

- (a) Get the facts and go into the minutest details.
- (b) Draw correct deductions.
- (c) Use common sense.
- (d) Be inquisitive yet tactful, suspicious but affable.

When the investigation is concluded the investigator should;-

- (a) Set out the facts concisely and accurately.
- (b) Offer suitable comments and clear recommendations

The IO should take all precautions that no case should be lost on account of technicalities or by default. Action that needs to be taken and the process thereafter and also the various check lists that need to be maintained in the Vigilance Investigation files is depicted in the ISO Quality Manual–Part–II. The Vigilance Officials should scrupulously follow the requirements.

Some agencies whose services would be required in Vigilance Investigation:

- (a) **GEQD (Government Examiner of Questionable Documents)**. Their expert advice is available on handwritings. There are several GEQD offices located in the country. GEQD at Hyderabad has a dedicated Department for Computers known as Computer Forensics Division – GEQD. Their services can be availed for referring any computer related crime/offence, after following the prescribed procedure already dealt in detail, in collection of computer related evidence.
- (b) **National Test House (NTH)**. NTH renders advice on materials, the composition there-of specifications etc.
- (c) **CFSL (Central Forensic Science Laboratory)**. CFSL have wide range of expertise in detection of forgeries, frauds, overwriting/ alteration etc. In the case of CSFL the added benefit is the experts of CSFL tender evidence in the Courts of law on their findings. While the CSFL is a part of the CBI, there are similar Forensic Science laboratories in the different States, working under the control of the State Governments.

Central Vigilance Commission while dealing on the subject of ‘References to the Commission for First Stage Advice’, has also dwelt in detail on the essential ingredients of Investigation Report. The same needs to be borne in mind while finalizing the Vigilance Investigations.

**(Ref: CVC Circular No.21/8/09 dated 6<sup>th</sup> August 2009)**

6. **Agreed List of suspected officers and list of public servants of Gazetted status of doubtful integrity**

In order to keep a watch on the activities of public servants who are of doubtful integrity, the Ministries/Departments/Organizations are required to maintain two lists, viz; (i) Agreed List and (ii) list of public servants of gazetted status of doubtful integrity. The Agreed List of suspected officers has its origin in the 'Programme for vigilance and anti-corruption work during 1966, whereas the list of public servants of gazetted status of doubtful integrity was prescribed in 1969.

The criteria for making such lists has been provided in the Ministry of Home Affairs Letter No.130/1/66-AVD dated 5/5/66 and letter No.105/1/66-AVD dated 28/10/69. It has been provided in these instructions that the 'Agreed List so prepared will remain in force for one year from the date of preparation and officials work/activities /behaviour during the period would be watched and the list would be reviewed after this period. The list of officers of doubtful integrity will remain in force for a period of three years.

The formats in which the reports are to be prepared and submitted are given in detail in ISO Manual Part – II and the CVC's guidelines/instructions issued in this regard from time to time.

## **7. Preparation of Annual Action Plan:**

As per CVC guidelines an “Action Plan” will be drawn every year for the period from April to March. In the Action Plan systematic Vigilance Inspections will be planned which will cover all the departments of HAL. Corporate office will draw an action plan for all the Divisions/Complexes. The Vigilance Inspections will also be planned for Liaison offices and other HAL offices located at various places. Based on the Action Plan drawn by the Corporate Office the divisional vigilance departments will draw their own detailed action plan and conduct the vigilance inspections and forward a report accordingly. The inspections carried out as per Action Plan are besides the routine and surprise inspections, which may be normally carried out by the vigilance department.

The Action Plan should essentially consist of the departments including sensitive and non-sensitive, their sections and places of interaction with public where the vigilance inspections are intended to be conducted. Once the Action Plan is conceptualized and put on paper responsibilities should be delegated to the officers and staff to carry out vigilance inspections systematically and record their observations. The irregularities noticed during the inspection may be further investigated to pin point the responsibilities of the individuals for the lapses, which will be forwarded separately under the investigation reports for initiation of Disciplinary Proceedings if warranted.

The Action Plan should include a thorough study of systems, procedures, rules & regulations, to be carried out during the period. After the systems are studied thoroughly the loopholes/lacunae are to be pointed which aid manipulations/malpractices and also suggest remedial measures to plug the loopholes.

Vigilance Awareness programmes should be planned in the Action Plan periodically in co-ordination with the training department of the Divisions for both Executives and Non Executives.

### **REPORT ON VIGILANCE ACTIVITIES FOR INCLUSION IN THE COMPANY ANNUAL REPORT**

A report on the activities of the vigilance departments of the Divisions/Complexes will be forwarded to the Corporate Office every quarter before 15 of April, July, Oct, Jan.

## **8. DO'S AND DONT'S FOR THE VIGILANCE STAFF**

### **DO'S**

- (a) Be objective in collecting facts and evidence- both oral and documentary.
- (b) Develop an information channel for planning and conducting preventive checks so as to cover all the departments vulnerable to corruption
- (c) Before taking up any allegation for investigation always ensure that it has a vigilance angle.
- (d) Complete investigations with reasonable speed and in an objective manner so as to instill a sense of confidence. Justice delayed is justice denied.
- (e) Always be fair and impartial and without personal prejudices and influence while conducting an investigation.
- (f) Plan adequately before commencement of an investigation and make reasonable assessments of time required.
- (g) Investigate in detail to form a logical picture of all the facts and evidence. Link them to conclude in a fair and just manner.
- (h) Check authenticity of the source.
- (i) Conduct quality preventive checks
- (j) Ensure that investigation is meticulously factual, scrupulously fair and unflinching speedy.
- (k) Be a man of absolute integrity and devotion to duty.
- (l) Always be firm in conviction and determination.
- (m) Always submit your own claims for TA, Medical Reimbursement, LTC, etc, in time.
- (n) Be polite and courteous. Give due regard to your seniors even if they are under investigation.
- (o) Do consider everyone as honest and well meaning, unless proved otherwise.
- (p) Do seek permission from your controlling officer before leaving Headquarters.
- (q) Do keep your departmental head informed of your movements.

- (r) Do exercise vigil on the activities of officials included in the Agreed List/ODI List.
- (s) Do remain accessible to all employees.

#### **DONT'S**

- (a) Do not be instrumental in building up a false case against an employee.
- (b) Do not register a vigilance case under local pressures or pressure out of department including affinity, acquaintance, etc.
- (c) Do not conclude in haste.
- (d) Do not disclose source of your information.
- (e) Do not divulge the identity of the complainant. It could lead to acrimonious relations.
- (f) Do not be light hearted, flippant, and irresponsible in your official conduct.
- (g) Do not allow bias or prejudice to affect objectivity.
- (h) Do not do anything with a view to settle scores.
- (i) Do not ask for any undue favour
- (j) Do not avail any non-entitled facility even if offered.
- (k) Do not take up petty cases for registration and investigation.
- (l) Do not try to play the role of a policeman.
- (m) Do not try to bypass any instructions from superior authority even in a circuitous way.
- (n) Do not offer advice unless you are sure of its correctness and legal tenability.
- (o) Do not be extravagant in your habits.
- (p) Do not forget to submit your Property Returns in time.
- (q) Do not develop familiarity with any particular employee or junior otherwise, your impartiality could be questioned.
- (r) Do not accept gifts whose value is beyond the acceptable limits.
- (s) Do not act in a manner which erodes faith of an employee in the functioning of vigilance.
- (t) Do not engage directly or indirectly in trade or business.

## **Chapter – V - VIGILANCE AND THE LAW**

***“The penalty good men pay for indifference to public affairs is to be ruled by evil men” - Plato***

### **1. THE PREVENTION OF CORRUPTION ACT, 1988**

**[Act No. 49 of 1988]**

**[12th September 1988]**

An act to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith.

Be it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows.

#### **Some important Sections of PC Act**

##### **2. Definitions.**

(b) "Public duty" means a duty in the discharge of which the State, the public or the community at large has an interest-

Explanation. -In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned controlled or aided by the Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956),

(c) "Public Servant" means

(i) Any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) Any person in the service or pay of a local authority.

(iii) Any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956.

(iv) Any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.

(v) Any person authorized by a court of justice to perform any duty, in connection with, including a liquidator, receiver or commissioner appointed by such court.

(vi) Any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority.

(vii) Any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election of part of an election;



- (viii) Any person who holds an office by virtue of which he is authorized or required to perform any public duty.
- (ix) Any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956;
- (x) Any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (xi) Any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever name called, of any university and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
- (xii) Any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government or local or other public authority.

Explanation 1. - Persons falling under any of the above sub-clauses are public servants, whether appointed by the government or not.

Explanation 2. -Whenever the words "public servant" occurs, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

**7. Public servant taking gratification other than legal remuneration in respect of an official act.**

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavor to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise shall, be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanation: -

(a) "Expecting to be a public servant". If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification. -The word "gratification" is not restricted to pecuniary gratification or to gratifications estimable in money.

(c) "Legal remuneration". -The words "legal remuneration" are not restricted to remunerations which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the Organisation, which he serves, to accept.

(d) "A motive or reward for doing". -A person who receives a gratification as motive or reward for doing what he does not intend or is not in a position to do, or has not one, comes within this expression;

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section.

**8. Taking gratification, in order, by corrupt or illegal means, to influence public servant.**

Whoever accepts, or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

**9. Taking gratification for exercise of personal influence with public servant.**

Whoever accepts or obtains or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant whether named or otherwise to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render to attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Clause (c) of Section 2, or with any public servant, whether

named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

10. Punishment for abetment by public servant of offences defined in Section 8 or 9.

11. Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant.

Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain for himself, or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

12. Punishment for abetment of offences defined in Section 7 or 11.

13. Criminal misconduct by a public servant.

(1) A public servant is said to commit the offence of criminal misconduct, -

- (a) If he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or
- (b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any, person whom he knows to be interests in or related to the person so concerned; or
- (c) If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or
- (d) If he, -
  - (i) By corrupt or illegal means, obtains for himself or for any other person any valuable thing or Pecuniary advantage; or

- (ii) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (iii) While holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or
- (e) If he or any person on his behalf, is in possession or has, at any time during the Period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation: -For the purposes of this section "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance, With the provisions of any law, rules or orders for the time being applicable to public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

**14. Habitual committing of offence under Sections 8, 9 and 12. - Whoever habitually commits.**

- (a) An Offence punishable 'under Section 8 or Section 9; or
- (b) An offence punishable under Section 12, shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to seven years and shall also be liable to fine.

15. Punishment for attempt.

16. Matters to be taken into consideration for fixing Fine.

17. Persons authorized to investigate.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank, -

- (a) In the case of the Delhi Special Police Establishment, of an Inspector of Police;
- (b) In the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 9 of the Code of Criminal Procedure, 1973, of an Asst. Commissioner of Police;
- (c) Else where, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this

Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant;

Provided that if a police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be or make arrest therefore without a warrant:

Provided further that an offence referred to in Clause (e) of sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

**18. Power to inspect bankers' books.**

If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under Section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of other person suspected to be holding money on behalf of such person, and take or cause or to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his power under this section.

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorized in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation. -In this section, the expressions "bank" and "bankers' books" shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891,

**19. Previous sanction necessary for prosecution.**

(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction, -

- (a) In the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
- (b) In the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
- (c) In the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973-

- (a) No finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission, irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has, in fact, been occasioned thereby;
- (b) No court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
- (c) No court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation: -For the purposes of this section, -

- (a) Error includes competency of the authority to grant sanction;
- (b) A sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

20. Presumption where public servant accepts gratification other than legal remuneration.

(1) Where, in any trial of an offence punishable under Section 7 or Section 11 or Clause (a) or Clause (b) of sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain from himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a

motive or reward such as is mentioned in Section 7 or, as the case may, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 or under Clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or the valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

21. Accused person to be a competent witness.

22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.

23. Particulars in a charge in relation to an offence under Section 13. (1) (c).

24. Statement by bribe-giver not to subject him to prosecution.

Notwithstanding anything contained in any law for the time being in force, a statement made by person in any proceeding against a public servant for an offence under Sections 7 to 11 or under Sections 13 or Section 15, that the offender agreed to offer any gratification (other than legal remuneration) or any valuable thing to the public servant, shall not subject such person to a prosecution under Section 12. .

25. Military, Naval and Air force or other law not to be, affected.

26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act.

27. Appeal and revision.

28. Act to be in addition-to any other law.

29. Amendment of Ordinance 38 of 1944.

30. Repeal and saving.

(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897, anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of

this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of this Act.

31. Omission of certain sections of Act 45 of 1860.

Section 161 to 165-A (both inclusive) of the Indian Penal Code shall be omitted, and Section 6 of the General Clauses Act, 1897, shall apply to such omission as if the said section had been repealed by a Central Act.



## **Information Technology Act 2000**

(Extract of only relevant portions useful for vigilance investigation – Chapters mentioned in the succeeding paragraphs are the Chapters as mentioned in the Act )

An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

whereas the General Assembly of the United Nations by resolution A/RES/51/162, dated the 30th January, 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law;

and whereas the said resolution recommends inter alias that all States give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information; and whereas it is considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records.

### 2. Definitions

(1) In this Act, unless the context otherwise requires, -

(a) "access" with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network;

(b) "addressee" means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

(c) "adjudicating officer" means an adjudicating officer appointed under subsection (1) of section 46;

(d) "affixing digital signature" with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of digital signature;

(e) "appropriate Government" means as respects any matter,-

(i) Enumerated in List II of the Seventh Schedule to the Constitution;

(ii) relating to any State law enacted under List III of the Seventh Schedule to the Constitution, the State Government and in any other case, the Central Government;

(f) "asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature;

(g) "Certifying Authority" means a person who has been granted a licence to issue a Digital Signature Certificate under section 24;

(h) "certification practice statement" means a statement issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Digital Signature Certificates;

(i) "computer" means any electronic magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

(j) "computer network" means the interconnection of one or more computers through—

(i) the use of satellite, microwave, terrestrial line or other communication media; and

(ii) terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained;

(k) "computer resource" means computer, computer system, computer network, data, computer data base or software;

(l) "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(m) "Controller" means the Controller of Certifying Authorities appointed under sub-section (l) of section 17;

(n) "Cyber Appellate Tribunal" means the Cyber Regulations Appellate Tribunal established under sub-section (1) of section 48;

(o) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media,

punched cards, punched tapes) or stored internally in the memory of the computer;

(p) "digital signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3;

(q) "Digital Signature Certificate" means a Digital Signature Certificate issued under sub-section (4) of section 35;

(r) "electronic form" with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(s) "Electronic Gazette" means the Official Gazette published in the electronic form;

(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(u) "function", in relation to a computer, includes logic, control arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer;

(v) "information" includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche:

(w) "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;

(x) "key pair", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key;

(y) "law" includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be. Regulations made by the President under article 240, Bills enacted as President's Act under sub-clause (a) of clause (1) of article 357 of the Constitution and includes rules, regulations, bye-laws and orders issued or made thereunder;

(z) "licence" means a licence granted to a Certifying Authority under section 24;

(za) "originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

- (zb) "prescribed" means prescribed by rules made under this Act;
- (zc) "private key" means the key of a key pair used to create a digital signature;
- (zd) "public key" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate;
- (ze) "secure system" means computer hardware, software, and procedure that-
- (a) are reasonably secure from unauthorized access and misuse;
  - (b) provide a reasonable level of reliability and correct operation;
  - (c) are reasonably suited to performing the intended functions; and
  - (d) adhere to generally accepted security procedures;
- (zf) "security procedure" means the security procedure prescribed under section 16 by the Central Government;
- (zg) "subscriber" means a person in whose name the Digital Signature Certificate is issued;
- (zh) "verify" in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions means to determine whether-
- (a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber;
  - (b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

## **Chapter - II**

### Digital Signature

#### 3. Authentication of electronic records.

(1) Subject to the provisions of this section any subscriber may authenticate an electronic record by affixing his digital signature.

(2) The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function which envelop and transform the initial electronic record into another electronic record.

*Explanation.-* For the purposes of this sub-section, "hash function" means an algorithm mapping or translation of one sequence of bits into another, generally smaller, set known as "hash result" such that an electronic record yields the same hash result every time the algorithm is executed with the same electronic record as its input making it computationally infeasible-

(a) to derive or reconstruct the original electronic record from the hash result produced by the algorithm;

(b) that two electronic records can produce the same hash result using the algorithm.

(3) Any person by the use of a public key of the subscriber can verify the electronic record.

(4) The private key and the public key are unique to the subscriber and constitute a functioning key pair.

### Chapter - III

#### ELECTRONIC GOVERNANCE

##### 4. Legal recognition of electronic records.

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is-

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

##### 5. Legal recognition of digital signatures.

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person (hen, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

*Explanation.-* For the purposes of this section, "signed", with its grammatical variations and cognate expressions, shall, with reference to a person, mean affixing of his hand written signature or any mark on any document and the expression "signature" shall be construed accordingly.

6. Use of electronic records and digital signatures in Government and its agencies.

(1) Where any law provides for:-

- (a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;
- (b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;
- (c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

(2) The appropriate Government may, for the purposes of sub-section (1), by rules, prescribe:-

- (a) the manner and format in which such electronic records shall be filed, created or issued;
- (b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause

7. Retention of electronic records.

(1) Where any law provides that documents, records or information shall be retained for any specific period, then, that requirement shall be deemed to have been satisfied if such documents, records or information are retained in the electronic form, if:-

- (a) the information contained therein remains accessible so as to be usable for a subsequent reference;
- (b) the electronic record is retained in the format in which it was originally generated, sent or received or in a format which can be demonstrated to represent accurately the information originally generated, sent or received;
- (c) the details which will facilitate the identification of the origin, destination, date and time of despatch or receipt of such electronic record are available in the electronic record:

Provided that this clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be despatched or received.

(2) Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information in the form of electronic records.

9. Sections 6,7 and 8 not to confer right to insist document should be accepted in electronic form.

Nothing contained in sections 6, 7 and 8 shall confer a right upon any person to insist that any Ministry or Department of the Central Government or the State Government or any authority or body established by or under any law or controlled or funded by the Central or State Government should accept, issue, create, retain and preserve any document in the form of electronic records or effect any monetary transaction in the electronic form.

12. Acknowledgment of receipt.

(1) Where the originator has not agreed with the addressee that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by-

- (a) any communication by the addressee, automated or otherwise; or
- (b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

(2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.

(3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

13. Time and place of despatch and receipt of electronic record.

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely :-

- (a) if the addressee has designated a computer resource for the purpose of receiving electronic records,-
  - (i) receipt occurs at the time when the electronic, record enters the designated computer resource; or

- (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;
  - (b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.
- (3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.
- (4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).
- (5) For the purposes of this section,-
- (a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;
  - (b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;
  - (c) "usual place of residence", in relation to a body corporate, means the place where it is registered.

## **CHAPTER - V**

### SECURE ELECTRONIC RECORDS AND SECURE DIGITAL SIGNATURES

14. Secure electronic record.

Where any security procedure has been applied to an electronic record at a specific point of time. then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

15. Secure digital signature.

If, by application of a security procedure agreed to by the parties concerned, it can be verified that a digital signature, at the time it was affixed, was-

- (a) unique to the subscriber affixing it;
- (b) capable of identifying such subscriber;
- (c) created in a manner or using a means under the exclusive control of the subscriber and is linked to the electronic record to which it relates in such a manner that if the electronic record was altered the digital signature would be invalidated,



then such digital signature shall be deemed to be a secure digital signature.

16. Security procedure.

The Central Government shall for the purposes of this Act prescribe the security procedure having regard to commercial circumstances prevailing at the time when the procedure was used, including:-

- (a) the nature of the transaction;
- (b) the level of sophistication of the parties with reference to their technological capacity;
- (c) the volume of similar transactions engaged in by other parties;
- (d) the availability of alternatives offered to but rejected by any party;
- (e) the cost of alternative procedures; and
- (f) the procedures in general use for similar types of transactions or communications.

28. Power to investigate contraventions.

(1) The Controller or any officer authorized by him in this behalf shall take up for investigation any contravention of the provisions of this Act, rules or regulations made thereunder.

(2) The Controller or any officer authorized by him in this behalf shall exercise the like powers which are conferred on Income-tax authorities under Chapter XIII of the Income-tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act.

29. Access to computers and data.

(1) Without prejudice to the provisions of sub-section (1) of section 69, the Controller or any person authorized by him shall, if he has reasonable cause to suspect that any contravention of the provisions of this Act, rules or regulations made thereunder has been committed, have access to any computer system, any apparatus, data or any other material connected with such system, for the purpose of searching or causing a search to be made for obtaining any information or data contained in or available to such computer system.

(2) For the purposes of sub-section (1), the Controller or any person authorized by him may, by order, direct any person in-charge of, or otherwise concerned with the operation of, the computer system, data apparatus or material, to provide him with such reasonable technical and other assistance as he may consider necessary.

## CHAPTER - VIII

### DUTIES OF SUBSCRIBERS

40. Generating key pair.

Where any Digital Signature Certificate, the public key of which corresponds to the private key of that subscriber which is to be listed in the Digital Signature Certificate has been accepted by a subscriber, then, the subscriber shall generate the key pair by applying the security procedure.

42. Control of private key.

(1) Every subscriber shall exercise reasonable care to retain control of the private key corresponding to the public key listed in his Digital Signature Certificate and take all steps to prevent its disclosure to a person not authorized to affix the digital signature of the subscriber.

(2) If the private key corresponding to the public key listed in the Digital Signature Certificate has been compromised, then, the subscriber shall communicate the same without any delay to the Certifying Authority in such manner as may be specified by the regulations.

*Explanation.*- For the removal of doubts, it is hereby declared that the subscriber shall be liable till he has informed the Certifying Authority that the private key has been compromised.

## CHAPTER - XI

### OFFENCES

65. Tampering with computer source documents.

Whoever knowingly or intentionally conceals, destroys or alters or intentionally or knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

*Explanation.*- For the purposes of this section, "computer source code" means the listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.

66. Hacking with computer system.

(1) Whoever with the intent to cause or knowing that he is likely to cause wrongful loss or damage to the public or any person destroys or deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means, commits hack:

(2) Whoever commits hacking shall be punished with imprisonment up to three years, or with fine which may extend upto two lakh rupees, or with both.

67. Publishing of information which is obscene in electronic form.

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

71. Penalty for misrepresentation.

Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any licence or Digital Signature Certificate, as the case may be. shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

72. Penalty for breach of confidentiality and privacy.

Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

73. Penalty for publishing Digital Signature Certificate false in certain particulars.

(1) No person shall publish a Digital Signature Certificate or otherwise make it available to any other person with the knowledge that-

- (a) the Certifying Authority listed in the certificate has not issued it; or
- (b) the subscriber listed in the certificate has not accepted it; or
- (c) the certificate has been revoked or suspended,

unless such publication is for the purpose of verifying a digital signature created prior to such suspension or revocation.

(2) Any person who contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

74. Publication for fraudulent purpose.

Whoever knowingly creates, publishes or otherwise makes available a Digital Signature Certificate for any fraudulent or unlawful purpose shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

75. Act to apply for offence or contravention committed outside India.

(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality.

(2) For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.

76. Confiscation.

Any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, in respect of which any provision of this Act, rules, orders or regulations made thereunder has been or is being contravened, shall be liable to confiscation:

Provided that where it is established to the satisfaction of the court adjudicating the confiscation that the person in whose possession, power or control of any such computer, computer system, floppies, compact disks, tape drives or any other accessories relating thereto is found is not responsible for the contravention of the provisions of this Act, rules, orders or regulations made thereunder, the court may, instead of making an order for confiscation of such computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto, make such other order authorised by this Act against the person contravening of the provisions of this Act, rules, orders or regulations made thereunder as it may think fit.

## CHAPTER - XIII

### Miscellaneous

80. Power of police officer and other officers to enter, search, etc.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any police officer, not below the rank of a Deputy Superintendent of Police, or any other officer of the Central Government or a State Government authorised by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit any offence under this Act

*Explanation :* For the purposes of this sub-section, the expression "public place" includes any public conveyance, any hotel, any shop or any other place intended for use by, or accessible to the public.

(2) Where any person is arrested under sub-section (1) by an officer other than a police officer, such officer shall, without unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer-in-charge of a police station.

(3) The provisions of the Code of Criminal Procedure, 1973 shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section.

84. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against the Central Government, the State Government, the Controller or any person acting on behalf of him, the Presiding Officer, adjudicating officers and the staff of the Cyber Appellate Tribunal for anything which is in good faith done or intended to be done in pursuance of this Act or any rule, regulation or order made thereunder.

85. Offences by companies.

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

*Explanation.* - For the purposes of this section, -

(i) "company" means any body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

THE FIRST SCHEDULE  
(See section 91)

Amendments to the Indian penal code  
(45 of 1860)

1. After section 29, the following section shall be inserted, namely:-

Electronic record.

"29A. The words "electronic record" shall have the meaning assigned to them in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000."

2. In section 167, for the words "such public servant, charged with the preparation or translation of any document, frames or translates that document", the words "such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record" shall be substituted.

3. In section 172, for the words "produce a document in a Court of Justice", the words "produce a document or an electronic record in a Court of Justice" shall be substituted.

4. In section 173, for the words "to produce a document in a Court of Justice", the words "to produce a document or electronic record in a Court of Justice" shall be substituted.

5. In section 175, for the word "document" at both the places where it occurs, the words "document or electronic record" shall be substituted.

6. In section 192, for the words "makes any false entry in any book or record, or makes any document containing a false statement", the words "makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement" shall be substituted.

7. In section 204, for the word "document" at both the places where it occurs, the words "document or electronic record" shall be substituted.

8. In section 463, for the words "Whoever makes any false documents or part of a document with intent to cause damage or injury", the words "Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury" shall be substituted.

9. In section 464 :-

- (a) for the portion beginning with the words "A person is said to make a false document" and ending with the words "by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration", the following shall be substituted, namely:-

"A person is said to make a false document or false electronic record-  
First" Who dishonestly or fraudulently"

- (i) makes, signs, seals or executes a document or part of a document;
- (ii) makes or transmits any electronic record or part of any electronic record;
- (iii) affixes any digital signature on any electronic record;
- (iv) makes any mark denoting the execution of a document or the authenticity of the digital signature,

with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

*Secondly* - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

*Thirdly* - Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration." ;

- (b) after *Explanation 2*, the following *Explanation* shall be inserted at the end, namely:-

*'Explanation 3.-* For the purposes of this section, the expression "affixing digital signature" shall have the meaning assigned to it in clause (d) of subsection (1) of section 2 of the Information Technology Act, 2000.'

10. In section 466,-

- (a) for the words "Whoever forges a document", the words "Whoever forges a document or an electronic record" shall be substituted;
- (b) the following *Explanation* shall be inserted at the end, namely:-

*'Explanation.* - For the purposes of this section, "register" includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000.'

11. In section 468, for the words "document forged", the words "document or electronic record forged" shall be substituted.

12. In section 469, for the words "intending that the document forged", the words "intending that the document or electronic record forged" shall be substituted.

13. In section 470, for the word "document" in both the places where it occurs, the words "document or electronic record" shall be substituted.

14. In section 471, for the word "document" wherever it occurs, the words "document or electronic record" shall be substituted.

15. In section 474, for the portion beginning with the words "Whoever has in his possession any document" and ending with the words "if the document is one of the description mentioned in section 466 of this Code", the following shall be substituted, namely: -

"Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as a genuine, shall, if the document or electronic record is one of the description mentioned in section 466 of this Code."

16. In section 476, for the words "any document", the words "any document or electronic record" shall be substituted.

17. In section 477A, for the words "book, paper, writing" at both the places where they occur, the words "book, electronic record, paper, writing" shall be substituted.



THE SECOND SCHEDULE  
(See Section 92)

Amendments to the Indian Evidence Act, 1872  
(1 of 1872)

When oral admission as to contents of electronic records are relevant.

"22A. Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question."

4. In section 34, for the words "Entries in the books of account", the words "Entries in the books of account, including those maintained in an electronic form" shall be substituted.

5. In section 35, for the word "record", in both the places where it occurs, the words "record or an electronic record" shall be substituted.

6. For section 39, the following section shall be substituted, namely:-

What evidence to be given when statement forms part of a conversation, document, electronic record, book or series of letters or papers.

"39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or is contained in part of electronic record or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, electronic record, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made."

Special provisions as to evidence relating to electronic record.

"65A. The contents of electronic records may be proved in accordance with the provisions of section 65B".

Admissibility of electronic records.

65B. (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: -

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause

(a) of sub-section (2) was regularly performed by computers, whether-

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,-

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

*Explanation.* - For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.

## **RIGHT TO INFORMATION ACT, 2005**

***“All men by nature desire to know” - Aristotle***

### **SALIENT ASPECTS:**

#### When does it come into force?

It comes into force on the 12<sup>th</sup> Oct 2005 (120<sup>th</sup> day of its enactment on 15<sup>th</sup> Jun 2005). Some provisions have come into force with immediate effect viz. obligations of public authorities [S-4(1)] designation of Public information Officers and Assistant Public information Officers [S.5 (1) and 5(2)] constitution of Central Information Commission (S.12 and 13) constitution of State Information Commission (S.15 and 16) non applicability of the Act to Intelligence and Security Organizations (S.24) and power to make rules to carry out the provisions of the Act (S.27 and 28).

#### Who is covered?

The Act extends to the whole of India except of State of Jammu and Kashmir [S (12)]

#### What does information mean?

Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by public authority under any other law for the time being in force but does not include “file noting” [S.2 (f)]

#### What does Right to Information mean?

It includes the right to-

- (i) Inspect works, documents, records
- (ii) Take note, extracts or certified copies of documents or records.
- (iii) Take certified samples of material.
- (iv) Obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts [S.2(j)]

#### What are the obligations of public authority?

It shall publish within one hundred and twenty days of the enactment:-

- (i) The particulars of its organization, functions and duties;
- (ii) The powers and duties of its officers and employees;
- (iii) The procedure followed in its decision making process, including channels of supervision and accountability;
- (iv) The norms set by it for the discharge of its functions;

- (v) The rules, regulations, instructions, manuals and records used by its employees for discharging its functions;
- (vi) A statement of the categories of the documents held by it or under its control;
- (vii) The particulars of any arrangement that exists for consultation with or representation by the members of the public in relation to the formulation of policy or implementation thereof.
- (viii) A statement of the boards, councils committees and other bodies consisting of two or more persons constituted by it. Additionally, information as to whether the meetings of these are open to the public, or the minutes of such meetings are accessible to the public;
- (ix) A directory of its officers and employees;
- (x) The monthly remuneration received by each of its officers and employees including the system of compensation as provided in its regulations;
- (xi) The budget allocated to each of its agency, indicating the particulars of all plans proposed expenditures and reports on disbursements made;
- (xii) The manner of execution of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
- (xiii) Particulars of recipients of concessions, permits or authorizations granted by it;
- (xiv) Details of the information available to, or held by it, reduced in an electronic forms;
- (xv) The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use.
- (xvi) The names, designations and other particulars of the Public Information Officers [S.4(1)(b)]

What does a “Public authority” mean?

It means any authority or body or institution of self-government established or constituted: [S.2 (h)]

- By or under the Constitution;
- By any other law made by Parliament;
- By any other law made by State Legislature;]
- By notification issued or order made by the appropriate Government and includes any-
  - a) Body owned, controlled or substantially financed
  - b) Non-Government organization substantially financed directly or indirectly by the appropriate Government.

Who are Public Information Officers (PIOs)?

PIOs are officers designated by the public authorities in all administrative units or offices under it to provide information to the citizen requesting for information under the Act. Any officer, whose assistance has been sought by the PIO for the proper discharge of his or her duties, shall render all assistance and for the purpose

of contraventions of the provisions of this Act, such other officer shall be treated as a PIO.

What are the duties of a PIO?

- PIO shall deal with requests from persons seeking information and where the request cannot be made in writing to render reasonable assistance to the person to reduce the same in writing.

If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately.

- PIO may seek the assistance of any other officer for the proper discharge of his /her duties.
- PIO on receipt of a request, shall as expeditiously as possible and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in S.8 or S.9;
- Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.
- If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request.
- Where a request has been rejected, the PIO shall communicate to the requester – (i) the reasons for such rejection, (ii) the period within which an appeal against such rejection may be preferred and (iii) the particulars of the Appellate Authority.
- PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the Public Authority or would be detrimental to the safety or preservation of the record in question.
- If allowing partial access the PIO shall give a notice to the applicant, informing.
  - That only part of the record requested, after severance of the record containing information which is exempted from disclosure, is being provided;
  - The reasons for the decision, including any findings on any material question of fact referring to the material on which those findings were based;
  - The name and designation of the person giving the decision.
  - The details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
  - His or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided.
- If information sought has been supplied by third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within 5 days from the receipt of the request and take its representation into consideration.

- Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice.

What is not open to disclosure?

- The following is exempt from disclosure [S.8]
- Information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security strategic, scientific or economic interest of the State, relation with foreign State or lead to incitement of an offence;
- Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- Information received in confidence from foreign Government;
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- Information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual;
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

Is partial disclosure allowed?

Only that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information may be provided [S.10]

## Who is excluded?

Central Intelligence and Security agencies in the Second Schedule like IB, R&AW, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Haveli and special Branch. Lakshadweep Police, Agencies specified by the State governments through a Notification will also be excluded. The exclusion however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further information relating to allegations of human rights valuations could be given but only with the approval of the Central or State Information Commission as the case may be [S.24]

Extract of some important DOPT Circulars on RTI/Central Information Commission Decisions (operative/decision) that may be useful for PIOs in HAL: (for complete details/updation, website of CIC to be accessed ([www.cic.gov.in](http://www.cic.gov.in)))

### 1. Public Authority not expected to create/interpret information:

Vide Office Memorandum No.1/3/2008-IR dated 25<sup>th</sup> April 2008. Ministry of Personnel, P.G. and Pensions Department of Personnel & Training has issued Guidelines for the Officers designated as first Appellate Authority under the RTI Act 2005.

Vide Para (9) the following is stated:-

“Only such information is required to be supplied under the Act which already exists and is held by the Public Authority or held under the control of the public authority. It is beyond the scope of the Act to create information; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.”

### 2. The PIO is not required to deduce conclusions from the available information

Office Memorandum No.11/2/2008-IR dated 10<sup>th</sup> July 2008

“ ..... it need to be noted that the sub-section simply means that if the information is sought in the form of photocopy, it shall be provided in the form of photocopy and if it is sought in the form of a floppy, it shall be provided in that form subject to the conditions given in the Act. It does not mean that the PIO shall re-shape the information”

“ ..... the Act however does not require the PIO to deduce some conclusion from the ‘material’ and supply the ‘conclusion’ so deduced to the applicant. The PIO is required to supply the ‘material’ in the form as held by the public authority and is not required to do research on behalf of the citizen to deduce anything from the material and then supply it to him”.



3. RTI cannot be used to make Public Authority to take certain actions:

F No.CIC/AT/A/2006/00022 dated 31.5.200 – Shri Pratap Singh Gandas v/s Joint Commissioner of Police Southern Range New Delhi.

Decision Notice

Para 5 - “.....The RTI Act cannot be used to make a public authority do certain things or take certain actions. It can be invoked only for access to permissible information.....”

4. Central Information Commission has no jurisdiction to judge the performance of a Public Authority.

Appeal No.CIC/WB/A/2007/01397 dated 18.10.2007 – Mr Abhay Kumar v/s Central Vigilance Commission

Decision Notice

“.....It was explained to him that Central Information Commission has no jurisdiction to judge the performance of a public authority or indeed advise action in the discharge of that authority’s public function except with regard to making available to a citizen such information as is held by that public authority.

5. RTI cannot be used to promote personal interests or not to settle personal scores.

Decision No.2636/IC(A)/2008 dated 19<sup>th</sup> June 2008 – Shri M Varaprasad Rao v/s Hindustan Aeronautics Limited.

Decision Notice:

“..... accordingly the CPIO should examine the appellant’s request for information and indicate as to how the disclosure of information would impede the investigation process..... in case any information is to be denied the grounds for doing so should be clearly stated for review, if necessary by the Commission.

As the information asked for is largely for promotion of either personal interest of the appellant or to seek natural justice, he ought to not try to settle personal scores in the garb of seeking information. He is also advised to seek legal remedy in the matter of dismissal of his services by the respondent (HAL)”

6. Information seeker to ask for specific information and not for the opinion of CPIO

Decision No.44/IC (A)/06 dated 24<sup>th</sup> May 2006, - Shri G M Chauhan v/s Office of the Chief Commissioner of Income Tax-1 Ahmedabad (regarding certain vigilance enquiries).

“The appellant is therefore required to specifically identify the information that he needs and in the first instance ask for inspection of documents which are

considered by him vital to defend his case..... however an information seeker should not seek the opinion of CPIO through any format of questionnaire, and non-furnishing of CPIO's opinion should not be deemed as refusal of information. The issues relating to redressal of grievances on service matters should be taken up with the appropriate authority..... If the Public Authority decides to refuse information the ground for doing so should be clearly indicated to justify the exemption from disclosure of information u/s 8 (1) and 9 of the RTI Act.”

7. Information should be provided if it is available (i) in material form (ii) held by or under the control of Public Authority.

CIC Decision Notice (appeal No.CIC/WB/A/2008/00951 dated 23.-5-2008) dated 25.9.2009

Dr. Sharad Gupta, Agra v/s CBI

“....From the above it is abundantly clear that any information of any kind that has to be provided under the Act must be information (i) in material form and (ii) held by or under the control of a Public Authority. A legal opinion in the present case is best sought from a lawyer since it is an opinion to be formed on the basis of the facts made available to the applicant in consequence of the information provided under the Act. Such information as is available as per both definitions has clearly been provided in this case to appellant at the level of CPIO himself. We cannot see therefore any merit in this appeal which is hereby dismissed.

8. Non -disclosure of complete inquiry report (disclosing identity and source of information and assistance given in confidence for law enforcement) under 8 1 (g) of the Act is justified.

CIC Decision Notice (Appeal No.CIC/WB/A/2008/00063 dated 29.1.2008) dated 26.6.2009

Dr M C Agarwal V/s Central Vigilance Commission

“From the above it is quite clear that the Vigilance Department of Delhi Police have indeed objected to the disclosure of information. There is some weightage in the submission of respondent Shri Amitabh Joshi that the disclosure of the complete inquiry report would expose the identity and source of information and assistance given in confidence for law enforcement to the Director of Vigilance. Although one cannot conclude from this alone that there will be a threat to the physical safety of any of these persons there could be an apprehension and therefore not disclosing such information would be justified u/s 8 (1) (g) of the RTI Act. However we find that this information is contained in a separate section which is covered in Pages 2, 3 and 4 whereas the enquiry report runs into 9 pages. The information after excluding the discussions contained in Pages 5, 6 & 7 is eminently disclosable in the light of the fact that this matter is no longer either under investigation or prosecution. The portion of the report headed Discussion commencing on Page 5 will be severed.”

9. Non-disclosure of Statement of Assets and Liabilities is justified unless it is proved that the same would have any relation to any public activity or interest.

CIC Appeal No.CIC/SM/A/2008/107, 585, 586, 619, & 783, Shri K K Tiwari v/s CPIO State Bank of India Bandra (E) Mumbai.

Decision dated 30.9.2009

“In appeals No.585 and 586 he had sought for copies of the statement of assets and the liabilities of three officers of the Bank clearly information of a personal nature without any relationship to any public activity or interest. Section 8 (1) (j) of the RTI Act exempts disclosure of personal information which has no relation to any public activity or interest or which could cause unwarranted invasion of the privacy of a third party unless of course a larger public interest would be served by such disclosure. In this case the appellant has not shown how the disclosure of the statement of assets and liabilities of these three officers had anything to with any public activity or interest. Admittedly the officers submit the statements of their assets and liabilities every year in confidence. This is in the nature of personal information and can be disclosed only if such disclosure would have any relation to any public activity or interest.”

10. An information which is not maintained or available cannot be furnished.

CIC Decision No.4097/IC(A)/2009 dated 29.6.2009 - Shri Brijendra Singh v/s NTPC Ltd

Decision:

“... Information which is not maintained or available cannot be furnished...”

11. There is no provision under the RTI Act for redressal of grievances of the employees

CIC Decision No.4102/IC(A)/2009 dated 30.6.2009 – Shri Manohar H Higiste V/s Air India Limited.

Decision:

“An information seeker is expected to clearly specify the required information as per Section 2 (f) of the Act which requires that the requested information should be available in any material form. ....”

“In the instant case, the appellant has asked for the information in the form of various queries, which seek to elicit the views and opinion of the CPIO on various issues raised by the appellant on the issue of pension and other retirement benefits. Since the question asked by the appellant relate to redressal of his grievances, he is advised to approach the competent authority which may do the needful in the matter.”

“As there is no provision under the RTI Act for redressal of grievances of the employees of the respondent, this appeal is considered unnecessary and is thus disposed of”

12. A requester is not expected to elicit views and opinion of the CPIO through various forms of queries

CIC Decision No.4113/IC(A)/2009 dated 30.6.2009 – Shri Sudhakar B Deshmukh V/s HPCL

Decision Notice:

“... Under Section 2 (f) of the Act an information seeker is expected to ask for information which is available in any material form. Accordingly a requester is not expected to elicit views and opinion of the CPIO through various forms of queries...”

13. Appellant cannot demand action on his petitions through an RTI proceeding

CIC Decision No.CIC/AT/A/2009/000238 dated 30.6.2009 – Shri Md Basaruddin v/s Southern Coalfields Limited

Decision:

“.....It is not open to the appellant to demand action on his petitions through an RTI proceeding”

14. Information seeker cannot demand from the respondents that they interpret the provisions of Rules and instructions for his benefit/ RTI Act cannot be used for a dialogue between a petitioner and the public authority about the correct interpretation of law. Similarly under the RTI Act a petitioner cannot demand to know from the public authority as to when a certain disciplinary action would be completed and an explanation as to why a court order – as understood by the appellant – was not complied with by the public authority. Such queries are all beyond the scope of RTI Act – outside the purview of Section 2 (f).

CIC Decision No.CIC/AT/A/2009/000244 and 245 dated 30.6.2009 – Shri Subhasis Banerjee v/s Eastern Coalfields Limited

Decision Notice:

“... Such queries cannot become a subject-matter of an RTI proceeding. It is not open to the appellant to demand from the respondents that they interpret the provisions of Rules and instructions for his benefit. These rules and instructions are all in the public domain. It is open to the appellant to interpret those rules as he believes these should be interpreted and to initiate such action to protect his interests as may be permissible under the law. RTI Act does not provide room for an RTI petitioner to ask the public authority to interpret a certain rule for his convenience. No matter what the public authority states, a petitioner such as this appellant who is facing disciplinary action, would ever accept that interpretation. RTI Act cannot be used for a dialogue between a petitioner and the public authority about the correct interpretation of law. Similarly under the RTI Act a petitioner cannot demand to know from the public authority as to when a certain disciplinary action would be completed and an explanation as to why a court order – as understood by the appellant – was not complied with by the public authority. Such queries are all beyond the scope of RTI Act – outside the purview of Section 2 (f). In view of the above, these appeals fail Closed. “

4. **Relevant Provisions of Indian Penal Code/Code of Criminal Procedure**

Sec 120 (B)	:	Criminal Conspiracy
Sec 166	:	Public Servant disobeying law with intent to cause injury
Sec 167	:	Public Servant framing an incorrect document with intent to cause injury
Sec 168	:	Public Servant unlawfully engaging in trade
Sec 169	:	Public Servant unlawfully buying or bidding for property
Sec 192	:	Fabricating false evidence
Sec 219	:	Public Servant in judicial proceeding corruptly making report etc. contrary to law
Sec 403	:	Dishonest misappropriation of property
Sec 409	:	Criminal Breach of Trust by a Public Servant
Sec 420	:	Cheating and dishonestly inducing delivery of property.
Sec 441	:	Criminal Trespass
Sec 463	:	Forgery
Sec 468	:	Forgery for the purpose of cheating
Sec 471	:	Using as genuine a forged document
Sec 477	:	Falsification of accounts

**Relevant Sections of Code of Criminal Procedure**

Sec 38	:	Aid to person other than Police Officer executing Warrant
Sec 62	:	Summons how served
Sec 63	:	Service of Summons on Corporate Bodies and Societies
Sec 66	:	Service of summons on Government Servant
Sec 91	:	Summons to produce document or other thing.
Sec 154	:	First Information Report
Sec 160	:	Police Officer's powers to require attendance of witnesses
Sec 164	:	Recording of confession and statements