

# Integrity Pacts in India

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# Abstract

This paper reviews experiences with the Integrity Pact in India. The Integrity Pact (IP) was introduced in the 1990's by Transparency International (TI) for monitoring corruption in public procurement. It consists of an agreement between a government/governmental organization and bidders participating in a tendering contract. IP is both a legal document and a process and adaptable to many legal settings. If violations of the written agreement occur, then certain sanctions such as loss or denial of contract, forfeiture of the bid or performance bond and liability for damages, debarment from future bidding or criminal/disciplinary action against employees of the government shall apply.<sup>1</sup>

The Integrity Pact was introduced in India in 2006 when Oil and Natural Gas Corporation (ONGC) became the first Public Sector Undertaking (PSU) to adopt the IP and to date more than 100 organizations, including central PSUs, Government departments and state PSUs make use of the tool in their procurement of goods and services.

At present, India has a law – the Prevention of Corruption Act 1988 – to deal with the demand side of corruption, as well as numerous guidelines and regulation issued by various ministries and Public Sector Organizations, while the Central Vigilance Commission (CVC) (India's apex anti-corruption body) directly handles issues and cases related to demand side of corruption. In addition, India has ratified the United Nation Convention Against Corruption (UNCAC) in 2011; amended however to the present Prevention of Corruption Act, which will bring supply side under the definition of corruption, is still pending in the parliament.

The Integrity Pact, if effectively implemented and diligently executed can fill this gap by bringing the supply side under the ambit of an anti-corruption mechanism. This paper gives a wider perspective of the IP and its implementation, learnings and challenges in India.

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<sup>1</sup> [http://archive.transparency.org/global\\_priorities/public\\_contracting/integrity\\_pacts#what\\_is](http://archive.transparency.org/global_priorities/public_contracting/integrity_pacts#what_is)

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# 1 Development of the Integrity Pact

The Integrity Pact (IP) was introduced in the 1990s by Transparency International (TI) for monitoring corruption in public procurement. It consists of an agreement between a government/government organization and bidders participating in a tendering contract. The IP is both a legal document and a process and adaptable to many legal settings. To ensure accountability, Integrity Pacts also include a monitoring system typically led by civil society groups.<sup>2</sup>

Transparent and accountable procurement cycles mean the companies that win the bids are those with the best product, at the best price targeted at achieving the best outcome. This is not a new concept, but we can no longer afford to talk in the abstract. Information needs to be proactively disclosed from the earliest decisions to the final audits. Needs assessments, budgets, award criteria, winning bids (justified against the criteria) and contracts (including crucially any contract amendments) all need to be publicly disclosed<sup>3</sup>.

Transparency International India and India's Central Vigilance Commission (CVC) have been promoting integrity, transparency, equity and competitiveness in Government/Public Sector Undertaking (PSU)<sup>4</sup> transactions and as a part of vigilance administration and superintendence. Public procurement is a major area of concern for the CVC and various steps have been taken to put proper systems in place. Leveraging technology, especially wider use of the web sites for disseminating information on tenders, clearly defining the pre-qualification criteria and other terms and conditions of the tender are some of the steps recently taken at the instance of the Commission. The work of Transparency International India provides for the basic guideline to the governmental organizations and helps in meeting the goal of corruption free procurement.

Salient features of the Integrity Pact:

- Creates a level playing field for every stakeholder
- Independent monitoring system under the leadership of the civil society
- Adopted successfully in more than 20` countries
- Scope for entry into the private sector

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<sup>2</sup> [http://www.transparency.org/whatwedo/tools/integrity\\_pacts](http://www.transparency.org/whatwedo/tools/integrity_pacts)

<sup>3</sup> Transparency in public procurement – moving away from the abstract, 27 MARCH 2015, available at – <http://oecdinsights.org/2015/03/27/transparency-in-public-procurement-moving-away-from-the-abstract/>

<sup>4</sup> Public Sector Undertaking – A state owned enterprise .

The development and implementation of the Integrity Pact in the Indian context is largely in response to problems faced within public procurement.

## 2 Public procurement in India

Procurement is often defined as “the business management function that ensures identification, sourcing, access and management of the external resources that an organization needs or may need to fulfill its strategic objectives.”<sup>5</sup> Procurement in any part of the world is an inevitable governmental activity today. India also acquires goods and services through public procurement and tendering, and vendors working globally have also entered the Indian market. The mere entry however of vendors at a large scale does not help the government because the government has to mitigate government’s social and economic goals and the international or regional trade agreements<sup>6</sup>. Along with new entrants, new problems have come to light. In order to tackle the issues related to public procurement various steps have been taken by the government in India and other parts of the country.

As identified by various researchers, government procurement activities have a direct effect on the market and aim to:<sup>7</sup>

- Promote local manufacturing and production capacities
- Regulate prices in the market
- Minimize and prevent black-marketing
- Provide support to priority sectors and helping in increasing competitiveness.

Though procurement is viewed at as a strategic tool for securing goods from the market in the most economical manner, certain problems have emerged in the field. Rampant corruption in public procurement is a major problem worldwide. The OECD estimates that corruption drains off between 20 and 25 per cent of national procurement budgets. Few government activities create greater temptations or offer more opportunities for corruption than public sector procurement. Indeed, 57 per

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<sup>5</sup> The Definition of Procurement, available at - [https://www.cipsa.org/Documents/CIPSAWhitePapers/2006/Definition\\_of\\_Procurement.pdf](https://www.cipsa.org/Documents/CIPSAWhitePapers/2006/Definition_of_Procurement.pdf)

<sup>6</sup> Hai, Khi, V., Challenges in Public Procurement, available at - <http://www.unpcdc.org/media/4899/challenges%20in%20public%20procurement.pdf>

<sup>7</sup> Government Procurement in India, Domestic Regulation & Trade Prospects, CUTS International, October 2012, available at - [http://www.cuts-citee.org/pdf/government-procurement-in-india\\_domestic-regulations-trade-prospects.pdf](http://www.cuts-citee.org/pdf/government-procurement-in-india_domestic-regulations-trade-prospects.pdf)

cent of foreign bribery cases prosecuted under the OECD Anti-Bribery Convention involved bribes to obtain public contracts.<sup>8</sup>

Due to scandals such as the Common Wealth Games<sup>9</sup> and the 2G Spectrum scam,<sup>10</sup> the Indian government has taken various measures to curb governance issues related to public procurement. The Group of Ministers was established in 2010-2011, which recommended that laws be framed in this regard and that a procurement committee should also be established, comprising major procuring departments in the government in its report published in the year 2011.<sup>11</sup>

## 2.1 Problems associated with public procurement in India

The problems associated with public procurement in India may be broadly divided in to various categories:

- Inadequate regulatory & legal framework
- Inadequate policy framework
- Unethical procurement practices & entry barriers
- Anti-competitive practices.

The National Academy of Defence Financial Institute<sup>12</sup> has also identified major problems associated with the procurement process, including:

- Overt emphasis on procurement procedures and guidelines
- Poor quality of manpower
- The fear of vigilance
- Frequent updates of manuals
- Multiple interpretations of manuals
- Poor quality of training
- Procurement postings not linked to qualifications
- Frequent inter-change with other assignments
- Lack of avenues / interest in knowledge building
- Lack of centralized data sharing facility
- Absence of a central authority to oversee procurement related issues.

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<sup>8</sup> Transparency in public procurement – moving away from the abstract, 27 MARCH 2015, available at – <http://oecdinsights.org/2015/03/27/transparency-in-public-procurement-moving-away-from-the-abstract/>

<sup>9</sup> <http://www.thehindu.com/news/national/major-scam-hits-commonwealth-games/article542593.ece>

<sup>10</sup> <http://www.firstpost.com/politics/2g-spectrum-scam-what-where-and-who-were-the-initial-players-94657.html>

<sup>11</sup> First Report Of Group Of Ministers To Consider Measures That Can Be Taken By The Government To Tackle Corruption; Department of Personnel and Training April 2011, available at – [http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02ser/372\\_19\\_2011-AVD-III-25102011.pdf](http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02ser/372_19_2011-AVD-III-25102011.pdf)

<sup>12</sup> Draft discussion paper Public procurement: problems and prospects, available at – <http://nadfm.nic.in/learning/Research%20Cell/Public%20Procurement%20-%20problems%20and%20prospects.pdf>

India does not have central procurement legislation. Therefore, the departments, Central Vigilance Commission (CVC) apex anti-corruption body, and governmental organizations have come up with various guidelines, office memorandums and circulars to deal with procurement procedures. Procurement is therefore controlled by the officials involved in procurement processes, with limited dissemination of information. In addition to this and the non-availability of standard terms and conditions, contracts are drafted differently and subsequently each sector has its own contract for procurement. Such variations lead to unnecessary complications in the procurement process. Because procurement is not uniform and there is absence of nodal regulatory agency in this regard, the respective department has complete autonomy and discretion to regulate entry of bidders.

Concerning invitation of tenders, there are three channels of tender invitation – Open Tender Enquiry, Limited Tender Enquiry & Single Tender Enquiry.<sup>13</sup> Sometimes the tenders issued have restrictive pre-qualifying criteria. As a consequence of this, only a few bidders are able to participate in the bidding process and thus it impedes competition. This also leads to grant/ award of contracts in a non-transparent manner. Apart from this, certain anti-competitive practices may also be adopted by various bidders. A prominent practice in this regard is bid rigging or collusive bidding. In this kind of practice, the price is generally fixed in a wrongful manner. Such price-fixing may be held in a manner where the bidders allow a certain bidder to win and other bidders bid at a higher rate. This practice is referred to as bid rotation. Corollary to this, sometimes a certain cartel or group of bidders decide to refrain from the bidding process/tender invite. Bidders may use predatory pricing techniques, whereby a major bidder bids at such low a price that the competitors are eliminated altogether.

The problems do not end here. Nepotism is another area of major concern where the bid is awarded to those who are close relatives or known acquaintances of the official involved in the issue of tender. Such practices also give rise to scams which are identified long after the bidding procedure completes. This is only strenuous to the other bidders who have to face unnecessary hardship. The consequence of this is grave because the bidders are not available with any redressal mechanism where they can voice their concern and this only aggravates the problem without any solution to it.

## **2.2 The Myriad of Regulations**

As mentioned, there is no specific, uniform regulatory legal framework for the purpose of regulating procurement. Subsequently, neither the government nor the bidders can follow such guidelines. Presently the Indian procurement system is guided by various guidelines and office memorandum. The guidelines of prime importance in this regard are the General Financial Rules, 2005, issued by the Department of Expenditure, Ministry of Finance. Rule 135-185, Chapter – 6 of these rules deal with the

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<sup>13</sup> Malhotra, Devika, Study on Government Procurement, January 2012, available at – <http://sps.iitd.ac.in/PDF/SGP.pdf>

public procurement procedure both in respect of goods and services.<sup>14</sup> The General Financial Rules (GFR)<sup>15</sup> however provide for regulation of procurement as each and every office of the Government of India while undertaking financial actions including procurement of goods and services have to abide by the GFR. In addition to these guidelines, a few other legislative acts such as the Right to Information Act, 2005, Vigilance Commission Act, 2003 and Prevention of Corruption Act, 1988 help to ensure transparency in procurement. A bill<sup>16</sup> has also been introduced and pending approval. Some features of the bill are:

- Appropriate penalties if corrupt behavior is identified
- Establishment of grievance redressal mechanism
- Open auction without restrictions on participation of bidders
- Standard and uniform terms and conditions of contract to be prescribed.

Since India does not have uniform laws and global vendors argue that they are guided by the Foreign Corrupt Practices Act or the UK Bribery Act; they refrain from signing an Integrity Pact because they do not find such a pact adding value to the chain of curbing problems associated with corruption in procurement.

India ratified the United Nations Convention against Corruption in 2011. Subsequently it is important and mandatory that India should frame separate law for implementation of the convention. Keeping in view the steps necessary to effect this, the United Progressive Alliance (UPA) Government in the year 2012 proposed the Public Procurement Bill, "to regulate public procurement with the objectives of ensuring transparency, accountability and probity in the procurement process, fair and equitable treatment of bidders, promoting competition, enhancing efficiency and economy, maintaining integrity and public confidence in the public procurement process."<sup>17</sup> The bill did not pass in its original form and the present government has once again introduced the bill with certain changes.

Key highlights of the bill<sup>18</sup> are summarized as follows:

- The Bill seeks to regulate and ensure transparency in procurement by the central government and its entities. It exempts procurement for disaster management, security or strategic purposes, and those below Rs. 50 lakhs (75,100 USD). The government can also exempt, in public interest, any procurements or procuring entities from any of the provisions of the Bill.

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<sup>14</sup> General Financial Rules, Department of Expenditure, Ministry of Finance, available at – [http://finmin.nic.in/the\\_ministry/dept\\_expenditure/gfrs/GFR2005.pdf](http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/GFR2005.pdf)

<sup>15</sup> General Financial Rules, 2005, Issued by the Ministry of Finance, Government of India, available at – [http://finmin.nic.in/the\\_ministry/dept\\_expenditure/gfrs/GFR2005.pdf](http://finmin.nic.in/the_ministry/dept_expenditure/gfrs/GFR2005.pdf)

<sup>16</sup> The Public Procurement Bill, 2012, available at – <http://www.prsindia.org/uploads/media/draft/Revised%20Draft%20Public%20Procurement%20Bill,%202012.pdf>

<sup>17</sup> Objectives of the Public Procurement Bill, Available at: [http://finmin.nic.in/the\\_ministry/dept\\_expenditure/ppcell/Salient\\_features\\_Draft\\_PP\\_Bill.pdf](http://finmin.nic.in/the_ministry/dept_expenditure/ppcell/Salient_features_Draft_PP_Bill.pdf)

<sup>18</sup> <http://www.prsindia.org/billtrack/the-public-procurement-bill-2012-2310/>



- The government can prescribe a code of integrity for the officials of procuring entities and the bidders. The Bill empowers the government and procuring entity to debar a bidder under certain circumstances.
- The Bill mandates publication of all procurement-related information on a Central Public Procurement Portal.
- The Bill sets Open Competitive Bidding as the preferred procurement method; an entity must provide reasons for using any other method. It also specifies the conditions and procedure for the use of other methods.
- The Bill provides for setting up Procurement Redressal Committees. An aggrieved bidder may approach the concerned Committee for redressal.
- The Bill penalizes both the acceptance of a bribe by a public servant as well as the offering of a bribe or undue influencing of the procurement process by the bidder with imprisonment and a fine.

The bill's transformation into legislation is a matter of time. The guidelines issued by the Central Vigilance Commission have to be strictly adhered to by organizations which are under the purview of the commission i.e. the PSUs, Banks, etc.<sup>19</sup> The PSUs which are under the direct control of CVC issue procurement manuals for the purpose of regulating public procurement.<sup>20</sup>

In light of these concerns and major issues which have come up not only in India but globally, the Integrity Pact is being implemented to curb problems associated with corruption in procurement.

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<sup>19</sup> No. 98/ORD/1, issued by Central Vigilance Commission, 18<sup>th</sup> December, 2003, available at – <http://cvc.gov.in/98ord12k312.pdf>

<sup>20</sup> Procurement Manuals of various PSUs in India can be accessed here –  
<http://www.hindustancopper.com/Admin/AnnouncementFiles/HCL%20Procurement%20Manual.pdf>  
[http://finmin.nic.in/the\\_ministry/dept\\_expenditure/acts\\_codes/MPProc4ProGod.pdf](http://finmin.nic.in/the_ministry/dept_expenditure/acts_codes/MPProc4ProGod.pdf)  
[http://www.oil-india.com/PDF/Tenders/Purchase\\_Manual.pdf](http://www.oil-india.com/PDF/Tenders/Purchase_Manual.pdf)  
[http://www.aai.aero/aai\\_employees/ANS\\_Procurement\\_Manual2012.pdf](http://www.aai.aero/aai_employees/ANS_Procurement_Manual2012.pdf)  
<http://www.isro.gov.in/sites/default/files/article-files/right-to-information/DOSPURCHASEMANUAL2015.pdf>  
[http://www.ha-india.com/Common/Uploads/DMS/CVC\\_Guidelines\\_Booklet.pdf](http://www.ha-india.com/Common/Uploads/DMS/CVC_Guidelines_Booklet.pdf)

## 3 The implementation of the Integrity Pact in India

### 3.1 Basics of Implementation of IP<sup>21</sup> in India

The IP is a preventive anti-corruption tool that addresses all forms of corruption in the procurement process. Its goal is the reduction and, eventually, elimination of any opportunity for corruption. The IP, which is a legally binding agreement, is signed by government agencies and their bidders/selected contractors for specific contracts with the intention of accomplishing two primary objectives:

- Companies are able to abstain from bribing. They are provided assurances that their competitors will also refrain from bribing and that the government agencies with which they are working will undertake to prevent corruption by their own officials and follow transparent procedures.
- Governments reduce the high cost and distortionary impact of corruption on public procurement, privatization or licensing.

### 3.2 Two Aspects of Corruption & Effectiveness of IP

IP acts as a two-way sword and can be used both by the governmental agencies and the vendors/bidders who wish to procure the tenders to eliminate corrupt practices. It creates responsibility & obligation on the part of both the principal and the vendor. The IP structure adds to the vigilance mechanism in an organization because it helps in creating an independent observer which is generally used to redress the grievances and also acts as a dispute resolving authority without the involvement of complex legal & procedural details.

There are three players to every IP in India:

- **The Principal** (or the Company/Authority/Agency) is a government authority/agency that is inviting public tenders for supply, construction, consultancy or other services, for the sale of assets, or for a license or concession.
- **The Vendors** (or the Bidders) are the bidders submitting tenders for this activity.
- **The Independent External Monitors** (IEM) are independent citizens of high integrity with expertise in the relevant field.

Once adopted, the IP should cover:

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<sup>21</sup> Tabish S.Z.S., Kohli Jitendra, Mishra, Ashutosh Kumar, Manual for the Examination of Public Procurement Process, Published by Transparency International India, April 2013, available at – <http://www.transparencyindia.org/pdf/Manual-for-The-Examination-of-Public-Procurement-Process.pdf>

- All tenders/procurements above a specific threshold value. This value should be determined after an ABC analysis such that it covers 90-95% of the total procurements of the organization, in monetary terms.
- Complicated or important contracts, even if below the monetary threshold, if decided so by the management.

It should be made mandatory for bidders to sign the IP and only those bidders that sign it should be allowed to participate in the tender process. Finally, the Purchase/Procurement wing of the agency is the focal point for the IP implementation. The Vigilance Department is responsible for review, enforcement, and reporting on all related vigilance issues.

### **The Demand Side**

PSUs and governmental departments are involved in the procurement, serving as the Principal. The demand is generated here which brings with it different associated problems. Under the IP the Principal agrees to adhere to a set of criteria.

The Principal agrees:

- That none of its officials or representatives will pay, offer, demand or accept bribes, kickbacks, gifts or other undue or improper payments.
- To disclose all commissions, payments and documents made in connection with the contract by partners, agents, brokers or any other intermediary.
- Not to commit any offences under the Indian Penal Code/ Prevention of Corruption IPC/PC Act.
- To discipline any officials found to be violating the IP with appropriate disciplinary or criminal sanctions.
- To treat all bidders fairly and transparently, this includes not offering confidential information to any bidders, or withholding information from any bidders and excluding persons from the process known to be prejudiced.
- To inform the Chief Vigilance Officer (CVOs are higher level officers who are appointed in each and every Department/Organisation to assist the Head of the Department/Organisation in all vigilance matters) if it obtains information or substantial suspicion regarding conduct of any of its employees that is a criminal offence under the IPC/PC Act.
- To provide IEMs sufficient information and access to all meetings and documents related to the project that could have an impact on the contractual relations and agreements.

### **3.3 Benefits of Integrity Pact:**

#### **Views from the Demand Side**

While Integrity Pacts help ensure clean operations on the part of contractors and public officials during the execution of a project, they also yield other benefits. Integrity Pacts provide enhanced access to information, increasing the level of transparency in public contracts. This, in turn, leads to greater

confidence and trust in public decision-making, less litigation over procurement processes and more bidders competing for contracts. Integrity Pacts can also encourage institutional changes, such as the increased use of e-procurement systems, simplified administrative procedures and improved regulatory action. A successfully implemented IP means that a contracting process was undertaken in a transparent and accountable manner, free from corruption and from delays caused by trouble, confusion and a lack of transparency. The social, economic and development goals of the project are achieved – or at least not impaired by corruption. As a side effect, trust in government and government officials is increased, and the reputation of all participants improved. If corruption does occur, it is detected and eliminated from the process when tools such as IP that are designed to identify corruption. IP enables the implementation of desirable law-abiding standards without additional legal reform, reduces conflict and distrust, and provides a channel for managing dissent. An independent monitor ensures the credibility and legitimacy of the contracting process, and offers all stakeholders oversight that would otherwise be denied to them.<sup>22</sup> Monitors reassure the authority and all participants of the integrity of the process, and help to isolate it from political pressures. The experience of ONGC is worth mentioning in this regard and as the Chairman of the organization stated that the “IP helped in yielding substantial benefits to them, a few of which were greater transparency and integrity between the buyer and seller, improved sense of ethics in ONGC and among the bidders, reduction in number of frivolous lawsuits and representations and complaints from vendors, speeding up of tender and procurement, reduced political, diplomatic and administrative interference, quick resolution of difference as representations are referred to IEMs for consideration, reduction in external interventions in matters of contracts and tenders and improvement in the image and general perception about the company.”<sup>23</sup>

### **The Supply Side**

The responsibility of eliminating corruption from the procurement procedure cannot be achieved merely by the demand side. The suppliers of goods and services also have to join hands with these organizations and therefore the Integrity Pact provides guidelines for the suppliers which need to be fulfilled.

The Vendors agree:

- Not to pay, offer, demand or accept bribes, kickbacks, gifts or other undue payments.
- To disclose all commissions, payments and documents made in connection with the contract by partners, agents, brokers or any other intermediary.
- Not to commit any offences under the Indian Penal Code/ Prevention of Corruption IPC/PC Act.

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<sup>22</sup> [http://www.transparency.org/whatwedo/tools/integrity\\_pacts](http://www.transparency.org/whatwedo/tools/integrity_pacts)

<sup>23</sup> Report International Conference on Integrity Pact: From Commitment to Compliance, Transparency International India, 9-10 December, 2013

- Not to collude with competitors or otherwise employ corrupt practices during a procurement process.
- To disclose any transgressions made by other companies that violate the terms of the IP.
- Not to disclose any information provided by the Principal as part of a business relationship to others or to otherwise improperly use any such information.
- If foreign based, to disclose the name and address of agents and representatives in India or, if Indian, to disclose foreign principals or associates.
- That the no-bribery commitment, the disclosure obligation and the attendant sanctions remain in force for the winning bidder until the contract has been fully executed.
- That all undertakings on behalf of bidding companies will be made “in the name of and on behalf of the company’s Chief Executive Officer, with the approval of the Board of Directors or other governing body.”
- Not to employ or engage any third persons to commit any such offences outlined above.
- To declare that no transgressions of the kinds outlined above occurred in the last three years with any company or public authority in any country.
- To provide to the IEMs access to any documents/records that are relevant to the bidding process or the contract.

With time there has been acceptance of IP among the bidder communities, though vendors/bidders are still bit reluctant to openly lodge their complaints with monitors, but in last few years the there has been a visible change, more and more vendors are approaching IEM for grievance redressal.

### **3.4 Further benefits of IP<sup>24</sup>**

First, IPs help compensate for a confused, inefficient, and incomplete set of formal procurement regulations, by giving well-intentioned government agents a basis to terminate corrupt contracts and seek contractual sanctions against the perpetrators.

Second, a key pillar of an IP is the Independent External Monitor, a civil society actor of high standing who monitors IP implementation and arbitrates all related disputes. Bidders aggrieved about the procurement process can approach the monitor, who then investigates the complaint and settles the dispute.

Finally, beyond their positive effect on the particular contracts they govern, reports on the success of IPs in discovering and penalizing corruption have helped create a stronger awareness of procurement

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<sup>24</sup> Kumar, Narayan Renu, Countering Procurement Corruption with Integrity Pacts: The Indian Experience, 4<sup>th</sup> march, 2016, available at - <https://globalanticorruptionblog.com/2016/03/04/countering-procurement-corruption-with-integrity-pacts-the-indian-experience/>

corruption and possible remedies. The strong actions taken against corrupt vendors by a powerful agency like the Ministry of Defense have helped dispel the cynical view that IPs are a sham.

### 3.5 Role of an Independent External Monitor (IEM) in India

- The IEM monitors independently and objectively whether and to what extent both the Principal and the Vendor respect and comply with these obligations.
- Disputes in the implementation and progress of the IP are resolved by mediation with the aid of the IEMs.
- Information relating to tenders in progress and under finalization must be shared with IEMs monthly/ periodically as is appropriate.
- The Principal, Bidders/Contractors and subcontractors are all responsible for providing IEMs unrestricted access to project related documentation.
- IEMs are vital to the successful execution of the IP. They are entrusted to monitor not only bids and tenders and their evaluation including the award decision, but also the execution of a project. Since IEMs offer advice in lieu of legal orders, they can oversee cases quickly and efficiently, reducing time and money spent adjudicating complaints during the procurement process. Sometimes what appears to be corruption during procurement is the result of the lack of capacity, or inefficiency on the part of procurement officials. The IEMs can help address these shortcomings by offering suggestions to reform procurement and minimize both perceived and actual corruption. The IEMs can also insist and ensure that relevant training be imparted to the concerned procurement officials to overcome observed knowledge-deficiencies.

### 3.6 Facts about IP in India

Implementation of the IP has been seen to:

- Improve the public perception of companies that adopt it.
- Secure the integrity of a procurement process.
- Result in faster processing of contracts at more competitive prices.
- Reduce the number of lawsuits and false complaints<sup>25</sup>.

In the changing business environment, where the recall value of a product or service by end users is associated with an ethical company, the IP plays an important role in creating such a brand image. Since the first IP was signed in 2006 by India's giant state owned oil company, Oil & Natural Gas Company Limited in 2006, there have been spurts of growth in the adoption of the IP in India and the tool is constantly evolving.

The four pillars on which integrity pact rests are as follows:

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<sup>25</sup> Admiral Tahiliani's address at TI's National workshop on Integrity Pact (23 January, 2010)

### 1. Anti-bribery

The aim of the Integrity Pact is to create a level playing field for every company. As a signatory of the IP, each bidder stands an equal chance to win the contract as the merit of the bidder decides the award of tender and not facilitation payment / bribery. In an article Deputy Chief Vigilance Officer of Kandla Port observed that introduction of Integrity Pact has curbed companies from bribing as it provides an assurance against any form of corruption including “extortion” by procurement officials.<sup>26</sup>

### 2. Reduction in procurement cost

Signing of an IP enables the government and companies that sign the IP to reduce cost of procurement.

### 3. Vendor-bidder confidence

If a company signs an IP, it pledges against bribery, this helps in creating an environment of confidence among the competitors.

### 4. Business case for IP adoption

Adopting an IP has enabled PSUs to become more competitive and profitable. There is significant evidence that effective implementation of the IP yields short-term and long-term benefits to both the Company and the vendors. The greatest advantage of adoption of IP is that it mitigates long drawn litigation and utilizes energy in productive pursuits within the organization.

Implementation of the IP in India is an ongoing process and currently has been adopted by over 100 PSUs. However, the methodology/process adopted for such implementation has been different through different organizations, and the regulatory framework guiding IP in India is multifarious.

The first and principal guidelines were issued by the 2<sup>nd</sup> Administrative Reforms Commission in its 4<sup>th</sup> report.<sup>27</sup> The report defined the Integrity Pact as “... an agreement between the public agency involved in procuring goods and services and the bidder for a public contract to the effect that the bidders have not paid and shall not pay any illegal gratification to secure the contract in question. For its part, the public agency calling for bids commits to ensuring a level playing field and fair play in the procurement process.” This report was published after the IP adopted by ONGC. Under the report it was urged that the Ministry of Finance may constitute a Task Force with representatives from Ministries of Law and Personnel to identify the type of transactions requiring such pacts and to provide for a protocol for entering into such a pact.

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<sup>26</sup> <http://www.siv-g.org/index.php/columnists/11-govindarajan-suresh/87-integrating-integrity-a-bottom-up-glory-for-good-governance> (<http://www.siv-g.org/index.php/columnists>)

<sup>27</sup> 4<sup>th</sup> Report, Ethics in Governance, Second Administrative Reforms Commission, Government of India, January 2007, available at - <http://darpg.gov.in/sites/default/files/ethics4.pdf>

Accordingly, the Ministry of Finance has issued an Office Memorandum to be followed by organizations for implementation of the Integrity Pact<sup>28</sup>.

The Central Vigilance Commission has also issued guidelines in this regard for adoption by the governmental departments/ organizations.<sup>29</sup> These guidelines are viewed as benchmarks for implementation of the Integrity Pact in India. Furthermore, the Department of Personnel & Training has also issued a circular in reference and consonance with the guidelines issued by the CVC for adoption of Integrity Pacts<sup>30</sup> for state (provincial level) Public Sector Enterprises.

### 3.7 IP in Defense sector in India<sup>31</sup>

Defense procurement is extremely complicated, in part due to its associations with national security, such that the government and bureaucrats prefer to limit disclosure in the public regarding the information of the equipment being purchased. The chances of corruption in defense procurement are therefore high because the activity is performed in the name of national interest and security. This gives immense power in the hands of a few who make the procurement decisions.

A grey area in defense procurement is the role of the agent, which has an official designation in the international market. These agents are officially appointed for executing the deal and are given a hefty amount (fraction in % of final sale price) for their work. The IP so far has not been able to take a position on officially-appointed agents who have (not in absolute term) no role in decision-making in the purchase of defense goods and services. The Indian government recently made it legal to foreign defense firms which can now appoint agents to market their products to the armed forces and the government, but with strict oversight which includes opening up of a company's books to scrutiny as well as forbidding success bonus or penalty fees, among other measures.<sup>32</sup> Whether or not to incorporate this into an IP is a subject of debate.

On a positive note, IPs in defense procurement remain in force for the winning bidder until the contract has been fully executed, and they extend for up to 5 years from the date of signing of an IP in case execution is less than five years. In addition, a bidder's conduct during a three-year period before the signing of an IP at the time of bid-submission for a particular tender must be free from any of the transgressions in respect to corrupt practices covered by an IP with any company in any country or with

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<sup>28</sup> Office Memorandum, Issued by Department of Expenditure, Ministry of Finance, 19<sup>th</sup> July, 2011

<sup>29</sup> No. 008/CRD/013, Circular No. – 10/5/09, Issued by Central Vigilance Commission, Government of India, 18<sup>th</sup> May, 2009, available at – <http://cvc.gov.in/008crd013210509.pdf>

<sup>30</sup> No. 372/13/2009-AVD-III, Issued by Department of Personnel & Training, 16<sup>th</sup> June, 2009, available at – <http://www.integritypact.in/download/DOPT%20Circular%20for%20State%20PSUs%20on%20IP%2016%20June%202009.pdf>

<sup>31</sup> Defence Procurement Policy, 2006

<sup>32</sup> <http://indianexpress.com/article/india/india-news-india/govt-allows-agents-in-defense-deals-but-with-strict-oversight-2852883/>



any Public Sector Undertaking (PSU) or any Government Department in India that could justify the bidder's exclusion from the tender process.

Commitments of parties to a defense IP –

- Obligations of the (Government) Principal in the Indian context, the Principal to an IP commits to treat all bidders with equity and reason, and in particular, to provide all bidders with the same information, and not provide any bidder confidential or additional information that could be used by such bidder to obtain a comparative advantage in the tender process or in contract execution.
- The Principal also undertakes to exclude all known prejudiced persons essentially a Conflict of Interest (Col) removal clause.
- Additionally, the principal commits that no employee of the Principal, either personally or through family members, will demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
- Para 2.01 of the Office Memorandum (OM) dated 18-5-2009 echoes the same commitments on behalf of the principal as essential ingredients of an IP, though the Col removal clause is absent in this latter OM. In the case of defense IPs, the Principal makes similar commitments to treat all bidders alike, to provide equal information to bidders, and to withhold information to a particular bidder that may lead to a comparative advantage vis-a - vis other bidders.
- Additionally, the Principal commits that none of its officials connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favor or any material or immaterial benefit or any other advantage from the bidder, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- However unlike the IP employed by the Steel Authority of India Limited (SAIL) , neither of the defense IPs (covering capital and revenue procurements) contains clauses to address Col removal commitments on part of the principal.

Insofar as defense procurement is concerned, the Defense Procurement Procedure, 2006<sup>33</sup> (DPP-06) made an IP compulsory for all capital procurement schemes above 100 crores (15 million USD). This pact was made equally applicable to capital procurements under fast track procedures while relaxing other contract formation procedures. The scheme was continued in the 2008 edition of the Defense Procurement Procedure (DPP-08) with the modification that defense PSUs (DPSUs) were made exempt

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<sup>33</sup> Defense Procurement Manual, available at –  
<http://pcfys.nic.in/files/DPM-2006.pdf>

from signing an IP, but they were nevertheless required to enter into IPs with their sub-contractors for sub-contracts exceeding 20 crores (3 million USD). The IP is equally applicable to revenue procurements in the Ministry of Defense since the issuance of defense Procurement Manual, 2006 to the current 2009 edition, but DPSUs do not appear to be exempt from the signing of an IP unlike the case with capital procurements. A recent memorandum issued by the Government of India advocated the adoption of IPs in procurements undertaken by Public Sector Enterprises (PSEs) at the State-level, but IPs are yet to be approved by any of the State Governments in India. Accordingly, IPs currently do not cover procurements by State PSEs or by any other State entities, including State Government departments.

### **3.8 The problems with implementation of Integrity Pact in India**

A report published by Transparency International India identifies some essential aspects of what the major problems are faced by the agencies in implementation of Integrity Pacts in the PSUs:<sup>34</sup>

- At times, tremendous duplication: An aggrieved party complains to the Central Vigilance Commission (CVC) and simultaneously takes it to the court. The CVC wants the Independent External Monitor (IEM) to investigate the matter and, at the same time, also suggests that someone from the Corporation conduct a technical examination. Thus, the same issue is debated in three different fora. This leads to a waste of time, energy and resources.
- The concept of island of integrity is difficult to achieve: PSUs are all commercial organizations. They are judged by performance and their management is judged by their top and bottom lines. It is difficult to implement an IP within a PSU as the incentives for employees are not very high. Requiring all employees of the PSU to sign the IP will lead to inefficiency and delay in operation, making the PSU uncompetitive.
- Difficulty in getting overseas suppliers to accept IP: Foreign companies have doubts about the IP and questions about its adoption. Hence, negotiations with them take time.
- Double-edged sword: If the IP is not signed, then the Chairman-cum-Managing Director (CMD) has to face questions from the CVC and Ministry. On the other hand, if the foreign company does not sign it, then the company loses its vendor.
- There is no level-playing field: Integrity Pact aims at providing a level playing field. But in practical circumstances, the fact remains that some vendors are at comparative advantage and some at comparative disadvantage. Therefore, impeding objective of integrity pact.
- The IEMs are new to the IP and do not have any experience how best to start their functions: In some companies with no case or history/experience, vendors do not know what complaint to make or whether or not the IEMs can be trusted.
- Concern amongst PSUs and vendors regarding commercial confidentiality: PSUs feel that too much disclosure could make them lose their edge in the bidding process whereas vendors are

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<sup>34</sup> Implementation of Integrity Pact in India, Transparency International India, available at – <http://www.transparencyindia.org/resource/books/Implementation%20of%20Integrity%20Pact%20in%20India.pdf>

of the opinion that PSUs do not disclose all of the information required, as per provisions of the Right to Information (RTI) Act.

With almost a decade of implementation of the IP in India, most of the organizations have shown positive outcomes. Some areas of concern remain however, including collusive bidding and cartel formation. With the better development of IP techniques, such problems could however be solved.

### **3.9 Subcontracting in IP: Grey Area**

Extension of IPs to sub-contracts is one of the crucial breakthroughs in enhancing the scope of IP, yet with this increased scope also comes several limitations. The example of the Steel Authority of India Limited (SAIL) IP model which is advocated by CVC<sup>35</sup> requires the prime contractor<sup>36</sup> to demand from all sub-contractors a commitment similar to the main IP, and to submit it to the principal at the time of contract-signing. It is unclear however whether the prime contractor is required to merely submit an undertaking to demand such commitment from its sub-contractors at the time of contract-signing, or if the prime contractor is required to submit actual commitments from known sub-contractors at the time of contract-signing. If the former interpretation is correct, then it appears that specific time-frames have not been mandated under the IP system for the prime contractor to submit actual evidence of such commitments from all its sub-contractors, whether known at the time of contract-signing or from those selected subsequently. In some cases, however, Central Public Sector Undertakings CPSUs appear to have exempted subcontractors from the purview of IPs due to operational difficulties, although a complete list of such government organizations is not available. It is also interesting to note that the model IP expects all sub-contractors to sign an IP with the prime contractor prior to bidding, irrespective of the value of the sub-contract, whereas the IP between the principal and the bidder is required to be signed by a prime contractor/bidder only if the main procurement contract is above a certain threshold value. This requirement for the prime contractor to obtain IP-like commitments from its subcontractors, either before or after contract-signing, is absent in defense IPs.

### **3.10 Role of Civil Society**

It is generally the rule of thumb that Civil Society in the respective country would play a key role in overseeing and monitoring the correct and full implementation of IP. In India the CVC appoints the monitor, therefore, Transparency International India, apart from in one state PSU, doesn't have any direct role in monitoring of IPs. Provisions related to review by NGOs (clause 6.02) which was part of

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<sup>35</sup> Available at – <http://www.sailtenders.co.in/dynamicpages/linkpages/FileDP270727.pdf>

<sup>36</sup> A Prime contractor undertakes to perform a complete contract, and may employ (and manage) one or more subcontractors to carry out specific parts of the contract.

the Standard Operating Procedure (SOP) issued by CVC in May 2009, was later dropped, thus limiting the role of NGO in monitoring of IPs in <sup>37</sup>India.

Political will is the most crucial factor which determines the role of civil society, however the meaningful public participation in the long run is the backbone of any tool, be it an Integrity Pact or any other public utility tool. The education and information, if available to the citizen beforehand, would enable them to decide the level of participation that they would likely to play rather than sticking to just a rigid format. It can be said that involving the public for participation would make the IP more chaotic but over a long period of time the process will streamline and will be easier to make decisions in a much more transparent manner.

Basically, civil society enables different stakeholders to exercise their rights in public policy formulation. They are often the only connection between the government and its stakeholders, broadening perspectives and bringing in even the voices of marginalized communities of society ,together into a single larger voice. This enables the public to be at par with any organization and even with the government and improves the effectiveness and sustainability of project such as Integrity Pacts.

### **3.11 Limitations of the IP in India**

The IP in India is not without limitations. Consider for example the tendering process in life sciences sector in India, which is unique in terms of the manufacturing and players involved in it, the testing requirements, sales and distribution of equipment or medicines and even laboratory tests. Now consider a government company or department or hospital which floats a tender for its requirements. In these cases, each tender is unique since it carries its own requirements, specifications and timeline which are mentioned in the tender document. Just like in defense sector procurement, here too an agent is appointed who acts as a liaison between the buyer and the seller which enable the bidder to better understand the requirement of the floated tender. Based on the information provided by the agent, the bidder makes his/her bid application to the purchaser. The IP has no provision regarding the role of the agents, since they play no role in physical movement of goods or services transacted between the buyer and the seller. This is one of many examples where the IP needs to be sector specific or in some cases even transaction specific.

## **4 Conclusion**

Conducting training and capacity building workshops for all the stakeholders of Integrity Pact, namely Independent External Monitors (IEMs), Vendors (also sub-contractors) and Central Vigilance Officers (CVOs) would be one of the continuous processes to be followed throughout the implementation of IP in

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<sup>37</sup> <http://cvc.gov.in/008crd013210509.pdf>

the long term. In the beginning, IP training with different stakeholders helped in understanding the procurement issues in the country. Some of the issues were unique in the Indian context due to the powerful position enjoyed by clerical staff. Workshop are another helping hand which covers all the aspects of corruption therefore discussing right from the current Indian scenario to judicial aspects and the international norms that India is required to follow to counter corruption.

As has been discussed earlier, the public procurement process is rife with opportunities for corruption. Some sectors are generally more prone to corruption; these include public works, contracts & construction; real estate & property development; oil & gas; heavy manufacturing; mining; pharmaceutical & medical care; utilities; civilian aerospace; power generation & transmission; and forestry. However, there are significant risks and opportunities for corruption in all sectors. Therefore, it is important to develop a holistic mechanism and all interest groups need to join the hands together. The Integrity Pact is a tool which has helped the industry and cleaned the procurement procedure in many ways. This must be developed by each organization and the Government must also focus on elaborate institutionalized reform in order to better implement the Integrity Pact.

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