

ESG

summary notes

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CHAPTER 11

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ch 11 - Business Ethics, Code of Conduct and Anti-Bribery

- Ethics has been derived from a Jahin word 'Ethos' also called as 'Ethicus' which in simple means character, so in a nutshell ethics are principles that guide an individual as to the right and wrong conduct.
- So in simple ethical behavior is considered as right and anything against this shall be wrong.
- It is not a natural science, hence it differs in different places at diff. times and in diff situations.
- When these ethical values are applied in the business conduct it becomes business ethics which comprises of both the conduct of individuals in the organization as well as the organization.
- So, business ethics are principles which govern the actions of the business and guides as to what is right and what is wrong.
- It ensures certain level of trust between consumers and market participants and increases the brand value of the organization.

(BCVR New)

• Features of Business Ethics includes :-

- a) Generally in the form of Code of Conduct
- b) Business ethics are based on morals and social values
- c) Ethics are always meant to be voluntary
- d) Relative term as it changes from one business to another.
- e) New Concept

(ACAHallageraho)

• Principles of Business Ethics :-

- a) Accountability - Every business must set responsibility for individuals and the individuals must hold themselves accountable for any unethical practice.
- b) Care and Respect - The co-workers should be respectful and at the same time responsible.
- c) Avoid Conflicts - The business should avoid excessive competition within the workforce which in turn minimizes conflict of interest
- d) Compliance.
- e) Honesty - The more transparent the communication is the more trust the employees have, which in turn brings the better version of employees.

f) Loyalty -

g) Relevant information - Both positive as well as negative information must be disclosed.

• Standard Ethical Practices :-

These are certain basic ethical practices which are expected from a business from the ethical point of view.

a) Social Responsibility - If the business earns profits from the society they should also work for the benefit of the society for instance CSR.

b) Corporate Responsibility - Every entity must safeguard the interest of all its stakeholders whether internal or external.

c) Technology Ethics - Certain ethics must be looked upon by the corporates while dealing with the customer information and while making privacy policy.

d) Fairness - While bias is pretty normal the same should not be at the workplace as it affects the decision making of the firm.

• Benefits of Business Ethics includes:

- Increased Productivity
- Customer loyalty
- Positive Brand Image
- Avoiding Negative Publicity

Q. How does business ethics affects the bottom line of a business? (SHEEE)

⇒ Bottom line is nothing but the goals which every business must attain, it includes:

- Economic
- Human
- social
- Environmental
- Evolutionary.

(a) Economic Bottomline - The first bottomline refers to the wealth creation of a company, which states that the first thing about an ethical organization is that it must create wealth else, it is considered unethical.

(b) Human Bottomline - The second bottomline about an ethical business is how it makes a better quality of workforce, which could be effected through leadership, motivation and teamwork.

(c) Social Bottomline - The business is part of society and as such is dependent on the well-being of society. Hence, it should take steps towards well being of society.
 For ex - CSR.

(d) Environmental Bottomline - The business is just not part of the society but also the part of the nature and any human group using the nature, must use it responsibly and prudently.

(e) Evolutionary Bottomline - Lastly, we humans are considered as an unfinished project which yet are seeking psychological, moral as well as spiritual development.
 The worklife should be so provided, that it allows evolution of the human at the spiritual, professional and personal level.

* The four Fundamental Ethical Principles :-

1) **Autonomy** → self rule, which means one must respect the autonomy of other person and it puts a negative duty as to not to interfere with decisions of other.

2) **Principle of beneficence** → To bring good in all the actions.

3) **Principle of non maleficence** → The rule simply implies that while opting for any action which should not harm anyone's interest.

'do not harm' if harm can be avoided or atleast minimize such harm.

4) The principle of justice → we have an obligation to provide others with what they deserve.

• Ethical Dilemma :

Also known as 'Ethical paradox' is a problem faced by a business when they are stuck between two equally undesirable alternatives, neither of which is acceptable from an ethical point of view.

Steps in Resolving Ethical Dilemma:

- ↳ considering the options available
- ↳ considering consequences - Positives & Negatives of ~~be~~ each option.
- ↳ Analysing actions
- ↳ Decision making and commitment
- ↳ Evaluate the system

Aspect	Code of Conduct	Code of Ethics
Definition/ Meaning	These are specific set of rules which outlines the specific expected behaviour from the employees & the organization.	These are guiding principles that outlines ^{values which help in} the decision making.
Flexibility	They are generally more rigid as they are clear cut rules.	These are generally more flexible.
Scope	It has narrower scope as it only contains the dos & don'ts	It has a wider scope as it has general principles.
Users	The target audience is primarily the employees & management.	The target audience is the stakeholders at large.
Mandatory	In many cases code of conduct is mandatorily required to be published on the website of co. for instance in India every	It is purely voluntary in nature however code of ethics help in →

listed company & the
 CEOs are bound to publish
 their code of conduct.

Better formation of
 code of conduct.

Penalty Non compliance of provi-
 sion of code of conduct
 may carry penalty.

Generally carries no
 penalties as it is
 voluntary in nature.

example A co. has a policy that
 the employees cannot
 accept gifts above 2000Rs.
 from any person with
 whom the company is
 transacting business.

Every employee
 should work with
 integrity, honesty &
 avoid conflict of
 interest.

• Code of Ethics generally carries 6 values

- Trustworthiness
- Respect
- Responsibility
- Fairness
- Caring
- Citizenship.

• An ideal ethical organization must have: ~~ethical~~

a) Ethical Code of Conduct

b) Not to discriminate unless there is a solid
 reason.

c) Reward those employees who have a track
 record of integrity, honesty, loyalty.

d) Co. must have vigil mechanism.

* Code of Conduct.

- Also known as the code of business conduct which are well written code, which guides the BOD & senior management as to the desired behaviour.
- It helps in day to day decision making and helps in resolving ethical dilemmas.
- Typically Code of Conduct includes following:
 - 1) Company's values
 - 2) Applicable laws as well as the rules which organization need to adhere
 - 3) Standards of business conduct
 - 4) Rules as to how to avoid conflict of interest
 - 5) Declaration that code of conduct is mandatorily followed & cannot be waived off.

* Advantages of Business Ethics.

1. Attracting and retaining talent
2. Investor loyalty
3. Customer Satisfaction
4. Regulators.

* Anti Corruption Laws :

- **US FCPA** :- it is an act which prohibits businesses from bribing the US officials and public figures. It's main aim is to prohibit companies and individuals from influencing foreign officials through any gratification.

• The applicability has extra territorial jurisdiction which applies to every person which has certain degree of connection with US and does any corrupt practice abroad or in the US.

- **UK Bribery Act, 2010** :- The act carries stringent punishments in the event of any person indulging into the offence of bribery, the punishment being imprisonment upto 10 years and unlimited fine. (Also known as toughest anti corruption legislation in the world.).

• Anti bribery laws in India :-

1) **PCA 1988** :- The act criminalizes gratification accepted by pub. authorities, other than any legal remuneration.

It further also punishes the person indulged into giving the bribe.

It further does not apply in case of bribing in private businesses.

Public Servant

State

- ↳ Employees of public sector
- ↳ Employees of local authorities
- ↳ Employees of electoral commission
- ↳ any person responsible for conducting elections

Judiciary

- ↳ Courts - people working in court
- ↳ Judges
- ↳ Arbitrators

Education

- ↳ Boards conducting exams
- ↳ Universities

• **Undue Advantage** here means gratification other than legal remuneration.

• Offences and Punishments:-

• Whoever accepts or attempts to obtain any undue advantage from any person with the intent to perform his public duty improperly or to induce any other public official to do his duty improperly shall be liable to be punished with imprisonment as well as with fine.

↳ Punishments:-

- 1) Pub. servant → min 3 years max 7 years & fine.
- 2) Pvt. Ind. giving / attempting bribe.
 - ↳ upto 7 years or fine or both. (compoundable)

↓
Provided he reports the same within 7 days of giving gratification.

Provided further, nothing shall apply if he reports before giving gratification to authority.

- **Habitual offender :-** (within 3 years)
↳ minimum 5 years max 10 years and fine.

- **Criminal Misconduct :-**
Whenever a public servant who has been entrusted with any property misappropriates the property for his own use or intentionally enriches himself illicitly has said to commit a criminal misconduct which carries punishment of min 4 yrs of imp. which may extend upto 10 yrs and fine.

Note: In case of attempt the punishment is 2 years which may extend upto 5 year & fine.

- No enquiry / investigation shall be commenced by police officer / asst. commissioner (for metropolitan cities) unless previous consent has been obtained from union / state govt. / local authority as the case may be.
- mutatis mutandis in case of court proceedings.
- Accused person shall be given OORH before accepting the requisition made by police officer / court.
- The concerned authorities generally replies within 3 months + 1 month (sufficient cause)

- Any person other than above is not allowed to approach govt unless court has directed him.
- Accused person is a competent witness for his defence, however he can be made witness only at his own choice and if he opts to remain silent, his silence can't be taken against him.
- No such questions / evidences which relates to any previous offence or conviction or bad character shall be allowed unless the character is in question / it is relevant for the judgement

* Lokpal and Lokayukta Act, 2013.

- There shall be a 'Lokpal for the Union' and 'Lokayukta for state' to inquire into allegations of corruption against public functionaries for matters punishable under the PCA, 1988.
- Under the act the Lokpal has the power to receive complaints against the prime minister as well.
- Establishment of Lokpal.

a) Chairperson → who is / has been CJI or Judge of Supreme Court.

- b) Such no. of members not exceeding 8.
- In the above case not less than 50% members shall be judicial members. &
 - Not less than 50% of members shall be from SC / ST / OBC / Minority / Women.
- In order to qualify as Judicial member he can be a Judge of SC / CJ of High Court.
 - For member other than Judicial member
 - ↳ Not less than 25 yrs of exp in law, anti corruption, finance, etc.
 - Chairperson / member shall not be :
 - a) member of Parliament / State legislature.
 - b) Person convicted by offence of moral turpitude.
 - c) Less than 45 yrs of age.
 - d) Panchayat / Municipality member.
 - e) Any person who:
 - ↳ Has been dismissed by from service of Union / State.
 - ↳ Holds any office of trust / profit.
 - ↳ Affiliated with any political party.
 - ↳ Practicing any profession / carrying on business.

Note: In above cases person can be appointed if:-

- a) He resigns from office where he holds any office of trust / profit.
- b) Carrying on any business severs himself from business.
- c) Practicing any profession ceases to practice such profession.

- Appointment is done on recommendation of Selection Committee by Selection Committee:

↓ comprises of

- a) Prime Minister → Chairperson
 - b) Speaker of House of people → member
 - c) Leader of opposition → member
 - d) CJI
 - e) Jurist → recommended by above.
- Selection Committee for purpose, searching appropriate candidates forms ^{of} Search Committee consisting of atleast seven persons who have knowledge in anti corruption, law, finance, etc.
 - ↓ 50% from SC/ST/OBC/minority/women.

• Inquiry Wing

The Lokpal has two wings through which it operates out of which one is the inquiry wing headed by director of inquiry which is responsible for the purpose of conducting preliminary inquiry committed by any person under PCA.

• Prosecution Wing

The other wing is headed by director of prosecution which has been created for the purpose of prosecuting public servants.

This wing on the command of the Lokpal files the investigation report before the special court and further takes all the necessary steps for the purpose of prosecution under the PCA 1998.

Jurisdiction

The Lokpal had^s the power to move against PM / MPs / Group A/B/C/D officers.

Further the jurisdiction can be summed up by the below mentioned :-

- A. The Prime Minister including previous PM
 ↳ Provided for allegations relating to international relations / internal / external security / public order / atomic energy / space, the case can only be initiated if a full bench of Lokpal alongwith 2/3rd majority approves it.
- B. Any Minister of the Union
- C. Any Member of Parliament
- D. Group A/B officer amongst public servant defined under PCA
- E. Group C/D officer amongst pub. servant defined under PCA connected with affairs of Union.
- F. Any person who is connected with any body / corporation which is established under the Act of Parliament / financed by CG / controlled by it.
 ↳ Note :- in case of officers of grp A/B or in case of person working under body / corporation is connected with affairs of state then consent of SG is necessary prerequisite.

G. Any person connected with any soc./trust which is in receipt of donation in excess of 10L Rupees in a year from any foreign source under FCRA.

- The Lokpal will not proceed with any complaint which alleges an offence, provided immunity under art. 105(2) of Const. which has been

- Provision regarding complaint, preliminary inquiry, investigation:-

- The Lokpal before proceeding with preliminary inquiry against any public servant has to decide upon material provided in the complaint as to whether there exist prima facie case or not

- If Lokpal decides to proceed with preliminary inquiry it may direct case to its inquiry wing and in case of public servants belonging to grp A, B, C, D the inquiry is transferred to the CVC.

- Of the above CVC submits its preliminary inquiry report to the Lokpal for grp A & B officers but can proceed with group C & D under provisions of the CVC Act.

- The preliminary inquiry referred above whether it was done by inquiry wing or any agency like CVC must be complete & report for same should be submitted to Lokpal within 60 days of reference.

5. Based upon the above report the Lokpal decides whether there is a need for investigation.

However, before ordering investigation OOBH to pub. servant has to be given.

This report is considered by not less than 3 members of Lokpal & based upon these they take following actions:

- a) Order Investigation
- b) Closure of the proceedings &
- Proceed against complainant
- c) Initiate any departmental proceeding against public servant.

6. Where the CVC is required to submit its report within 60 days, ordinary time allowed for submission of preliminary report is 90 days which may further be extended for another 90 days for reasons to be recorded.

7. If the Lokpal decides for investigation then it shall order its own agency or any other specialized agency to conduct the same, and the same should be completed within a period of six months which may further be extended for another 6 months for reasons to be recorded.

8. Further, a bench consisting of not less than 3 members shall consider every report and further it may order:

- a) Sanction to its prosecution wing to proceed, or any other agency to file charge sheet.

b) To submit closure report in front of the Special Court

c) Alternatively, it may also direct the competent authority to initiate departmental proceeding against the public servant.

9. Lastly, the Lokpal has to maintain a website for the display to the public, number of complaints disposed off and which are pending.

• Powers of Lokpal :-

1. There are multiple powers given under act to Lokpal, which amongst many includes the following:

a) Supervisory power :

The Lokpal has the power of superintendence and the power to give directions to the DSPE as well as the CVC to conduct preliminary inquiry as well as investigation.

b) Search and Seizure :

- If the Lokpal is of the opinion that any document which is relevant has been secreted then it may order the search for such document by its own agency as well as any independent agency including DSPE.

- Further, if required for the purpose of further prosecution it may also authorize seizure & retention of the same.

c) It has the powers of Civil court:

1. Summoning and enforcing attendance
2. Requiring discovery of any document
3. Receiving evidence on affidavit
4. Issuing Commissions
5. Requiring any other authority for any record or copy.

* Provisional Attachment of Assets

- If the Lokpal or his authorized officer has reason to believe that any person is in possession of proceeds of corruption or is accused of the offence of corruption and the property maybe concealed or transferred or be dealt in such a way that it may result into frustration of the proceedings for confiscation.
- If the Lokpal wants it can provisionally attach the property for period of 90 days & immediately after the attachment within 30 days of the same direct its prosecution wing to apply in front of the special court praying for confirmation of attachment.
- If the court feels that the attachment is necessary it may order confirmation of attachment.
- If the public servant is subsequently acquitted the property shall be returned alongwith all the benefits & incase he is convicted the property

shall be confiscated free from any encumbrance in central Government.

- The Lokpal has the power to recommend the Central Government accused person shall be suspended or transferred during pendency of inquiry and it is upto CG to accept the recommendation or reject the same for admin reasons.

* Complaints against chairperson / members of Lokpal.

- The Lokpal cannot investigate into complaints against chairperson and its members.
- Any suspension or removal of chairperson or member can only be ordered by President, who is also depended on report of The Supreme Court.
- Supreme Court initiates inquiry only when a reference is made by the President & which is signed by hundred members of the Parliament.
- § misbehaviour within its ambit includes:
 - The act of indulging with other corporates or becoming interested in any contract or amangement with the government.
- § Apart from above other grounds on which the President may remove Chairperson or member are as follows:

- a. Insolvency
- b. Engages in paid employment
- c. As per opinion of President he is infirm by body or by mind.

6. Suspension order may also be ordered on the basis of interim report passed by the Supreme Court.

* Offences & Penalties.

- Whoever makes any false complaint shall on conviction be punishable with imprisonment which may extend to 1 year and fine which may extend upto 1 Lakh

~~Report of Lokpal~~

* ICSI Anti bribery Code:-

- The anti bribery code is to be applied on voluntary basis and its scope is applicable to all of its BOD / employees / associates / contractors
- The code contains the following clauses:
 1. Adherence to anti corruption laws
 2. Bribery in Private sector
 3. Facilitation Payments
 4. Bribery to foreign public officials
 5. Policy of Gifts / Hospitality & Expenses
 6. Whistle Blower Mechanism
 9. Sanctions on non compliance.