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Business Ethics, Code of Conduct & Anti bribery

PREMIUM

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SUCCESSFUL

Ethics - "Ethos"



Set of principles / Rules & Conduct which governs what is right & what is wrong
Hence it changes from place to place & evolves with time
Application of these ethical values to the business behaviour & it applies to both that is conduct of individual & conduct of organisation

Areas where business ethics can play imp role -



Financial reporting helps you avoid insider threats, security frauds
Human resource mgmt Focus on executive compensation & prevention of sexual harass.
Sales & Marketing To avoid price discrimination & negative campaign.

Many times a Co. action can come in grey area which blurs the line between ethical & unethical, it is here where business ethics helps in deciding 'What is right & what is wrong'

Features of business Ethics

- 1) Voluntary in nature
- 2) Based on morals & social balance
- 3) Not a universal term, keeps on changing from one business to another
- 4) Relatively ^{newer} ~~you~~ concept
- 5) Requires education & guidance

Principles of Business Ethics

- 1) Accountability
 - Taking responsibility for the acts, this goes both ways, where individual is also liable for unethical activities of firm
 - Firm also responsible for unethical practices of employees
- 2) Honesty
 - The more transparent a business is the more trust it gains from its employees / Sth
- 3) Avoid Conflicts
 - Firm needs to avoid or minimize conflicts of business interests
- 4) Compliance
 - It should comply with all ethical or applicable rules
- 5) Fulfill Commitments
 - Firm should always complete the contracted commitment it made.
- 6) Loyalty
 - Business should be loyal to employees & employees shld be loyal to business

Standard Ethical practices a business should adopt

- a) Corporate responsibility
Also being a separate legal entity has certain moral obligations in which one is to saveguard the interests of its stakeholders
- b) Social responsibility
Since corporate make profit from the society, CSR becomes a very common practice which corporate must adopt $\hookrightarrow$ has to give it back to society through CSR.
- c) Personal responsibility
Employees are expected to act honestly & diligently
- d) Technological ethics
The modern business uses technology into their practices but at the same time it should maintain customer privacy

What are the Various bottom lines under business ethics + How does business ethics improve it?

Bottom line means the targets which a business needs to achieve, there are 5 bottom line for Business to achieve -

1) Economic bottomline

The most fundamental dharma for business is wealth creation & if a business fails in it that is adharmic

2) Human bottomline

The next task of business is wellbeing of its workplace which include leadership, motivation wellness of the employees

3) Social bottomline

An org. is a part of ^(social environment) org. & for long-term sustainability

It is dependent on the society → Example - CSR

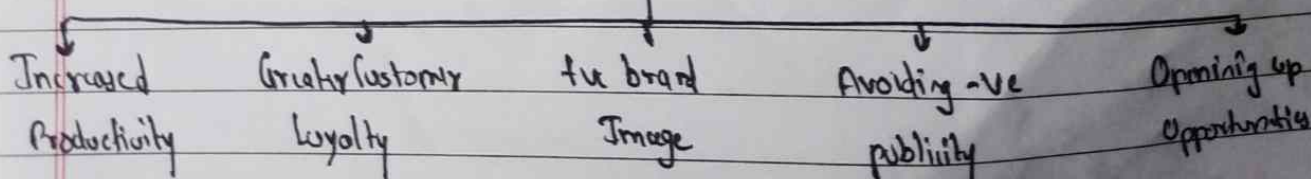
4) Environmental bottomline

Business is not just a part of society but also part of nature & hence it should use its environment & nature judiciously

5) Evolutionary bottomline

This believes that a business should provide a rich field of experience not just for professional growth but also for evolution of individual morally & spiritually

Business Ethics can help improve them :



Four fundamental Ethical principles

1) Principle of ~~respect~~ autonomy

It is to respect the decision made by others concerning their lives

It has -ve duty to not interfere & +ve duty to empower others while taking decisions

2) Principle of beneficence

It is the responsibility of business to bring good in all his actions

3) Principle of non-maleficence

It is not to harm anyone

Corollary principle

Where harm cannot be avoided, atleast minimize it

4) Principle of justice

We have an obligation to provide others with whatever they deserve & to treat them fairly & equally

Ethical Dilemma

An ethical dilemma (ethical paradox or moral dilemma)

Problem to choose b/w two equally unfavorable options

Extremely complicated challenges that cannot be easily solved

Example: Taking credit for others' work, offering work product for profit

Some common ethical dilemma in businesses are

- 1) Unethical Accounting - Looking the books to avoid ambiguity should create
- 2) Social media ethics - Punishing employees for what they post about social media policy
- 3) Harassment & discrimination - Racial, sexual harassment, wage inequality etc
- 4) Health & Safety -
 - a) Fall protection - protect employees against falls
 - b) Hazard Communication - How to handle hazardous materials safely
 - c) Scaffolding - About maximum weight numbers structure can handle
 - d) Respiratory protection - Emergency procedures
 - e) Lockout - Procedures for dangerous machines & hazardous sources
 - f) Electrical Wiring methods - Procedures for electrical & wiring tasks
- 5) Corporate espionage & nondisclosure - means stealing an org. data or illegally distributing the information.

Steps to Resolve Ethical Dilemma

Considering options available



Considering consequences +ve and -ve of each option



Analysing actions



Decision making & Commitment



Evaluate the system

Code of ethics (Set of Fundamental Principles)

- Every business keeps on facing ethical issues & many times the mgt is stuck b/w two options in such instances code of ethics comes into existence
- Code of ethics outlines a set of fundamental principles which could be used as the basis for operational requirements (things one must do) operational prohibitions (things one must not do)

It contains 6 Core values - (6 Value System)

- | | |
|---------------------|-----------------|
| i) Trustworthiness | iv) Fairness |
| ii) Respect | v) Caring |
| iii) Responsibility | vi) Citizenship |

Code of Conduct (Set of rules)

- Also known as code of business conduct which are well written code which guides the BOD & senior management as to the desired behaviour
- Helps in day to day decision making
- Helps in resolving ethical dilemmas

Code of Conduct Includes Following:

- 1) Company values
- 2) Applicable Laws
- 3) Standards of business conduct
- 4) Rules as to how avoid conflict of interest
- 5) Declaration that code of conduct is mandatory & cannot be waived off

Values
Laws
Standards
(Mandatory)

Code of Conduct

Set of rules which outlines the specific expected behaviour from the employees & the organisation

Generally more rigid as they are clear cut rules

It has narrow scope & it only contains do's & don't's

Target audience is primarily the employees & management

Mandatorily required to be published on the website of Co

Non compliance - penalty

Code of Ethics

Guiding principles that outlines values which help in decision making

Generally more flexible

It has wider scope & it has general principles

Target audience is the stakeholder at large

Purely Voluntary in nature however helps in better formation of code of conduct

No Penalty / Voluntary in nature

An ideal ethical organization must have :

- Ethical code of conduct
- Not to discriminate unless there is a solid reason
- Reward those employees who have a track record of integrity, honesty
- Co must have a vigil mechanism
- Ethics counsellors/ committee
- Handle sh.h/ employees grievances properly

Anti bribery laws in India :-

1) Prevention of Corruption Act, 1988 (PCA)

The act criminalises gratification accepted by public authorities, other than any legal remuneration

- Punishes the person indulged into giving the bribe
- Does not apply in case of bribing in private businesses,

Private person will be liable for inducing public servant to commit act which is prohibited by PCA

2) Public Servant

State	Judiciary	Education
↓	↓	↓
Employees of public Sector	Courts in people	Board conducting exams
Employees of local authorities	Working in courts	Universities
Employees of electoral Commission	Judges	
Any person responsible for conducting elections	Arbitrator	

3) Undue Advantage

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 public official to do his duty improperly

↓
Shall be liable for

Public Servant → Min 3 Max 7 + Fine

Pub Individual giving / attempting bribe → Up to 7 yrs or fine or both (compoundable)

↓

(Provided he reports the same within 7 days of giving gratification)

Habitual Offender → Min 5 Max 10 + Fine

Criminal Misconduct →

Whenever a public servant who has been entrusted with any property misappropriates the property

Dishonestly / fraudulently converts for his own use

Intentionally enriches himself illicitly has said to commit a criminal misconduct

↓

[~~4 yrs~~ 4 yrs - 10 yrs] + Fine

Punishment for attempt → [2 yrs - 5 yrs] + Fine

No enquiry / investigation shall be commenced by police officer / assistant 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 ODH before accepting the requisition made by police officer / court

The concerned authorities generally replies within 3 months + 2 months (Subsequent 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 question / evidence 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

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Lokpal and Lokayukta Act 2013

- Lokpal For the Union & Lokayukta For State
- To inquire into allegations of corruption against public functionaries
- For matters punishable under the PCN act 1988

Lokpal has the power to receive complaints against the prime minister

(Current chairman of Lokpal) →

9/10

9999

9999

or 80% SA

* Establishment of Lokpal

- Chairperson → CJI or Judge of SC
- No. of members not exceeding 8 (50% members shall be judicial members)
- 50% members amongst SC / ST / OBC / minority / Women
- Judicial member → CJI of HC / Judge of SC
- Other than judicial member → Person of integrity / 25 yrs experience in law / anticorruption / Finance

* Chairperson / Member shall not be :

- a) MP / MLA
- b) Convicted by offence of moral turpitude
- c) less than 45 yrs of age
- d) Panchayat / Municipality member
- e) Any person who :
 - i) Has been dismissed from service of Union / State
 - ii) Holds any office of trust / profit
 - iii) Affiliated with any political party
 - iv) Practising any profession

* In above cases person can be appointed if

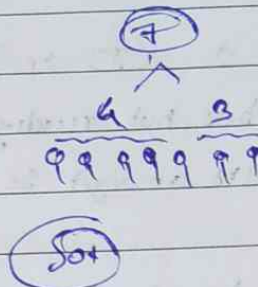


- He resigns from office where he holds any office
- Carrying on any business - Severs himself from business
- Ceases to practice profession

* Appointment of Chairperson + Members On Recommendation of Selection Committee

• Selection Committee Comprises of

- PM → Chairperson
- Speaker of house of people → member
- Leader of opposition → member
- CJI or Judge of SC
- Jurist → recommended by above



Selection Committee For purpose of searching appropriate candidates
Forms such committee consisting of atleast 7 persons who have
knowledge in anti corruption, law, Finance etc

↳ 50% From SC, ST, OBC, Minority, Women

* Inquiry Wing (For conducting preliminary enquiry)

Lokpal shall constitute an inquiry wing headed by Director of inquiry
For the purpose of conducting preliminary inquiry committed by any
person under PCA

* Prosecution Wing (For prosecuting public servants)

headed by director of prosecution which has been created for the purpose
of prosecuting public servants

On command of Lokpal files the investigation report before the special court
& takes all the necessary steps for purpose of prosecution under

PCA 1988

Jurisdiction

The Lokpal has the power to move against PM / MPs / Group A / B / C / D officers

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

(Jurisdiction of Lokpal)

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 along with

→ 2/3 majority approves it

B)

Any minister of the Union

C)

Any member of Parliament (MP)

D)

Group A / B officer amongst public servant defined under PCA

E)

Group C / D officer amongst public servant defined under PCA

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 group A / B or in case of person

working under body / corporation is connected with affairs of state

then consent of SC is necessary

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 shall not proceed with any complaint which alleges an offence

provided immunity under article 105(2) of constitution

Provisions regarding complaint and preliminary enquiry, Investigation:

- 1) Lokpal on receipt of complaint may order preliminary enquiry by Inquiry wing to decide whether there exists a prima facie case
- 2) If Lokpal decides to proceed with preliminary enquiry it may direct case to its inquiry wing

* In case of public servants belonging to group A, B, C, D Inquiry is transferred to Central Vigilance Commission (CVC)
- 3) After enquiry in respect of public servant belonging to
 - Group A/B → Submit report to Lokpal
 - Group C/D → Submit report to Commission
- 4) Enquiry done by inquiry wing / commission must be complete & report for same to be submitted to Lokpal w. 60 Days
- 5) (Bench consist of 3) based on the report Lokpal shall consider every report after giving 60th decide to proceed on action
 - 1) Inv by agency
 - 2) Proceed against public servant
 - 3) Closure of proceeding against public servant & proceed against complainant
- 6) Preliminary enquiry shall be completed within 90 days

$$\begin{array}{r} 90 \\ + 90 \\ \hline \end{array}$$

Can be extended to for another 90 days
 (Reasons to be recorded)

- 7) If the Lokpal decides for investigation then it shall order its own agency or specialized agency to conduct the same & should be completed within 6 months
Can be extended for another 6 months } 6m + 6m
- 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 chargesheet
 - 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) Lokpal has to maintain a website for the display to the public, number of complaints disposed off and which are pending

* Powers of Lokpal

There are multiple powers given under act to lokpal which amongst many include the following

a) Supervisory power

The Lokpal has the power of superintendence and the power to give directions to the DSPE as well as ~~ex~~ CVC to conduct preliminary enquiry as well as investigation

(delhi special police establishment)

b) Search and Seizure

If the Lokpal is of opinion that any document which is relevant has been secreted or relevant for investigation

It may order for search by its own agency as well as independent agency. Further if required for the purpose of further prosecution it may also authorize seizure & detention of the same.

c) It has the powers of civil court:

- 1) Discovery & production of any document
- 2) Summoning and enforcing attendance & examining on oath
- 3) Receiving evidence on affidavits
- 4) Requiring any authority for any record or copy
- 5) Issuing commissions for examination of witnesses

* Provisional attachment of assets :

- If Lokpal or any officer reason to believe that
 - any person is in possession of any proceeds of corruption
 - Such person is accused of having committed an offence relating to corruption
 - Proceeds of offence are likely to be concealed, transferred or dealt in such a way that it may result into frustration of proceedings for confiscation
- Lokpal can provisionally attach the property for period of 90 days (90)
- Immediately after attachment within 30 days direct its prosecution wing to apply in front of special court praying for confirmation of attachment in a sealed envelope (30)
- If Special court is satisfied that property is confirmed the attachment attached through corrupt means
- If the public servant is subsequently acquitted the property
 - ↓
 - Shall be returned along with all benefits
 - (In case he is convicted the property) → Shall be confiscated & vest in CG
- 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

Lokpal cannot investigate into complaints against chairperson & its members

Any removal or suspension of chairperson & members can only be Ordered by President - depended on report of Supreme Court

Supreme Court initiates inquiry only when a

Petition is signed by at least 100 members of parliament

Misbehaviour within its ambit includes:

- a) The act of indulging with the other corporates
- b) Involved in any contract or arrangement with govt

President may order removal of chairperson or members if

- 1) adjudged as insolvent
- 2) Engaged in paid employment
- 3) In the opinion of president

* Offences & Penalties

Whoever make any false complaints shall on conviction be punishable with

[Imp upto 1 year
Fine upto 1 Lac]

Bribery → Includes giving or receiving bribe to 3rd party gratification

Committed intentionally in course of economic, financial or commercial activities
In order to breach duties

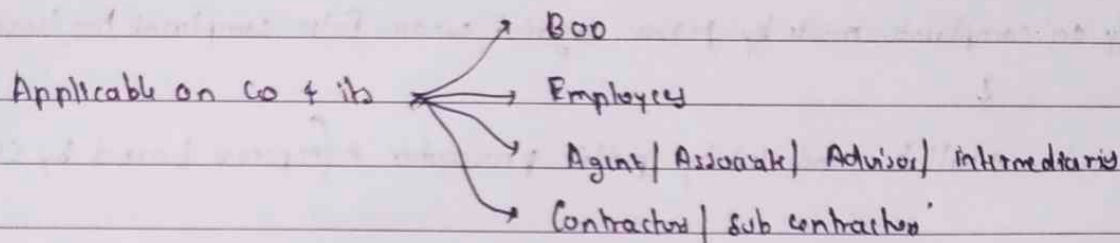
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ICSI Anti bribery Code



- 1) Adherence to anti corruption Laws
- 2) Bribery in Private sector (Payment made to govt private official)
- 3) Facilitation Payments as an incentive to complete action
- 4) Bribery to foreign public officials (Person holding legislative, executive, administrative judicial office of foreign country)
- 5) Policy for gifts, hospitality & expenses
- 6) Whistleblower mechanisms
- 7) Anti bribery training & awareness programmes
- 8) Monitoring mechanism for antibribery code
- 9) Sanctions for non compliance

Guidelines



- Adopted Voluntarily
- Change in the code → with approval of BOO
- Communicated to all existing employees / mgt / board members &
- Unconditionally follow the code
- Put on Co's website
- Due diligence