

Chapter 5: Values, Ethics and Professional Conduct

INTRODUCTION:

- ✓ India's culture values ethics, passed down through texts like the Bhagavad Gita and Ramayana.
- ✓ Modern business focuses too much on success, often neglecting ethics.
- ✓ The idea that "the ends justify the means" harms ethical standards.
- ✓ Ethics guide behaviour and protect the interests of customers, employees, and society.
- ✓ In business, ethics help maintain fairness and integrity.

TYPES/BRANCHES OF ETHICS:

1. **Descriptive Ethics**: Studies what people believe to be right or wrong, comparing ethics across societies and time. It focuses on what is accepted or punishable.
2. **Normative Ethics**: Explores how people should act, setting standards for right and wrong actions. It is also known as prescriptive ethics.
3. **Meta-Ethics**: Examines the origin and meaning of ethical concepts like "goodness" or "rightness," without judging actions themselves.
4. **Applied Ethics**: Focuses on applying moral principles to real-life issues in areas like medicine, law, and business. It includes domains like decision-making, professionalism, clinical practices, business practices, organizational behaviour, and social ethics.
5. **Business Ethics**: A branch of applied ethics that involves applying moral codes to business management and operations.

KEY DIFFERENCES BETWEEN ETHICS AND VALUES:

Ethics	Values
Guidelines for conduct	Principles that guide judgment
A system of moral principles	Stimulate thinking
Compels action	Influences emotions and motivates
Consistent in nature	Vary between individuals
Decides what is morally right/wrong	Defines personal goals and priorities
Determines right or wrong options	Defines what is important in life

Ethics are moral principles that govern behaviour and remain consistent over time for all people. Examples of ethics include:

1. **Professional Ethics:** Ethical standards for professionals like doctors, lawyers, and engineers.
2. **Business Ethics:** Moral principles that guide behaviour in the business world.
3. **Environmental Ethics:** Responsibility to protect and preserve the natural environment.
4. **Social Ethics:** Principles that guide behaviour related to social issues like poverty and justice.
5. **Religious Ethics:** Moral values that guide behaviour within religious contexts.

Values are personal principles and beliefs that guide behavior and decision-making. They vary from person to person but are usually stable, though they can change after significant emotional events. Examples of values include:

1. **Respect:** Treating others with dignity.
2. **Integrity:** Acting in line with one's beliefs.
3. **Responsibility:** Being accountable for actions.
4. **Honesty:** Telling the truth.
5. **Empathy:** Showing understanding for others.
6. **Courage:** Standing up for what is right.
7. **Fairness:** Treating people equally.
8. **Diversity:** Valuing differences in people.
9. **Sustainability:** Protecting the environment for future generations.

ETHICAL PRACTICES:

- ❖ **Beneficence:** It is the ethical principle of doing good and promoting well-being. It involves actions that benefit others and minimize harm. The goal is to create the greatest positive impact for the most people.
- ❖ **Least Harm:** When no choice seems good, decision-makers aim to cause the least harm and affect the fewest people.
- ❖ **Utilitarian:** This ethical theory focuses on the consequences of actions, aiming to benefit the most people and consider the interests of others.
- ❖ **Autonomy:** This principle emphasizes allowing individuals to make their own decisions and have control over their lives, as they understand their own needs and experiences best.
- ❖ **Justice:** This principle focuses on fairness, ensuring decisions treat everyone equally. Any exceptions should be justified by significant, unique circumstances.

Key values in business include accountability, excellence, fairness, honesty, leadership, loyalty, and respect. These guide ethical decisions and behaviours, emphasizing trust, reputation, and keeping promises.

The Companies Act, 2013 (Schedule VI) outlines ethical standards for independent directors. They must:

1. Maintain integrity and honesty.
2. Act with objectivity and constructiveness.
3. Perform their duties sincerely and in the company's best interest.

PROFESSIONAL ETHICS:

- Professional ethics come from moral awareness, cultural education, and learned standards.
- Professionals must combine ethical values with technical skills.
- They should reflect on their actions and promote high moral standards.
- Key principles include integrity, independence, competence, objectivity, ethical behaviour, and confidentiality.
- Professionals must uphold the dignity and reputation of their field.

CASE LAW: In the case of ***Mahesh Chand Agrawal***, Mr. 'M', a registered valuer, failed to disclose three pending FIRs filed by the CBI related to his role as a valuer. His concealment of this information violated ethical standards and the Companies (Registered Valuers and Valuation) Rules, 2017. As a result, his registration as a Registered Valuer was cancelled.

Indian companies are increasingly focusing on corporate social responsibility (CSR) by following ethical practices such as:

- ✓ Complying with local laws and engaging in fair business practices.
 - ✓ Striving to be good corporate citizens and maintaining harmony with society.
 - ✓ Being transparent and timely in sharing information.
 - ✓ Contributing to environmental protection.
 - ✓ Respecting human rights and fostering a corporate culture based on strong ethics.
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- A business owner treats others fairly, follows laws, and acts with integrity.
 - A financial advisor prioritizes clients' interests, provides honest advice, and avoids conflicts of interest.
 - Professional ethics means acting with integrity, transparency, and focusing on everyone's well-being.

MODEL ETHICAL PRINCIPLES FOR COMPANY SECRETARIES:

Professionalism is the high standard of work and behaviour that defines a person's career. Being known for professionalism helps in career growth. Company Secretaries and all professionals are valued for their ethical conduct. The Golden Rules of Ethics guide professionals to success.

- 1) **Strive for excellence:** Aim for exceptional work that surpasses expectations, making a lasting positive impression on clients and colleagues. Consistently deliver high-quality service that stands out in your field.
- 2) **Be trustworthy:** Build trust by fulfilling promises, meeting expectations, and being reliable in all professional dealings. Trustworthiness is earned over time through consistent and dependable actions.
- 3) **Be accountable:** Take responsibility for your actions, whether the outcomes are good or bad. Acknowledge mistakes and learn from them to build credibility and respect.
- 4) **Be courteous and respectful:** Treat others with kindness and professionalism, ensuring smooth interactions in the workplace. Respect is earned through consistent, considerate behaviour over time.
- 5) **Be honest, open, and transparent:** Communicate clearly, truthfully, and with integrity, ensuring that actions are visible and above reproach. Transparency and honesty foster trust and a solid reputation.
- 6) **Be competent and improve continually:** Continuously develop your skills, knowledge, and experience to stay relevant and perform your duties effectively. A commitment to learning ensures ongoing competence in your field.
- 7) **Be ethical:** Follow professional codes of conduct and act with moral integrity, even when guidelines are unclear. Ethical behaviour fosters trust and enhances professional relationships.
- 8) **Have high integrity:** Demonstrate consistency in moral actions and decisions, aligning with strong personal values and professional principles. Integrity builds long-term trust and respect.
- 9) **Respect confidentiality:** Safeguard sensitive information and uphold promises of confidentiality, whether from clients or colleagues. Protecting confidential data strengthens trust and your professional reputation.
- 10) **Set good examples:** Lead by demonstrating professionalism, integrity, and ethics in your actions. By setting a positive example, you inspire others to adopt similar standards in their own behaviour.

Key Points:

- Professionals must follow up-to-date corporate governance principles.
- Excellence comes from continuous learning and collaboration.
- Company Secretaries help businesses maintain ethical practices.

ICSA (UK) Code of Ethics has four core principles for its members:

1. **Integrity** means being honest and following strong moral principles. It includes:
 - ✓ Acting professionally and understanding your role and responsibilities.
 - ✓ Treating others with respect.
 - ✓ Avoiding improper gifts, hospitality, or inducements.
 - ✓ Preventing or disclosing conflicts of interest.
 - ✓ Considering ethical issues and the impact on stakeholders.
 - ✓ Avoiding unethical, illegal, or misleading behaviour.
 - ✓ Not ignoring unethical actions.
 - ✓ Maintaining the profession's reputation.

2. **High standard of service/professional competence** means:

- Keeping your skills and knowledge up to date.
- Completing required training (CPD).
- Communicating clearly with clients and colleagues.
- Admitting when you cannot perform a task.
- Following legal and ethical rules.
- Keeping information confidential unless required to share by law.

3. **Transparency** means being clear and honest in business conduct. This includes:

- ❖ Being open in all business dealings.
- ❖ Avoiding any dishonest actions.
- ❖ Treating all work as if it were public.

4. **Professional behaviour** means acting in accordance with laws, regulations, and professional standards. It includes:

- Avoiding bankruptcy or insolvency.
- Not being convicted of offenses that harm the profession's reputation.
- Upholding the code of professional conduct and ethics.
- Avoiding actions that could bring disrepute to the Institute or profession.
- Complying with decisions from the Council or its committees.
- Adhering to the Institute's byelaws, Charter, and regulations.
- Cooperating with disciplinary investigations.
- Following decisions made by Disciplinary or Appeal Tribunals.

The Singapore ICSA requires members to maintain high standards of professional conduct and ethics, including:

- Upholding the Institute's Charter and Bye-laws.
- Being aware of their responsibility to the wider community.
- Safeguarding the interests of employers, colleagues, or clients, without participating in illegal or unethical activities.
- Avoiding conflicts of interest that affect their professional duties.

- Not using confidential information for personal gain or to harm others.
- Keeping their knowledge and skills up to date.
- Refraining from actions that harm the Institute's reputation.

Recent disciplinary cases highlight the importance of ethics and professional conduct for company secretaries:

1. In 2021, SEBI banned a company secretary for 3 years for submitting false documents and failing to conduct due diligence during securities issuance.
2. In 2020, SEBI fined Mr. Renganathan, EFSL's compliance officer, Rs 5 lacs for failing to close the trading window during insider trading violations.
3. In 2022, ICSI fined a company secretary Rs 10,000 for not exercising due diligence and wrongly certifying share details.
4. In 2018, ICSI suspended a company secretary for 3 months for issuing a certificate without proper document verification.
5. In 2021, SEBI fined a company secretary Rs 10 lacs for failing to disclose material information to stock exchanges on time.
6. In 2020, ICSI suspended a company secretary for 3 months for making false statements and breaching client confidentiality.

These cases show the serious consequences of violating ethical standards and emphasize the importance of integrity and compliance for company secretaries.

ETHICAL DECISION WORKSHEET:

1. **Analyse the Situation**
 - Identify available choices.
 - Understand what is at stake.
2. **Understand the Facts**
 - What are the key facts?
 - Is any action required?
3. **Understand the Options**
 - What options are available?
 - Do any rules, laws, or ethics affect your options?
4. **Understand the Consequences**
 - What are the consequences of each option?
 - Who will be impacted, and how?

5. Test the Chosen Option

- Choose the best option.
- Evaluate if it is easy to justify and understand.
- Plan how to implement the decision.

6. Explain the Decision

- Justify the actions logically.
- Keep a record of your decision.

7. Act on the Decision

- Create a plan to implement the chosen option.

8. Reflect on the Outcome

- Evaluate how the decision turned out.
- Assess who was affected and how.

ICSI CODE OF CONDUCT:

The Code of Conduct promotes ethics, good practices, and fairness while preventing misconduct. It supports ethical decision-making and creates a positive environment for the Institute of Company Secretaries of India and its stakeholders.

Fundamental duties of Professional:

1. Fair Dealing -

Institute members must be fair, honest, and professional with clients, colleagues, and students.

Key points:

- Always act in the client's best interest.
- Be honest and respectful.
- Provide services competently and promptly.
- Maintain integrity and independence.
- Follow the law and rules.

2. Professional Opportunity -

Professionals should not use information or opportunities gained through others for personal benefit unless fully disclosed and authorized.

3. Mistakes of Other Solicitors -

A professional should not take advantage of another's mistake to gain an unfair benefit for a client.

4. Confidentiality -

Client information is valuable and must be kept confidential. It should only be used to benefit the client and never shared without permission. Exceptions to confidentiality include:

- ✓ Client gives permission.
- ✓ Disclosure is required by law.
- ✓ Disclosed to seek legal or ethical advice.
- ✓ To prevent a serious crime or physical harm.
- ✓ Shared with the professional's insurer or associated entities.

5. Inadvertent Disclosure -

If a professional accidentally reads confidential material, they must:

- ❖ Immediately notify the person involved.
- ❖ Stop reading the material. If a client asks to read material received by mistake, the professional must refuse.

6. Conflicts of Interest -

Professionals must avoid conflicts of interest where their personal interests clash with the client's.

Key points:

- Conflicts must be disclosed immediately.
- Professionals should not take on cases where their duty to the client conflicts with their own interests.
- Professionals must not use undue influence to benefit themselves.
- Borrowing money or accepting financial benefits from clients or third parties is prohibited, unless:
 - ✓ The client is informed about any commissions or benefits.
 - ✓ The client gives consent.

7. Undertakings -

- ❖ A professional must fulfil any promises (undertakings) made during legal practice on time, unless released by the recipient or a court.
- ❖ Professionals should not ask others for undertakings that depend on third-party cooperation.

8. Integrity of Evidence -

A professional must not:

- Suggest or encourage a witness to give false or misleading evidence.
- Coach a witness on what answers to give.

However, it is acceptable to:

- Advise the witness to tell the truth.
- Discuss and test the witness's version of events.
- Point out any inconsistencies in the evidence, as long as the witness's truth is not altered.

9. Client Documents -

A professional must:

- ❖ Provide client documents (or copies) when requested after the engagement ends, unless there's a valid lien.
- ❖ Destroy client documents after 7 years, unless instructed otherwise by the client or required by law.

10. Dealing with Other Persons -

A professional must not:

- ✓ Make exaggerated statements that mislead or intimidate others.
- ✓ Threaten criminal or disciplinary action to settle a civil matter.
- ✓ Use unfair tactics to embarrass or frustrate others.

Additionally, professionals must not pressure someone in distress or at a disadvantage to give instructions for legal services.

11. Anti-Discrimination and Harassment -

A professional must not engage in discrimination, sexual harassment, or workplace bullying.

12. Dealing with the Media -

A professional must not publish material that could harm a fair trial or justice. They must follow advertising rules and avoid conflicts of interest to maintain public trust in the profession.

ETHICAL DILEMMA:

- An ethical dilemma is a situation where a person has to choose between two conflicting actions.
- Both choices involve breaking a moral principle.
- Each decision leads to a tough consequence, making it hard to choose the right one.
- These dilemmas can happen in everyday life.
- One choice might follow a moral rule, but violate another.

Some examples of ethical dilemmas include:

- A secretary learns her boss is laundering money and must decide whether to report him.
- A doctor refuses to give morphine to a terminally ill patient, while the nurse sees the patient suffering.
- A police officer responds to a domestic violence call and discovers the attacker is the police chief's brother, who tells the officer to cover it up.
- A government contractor discovers illegal spying on citizens but is required by contract to keep it confidential.

The Narayana Murthy Committee defines corporate governance as making ethical business decisions. It involves choosing what is right based on values and principles. Ethical dilemmas occur when interests conflict. Good leadership helps meet stakeholder expectations and benefits the business.

COMMON CAUSES OF LOSS OF ETHICS AND VALUES:

Common causes of loss of ethics and values:

1. **Unclear Policies:** Lack of clear ethical guidelines or inconsistent enforcement can lead to poor ethical behaviour.
2. **Conflicting Goals:** When organizational and individual goals clash, ethical dilemmas can arise as one goal is sacrificed for the other.
3. **Cultural Values:** Different cultural backgrounds influence ethical decisions, leading to varying views on what is right or wrong.
4. **Managerial Decisions:** Some managers may prioritize profits over ethics, leading to decisions that benefit the company but harm ethical standards.
5. **Human Nature:** Different personal values and opinions create ethical dilemmas, as what's ethical to one person may not be to another.
6. **Ambition & Discrimination:** Financial pressures or desire for recognition may lead some workers to act unethically, and discrimination based on background is both unethical and illegal.
7. **Pressure from Management:** When companies focus too much on results, employees may feel pressured to compromise ethics to meet expectations.
8. **Negotiation Pressure:** Negotiating for the best deal may lead some workers to act dishonestly or unethically to gain concessions.
9. **Conflicting Values:** Ethical dilemmas can arise when different values, like quality vs. cost, clash between individuals in the organization.

The Organisation for Economic Co-operation and Development (OECD) principle on Disclosure and Transparency states that companies should provide timely and accurate information on key matters, including financial performance and governance.

An Organization Transparency checklist includes:

- ✓ Dates, times, and locations of board meetings shared at least one week in advance.
- ✓ Audited financial statements posted online (for non-profits).
- ✓ Rules ensuring public access to government-held data.
- ✓ Regular reviews of financial plans.
- ✓ Regular financial audits conducted.
- ✓ Reports posted on the website for easy access.
- ✓ Clear communication of the organization's goals and priorities.
- ✓ Names and contact information of key staff posted online.
- ✓ Honest and transparent leadership communication.
- ✓ Inclusive operations with diverse input from within the organization.
- ✓ Transparency about partnerships and collaborations.
- ✓ Sharing both successes and challenges openly.
- ✓ Clearly stated ethical guidelines and values.

HOW TO RESOLVE ETHICAL DILEMMA:

To resolve an ethical dilemma, consider these three approaches:

1. **Ends-based:** Choose the option that benefits the most people.
2. **Rule-based:** Choose according to a universal standard, following the rule you would want others to follow.
3. **Care-based:** Choose as if you were the one most affected by the decision.

By evaluating your options with these principles, the best choice will become clear.

STRATEGY FOR OVERCOMING FROM THE EVILS:

To overcome ethical challenges, organizations need a systematic approach to maintain high governance standards and nurture ethical values from the start. It is important to remember that organizations act through their employees, and human behaviour shapes ethical conduct. Key solutions include:

1. **Satisfaction:** Develop a culture of being satisfied with what is achieved, especially in business, where growth is prioritized. The key is understanding how much is enough and remaining content with valid means.
2. **Ends Do not Justify the Means:** Achieving results should not come at the cost of ethics. While results are important, compromising on values to reach them is not acceptable. Ethical methods should always be used, even if the goal is worthwhile.
3. **Ethical Leadership:** Leaders should guide organizations ethically, setting an example through their actions. Ethical leadership ensures that the right means are used to achieve success, much like Krishna guiding the Pandavas.
4. **Character:** Character is essential for trust and reliability. Great leaders are judged by their integrity, honesty, and ethical values. A strong character forms the foundation of ethical behaviour.

These principles help organizations maintain ethical standards and avoid compromising values.

RECENT CASES ON VALUES, ETHICS AND PROFESSIONAL CONDUCT:

Punjab National Bank Scam:

- The Punjab National Bank (PNB) scam involved a fraudulent loan of Rs. 11,300 crores, which lasted for six years from 2011, with some PNB officials involved.
- Nirav Modi and Mehul Choksi obtained illegal Letters of Undertaking (LOUs) without proper credit limits or collaterals.
- PNB filed an FIR against Modi, Choksi, and others for criminal conspiracy and cheating.
- The Central Bureau of Investigation (CBI) and Enforcement Directorate (ED) investigated, leading to the seizure of assets like diamonds, gold, and luxury items worth billions.
- Several arrests were made, including PNB employees and senior executives from Nirav Modi's firm.
- Nirav Modi fled to the UK, where he was arrested in 2019 after India requested his extradition.
- The RBI took steps after the fraud was detected, including discontinuing the use of LOUs and ordering banks to reconcile transactions in real-time to prevent similar frauds.

This case highlighted major lapses in banking regulations and ethics, with significant legal and financial actions following the discovery of the scam.

YES Bank Crisis:

- YES Bank, once a leading private lender, faced a crisis due to mismanagement and fraud. Founded in 2004, it grew quickly under founder Rana Kapoor but collapsed due to poor decision-making.

Key Factors Leading to the Crisis:

1. **Centralized Decision-making:** Rana Kapoor made most major decisions, including large loans, which were often high-risk.
2. **Aggressive Lending:** YES Bank lent heavily to companies in trouble, like Reliance Group, DHFL, and IL&FS, without properly assessing risks.
3. **Misreporting NPAs:** The bank hid bad loans, which worsened its financial position.
4. **Declining Deposits:** After Ravneet Gill took charge, he struggled to rebuild trust and attract new capital as deposit withdrawals continued.
5. **Governance Issues:** In 2020, an independent director resigned, citing poor governance practices.

Main Issues:

1. **NPAs:** The bank's non-performing assets (NPAs) doubled, with a sharp rise in impaired loans.
2. **NBFC Crisis:** The collapse of IL&FS and DHFL affected YES Bank, with significant exposure to these entities.
3. **Governance Problems:** The bank faced compliance failures and under-reported NPAs, leading to regulatory intervention.
4. **Excessive Withdrawals:** Deposit withdrawals burdened the bank's balance sheet.

Actions Taken by RBI:

1. RBI took over the bank's management.
2. A moratorium was imposed on YES Bank.
3. SBI was tasked with investing in the bank and acquiring a 49% stake under a reconstruction plan.

These actions were necessary to prevent further collapse and stabilize YES Bank.

Infrastructure Leasing & Financial Services Limited (IL&FS) Case:

IL&FS (Infrastructure Leasing & Financial Services) was a large company with over Rs. 91,000 crores in debt. It faced a liquidity crisis due to defaults by its subsidiaries in 2018, especially in repaying loans and deposits.

Key Events:

1. IL&FS's road subsidiary struggled to make bond repayments in July 2018, and a subsidiary defaulted on a Rs. 1,000 crore loan from SIDBI in September 2018.
2. The government filed a petition to the NCLT (National Company Law Tribunal) for mismanagement and oppression by the company's management.

3. NCLT suspended IL&FS's board and allowed reopening of its financial records from the past five years for scrutiny.

Legal Actions:

- In 2019, the NCLAT ruled that banks couldn't declare IL&FS accounts as Non-Performing Assets (NPAs) without prior permission.
- The Serious Fraud Investigation Office (SFIO) charged 30 parties, including auditors, for failing to flag fraudulent activities and misreporting financials.
- The Ministry of Corporate Affairs (MCA) sought action against auditors Deloitte and BSR Associates for their role in the fraud.

Reasons for Failure:

1. IL&FS failed to disclose bad loans, and poor management decisions led to its downfall.
2. The company lent funds to insolvent entities and troubled projects, showing weak fund management.
3. Auditors missed warnings about the company's financial health, failing to report crucial issues.

Steps Taken by RBI:

1. RBI is now closely monitoring the top 50 Non-Banking Financial Companies (NBFCs), which make up 75% of the sector.
2. RBI conducts in-depth audits of their financial records to prevent future systemic issues.

DHFL Case:

Dewan Housing Finance Corporation Limited (DHFL), a major housing finance company, was involved in a massive fraud. It provided unsecured loans to shell companies without collateral, and these loans were used for personal asset creation by promoters.

Key Issues:

1. DHFL sanctioned large loans to shell companies without proper security or collateral.
2. The loan terms were not adequately disclosed in financial statements, and many loans were hidden under dummy accounts.
3. Around 6 lakh dummy accounts were created using names of borrowers who had already repaid their loans, allowing funds to be diverted.
4. The loans were non-recoverable as the companies or their directors did not own assets.
5. The promoters used these loans to acquire personal assets, making it difficult to recover the funds.

Reasons for Failure:

1. Complete failure of corporate governance.
2. Loans were diverted to shell companies without proper scrutiny or security, violating corporate governance norms.

Actions Taken:

- Due to these governance issues, the RBI took over the management of DHFL and initiated resolution proceedings under the Insolvency and Bankruptcy Code (IBC) in 2019.

Hero MotoCorp Case:

Hero MotoCorp, India's largest two-wheeler maker, dismissed around 30 employees for violating the company's code of conduct. The employees were found to be falsifying travel expense bills and accepting personal gifts and benefits from vendors, suppliers, and dealers.

Key Details:

1. The company conducted thorough investigations, with independent third-party investigators involved.
2. The employees were given opportunities to explain their actions, but when confronted with evidence, they admitted their wrongdoings.
3. Hero MotoCorp stressed the importance of integrity and adherence to its code of conduct, making it clear that any violation would not be tolerated.

Action Taken: The employees were terminated after legal procedures were followed and the violations were confirmed. Hero MotoCorp upheld its values by ensuring accountability and transparency in the process.

Volkswagen Emissions Scandal (2015):

- Volkswagen (VW) installed "defeat devices" in diesel cars to cheat emissions tests.
- Devices adjusted car performance to pass tests.
- Company admitted to fraud, resulting in fines and criminal charges.
- Raised concerns about ethics in the automotive industry.

VALIC Financial Advisors (2020):

- U.S. Securities and Exchange Commission (SEC) fined VALIC Financial Advisors, Inc. (VFA) for failing to disclose conflicts of interest.
- The company recommended investments that generated higher fees for itself, not in clients' best interests.
- Violated its fiduciary duty to act in the best interest of clients.