

Values, Ethics and Professional Conduct

Lesson 5

KEY CONCEPTS

■ Professional Ethics ■ Ethical Principles ■ Ethical Dilemma ■ Integrity ■ High Standards of professional competence ■ Fair dealing

Learning Objectives

To understand:

- The importance of Ethics, values and good governance that are the fundamentals of life which should be followed in all circumstances and have been a matter of respect, be it in individual context or in the corporate world.
- How the Business dynamism demands various evils and vulnerable situations which have pointed out the need to imbibe and inculcate the culture for adherence to ethical practices, governance and leadership.
- Various practical aspects of ethical values, ethical dilemmas, and ethical leadership encompassing various human virtues which are ultimately built upon conscience.

Lesson Outline

- Introduction
- Types of Ethics
- Professional Ethics
- Ethical Principles for Company Secretaries
- Fundamental Duties of Professionals
- Ethical Dilemma
- Recent disciplinary case studies/cases on values, ethics and professional conduct
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (Including Websites/Video Links)

INTRODUCTION

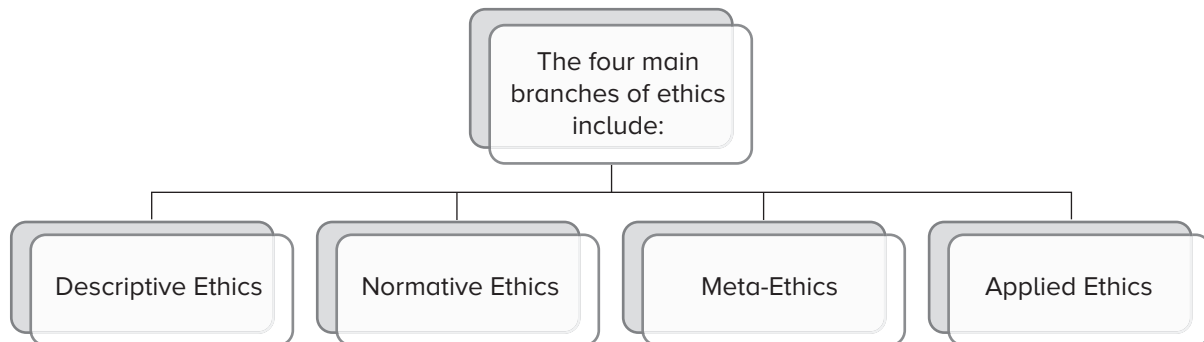
India has a very strong history and deep roots of culture, principles and ethics which have come down to us across generations, through the immortal Shrimad Bhagavad Gita which is useful in getting answers to various complex situations and ethical dilemmas. The great epic, Ramayana is also a very important document which has thrown light on aspects like values and character. *Nitishatak* by a noted scholar, *Bhartruhari*, and the teachings of Arya Chanakya (*Chanakya Neeti*) cannot be ignored while talking of character, ethical practices, values and good governance. Aesop's Fables, Panchatantra and Hitopadesh are also fictional sources of moral codes.

Today's doing business is full of temptations and distractions driven by greed to earn unlimited profits, market share, market-standing (in terms of numbers), performance, etc., coupled with tremendous pressure and compulsion to remain ahead; wherein organizations alluring individuals working therein to ignore or lose hold on ethical aspects of a business. Social life is dominated by numerical success where "the ends justify the means". Of late, this attitude and temperament believing the philosophy "the ends justify the means" has led to a substantial depletion of good character, ethical standards, practices and good governance. This has led to loss of humanity, and ultimately, happiness of self and society.

The term "ethics" is derived from the Greek word "ethos" which refers to character or customs or accepted behaviours. The Oxford Dictionary states ethics as "the moral principle that governs a person's behaviour or how an activity is conducted". The synonyms of ethics as per Collins Thesaurus are – conscience, moral code, morality, moral philosophy, moral values, principles, rules of conduct, standards.

In the world of intense competition, every professional work on certain principles and beliefs which are nothing but the values. Likewise, ethics is implemented in the organisation to ensure the protection of the interest of stakeholders like customers, suppliers, employees, society and government.

TYPES/BRANCHES OF ETHICS



These types of ethics can be defined as under:

Descriptive Ethics deals with what people actually believe (or made to believe) to be right or wrong and accordingly holds up the human actions acceptable or not acceptable or punishable under a custom or law. Descriptive Ethics is also called comparative ethics because it compares the ethics or past and present; ethics of one society and other.

Descriptive ethics: What do people think is right?

Normative Ethics deals with "norms" or set of considerations how one should act. Thus, it is a study of "ethical action" and sets out the rightness or wrongness of the actions. It is also called prescriptive ethics because it rests on the principles which determine whether an action is right or wrong.

Normative (prescriptive) ethics: How should people act?

Meta-Ethics or “analytical ethics” deals with the origin of the ethical concepts themselves. It does not consider whether an action is good or bad, right or wrong. Rather, it questions – what goodness or rightness or morality itself is. It is basically a highly abstract way of thinking about ethics.

Meta-ethics: What does “right” even mean?

Applied Ethics deals with the philosophical examination, from a moral standpoint, of particular issues in private and public life which are matters of moral judgment. This branch of ethics is most important for professionals in different walks of life including doctors, teachers, administrators, rulers and so on. There are six key domains of applied ethics viz. Decision ethics {ethical decision making process}, Professional ethics {for good professionalism}, Clinical Ethics {good clinical practices}, Business Ethics {good business practices}, Organizational ethics {ethics within and among organizations} and social ethics.

Applied ethics: How do we take moral knowledge and put it into practice?

Business Ethics is one of the branches of Applied Ethics which is mostly used in various organizations & Corporates. It can be defined as, “The application of a moral code of conduct to the strategic and operational management of a business.”

KEY DIFFERENCES BETWEEN ETHICS AND VALUES

The fundamental differences between ethics and value are described in the given below points:

ETHICS	VALUES
Ethics refers to the guidelines for conduct, that address question about morality.	Value is defined as the principles and ideals, which helps them in making the judgement of what is more important.
Ethics is a system of moral principles.	In contrast to values, which is the stimuli of our thinking.
Ethics compels to follow a particular course of action.	On the other hand, Values strongly influence the emotional state of mind. Therefore it acts as a motivator.
Ethics are consistent in nature.	Whereas values are different for different persons, i.e. what is important for one person, may not be important for another person.
Ethics helps us in deciding what is morally correct or incorrect, in the given situation.	Values tell us what we want to do or achieve in our life.
Ethics determines to what extent our options are right or wrong.	As opposed to values, which defines our priorities for life.

To summaries ethics are consistently applied over the period and remains same for all the human beings. Ethics are moral principles that govern the behavior of individuals and organizations. Here are some examples of ethics:

1. Professional ethics: ethical standards that guide the conduct of professionals in various fields such as medicine, law, accounting, engineering, and journalism.
2. Business ethics: moral principles and values that guide the behavior of individuals and organizations in the business world.
3. Environmental ethics: ethical considerations related to the relationship between humans and the environment, and the responsibility to protect and preserve the natural world.

4. Social ethics: principles and values that guide the behavior of individuals and organizations in relation to social issues such as poverty, inequality, and social justice.
5. Religious ethics: moral principles and values that guide the behavior of individuals and organizations within religious contexts.

These are just a few examples of ethics, and different fields and cultures may have their own unique ethical considerations.

On the other hand, Values have an individualistic approach, i.e. it varies from person to person but remains stable, relatively unchanging but they can be changed over time due to a significant emotional event. Values are the principles and beliefs that guide the behavior and decision-making of individuals and organizations. Here are some examples of values:

1. Respect: treating others with dignity and courtesy.
2. Integrity: acting in a way that is consistent with one's values and beliefs.
3. Responsibility: being accountable for one's actions and decisions.
4. Honesty: telling the truth, not lying or deceiving others.
5. Empathy: showing concern and understanding for others.
6. Courage: standing up for what is right even in the face of difficulty or opposition.
7. Fairness: treating people equally and impartially.
8. Diversity: valuing and respecting differences in culture, ethnicity, gender, and other characteristics.
9. Sustainability: promoting responsible use of natural resources to protect the environment for future generations.

These are just a few examples of values, and different individuals and organizations may have their own unique values that guide their behavior and decision-making. Values can be both personal and cultural, and can play an important role in shaping the way we interact with the world around us.

ETHICAL PRACTICES

Beneficence: The principle of beneficence guides the decision maker to do what is right and good. This priority makes an ethical perspective and possible solution to a dilemma acceptable and resolvable. This is also related to the principle of utility, which states that one should attempt to generate the largest ratio of good over evil possibility. This principle stipulates that ethical theories should strive to achieve greatest amount of good because people benefit from the most good.

Least Harm: This theory deals with situations in which no choice appears beneficial. In such cases, decision makers seek to choose to do the least harm possible and to do harm to the fewest people. This principle is mainly associated with the utilitarian ethical theory discussed below.

Utilitarian: This is a normative ethical theory that places the locus of right and wrong solely on the outcome or consequences of choosing one action/policy over other. As such, it moves beyond the scope of one's own interest and takes into account the interest of others.

Autonomy: This principle states that decision making should focus on allowing people to be autonomous; that is, to be able to make decisions that apply to their own workplace or lives. In other words, people should have control over their own selves as much as possible because they are the only people who completely understand their chosen type of work/life style. Each individual deserves respect because only he/she has had those exact life experiences and understands own emotions, motivations, and physical capabilities in an intimate manner. In essence, this ethical principle is an extension of the ethical principle of beneficence because a person who is independent usually prefers to have control over his own experiences in order to secure the lifestyle that he/she enjoys.

Justice: The justice ethical principle states that decision makers should focus on actions that are fair to all those involved. This means that ethical decisions should be consistent with the ethical theory unless extenuating circumstances that can be justified and exist in the case. This also means that cases with extenuating circumstances must contain a significant and vital difference from other similar cases that justify the inconsistent decision.

The principles of integrity in business are guided by a set of core ethics that influence their decisions and behavior which includes: Accountability, Commitment to Excellence, Concern for Others, Fairness, Honesty, Integrity, Abiding Law, Leadership, Loyalty Morale, Keeping Promises, Reputation, Respect for others, Trustworthiness etc.

Question: The principle of guides the decision maker to do what is right and good.

Options:

- (A) Utilitarian (B) Autonomy
(C) Beneficence (D) Justice

Answer: (C)

The schedule VI of the Companies Act, 2013 also states to uphold ethical standards by independent directors:

I. Guidelines of professional conduct :

An independent director shall:

- “(1) *uphold **ethical standards of integrity and probity;***
(2) *act **objectively and constructively** while exercising his duties;*
(3) *exercise his responsibilities in a **bona fide manner** in the interest of the company;.....”*

PROFESSIONAL ETHICS

Ethics arises from three main factors, moral attitudes as a result of consciousness or awareness-raising, culture as a result of education and the use of know-how and the application of standards as a result of learning and training.

Ethics amount to fundamental moral attitudes, binding values and irrevocable standards. A distinguishing characteristic of a profession is the ability to combine ethical standards with the performance of technical skills. The professionals being exclusive custodian of expertise need to profess high ethical and moral values and to redeem their noble traditions. Every professional should desire for introspection and a dynamic movement to promote a value revolution with deeper conviction and creative consciousness, leading himself to be good professional. The collective wisdom prevail to inculcate highest standards of professional ethics and moral values and adherence to Professional code of conduct in its true letter and spirit.

The principles which govern the conduct of a professional broadly encompasses, Integrity, Professional independence, Professional competence, Objectivity, Ethical behavior, Conformance to technical standards, if any and Confidentiality of information acquired in the course of professional work. The professionals are expected to conduct themselves in such a manner so as to uphold the grace, dignity and professional standing of the institute.

CASE LAW

In Re Mahesh Chand Agrawal, IBBI/VALUATION/DISC./01/2022 dated 11.02.2022, in this matter Mr. 'M', who was registered as member of Registered Valuer Organisation had concealed material information in his application form for registration regarding pendency of 3 FIRs filed by Central Bureau of Investigation on basis of complaint made by PNB for his role as valuer. It is duty of a prospective valuer to be responsible, accountable and to maintain integrity, however, in instant case concealment of material facts of chargesheet being filed by CBI against 'M' affected his integrity and reflected his inability to adhere to standards of professional ethics, which was in violation of rule 3(1)(k) of Companies (Registered Valuers and Valuation) Rules, 2017 and Model Code of Conduct for Registered Valuers and, therefore, registration of 'M' as Registered Valuer was to be cancelled.

Companies in the India have begun to fulfill their corporate social responsibility, either voluntarily or in compliance with mandates or statutes, respecting social ethics, thereby, setting up healthy and sensible corporate ethics on the following parameters:

- Complying with the laws of land where business is conducted and engaging in fair practices in the light of social ethics.
- Aiming to become a sensible corporate citizen and striving for harmony with local society.
- Disclosing information in a timely manner and engaging in honest and transparent communications mode.
- Protecting the irreplaceable earth and contributing to the preservation of the environment.
- Respecting fundamental human rights and individuality and building up a corporate culture with a broad vision which fosters the spirit of corporate ethics.

Illustration of professional ethics:

A business owner who upholds professional ethics will ensure that they treat their employees, customers, and suppliers with respect and fairness, comply with all applicable laws and regulations, and act with integrity in all of their dealings.

A financial advisor who adheres to professional ethics will prioritize the best interests of their clients, provide accurate and honest information, and avoid conflicts of interest or unethical practices that could harm their clients' financial well-being.

In general, upholding professional ethics involves acting with integrity, transparency, and a commitment to serving the best interests of all stakeholders.

MODEL ETHICAL PRINCIPLES FOR COMPANY SECRETARIES

Professionalism is the virtue, conduct, aim, value or quality that characterize or marks a profession or professional person; it implies quality of workmanship or service. Having a reputation for excellence and being thought of as someone who exhibits professionalism under any circumstances can open doors for him/her in the individual's workplace or personal ambition. Professionals like the Company Secretaries are highly valued by their profession. For any professional the below can be the Golden Rules of Ethics for Professionals. It is recommended to apply these Golden Rules of Professionalism for enjoying a reputable, professional and prosperous career in providing service to the client/ organization:

- **Strive for excellence:** This is the first step to achieving greatness in whatever endeavor one undertakes; it is the quality that marks one's work to stand-out. Excellence is a quality of service which is remarkably good and so it surpasses ordinary standards, it should be made a habit to make a good impression on clients and colleagues.
- **Be trustworthy:** In today's society trust is an issue and one who exhibits trustworthiness is on a fast track to professionalism. It is all about fulfilling an assigned task, not letting down the client's expectations, it is being dependable and reliable when called upon to deliver service. In order to earn this trust, worthiness and integrity it must be sustainably proven over a time-span.
- **Be accountable:** It implies that one should be able to stand tall and be counted upon for all actions undertaken; this is also construed as a quality of being credible and responsible for actions performed and their consequences - good or bad.
- **Be courteous and respectful:** Courteousness is more than being friendly, polite and well-mannered with a gracious consideration towards others. It makes social interactions in the workplace run smoothly; avoid conflicts and earn respect. Respect is a positive feeling of esteem or deference for a person or organization; it is built over span of time and can be lost with one single inconsiderate action; continual courteous interaction is required to be maintained to enhance the respect gained.

- **Be honest, open and transparent:** Honesty is a facet of moral character that connotes positive and virtuous attributes such as truthfulness, straightforwardness, good conduct, loyalty, fairness, sincerity, openness in communication and generally operating in a manner for others to notice the perfection with which actions are performed; a virtue highly appreciated and valued by clients, employers and colleagues because it builds trust and personal reputation.
- **Be competent and improve continually:** Competence is the core ability of a professional to do a job properly. It is a combination of quality of knowledge, skill, acumen and behaviour used to perform. Competency grows through experience and to the extent one is willing to learn and adapt. Continuous self-development is a pre-requisite in offering professional service at all times.
- **Be ethical:** Ethical behavior is acting within certain moral codes in accordance with the generally accepted code of conduct or rules. It is always safe for a professional to “play by the rules” where the rule book is inadequate; and acting with a clear moral conscience is the right way to adopt.
- **High Integrity:** Honorable action is behaving in a way that portrays “nobility of soul, magnanimity of person” derived from virtuous conduct and integrity in adherence to the dictum of “wholeness or completeness” of character in line with certain values, beliefs and principles with consistency in action and outcome.
- **Be respectful of confidentiality:** Confidentiality is respecting the set of rules or promises that restricts one from further or unauthorized dissemination of information. Over the course of one’s career, information will come to be possessed in strict confidence - either from the organization or from colleagues; and it is important to be true to such confidentiality. One gains trust and respect of those confiding and enhances professional credibility within the organization.
- **Set Good Examples:** Applying the foregoing rules helps one to improve traits of professionalism by imparting knowledge to those around and below the rank and file. One ought to show and lead by setting good exemplary life all along. Modern corporate governance rightly demands a comprehensive, interdisciplinary approach to the management and control of companies.

Therefore, professionals need to practice with a sense of responsibility the evolving principles of good corporate governance across the globe on a continual basis. Excellence can be bettered through continuous up-gradation of research and interaction between the relevant practices and control of respective disciplines of Compliance, accounting, finance, law and management functions to deliver the highest quality of good corporate governance.

In this context the corporate looks upon Company Secretaries to provide the impetus, guidance and direction for achieving world-class ethical business practices and strategic corporate governance.

The Chartered Governance Institute of UK & Ireland Code of Professional Ethics and Conduct comprises four core principles to which all Fellows, Associates, graduates, students and affiliated members registered need to follow.

1. Integrity

Integrity is the quality of being honest and having strong moral principles. The term has been described judicially as connoting “moral soundness, rectitude, and steady adherence to an ethical code”. It requires that members are impartial, independent and informed. Displaying integrity includes:

- acting professionally in your business dealings;
- displaying a proper understanding and appreciation of your role and responsibilities;
- being respectful of others at all times;
- not accepting or offering improper gifts, hospitality or other inducements;
- avoiding conflicts of interest, or, where a conflict arises, making sure that everyone involved is aware of the interest;

- recognising and considering the ethical issues arising from, and the interests of the groups or
- stakeholders who may be affected by, your choices, decisions and actions;
- avoiding involvement in any unethical, misleading, illegal or covert behaviour;
- not knowingly ignoring (or turning a blind eye to) unethical, misleading, illegal or obscure behaviour; and
- avoiding bringing the profession into disrepute.

2. High standard of service/professional competence

A high standard of service or professional competence should be delivered throughout one's working life. This involves an understanding of relevant technical, professional and business developments. Professional competence also takes account of the wider implications and expectations of our members. This includes:

- maintaining professional knowledge and skills which are required to perform the role which you are employed to carry out;
- completing CPD as required by the UKRIAT Committee (this does not apply to students);
- communicating effectively and promptly with your clients, colleagues and stakeholders to ensure that they are able to make informed decisions;
- acting within your level of competence; if this requires an admission to your client that you are unable to perform a task then this should be communicated effectively;
- upholding the requirements of the Royal Charter and byelaws made under it; and
- respecting the confidentiality of information acquired through professional relationships save where there is a legal or regulatory requirement to disclose or report that information.

3. Transparency

Transparency requires that members are clear and open in their business and professional conduct. This includes:

- being open and frank in any business dealings;
- not being underhand in any business transaction; and
- treating all work as if it was reported in the public domain.

4. Professional behavior

Professional behavior requires that members act in a way which conforms to the relevant laws of the jurisdiction in which they are residing and/or undertaking business transactions. It requires them also to pay regard to all regulations which may have a bearing on their actions and to adhere to the byelaws, specifically byelaw which states that the following actions or inactions may result in disciplinary proceedings:

- becoming bankrupt or insolvent;
- being convicted of an offence which might bring discredit on the Institute or the profession;
- failing to uphold the code of professional conduct and ethics;
- behaving, by doing something or not doing something, in a way considered by the Disciplinary Tribunal to bring the Institute or the profession into disrepute;
- disobeying any decisions of the Council or of one of its Divisional Committees;

- breaking any of the Institute's byelaws or Charter or Regulations;
- failing to comply or co-operate with a disciplinary investigation; or
- failing to comply with a decision or any conditions made by a Disciplinary or Appeal Tribunal.

The Singapore Association of the Institute of Chartered Secretaries and Administrators (ICSA) requires members to observe the highest standards of professional conduct and ethical behaviour in all their activities. By maintaining these standards, members enhance their reputation as corporate advisors and increase confidence in the management and administration of private and public sector organisations. As the conduct of an individual member can reflect upon the wider profession of corporate management and the Institute's membership as a whole, the Code sets out what are deemed to be appropriate standards of professional conduct:

- Members are required to uphold the Institute's Charter and comply with the Bye-laws.
- Members shall at all times be cognisant of their responsibilities as professional people toward the wider community.
- Members shall at all times safeguard the interests of their employers, colleagues or clients provided that Members shall not knowingly be a party to any illegal or unethical activity.
- Members shall not enter into any agreement or undertake any activity which may be in conflict with the legitimate interest of their employer or client or which would prejudice the performance of their professional duties.
- Members shall not use any confidential information obtained in the performance of their duties for personal gain nor in a manner which would be detrimental to their employer, client or any other party.
- Members shall ensure the currency of their knowledge, skills and technical competencies in relation to their professional activities.
- Members shall refrain from conduct or action which detracts from the reputation of the Institute.

Recent disciplinary case studies on values, ethics and professional conduct:

1. In 2021, the Securities and Exchange Board of India (SEBI) barred a company secretary from practicing for three years for submitting false documents and failing to conduct due diligence in relation to the issuance of securities by a company. The company secretary was found to have violated the code of conduct for practicing company secretaries, which requires them to act with integrity, objectivity, and professional competence.
2. In 2020, *SAT Order in the matter of B. Renganathan v. SEBI*, the markets watchdog SEBI imposed a penalty of Rs 5 lacs on Edelweiss Financial Services Limited (EFSL) compliance officer Mr. B Renganathan for failing to close the trading window during the existence of the unpublished price-sensitive information.

SEBI on receipt of an examination report from the National Stock Exchange (NSE), conducted investigation in the dealings in the scrip of EFSL in order to examine possible violations of SEBI (Prohibition of Insider Trading) Regulations, for the period of January 2017 to April, 2017.

During the course of investigation, it was observed that ECap Equities, a wholly-owned subsidiary of EFSL, had acquired Alternative Investment Market Advisors Pvt Ltd (AIMIN), a financial technology company, on April 5, 2017, by entering into a share purchase agreement. The same was disclosed by EFSL to the NSE and the BSE on the same day. The acquisition of AIMIN by ECap was a price-sensitive information that had come into existence on January 25, 2017, upon signing of term sheet. The acquisition of AIMIN by ECap was a price-sensitive information that had come into existence on January 25, 2017, upon signing of term sheet. According to SEBI, Mr. Renganathan, being the compliance officer of the company, failed to close the trading window during the period of January 25, 2017 to April 5, 2017.

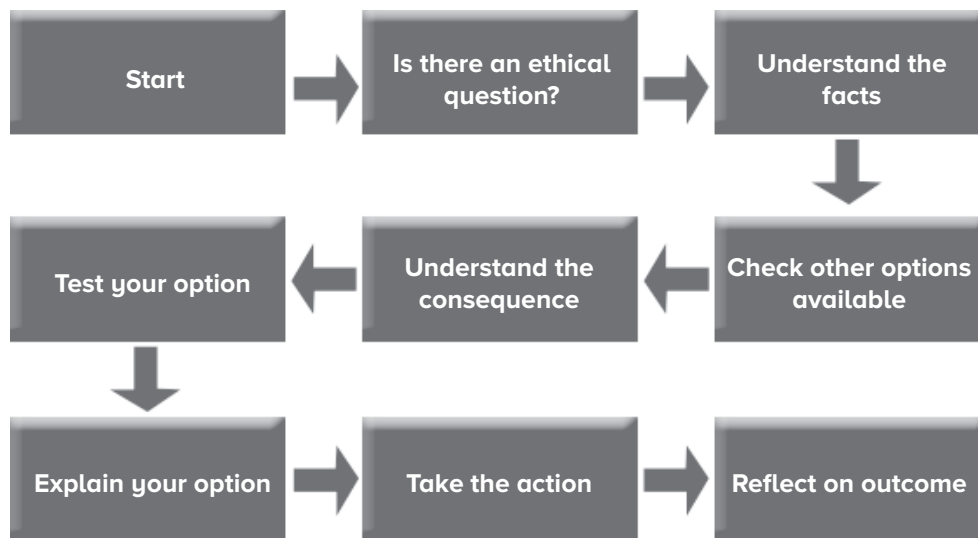
By his failure to close the trading window during this period, he has violated the provisions of minimum standards for code of conduct to regulate, monitor and report trading by insiders mentioned in the PIT Regulations, the regulator added. Further, he has admittedly begun intimating stock exchanges on trading window closure only from January 2019. Accordingly, the regulator levied the penalty of Rs 5 lacs on him.

3. In January 2022, the Disciplinary Committee of ICSI imposed a penalty of R. 10000 and reprimanded the company secretary on account of founding him guilty of professional misconduct under clause (7) of Part II of the Second schedule to the Companies Secretaries Act, 1980 for not exercising due diligence while issuing compliance certificate by stating that there were no allotment/transfer/transmission of securities during the financial year and wrongly certified nominal value per share of the company.
4. In 2018, the Institute of Company Secretaries of India (ICSI) suspended a company secretary from its membership for a period of three months for professional misconduct. The company secretary was found to have issued a certificate without proper verification of documents, which violated the ICSI's code of conduct.
5. In 2021, the Securities and Exchange Board of India (SEBI) imposed a penalty of Rs 10 lakhs on a company secretary for failing to disclose certain material information to the stock exchanges in a timely manner. The company secretary had violated the SEBI's listing obligations and disclosure requirements regulations.
6. In 2020, the Institute of Company Secretaries of India (ICSI) suspended a company secretary from its membership for three months for professional misconduct. The company secretary was found to have violated the ICSI's code of conduct and professional ethics, including making false statements and failing to maintain the confidentiality of client information.

Above mentioned cases demonstrate the importance of upholding ethical values and professional conduct for company secretaries, and the potential consequences of failing to do so. Company secretaries have a crucial role in ensuring compliance with legal and regulatory requirements, and in upholding the integrity and reputation of their clients and the profession.

Ethical Decision Worksheet

This worksheet is designed for assisting in making ethically responsible decision:



<p>1. Analyse the situation? <i>Analyse the situation?</i> <i>Check whether you have choices?</i> <i>What is at stake?</i></p>
<p>2. Understand the facts <i>What are the facts?</i> <i>Is anything required to be done?</i></p>
<p>3. Understand the options available <i>What al options are available?</i> <i>Do any Rule/regulation/laws/professional ethics influence your options?</i></p>
<p>4. Understand the consequences of the options <i>What are the consequences of each available option?</i> <i>Who will be affected by each available option?</i> <i>How will the parties be affected by these option?</i></p>
<p>5. Test the option you plan to take <i>Identify the best option.</i> <i>Review the difficulty level of preferred option:</i> <i>Is the option difficult for others to understand?</i> <i>Can I justify my actions on that option?</i> <i>How to implement the decision?</i></p>
<p>6. Explain the option you have decided upon <i>Explain the actions – you should be able to justify them in a logical manner You should have kept records of your decision.</i></p>
<p>7. Act on the chosen option <i>Make a plan to implement your decision?</i></p>
<p>8. Reflect on the outcome <i>How did my decision turn out?</i> <i>Who was affected and how?</i></p>

ICSI CODE OF CONDUCT

The purpose of Code of Conduct is to lay down certain ground rules to promote ethical conduct and good practices and to deter wrong-doing and also to make the relationship mutually pleasant and productive and to enhance the sense of community with common values and mission. Further, Code of Conduct is a step towards ethical decision making in which strategic management decisions result from due deliberations and objective analysis of facts, distanced from personal biases, leanings, subjectivity or emotional perceptions. The matters covered under the Code are of utmost importance to the Institute of Company Secretaries of India (“Institute”), its members, students and other stakeholders including Government, Regulators, Trade and Industry and other users of services of the Company Secretaries.

Fundamental duties of Professional

Fair Dealing	Not exploiting undue Professional Opportunity	No Misuse of Mistakes of Other Solicitor	Maintaining Confidentiality
Making Inadvertent Disclosure	Avoid Conflicts	Honour Undertakings of professionals	Maintaining Integrity of evidence
Due care while dealing with Client documents	Dealing with other persons	Promote Anti-discrimination and Anti-Harassment	Dealing with Media

(i) Fair Dealing

Each member of the institute should endeavor to deal fairly with the Clients, other members and students. No Member of the Institute should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair dealing practice.

In addition to strict compliance with all legal aspects, all members are expected to observe the highest standards of business and personal ethics.

A Professional must also:

- act in the best interests of a client in any matter in which he represents the client;
- be honest and courteous in all dealings in the course of legal practice;
- deliver legal services competently, diligently and as promptly as reasonably possible;
- avoid any compromise to their integrity and professional independence; and
- comply with applicable Rules and the law.

(ii) Professional Opportunity

The professional should not exploit for their own personal gain, opportunities that are discovered through third party, information or position unless the opportunity is disclosed fully in writing and permits to pursue such opportunity.

(iii) Mistakes of Other Solicitor

A professional must not take unfair advantage of the obvious error of another professional or other person, if to do so would obtain for a client a benefit which has no supportable foundation in law or fact.

(iv) Confidentiality

The client's confidential information is a valuable asset. All confidential information must be used for the benefit and in the best interest of client. Every professional must safeguard the confidentiality as above.

The confidential information, discussions, documents and data should be dealt with utmost care and should not be shared or passed on to any person/outsider under any circumstances, directly or indirectly without authorization.

A professional must not disclose any information which is confidential to a client and acquired by him during the client's engagement to any person who is not:

- a partner, promoter, director, or employee of the firm of the professional; or
- a professional or an employee of, or person otherwise engaged by, the firm of professional or by an associated entity for the purposes of delivering or administering legal services in relation to the client, except the following:
 - the client expressly or impliedly authorises disclosure;
 - the professional is permitted or is compelled by law to disclose;
 - the professional discloses the information in a confidential setting, for the sole purpose of obtaining advice in connection with the solicitor's legal or ethical obligations;
 - the professional discloses the information for the sole purpose of avoiding the probable commission of a serious criminal offence;
 - the professional discloses the information for the purpose of preventing imminent serious physical harm to the client or to another person; or
 - the information is disclosed to the insurer of the professional or its associated entity.

(v) Inadvertent Disclosure

A professional who reads part or all of the confidential material before becoming aware of its confidential status must:

- notify the same or the other person immediately; and not read any more of the material.
- If a professional is instructed by a client to read confidential material received in error, the solicitor must refuse to do so.

(vi) Conflicts

Each professional should avoid any conflict of interests with that of the client. A 'conflict of interest' exists where the interests or benefits of one person or entity conflict with the interests or benefits of the client. The professional must avoid situations involving actual or potential conflict of interest.

Any situation that involves or may involve a conflict of interest must be promptly disclosed. No transaction, which involves an actual or potential conflict of interest, should be undertaken by professional.

A professional must not act for a client where there is a conflict between the duty to serve the best interests of a client and the interests of the professional or an associate of the professional, except as permitted.

A professional must not exercise any undue influence intended to dispose the client to benefit the professional in excess of the professional fair remuneration for legal services provided to the client.

A professional must not borrow any money, nor assist an associate to borrow money, receiving a financial benefit from a third party in relation to any dealing where the professional represents a client, or from another service provider to whom a client has been referred by the professional, provided that the professional advises the client:

- (i) that a commission or benefit is or may be payable to the professional in respect of the dealing or referral and the nature of that commission or benefit;
- (ii) that the client may refuse any referral (ii) the client has given informed consent to the commission or benefit received or which may be received.

(vii) Undertakings

A professional who has given an undertaking in the course of legal practice must honour that undertaking and ensure the timely and effective performance of the undertaking, unless released by the recipient or by a court of competent jurisdiction.

A professional must not seek from another professional, or that professional's employee, associate, or agent, undertakings in respect of a matter, that would require the co-operation of a third party who is not party to the undertaking.

(viii) Integrity of evidence

A professional must not:

- advise or suggest to a witness that false or misleading evidence should be given nor condone another person doing so; or
- coach a witness by advising what answers the witness should give to questions which might be asked;

A professional will not have breached by:

- expressing a general admonition to tell the truth;
- questioning and testing in conference the version of evidence to be given by a prospective witness; or
- drawing the witness's attention to inconsistencies or other difficulties with the evidence, but must not encourage the witness to give evidence different from the evidence which the witness believes to be true.

(ix) Client documents

A professional with designated responsibility for a client's matter, must ensure that, upon completion or termination of the law practice's engagement:

- the client or former client, or another person authorised by the client or former client, is given any client documents, (or if they are electronic documents copies of those documents), as soon as reasonably possible when requested to do so by the client, unless there is an effective lien.
- a professional may destroy client documents after a period of 7 years has elapsed since the completion or termination of the engagement, except where there are client instructions or legislation to the contrary.

(x) Dealing with other persons

A professional must not in any action or communication associated with representing a client:

- make any statement which grossly exceeds the legitimate assertion of the rights or entitlements of the client, and which misleads or intimidates the other person;
- threaten the institution of criminal or disciplinary proceedings against the other person if a civil liability to the client is not satisfied; or
- use tactics that go beyond legitimate advocacy and which are primarily designed to embarrass or frustrate another person.
- In the conduct or promotion of a professional practice, the solicitor must not seek instructions for the provision of legal services in a manner likely to oppress or harass a person who, by reason of some recent trauma or injury, or other circumstances, is, or might reasonably be expected to be, at a significant disadvantage in dealing with the solicitor at the time when the instructions are sought.

(xi) Anti- discrimination and Harassment

A professional must not in the course of practice, engage in conduct which constitutes:

- discrimination;
- sexual harassment;
- workplace bullying – “bully by proxy”.

(xii) Dealing with the Media

- A professional must not publish or take steps towards the publication of any material concerning current proceedings which may prejudice a fair trial or the administration of justice.
- To adhere to practice promotion, advertising and solicitation rules, codes and legislation in use and avoid Conflicts of interest.
- Maintaining public confidence and faith in the profession.

Question: A professional must not publish or take steps towards the publication of any material concerning which may prejudice a fair trial or the administration of justice.

Option: (A) current proceedings (B) Past Proceedings (C) Future Proceedings (D) None of these

Answer: (A)

ETHICAL DILEMMA

Dilemma means a situation in which a difficult choice has to be made between two courses of action, either of which entails contravening a moral principle. An ethical dilemma or ethical paradox is a decision-making problem between two possible moral imperatives, neither of which is unambiguously acceptable or preferable. The complexity arises out of the situational conflict in which obeying one would result in transgressing another.

Ethical Dilemma is the situation where a person’s view regarding selecting an object or the alternative includes series of outcomes, which is very confusing. Each outcome has a serious overlapping outcome, which cannot be at a time wrong for one person but the same may be ethically wrong for the other.

An “absolute” or “pure” ethical dilemma only occurs when two (or more) ethical standards apply to a situation but are in conflict with each other. In ethical dilemma, if we obey one decision then it would bring about disobeying another.

Ethical dilemma is also known as moral dilemma. Ethical dilemmas make the situations too difficult. A person has to choose only one way from two of them - a moral or an immoral way. Ethical dilemmas can be seen everywhere in daily lives. However, everybody has their own particular experience towards ethical dilemma. Ethical dilemmas assume that the chooser will abide by societal norms, such as codes of law or religious teachings, in order to make the choice ethically impossible.

For Instance ethical dilemmas in PoSH

Handling sexual harassment cases under the PoSH Act presents significant ethical challenges, particularly regarding the potential misuse of the law for personal vendettas, retaliation, or damaging someone’s reputation. These dilemmas necessitate careful decision-making to ensure fairness while maintaining a safe and respectful workplace for all employees.

The misuse of the PoSH Act can have serious consequences for the accused, jeopardizing their careers, reputations, and personal lives. It is essential to approach these cases with an impartial mindset, rigorously investigating claims to differentiate between genuine grievances and malicious accusations. This process involves actively listening to both the complainant and the accused, thoroughly examining evidence, and maintaining confidentiality to protect the dignity of all parties involved.

A ruling, delivered on November 6, 2023, by a bench led by Chief Justice of India Dhananjaya Y Chandrachud, alongside Justices JB Pardiwala and Manoj Misra, emphasizes the importance of ethical considerations in cases of workplace harassment. The court stressed that *'sexual harassment in any form at the workplace must be viewed seriously and the harasser should not be allowed to escape from the clutches of law.'* However, the bench also recognized the potential for misuse of such laws, cautioning that *"The veracity and genuineness of the complaint should be scrutinised to prevent any misuse of such laudable laws enunciated for the upliftment of the society and for equal rights of people without gender discrimination by anybody under the garb of 'sexual harassment', lest justice rendering system would become a mockery."*

This judgment highlights the ongoing ethical challenges of implementing the PoSH Act: ensuring it protects individuals from harassment without being exploited. Maintaining this balance is essential to upholding the integrity of the law while fostering a workplace culture rooted in fairness, dignity, and respect.

Some examples of ethical dilemmas include:

- A secretary discovers her boss has been laundering money, and she must decide whether or not to turn him in.
- A doctor refuses to give a terminal patient morphine, but the nurse can see the patient is in agony.
- While responding to a domestic violence call, a police officer finds out that the attacker is the brother of the police chief, and the police chief tells the officer to "make it go away"
- A government contractor discovers that intelligence agencies have been spying on its citizens illegally, but is bound by contract and legalities to keep his confidentiality about the discovery.

Narayana Murthy Committee, 'Report of the SEBI Committee on Corporate Governance', has conceptualized the concept of corporate governance, *inter-alia*, thus:-

*"Corporate Governance is about ethical conduct in business. Ethics is concerned with the code of values and principles that enables a person to choose between right and wrong, and therefore, select from alternative courses of action. Further, **ethical dilemmas** arise from conflicting interests of the parties involved. In this regard, managers make decisions based on a set of principles influenced by the values, context and culture of the organization. Ethical leadership is good for business as the organization is seen to conduct its business in line with the expectations of all stakeholders".*

Common Causes of Loss of Ethics and Values

1. **Unclear Policies in some cases:** Managers and employees exhibit poor ethical behaviour because the company does not offer a clear model of ethics. Some businesses have no formal ethical policy documents and offer no guidance at all. Others have policies that are unclear, vague, inconsistent or not consistently enforced.
2. **Conflict between Organisational & Individual Goal:** When the Organizational & Individual Goals overlap, it becomes difficult to balance things. The problem arises when one thing has to be sacrificed for the sake of others. To achieve Organisational goal, Individual goal, has to be compromised and vice versa so this leads to Ethical Dilemma.
3. **Cultural Value & Background:** Every individual decision is based on background. For some people it may be ethical to give priority for self and then decide about others but for some others it may be other way round. Thus background & value system creates the ethical Dilemma.

4. **Situation when a decision is taken by a manager:** It may be so that situation demands him to decide on certain things which dealing with Ethical Dilemmas. Each Company's culture is different, but some companies stress profits and results above all. In these environments, management may turn a blind eye to ethical breaches if a worker produces results, given the firm's mentality of "the end justifies the means." are not beneficial for all but will benefit the company alone. Example - Automation of a plant.
5. **Dynamic & Different Human Nature:** Ethical Dilemma arises due to difference of the opinion among the group of people. Whatever is ethical for one person, may be unethical for another.
6. **Ambition and Discrimination** Individual workers may be under financial pressure or simply hunger for recognition. If they can't get the rewards they seek through accepted channels, they may be desperate enough to do something unethical, such as falsifying numbers or taking credit for another person's work to get ahead. Though diversity is an important part of business, some people may not be comfortable with people from different backgrounds and possibly be reluctant to treat them fairly. This kind of discrimination is not only unethical but illegal and still remains common.
7. **Pressure from Management:** Each company's culture is different, but some companies stress profits and results above all. In these environments, management may turn a blind eye to ethical breaches if a worker produces results, given the firm's mentality of "the end justifies the means." Whistle-blowers may be reluctant to come forward for fear of being regarded as untrustworthy and not a team player. Therefore, ethical dilemmas can arise when people feel pressurised to do immoral things to please their bosses or when they feel that they can't point out their co-workers' or superiors' bad behaviours.
8. **Negotiation Skills:** While these factors can cause ethical dilemmas for workers within their own companies, doing business with other firms can also present opportunities for breaches. Pressure to get the very best deal or price from another business can cause some workers to negotiate in bad faith or lie to get a concession.
9. **Conflicting Values:** Ethical dilemmas may occur because of conflicting values between two or more people in an organization. One manager may value product quality over quantity while another may value thriftiness. These managers may discuss changing to a cheaper supplier for a material used in production because of the potential to save money. However, the first manager may object because he knows the cheaper material will produce a product of lesser quality, which is not good for customers. Without a culture of shared values, the least ethical choice may be approved.

Organisation for Economic Co-operation and Development (OECD) has also described various principles on "Corporate Governance" one of these Principle includes Disclosure and Transparency, which states "The Corporate Governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company."

An Organization Transparency checklist includes the below mentioned traits:

- Board meetings (Dates, times and locations of Board meetings are conveyed at least one week in advance of the meetings)
- Financial disclosure statements (Non-profits should consider posting their audited financial statements on their website)
- Freedom of information legislation (Rules that guarantee access to data held by the state; they establish a "right-to-know" legal process where requests can be made for government-held information)

- Budgetary reviews
- Annual audits
- Annual Reports (Posted on the organization’s website for easy access)
- Strategic plans and priorities
- Board of Directors and names of key staff as well as their contact information (Posted on the organization’s website)
- Straight talking leadership
- Open culture and operations (many voices on behalf of the organization)
- Disclosed partnerships
- Frank, open communications including the good and bad
- Core values & Code of conduct.

HOW TO RESOLVE ETHICAL DILEMMA

Think about outcomes if you find yourself in a situation when this approach doesn’t work, you can resolve a right versus right dilemma by finding the highest “right.” Kidder wrote that there are three ways to make the best choice when faced with these types of dilemmas:

Resolving Ethical dilemma		
<p>Ends-based: Select the option that generates the most good for the most people.</p>	<p>Rule-based: Choose as if you’re creating a universal standard. Follow the standard that you want others to follow.</p>	<p>Care-based: Choose as if you were the one most affected by your decision. Once you’ve identified an ethical right versus right dilemma, lay out your options according to these three principles. One approach will immediately present itself as the “most right”.</p>

STRATEGY FOR OVERCOMING FROM THE EVILS

For any organization the systematic and rigorous approach coupled with efforts is necessary to keep governance standards at the highest level by nurturing of ethical values and standards well embedded from the inception of the organization. It needs further conscious cultivation during the growth phase. It is equally important to remember that organizations or institutions act through its own employees.

Technology is only a means — a handmaid available at the disposal of humans and it cannot be a substitute; even in the society of the future where robots will take a dominating and universal position. Therefore, the human beings need proper and rigorous grooming. Thus, it is necessary that any attempt to address ethical issues is to be handled by human beings and not machines.

The human traits and characteristics shape human behavior and a few probable solutions are explained below:

(i) Satisfaction

To achieve happiness it is essential that the culture of ‘being satisfied’ is developed. However, the most challenging and unanswerable question on satisfaction is “How much is Enough”. The issue

is very difficult to resolve especially in the corporate field where expansion is the prime direction in which it is supposed to move; yet it is the need of the hour to understand and remain satisfied with what is achieved within the validly available means.

(ii) Ends not to justify the means

It is often said that the results matter and what was done to achieve the same is of no consequence. The statement may appear encouraging; but reading between the lines it is not the intention to achieve results by compromising ethics and values. The need of compromising ethics and values arises when there is a dearth of valid means to achieve the end-result. The thirst to succeed, vaulting ambition and flawed education are equally responsible elements. It is essential to note that however worth the cause may be, the means to achieve the same should also be equally valid. An irregular or an unethical action leading to a good outcome may not necessarily justify the method of achieving the goal.

(iii) Ethical Leadership

The Professional should lead the organisation like Krishna as he led Pandvas to success by guiding them to fight morally. It is the duty of the leader driving the organization to ensure use of proper and ethical means in his conduct. It is equally essential that the leader walks the talk and sets an example of good governance and ethical leadership.

(iv) Character

Professional should always consider the old idiom: If Character Is Lost Everything Is Lost. The idiom amply highlights the importance of good character. Character is generally built or earned by virtues like courage, honesty, values and ethics. Great leaders and eminent personalities are judged by their character. A good character is synonymous to reliability.

Cases on Values, Ethics and Professional conduct

1. Punjab National Bank Case

Punjab National Bank is one of the largest public sector banks in India. The scam of Rs. 11,300 crores in the Punjab National Bank scam has come into the limelight. The PNB scam and irregularities, forgery commenced in the year 2011 and continued for six long years with the knowledge of a few banking officials of PNB. It is a case where Letter of Undertaking (LOU) from Punjab National Bank was taken by Nirav Modi without having a sanctioned credit limit or collaterals. The dispute mainly started due to illegal LOUs issued to Nirav Modi by few PNB banking officials.

The chronological dates on which the events and transaction concerning the scam took place is briefed as under:

- Punjab National Bank filed an FIR against Nirav Modi, Mehul Chowskhi and other charged with criminal conspiracy and cheating amounting to the tune Rs 11,300 Crores.
- Central Bureau of Investigation (CBI) was handed over the investigation into the matter.
- The Enforcement Directorate (ED) had registered a money laundering case against Nirav Modi and others under the provisions of PMLA based on the FIR registered by CBI under Sections 120-B r/w 420 of IPC, 1860 read with Section 13(2) read with 13(1)(d) of PC Act, 1988
- The Enforcement Directorate seized some movable assets like diamond, gold and jewellery worth Rs. 56.74 billion from the house of Nirav Modi and his office CBI after an investigation into the matter arrested two employees of Punjab National Bank and detained one representation of Nirav Modi Group. Simultaneously, Government of India suspended passport of Nirav Modi and Mehul Choskwi for the involvement in the PNB Scam.
- Subsequently, the Central Bureau of Investigation arrested the Chief Financial Officer (CFO) and two Senior Executives of Nirav Modi firm. It also sealed the Nirav Modi farmhouse at Alibaug, Mumbai.

- CBI seized nine luxurious cars which belong to Nirav Modi and his firm which worth crores of money.
- The Magistrate Court issued first bailable arrest warrant against Nirav Modi and Mehul Chowski. Enforcement Directorate on the same day filed a petition before the Special Court, Mumbai for seeking issuance of a non-bailable warrant (NBW) against the diamondaire – Nirav Modi and his firm.
- Enforcement Directorate moves before the Special Court to issue extradition proceeding against Nirav Modi.
- Government of India sent a letter requesting the UK authorities to initiate extradition proceeding against Nirav Modi.
- CBI officials requested Interpol Manchester to detain Nirav Modi about Nirav Modi presence in the country.
- UK authorities confirm the presence of the accused – Nirav Modi in the country.
- In a British newspaper named as UK Daily Telegraph which published a report on Nirav Modi presence and roaming in London streets. After knowing the incident Enforcement Directorate requested the Government of UK to take further action on the extradition proceeding of Nirav Modi in the UK court.
- Government of UK took action on the request of the Government of India and the Westminster Court, London issued an arrest warrant against Nirav Modi Nirav Modi was arrested in London by Scotland Yard Officers and produced before the Westminster Court. He applied for which was rejected by the Court. The accused Nirav Modi was sent to Her Majesty's Prison (HMP), Wandsworth till 29th March, 2019.
- The Westminster Court rejected the bail petition of the accused /fugitive offender – Nirav Modi on the ground that he may not appear before the Court on the fixed dates for further hearing of the matter. (29th March ,2019)
- After the plea made by Enforcement Directorate, Nirav Modi has been declared as Fugitive Offender by the Mumbai Court under the Fugitive Offender Act ,2018. Nirav Modi is currently in Wandsworth Prison in London, from where he is fighting for extradition charges.

Action taken by RBI after detection of PNB Fraud

- Reserve Bank of India discontinued the practice of LOUs/ FLCs for trade credits for imports into India.
- RBI also ordered all the banks to reconcile transactions in Nostro accounts on a real-time basis so that unrecorded and illegal transactions can be identified immediately.

2. YES Bank Crisis

YES Bank was once the country's fifth-largest private lender by market capitalization. YES Bank was founded by Rana Kapoor and Ashok Kapoor in 2004. Fraud led to the unexpected and sudden fall of YES Bank which was emerging as a good competition to other private banks. The bank had a differentiated business model, with focus on technology, branches network, retail loans etc. and was ranked number 1 bank in the Business Today-KPMG Best Banks Annual Survey 2008.

What has led to a crisis at YES Bank?

Promoter of the bank, Rana Kapoor had, over a short period of time, built an overwhelming image in the industry and had developed contacts with top industrialists of the country. Most of the decision making on key matters including large loans was centralised in his hands. He had the ambition to make YES Bank the largest private bank of the country. It was this ambition which perhaps led to the sharp downfall in fortunes of the bank, steeper than its rise to an eminent position in the banking industry.

The bank's loan book on March 31, 2014, was Rs 55,633 crore, and its deposits were Rs 74,192 crore. Since then, the loan book has grown to nearly four times as much, at Rs 2.25 trillion as on September 30, 2019. While deposit

growth failed to keep pace and increased at less than three times to Rs 2.10 trillion. The bank's asset quality also worsened and it came under regulator RBI's scanner. Yes bank was lending aggressively disregarding the risk limits and also under-reporting the bad loans. They were lending to corporates that were already in very risky businesses and facing some challenges in their business like the Anil Ambani-led Reliance group, DHFL and IL&FS. All this happened in Rana Kapoor's tenure. The exposure of loans to such bad performing companies was huge in Yes Bank's case, and to add up they were hiding the NPAs or misreporting the same. After the above fiasco, Raveet Gill took charge of Yes Bank but struggled to revive as deposits kept depleting and he wasn't able to raise enough capital given the loss of confidence in the market. The tipping point came when one of the bank's independent directors Uttam Prakash Agarwal, resigned from the board in January 2020 citing governance issues.

Several reasons behind the crisis of YES bank were:

- a. **NPAs:** YES Bank ran into trouble following the central bank's asset quality reviews in 2017 and 2018, which led to a sharp increase in its impaired loans ratio and uncovered significant governance lapses that led to a complete change of management. The bank subsequently struggled to address its capitalisation issues. YES Bank suffered a dramatic doubling in its gross NPAs between April and September 2019 to Rs 17,134 crore.
- b. **NBFC crisis:** The crisis in India's shadow-banking space started with the unravelling of Infrastructure Leasing & Financial Services (IL&FS) and then extended to Dewan Housing Finance Limited (DHFL). YES Bank's total exposure to IL&FS and DHFL was 11.5 per cent as of September 2019. In April 2019, the bank had classified about Rs 10,000 crore of its exposures, representing 4.1 per cent of its total loans under watch list, as potential non-performing loans over the next 12 months.
- c. **Governance issue:** YES Bank faced several governance issues that led to its decline. On January 10, independent director Uttam Prakash Agarwal quit citing deteriorating corporate governance standards and compliance failure at the lender. In 2018-19, the bank under-reported NPAs to the tune of Rs 3,277 crore, prompting RBI to dispatch R Gandhi, one of its former deputy governors, to the board of the bank. Rana Kapoor, who was instrumental in building YES Bank from scratch, was asked to step down as chief executive in January 2019.
- d. **Excessive withdrawals:** YES Bank's financial condition dissuaded many depositors from keeping funds in the bank over a longer term. The bank showed a steady withdrawal of deposits, which burdened its balance sheet and added to its woes. The bank had a deposit book of Rs 2.09 trillion at the end of September 2019.

Steps taken by RBI against YES Bank

- i. RBI has taken over the YES Bank management
- ii. The central has imposed a moratorium on the lender
- iii. RBI announced a draft 'Scheme of Reconstruction' that entails SBI investing capital to acquire a 49% stake in the restructured private lender.

3. Infrastructure Leasing & Financial Services Limited (IL&FS) Case

- IL&FS is a systemically important Core Investment Company with the Reserve Bank of India and is engaged in the business of giving loans and advances to its group companies (and holding an investment in such companies). IL&FS has a large number of group companies across various sectors such as Energy, Transportation, Financial Services.
- IL&FS Group, which had approximately over Rs. 91,000 crores in debt, was facing a severe liquidity crisis. Between July 2018 and September 2018, two of the subsidiaries of IL&FS Group reported having trouble in paying back loans and inter- corporate deposits to banks/lenders.
- In July 2018, the road arm of IL&FS was facing difficulty in making repayments due on its bonds. Further, in early September 2018, one of the subsidiaries of IL&FS Group was unable to repay a

short-term loan of Rs. 1,000 crore taken from Small Industries Development Bank of India (SIDBI). Also, certain group companies defaulted in repayments of various short and long-term deposits, inter- corporate deposits, and commercial papers.

- IL&FS failed continuously to service its debt and the imminent possibility of a contagion effect in the financial market led the Central Government to move an application under Sections 241 and 242 of the Companies Act, 2013 before the NCLT (National Company law Tribunal). Section 241 deals with the cases of mismanagement and oppression by company's management.
- The NCLT suspended IL&FS board members and management and restrained the suspended members from alienating their personal assets.
- In view of the prima facie findings of ICAI and the SFIO interim report dated November 30, 2018, the Central Government filed a petition before the NCLT, Mumbai Bench under Section 130 of the Companies Act, seeking re-opening of the books of account of IL&FS and its group companies for the past five financial years. The NCLT vide its judgment dated January 1, 2019, allowed the petition of the Central Government.
- Upon an application filed by PTC India Financial Services Ltd, the NCLAT has, without going into the rival contention of the parties, made it clear that due to non-payment of dues by IL&FS or its entities including the 'Amber Companies', no financial institution will declare the accounts of IL&FS or its entities as NonPerforming Assets (NPA) without its prior permission.
- By its order dated May 2, 2019, NCLAT allowed the banks to declare as nonperforming assets the accounts of IL&FS and its group companies that have defaulted on payments. However, the tribunal clarified that the banks cannot initiate the recovery process and debit money.
- On May 30, 2019 SFIO submitted a chargesheet against 30 parties, including two auditor firms, for concealing information by not flagging the alleged criminal conspiracy and misreporting the financial statements of the IL&FS firms.
- MCA moved against the auditors, Deloitte Haskins and Sells as well as BSR and Associates LLP and their former auditors, under Section 140(5) of the Companies Act, for their role in "perpetuating the fraud" at IFIN, a subsidiary of IL&FS. The Ministry sought debarment of these audit firms and their audit partners. It also sought interim attachment of their properties, including bank accounts and lockers.
- On June 4, the Supreme Court allowed the SFIO to reopen and recast accounts of IL&FS and two of its subsidiary companies for the last five years. The MCA had approached the Supreme Court seeking a vacation of the stay imposed by the Supreme Court through its order passed on April 29.

Reasons for Failure

- IL&FS hadn't disclosed bad loans on its books for years despite a big part of its loan book having soured.
- As it was the shadow bank or NBFC, "Unscrupulous, negligent and dormant management decisions were the main root cause of failure.
- Poor fund management and controls as IL&FS lent funds to insolvent entities and troubled projects.
- "Deficient audit" by the auditors as they failed to issue warnings.
- The auditors did not highlight the Reserve Bank of India's (RBI's) inspection report, which had labelled IFIN as over-leveraged, besides failing to report negative cash flows and adverse key financial ratios.
- RBI or any other entity did not strictly regulated NBFCs. The IL&FS crisis has raised concerns over the management of such entities.

Steps taken by RBI

- RBI is constantly monitoring NBFC's to prevent systemic shocks.
- RBI is monitoring top 50 NBFCs more closely. These 50 NBFCs represent 75% of the sector.
- Wherever necessary, RBI is making deep dive into their books, their balance sheet and other numbers.

4. DHFL Case

Dewan Housing Finance Corporation Limited (DHFL) is a leading housing finance company, headquartered in Mumbai with branches in major cities across India. Mr. Rajesh Kumar Wadhawan is the Founder of DHFL.

- DHFL has sanctioned and paid funds in unsecured and dubious loans.
- Loan amounting to thousands of crores of rupees were given to newly incorporated shell companies.
- The said loans were provided without any security or collateral and the proceeds were utilized by for private asset creation.
- DHFL has not adequately disclosed the terms of loan and repayment in the financial statements. They also ensured that most of the shell companies have hidden the name of the lender i.e. DHFL.
- Approximately 6 lacs dummy accounts were established at one branch, using the names of borrowers who had already repaid their loans. These accounts were used to issue loans to promoter firms, which were then used to syphon funds. These loans turned out to be non-recoverable in the end.
- The act of DHFL ensured that the recovery of such dubious loans would be impossible since the companies or their directors themselves do not own any assets.
- The promoters and their associates used these dubious loans to acquire personal assets which were completely ring-fenced from the recovery process since the companies or their directors themselves do not own any of these assets.
- Due to poor Corporate Governance concerns, the Reserve Bank of India (RBI) superseded the board of debt-laden DHFL.
- RBI has initiated the process of resolution of the Company under the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Finance Service providers and Application to Adjudicating Authority rules, 2019).

Reasons for failure:

- DHFL case is absolute failure of Corporate Governance.
- The act of promoters in diversion of loan amounts to shell company without scrutiny or security shows a complete deviation from the corporate governance policies.

5. Hero MotoCorp

The country's largest two-wheeler maker Hero MotoCorp has sacked around 30 employees for violation of the company's code of conduct, These executives were found fudging travel expense bills, accepting personal favours, gifts and other benefits from some of vendors, suppliers and dealers in violation of the company's internal 'code of conduct'.

The executives were given marching orders after "thorough investigations" into the allegations against them, all due legal procedures were followed before taking the final action. Third-party independent investigators were appointed to look into these cases once the anomalies were detected in the activity record of these executives.

Stressing on the significance of the step, the official said, "We have always had a clearly laid out Code of Conduct for all employees and it is absolutely mandatory for everyone working at Hero to abide by it. Integrity and value-based behaviour is a way of life at Hero and no one violating these principles has any place in this organisation".

Hero MotoCorp's management was unanimous in its view that the concerned employees could not continue in the company, once it was established. The employees were given due opportunities to present their cases. When confronted with evidence, they owned up to the wrongdoing, official said. He, however, declined to share the names and designations of the sacked employees.

6. Volkswagen's Emissions Scandal:

In 2015, it was discovered that Volkswagen had installed "defeat devices" in its diesel cars that enabled the vehicles to cheat emissions tests. Many VW cars being sold in America had a "defeat device" - or software - in diesel engines that could detect when they were being tested, changing the performance accordingly to improve results. The German car giant has since admitted cheating emissions tests in the US.

The scandal resulted in a significant fine for the company and criminal charges for several executives. The case raised questions about ethical behavior and values within the automotive industry, as well as the need for stricter regulations and enforcement.

7. In 2020, the Securities and Exchange Commission (SEC) fined a major financial services company [VALIC Financial Advisors Inc. (VFA)] for failing to disclose conflicts of interest in its investment advice. The SEC charged VFA for making false and misleading statements about, and otherwise failing to disclose, conflicts related to its receipt of millions of dollars of financial benefits from client mutual fund investments. The SEC found that the company had recommended investments that generated higher fees for the company, even if they were not in the best interests of their clients. This violated the company's fiduciary duty to act in the best interests of their clients.

LESSON ROUND-UP

- The ethics include descriptive ethics, normative ethics, meta-ethics and applied ethics.
- Ethics refers to the guidelines for conduct, that address question about morality. Value is defined as the principles and ideals, which helps them in making the judgement of what is more important.
- Ethics arises from three main factors, moral attitudes as a result of consciousness or awareness-raising, culture as a result of education and the use of know-how and the application of standards as a result of learning and training.
- A professional must not exercise any undue influence intended to dispose the client to benefit the professional in excess of the professional fair remuneration for legal services provided to the client.
- The term "ethics" is derived from the Greek word "ethos" which refers to character or customs or accepted behaviours.
- Descriptive Ethics deals with what people actually believe (or made to believe) to be right or wrong and accordingly holds up the human actions acceptable or not acceptable or punishable under a custom or law.
- Normative Ethics deals with "norms" or set of considerations how one should act. Thus, it is a study of "ethical action" and sets out the rightness or wrongness of the actions.
- Meta-Ethics or "analytical ethics" deals with the origin of the ethical concepts themselves. It does not consider whether an action is good or bad, right or wrong.
- Applied Ethics deals with the philosophical examination, from a moral standpoint, of particular issues in private and public life which are matters of moral judgment.
- Value is defined as the principles and ideals, which helps them in making the judgement of what is more important.
- The principles which govern the conduct of a professional broadly encompasses, Integrity, Professional independence, Professional competence, Objectivity, Ethical behavior, Conformance to technical standards, if any and Confidentiality of information acquired in the course of professional work.

- Professionalism is the virtue, conduct, aim, value or quality that characterize or marks a profession or professional person; it implies quality of workmanship or service.
- The purpose of Code of Conduct is to lay down certain ground rules to promote ethical conduct and good practices and to deter wrong-doing and also to make the relationship mutually pleasant and productive and to enhance the sense of community with common values and mission.

TEST YOURSELF

(These are meant for recapitulation only, Answer to these questions are not to be submitted for evaluation)

1. Define ethics and the various types of ethics.
2. What are principles which should be adopted by the company Secretaries to become successful?
3. Describe the duties of professional which are to be performed by every professional.
4. Define the common causes of loss of ethics and values by professionals.
5. Prepare a Ethical Decision Worksheet for the below situation. Assume facts. "X has to take a decision, where the best service provider is his near relative".
6. As a Company Secretary, prepare a note differentiating between concept of Ethics and Values.

GLOSSARY

Descriptive Ethics: It deals with what people actually believe (or made to believe) to be right or wrong, and accordingly holds up the human actions acceptable or not acceptable or punishable under a custom or law. Descriptive Ethics is also called comparative ethics because it compares the ethics or past and present; ethics of one society and other.

Normative Ethics: It deals with "norms" or set of considerations how one should act. Thus, it's a study of "ethical action" and sets out the rightness or wrongness of the actions. It is also called prescriptive ethics because it rests on the principles which determine whether an action is right or wrong.

Meta-Ethics or "analytical ethics": It deals with the origin of the ethical concepts themselves. It does not consider whether an action is good or bad, right or wrong. Rather, it questions – what goodness or rightness or morality itself is. It is basically a highly abstract way of thinking about ethics.

Applied Ethics: It deals with the philosophical examination, from a moral standpoint, of particular issues in private and public life which are matters of moral judgment.

Beneficence: The principle of beneficence guides the decision maker to do what is right and good. This principle stipulates that ethical theories should strive to achieve greatest amount of good because people benefit from the most good.

Least Harm: This theory deals with situations in which no choice appears beneficial.

Utilitarian: This is a normative ethical theory that places the locus of right and wrong solely on the outcome or consequences of choosing one action/policy over other.

