

Business Ethics, Code of Conduct and Anti-Bribery

Lesson 11

KEY CONCEPTS

- Business Ethics ■ Fundamental Ethical Principles ■ Ethical dilemma • Code of Conduct ■ Lokpal and Lokayukta
- Anti-Bribery Code

Learning Objectives

To understand:

- Concept of Business Ethics
- Context and relevance of Business Ethics in today's business
- Four Fundamental Ethical Principles
- Ethical Dilemma
- Prevention of Corruption Act, 1988
- Lokpal and Lokayukta Act, 2013 (LLA)
- ICSI Anti-Bribery Code

Lesson Outline

- Introduction
- Ethics
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

INTRODUCTION

The corporate world across the globe are laying due emphasis on moral values of conducting business activities. With the passage of time, it has been realized that days are gone when stakeholders can be exploited be it customers, shareholders, creditors, human capital etc. With the onset of various industrial revolution, the business landscape have undergone a sea change. Moreover, the changes taking place in ESTEMPLE factors (E-Economic, S-Social, T-Technological, E-Ecological, M-Media, P-Political, L-Legal and E-Ethical) have also played a pivotal role in fostering ethics in business world.

Further, the new and emerging concepts in management like corporate governance, business ethics and corporate sustainability are some of the expressions through which this emerging ethical instinct in the corporate world is trying to express and embody itself in the corporate life. In this study we examine the concept of ethics and its importance for the business, corporate governance and governance through inner conscience and sustainability.

WHAT IS ETHICS

As per the Oxford Dictionary the meaning of ethics is a “system of moral principles, rules and conduct.” Ethics is a “Science of morals.” The word ethics has emerged from Latin ‘Ethicus’ or in Greek ‘Ethicos’. The origin of these two words is from ‘ethos’ meaning character. Character unlike behavior is an intrinsic or basic factor which derives from inner most.

The term ‘ethics’ can commonly refer to the rules and principles that define right and wrong conduct of individuals (Robbins, Bergman, Stagg and Coulter, 2003, p.150). Ethical Behavior is accepted as “right” or “good” in the context of a governing moral code. Ethics can be viewed as a way of behaving that can be prescribed and imposed by the work environment (Garcia- Zamor, 2003).

Ethics is the study of morality and application of reasons for taking any decision or choosing any course of action, morality is related to norms, values and beliefs embedded in social process.

Ethics refers to well-founded standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues.

Thus, ethics relates to the standards of conduct and moral judgements that differentiate right from wrong. Ethics is not a natural science but a creation of the human mind. For this reason, it is not absolute and is open to the influence of time, place and situation.

BUSINESS ETHICS

According to Crane, ***“Business ethics is the study of business situations, activities, and decisions where issues of right and wrong are addressed.”***

Baumhart defines, ***“The ethics of business is the ethics of responsibility. The business man must promise that he will not harm knowingly.”***

Business ethics is the application of ethical values to business behaviour. Business ethics is relevant both to the conduct of individuals and to the conduct of the organisation as a whole. It applies to any and all aspects of business conduct, from boardroom strategies and how companies treat their employees and suppliers to sales techniques and accounting practices.

Business ethics are the moral principles that act as guidelines for the way a business conducts itself and its transactions. In many ways, the same guidelines that individuals use to conduct themselves in an acceptable way – in personal and professional settings – apply to businesses as well.

Business ethics constitute the ethical/moral principles and challenges that arise in a business environment. Some of the areas related with – and not limited to- business ethics include the following:

1. **Finance and Accounting:** Creative accounting, Earnings management, Financial analysis, Insider trading, Securities Fraud, Facilitation payment.
2. **Human Resource Management:** Executive compensation, Affirmative action, Workplace surveillance, Whistle blowing, Occupational safety and health, Indentures servitude, Union busting, Sexual Harassment, Employee raiding.
3. **Sales and Marketing:** Price fixing, price discrimination, green washing, spamming, using addictive messages/ images in advertising, Marketing to children, False advertising, Negative campaigning.

Business ethics refers to implementing appropriate business policies and practices with regard to arguably controversial subjects. Some issues that come up in a discussion of ethics include corporate governance, insider trading, bribery, discrimination, social responsibility, and fiduciary responsibilities.

Business ethics ensure that a certain basic level of trust exists between consumers and various forms of market participants with businesses. For example, a portfolio manager must give the same consideration to the portfolios of family members and small individual investors as they do to wealthier clients. These kinds of practices ensure the public receives fair treatment.

The concept of business ethics began in the 1960s as corporations became more aware of a rising consumer-based society that showed concerns regarding the environment, social causes, and corporate responsibility. The increased focus on “social issues” was a hallmark of the decade.

Since that time, the concept of business ethics has evolved. Business ethics goes beyond just a moral code of right and wrong; it attempts to reconcile what companies must do legally vs. maintaining a competitive advantage over other businesses. Firms display business ethics in several ways.

A simple example of being ethical is avoiding plastic bags. Currently, corporate ethics strongly emphasize sustainability that is resources for future generations are at risk.

On December 9, 2021, Wintrust Financial Corporation won the Better Business Bureau’s (BBB) Torch Award for Ethics. Wintrust is a Chicago-based financial service. The company is known for its ethical standards and fair business practices.

Wintrust flared out as a value-driven organization. Every employee tries to provide a relationship-centric banking solution. BBB is popular for its contribution to community service and financial care.

Business ethics involve determining what is right and what is wrong. Acting ethically ultimately means determining what is “right” and what is “wrong.” Basic standards exist around the world that dictate what is wrong or unethical in terms of business practices.

For example, unsafe working conditions are generally considered unethical because they put workers in danger. An example of this is a crowded work floor with only one means of exit. In the event of an emergency – such as a fire – workers could become trapped or might be trampled on as everyone heads for the only means of escape.

While some unethical business practices are obvious or true for companies around the world, they do still occur. Determining what practices are ethical or not is more difficult to determine if they exist in a grey area where the lines between ethical and unethical can become blurred.

For example, assume Company A works with a contact at Company B, an individual through which they

negotiate all the prices for supplies they buy from Company B. Company A naturally wants to get the best prices on the supplies. When the individual from Company B comes to their home office to negotiate a new contract, they put him up in a top-tier hotel, in the very best suite, and make sure that all his wants and needs are met while he's there.

In technical terms, the practice is not illegal. However, it might be considered a grey area – close to, but not quite, bribery – because the individual is then likely to be more inclined to give Company A a price break at the expense of getting the best deal for his own company.

At this point it will be of massive academic interest to comprehend the parts of business ethics. The following are the parts of business ethics:

1. History

The first part is the history. While the idea of business ethics came into existence along with the creation of the first companies or organizations, what is most often referred to by the term is its recent history since the early 1970s. This was when the term became commonly used in the United States.

The main principles of business ethics are based in academia and on academic writings on proper business operations. Basic ethical practices have been gleaned through research and practical study of how businesses function, and how they operate, both independently and with one another.

2. Scandals

The second major meaning behind the term is derived from its close relationship and usage when scandals occur. Companies selling goods in the U.S. that were created using child labour or poor working conditions is one such scandalous occurrence.

3. Integration

Perhaps the most recent and continually developing aspect of ethics is the third piece – the idea that companies are building business ethics into the core of their companies, making them a standard part of their operational blueprint. As the world continues to grow more political – and more politically correct – an increased focus on proper business ethics and strong adherence to them become ever more the norm.

FEATURES OF BUSINESS ETHICS

The features of business ethics are as under:

- **Code of Conduct** – Business ethics is actually a form of codes of conduct. It lets us know what to do and what not to do. Businesses must follow this code of conduct.
- **Based on Moral and Social Values** – Business ethics is a subject that is based on moral and social values. It offers some moral and social principles (rules) for conducting a business.
- **Protection to Social Groups** – Business ethics protect various social groups including consumers, employees, small businesspersons, government, shareholders, creditors, etc.
- **Offers a Basic Framework** – Business ethics is the basic framework for doing business properly. It constructs the social, cultural, legal, economic, and other limits in which a business must operate.
- **Voluntary** – Business ethics is meant to be voluntary. It should be self-practiced and must not be enforced by law.

- **Requires Education & Guidance** – Businessmen should get proper education and guidance about business ethics. Trade Associations and Chambers of Commerce should be active enough in this matter.
- **Relative Term** – Business ethics is a relative term. It changes from one business to another and from one country to another.
- **New Concept** – Business ethics is a relatively newer concept. Developed countries have more exposure to business ethics, while poor and developing countries are relatively backward in applying the principles of business ethics.

Context and relevance of Business Ethics in today's business

Present day global crisis has raised questions about the legitimacy of capitalism. Ethical failures certainly played a role. While it remains to be seen whether and how many people blatantly broke the law, there are abundant signs of various forms of potentially unethical behavior. These include greed, unreasonable amounts of leverage, subtle forms of corruption (such as ratings agencies that appear to have had a conflict of interest), complex financial instruments that no one really understood, and herd behavior where people just followed along and failed to exercise independent judgment. Business leaders must use their personal moral compasses to make ethical decisions. As for the business's compass, it should be oriented toward satisfying customers above all stakeholders. That is the orientation that allows for the greatest competitive success and profitability.

Gary Hamel*, World's most influential business thinker (The Wall Street) and world's leading expert on business strategy (Fortune), answered this question which is basically conclusions of one International Conference in California organized by The Management Lab - a Silicon Valley based research organization, with the support of McKinsey & Company, where 35 top management scholars and practitioners of the world met for two days to debate the future of management. These are the points:

- "Modern" management much of which dates back to the late nineteenth century has reached the limits of improvement.
- Unless management innovators tackle those issues, companies will be unable to cope with tomorrow's volatile world.
- Management pioneers must find ways to infuse mundane business activities with deeper, soul-stirring ideals, such as honor, truth, love, justice, and beauty. These timeless virtues have long inspired human beings to extraordinary accomplishment and can no longer be relegated to the fringes of management.
- Most companies strive to maximize shareholder wealth - a goal that is inadequate. As an emotional catalyst, wealth maximization lacks the power to fully mobilize human energies. Tomorrow's management systems must give as much credence to such timeless human ideals as beauty, justice, and community as they do to the traditional goals of efficiency, advantage, and profit.
- Tomorrow's managers will require new skills, among them reflective learning, system-based thinking, creative problem solving, and values-driven thinking. Business Schools and companies must redesign training programs to help executives develop such skills and reorient management systems to encourage their application.

* Gary Hamel (Director, The Management Lab, a Silicon Valley based research organization) Ref: Harvard and Business Review, February 2009 issue, p.79-86

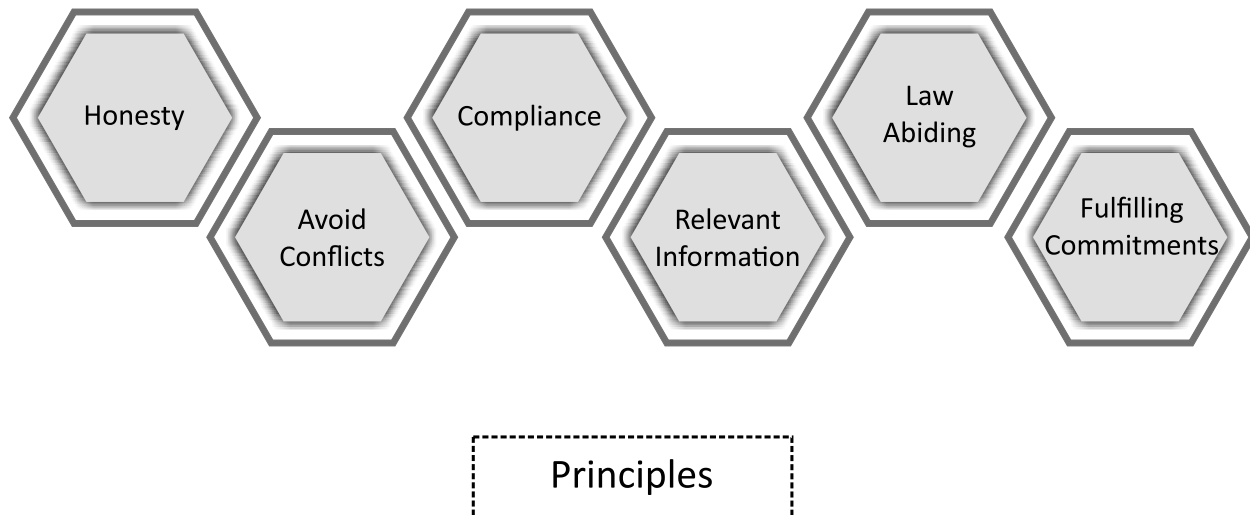
Mere professional competence alone does not lead to excellence. In the long-term enduring quality or excellence comes from values. These universal human values like truth, beauty, goodness and harmony are

applicable to all human activity. But for practical application of these values for a professional activity, we have to take into consideration the unique and intrinsic nature of that activity.

PRINCIPLES OF BUSINESS ETHICS

The fundamental principles of business ethics are as follows:

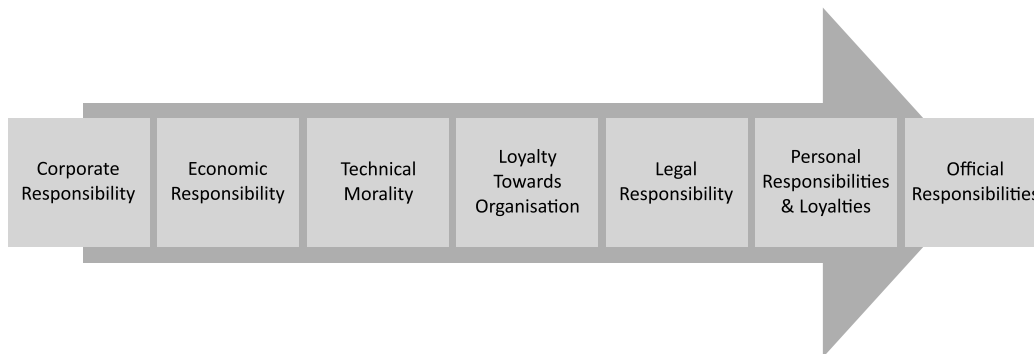
Business Ethics



1. **Accountability:** Ethics is all about taking individual responsibility. It goes both ways. Individuals are responsible for unethical practices of the firm because they did not come forward to become whistle-blowers. Similarly, when an employee indulges in unethical business practices, the firm is responsible.
2. **Care and Respect:** Professional interactions between co-workers should be responsible and respectful. Firms should make sure that the workplace is safe and harmonious.
3. **Honesty:** The best way to gain the trust of the employees is to have transparent communication with them.
4. **Avoid Conflicts:** Firms need to minimize conflicts of interest in the workplace. Excessive competition within the workforce can end disastrously.
5. **Compliance:** Firms need to comply with all the rules and regulations.
6. **Loyalty:** The employees should be faithful to the organization and uphold the brand image. Grievances, if any, should be dealt internally.
7. **Relevant Information:** It is necessary to provide information that is comprehensible. All the relevant facts, whether positive or negative, must be disclosed. It is unethical to hide unreasonable terms and conditions in the fine print.
8. **Law Abiding:** Corporate laws protect the rights of every section of society. Any kind of discrimination is unethical. Personal biases of individuals should not affect the decision-making of leaders.
9. **Fulfilling Commitments:** It is unethical to justify non-compliance by interpreting agreements unreasonably.

STANDARD ETHICAL PRACTICES A BUSINESS SHOULD ADOPT

Given below are the standard ethical practices that a business should adopt:



1. **Corporate Responsibility:** The organization works as a separate legal entity with certain moral and ethical obligations. Such ethics safeguard the interest of all the internal and external parties associated with the firm. This includes the employees, customers, and shareholders.
2. **Social Responsibility:** Making profits should not be at the cost of society. Therefore, corporate social responsibilities (CSR) have been a common practice where businesses work towards environmental protection, social causes, and spreading awareness.
3. **Personal Responsibility:** Employees are expected to act responsibly with honesty, diligence, punctuality, and willingness to perform excepted duties. Individuals should settle dues in time and avoid criminal acts.
4. **Technology Ethics:** In the 21st century, companies have adopted e-commerce practices. Technology ethics includes customer-privacy, personal information, and intellectual property fair practices.
5. **Fairness:** Favouritism is highly unethical. Every individual possesses certain personal bias. But at the workplace, personal beliefs and biases should not affect decision-making. The firm has to ensure fair chances of growth and promotion for all.
6. **Trustworthiness and Transparency:** Businesses should maintain transparency in business practices and financial reports.

HOW BUSINESS ETHICS IMPROVE BOTTOM LINE

1. Increased Productivity

Employees who believe they are being treated fairly by an organization that cares about them work harder and are more committed to helping the company reach its goals. One owner of a small business, for example, could choose to pay employees below-market wages knowing that they are not likely find better employment opportunities in a poor job market.

Another company owner with a longer-term perspective could make the moral choice to pay above-market wages even though he doesn't have to. His view would be that it is unethical to take advantage of the bad job market. The payoff for his choice is greater productivity, which translates into lower production costs and higher profits. He also is more likely to retain his best employees when the economic environment becomes more positive and job opportunities increase.

2. Greater Customer Loyalty

Small business owners can be tempted to make choices that involve questionable ethics when dealing with customers. One example is not fully disclosing the facts relating to a purchase, such as selling a reconditioned appliance as new. The customer is often at a disadvantage because he doesn't know the right questions to ask. The penalty for operating a business in this fashion is low customer satisfaction

and the likelihood the customer will neither purchase from that business again nor recommend it to others. This outcome has a negative affect on both revenues and profits because acquiring a new customer involves additional marketing cost, whereas selling to an existing customer does not.

3. Positive Brand Image

Businesses that gain a reputation for maintaining the highest ethical standards can achieve the status of being the gold standard in their industry. They may earn awards such as being named in “Best Places to Work” surveys. This recognition allows them to attract the most talented employees, which in turn helps the company build its competitive edge.

The most ethical businesses find it easier to attract customers as well. Consumers’ perception of how they will be treated by the business affects their willingness to purchase from it. In dealing with ethical businesses, they don’t have to be concerned about being sold inferior merchandise or being charged for unnecessary repairs.

4. Avoiding Negative Publicity

Companies with low ethical standards over time may acquire an unsavory reputation in the marketplace and, in extreme cases, attract negative publicity. Consumers frequently contact the media and voice complaints. Television stations have consumer hotlines and do stories about companies that are the worst offenders. In this Internet age, word gets around quickly.

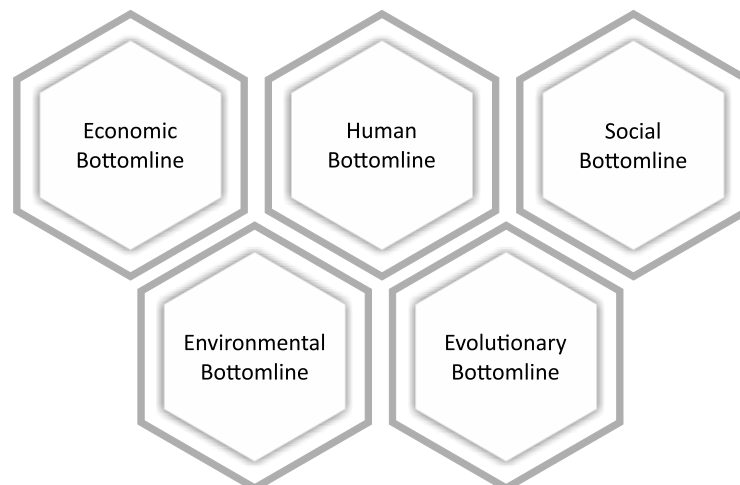
Consumers who have had bad experiences with a company quickly express their grievances through email and through posting on discussion boards or consumer satisfaction websites. If the complaints are frequent and valid, the effect on sales and profits can be significant. Consumers may not want to purchase from the company even if its prices are lower than the competition.

5. Opening up Opportunities

Growing a small business depends on finding new ways to attract customers, and an effective way to do that is to develop joint ventures, marketing alliances or partnerships with other businesses. A business owner might find a company that has a large customer base in a city where his company is not well known.

The willingness of these two companies to form a partnership is dependent upon both parties believing their potential partner is good to do business with. Every business relationship requires trust between the parties involved, because you can’t always be there to monitor what your partner is doing.

FIVE BOTTOM LINES OF THE FUTURE



Source: Aurosociety (fourth dimension inc.)

Economic Bottomline: Wealth-creation is the most basic and fundamental dharma of business. A business organization which doesn't create wealth for the society is adharmic, unethical. We have to focus more on the causative factors which lead to these economic goals like for example, Technology, Productivity, Quality, Customer, Service, Innovation or "knowledge". These are the key-factors of the Economic Bottomline.

Human Bottomline: The Key Result Areas in this domain are those factors which lead to a better quality of the work-force like for example, Leadership, Teamwork, Motivation, Creativity, Ethics, Values and Wellness.

Social Bottomline: An organization is an integral part of the larger social environment. In the long-term, well-being of the organization depends on the wellbeing of the society. This is the rationale behind the concept of Corporate Social Responsibility (CSR) which is gaining increasing acceptance among corporate leaders. However, here also the concept and practice of CSR has to progress beyond isolated charitable projects to embrace the community as a whole.

A business organization is not merely an economic entity but also a social organism, a human community. The highest aim of CSR must be to integrate the communal life of the organization with the communal life of the surrounding environment and harmonise the organizational goals with the developmental goals of the larger community of which it is a part. In this broader perspective, the corporation has to share with the community not only its wealth but also some of its capabilities or expertise.

There is a concentration of resources, knowledge, competence and skill in a business organization, which it has to share with the community of which it is a part.

Among business leaders, J.R.D. Tata had a clear perception of this responsibility and also the potentiality of business for community development. He said "Every company has a special continuing responsibility towards the people of the area in which it is located. The company should spare its engineers, doctors, managers to advise the people of the villages and supervise new developments undertaken by cooperative effort between them and the company." We must note here that JRD's conception of corporate responsibility goes far beyond charity or sharing of wealth towards sharing of capabilities.

Environmental Bottomline: We are not only part of society but also part of Nature. Any human group which draws energy and resources from Nature has a responsibility to use them prudently within the laws and limits set by Nature. Here again as with CSR, the highest aim of ecological responsibility is to harmonize the communal life of the group (especially the economic and material life) and the resource-energy management strategies, with the laws of Nature and the natural environment.

However, for long-term effectiveness, social and ecological bottomlines should not remain as mere decorative, idealistic, showy "projects" at the fringe of the corporate life. They have to become part of the core strategy of the organization.

Evolutionary Bottomline: This is something which has not been recognized in the corporate world. We humans, as a species, are an unfinished project. We have not yet realized all our potentialities hidden within us, especially in the moral, psychological and spiritual realms of our consciousness. We have to progress or evolve further to reach our highest potential as human being.

The work and life of the modern corporate world provides a rich field of experience not only for professional growth but also for evolution of the individual. For someone who is seeking for moral and spiritual development, the corporate world provides a more effective field of experience for accelerated inner growth than an isolated ashram, monastery or forest.

The problems, difficulties, challenges, temptation and conflicts of the corporate world, are a fertile arena for becoming fully conscious of our weaknesses and strengths and also for expressing our inner potentialities. Secondly, the modern corporate experiences provide the right anvil for testing the quality and genuineness of our inner growth.

But a corporate leader or manager may ask: How can it be called a bottom-line? Why should a business organization bother about the personal growth of the employees, which is his personal business? There are two reasons why. The first reason is that personal growth will have its ultimate impact on the four bottom lines. Most of the moral and spiritual disciplines can also make the employee a better professional.

For example the discipline of inner peace, equanimity and loving kindness to all which are common disciplines in all eastern spiritual traditions can lead to greater clarity in thought, better judgment, more effective decision-making, less stress and a more harmonious interpersonal relationship or team-work. Similarly the spiritual discipline of karma yoga can lead to a greater efficiency, creativity and skill in action.

The second reason is that prophetic insights of seers have perceived this inner growth in the moral psychological and spiritual realms as the next step in human evolution and whichever group takes up this higher evolution as a part of its vision and strategy will be among the leaders of the future.

As Sri Aurobindo said,

“In the next stage of human progress it is not a material but a spiritual, moral and psychical progress that has to be made” and therefore “whatever race or country seizes on the lines of that new evolution and fulfills it will be the leader of humanity.”

SIGNIFICANCE OF BUSINESS ETHICS

The importance of general and business ethics, in particular, is huge. If we talk about following ethics in the business environment, the code of conduct framed by an organization plays a pivotal role in helping an employee to understand their rights, responsibilities, and duties. Let's understand thoroughly the importance of business ethics in day-to-day corporate life:

- Following business ethics strictly leads to profits, both in terms of boosting sales, revenue generation, customer attraction, and workforce development.
- From manufacturing, distribution to wholesale and retails, efficient dealing with clients and strengthening of employment policies leads to transparency in the business landscape. In order words, everything will be in hunky-dory, from customer satisfaction to pitching of sales, if ethics are properly taken into consideration.
- Business ethics help the company to get talented employees on board which ultimately reduces the recruitment cost and brings productivity in the company.
- It also helps in setting a safer and conducive environment in the company for employees to work in.
- Business ethics will create a positive image of the company. If both the employees and an employer follow business ethics with enthusiasm without getting indulged in unscrupulous activities, it will create a positive image in the society of the organization.
- If business ethics are strictly followed, it will safeguard consumer rights as well. Not only will they get complete information about what they are consuming, but their grievances can be redressed ethically.
- It will ensure there are no unfair or malpractices taking place in the company.

Four Fundamental Ethical Principles

1. The Principle of Respect for autonomy

Autonomy is Latin for “self-rule” We have an obligation to respect the autonomy of other persons, which is to respect the decisions made by other people concerning their own lives. This is also called the principle of human dignity. It gives us a negative duty not to interfere with the decisions of competent adults, and a positive duty to empower others for whom we're responsible.

Corollary principles: honesty in our dealings with others & obligation to keep promises.

2. The Principle of Beneficence

We have an obligation to bring about good in all our actions.

Corollary principle: We must take positive steps to prevent harm. However, adopting this corollary principle frequently places us in direct conflict with respecting the autonomy of other persons.

3. The Principle of non-maleficence

(It is not “non-maleficence,” which is a technical legal term, & it is not “non-malevolence,” which means that one did not intend to harm.)

We have an obligation not to harm others: “First, do no harm”. Corollary principle: Where harm cannot be avoided, we are obligated to minimize the harm we do.

Corollary principle: Don’t increase the risk of harm to others.

Corollary principle: It is wrong to waste resources that could be used for good.

Combining beneficence and non-maleficence: Each action must produce more good than harm.

4. The Principle of justice

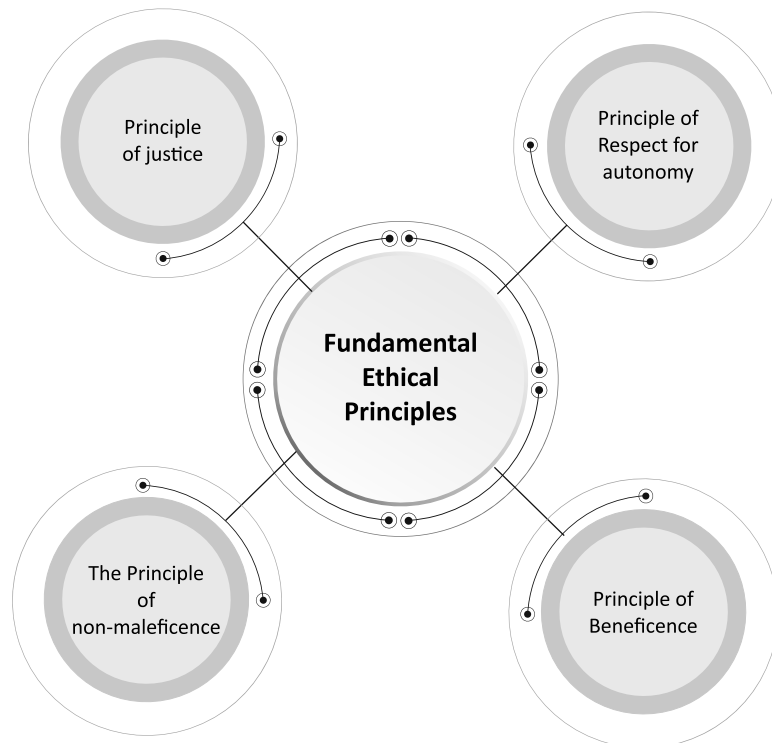
We have an obligation to provide others with whatever they are owed or deserve. In public life, we have an obligation to treat all people equally, fairly, and impartially.

Corollary principle: Impose no unfair burdens.

Combining beneficence and justice: We are obligated to work for the benefit of those who are unfairly treated.

The aforesaid principles are provided in exhibit 1.

Exhibit 1



ETHICAL DILEMMA

An ethical dilemma (ethical paradox or moral dilemma) is a problem in the decision-making process between two possible options, neither of which is absolutely acceptable from an ethical perspective. Although we face many ethical and moral problems in our lives, most of them come with relatively straightforward solutions. On the other hand, ethical dilemmas are extremely complicated challenges that cannot be easily solved. Therefore, the ability to find the optimal solution in such situations is critical to everyone.

Every person may encounter an ethical dilemma in almost every aspect of their life, including personal, social, and professional.

Some examples of ethical dilemma include:

- Taking credit for others' work
- Offering a client a worse product for your own profit
- Utilizing inside knowledge for your own profit

How to Solve an Ethical Dilemma?

The biggest challenge of an ethical dilemma is that it does not offer an obvious solution that would comply with ethical norms. Throughout the history of humanity, people have faced such dilemmas, and philosophers aimed and worked to find solutions to them.

The following approaches to solve an ethical dilemma were deduced:

- **Refute the paradox (dilemma):** The situation must be carefully analyzed. In some cases, the existence of the dilemma can be logically refuted.
- **Value theory approach:** Choose the alternative that offers the greater good or the lesser evil.
- **Find alternative solutions:** In some cases, the problem can be reconsidered, and new alternative solutions may arise.

COMMON ETHICAL ISSUES IN BUSINESS

1. **Unethical Accounting:** "Cooking the books" and otherwise conducting unethical accounting practices is a serious problem, especially in publicly traded companies. One of the most infamous examples is the 2001 scandal that enveloped American energy company Enron, which for years inaccurately reported its financial statements and its auditor, accounting firm Arthur Andersen, signed off on the statements despite them being incorrect. When the truth emerged, both companies went out of business, Enron's shareholders lost \$25 billion, and although the former "Big Five" accounting firm had a small portion of its employees working with Enron, the firm's closure resulted in 85,000 jobs lost.

Although the Federal Government responded to the Enron case and other corporate scandals by creating the Sarbanes-Oxley Act in 2002, which mandates new financial reporting requirements meant to protect consumers, the "Occupy Wall Street" movement of 2011 and other issues indicate that the public still distrusts corporate financial accountability.

2. **Social Media Ethics:** The widespread nature of social media has made it a factor in employee conduct online and after hours. Is it ethical for companies to fire or otherwise punish employees for what they post about? Are social media posts counted as "free speech"? The line is complicated, but it is drawn when an employee's online activities are considered disloyal to the employer, meaning that a Facebook post would go beyond complaining about work and instead do something to reduce business.

For example, a Yelp employee wrote an article on Medium, a popular blogging website, about what she perceived as awful working conditions at the influential online review company. Yelp fired her, and the author said she was let go because her post violated Yelp's terms of conduct. Yelp's CEO denied her claim.

Was her blog post libelous, or disloyal conduct, and therefore a legitimate cause for termination? In order to avoid ambiguity, companies should create social media policies to elucidate what constitutes an infringement, especially as more states are passing off-duty conduct laws that prohibit an employer's ability to punish an employee for online activities.

3. **Harassment and Discrimination:** Racial discrimination, sexual harassment, wage inequality – are all costly ethical issues that employers and employees encounter on a daily basis across the country. According to the Equal Employment Opportunity Commission (EEOC), the EEOCC secured \$505 million for victims of discrimination in the private sector and government workplaces in 2019.

The EEOC states that there are several types of discrimination, including age, disability, equal pay, genetic information, harassment, national origin, race, religion, retaliation, pregnancy, sex and sexual harassment.

4. **Health and Safety:** All employees have a right to a safe working environment and work conditions. Some of the most common employee safety considerations include:
 - a) *Fall protection:* This involves measures to protect employees against falls, such as guard rails.
 - b) *Hazard communication:* Identify any harmful substances employees work with and communicate how to handle these hazardous materials safely.
 - c) *Scaffolding:* The HR department in construction or maintenance organisations is obliged to guide employees about the maximum weight numbers structures can handle.
 - d) *Respiratory protection:* If relevant, provide guidelines about emergency procedures and the standards applicable to the use of respiratory equipment.
 - e) *Lockout, tag out:* This involves specifying the control procedures for dangerous machines and hazardous energy sources, such as gas and oil.
 - f) *Industrial trucks:* It's important to ensure that the required safety standards for trucks are in place to protect employees.
 - g) *Ladders:* Before using ladders, employees must be given an understanding of the weight that the ladder can support.
 - h) *Electrical wiring methods:* Create procedures for electrical and wiring tasks. For example, these guidelines can specify how employees can create a circuit to reduce electromagnetic interference.
 - i) *Machine guarding:* It's important to provide operation guarding instructions for items such as guillotine cutters, power presses, shears and other devices where applicable.
 - j) *General electrical regulations:* Developing general electrical regulations for employees is critical for safety in work environments that require the frequent use of electrical equipment. For example, employees should never place conductors or equipment in damp or wet locations.

Health and safety guidelines should not only cover physical harm to employees rather it is also important to consider psychosocial risks, work-related stress and mental health issues. Factors such as high work demands, job insecurity, effort-reward imbalance and low levels of autonomy can contribute to health-related behavioural risks.

5. **Corporate espionage and nondisclosure:** Many organisations are at risk that current and former employees may steal information, such as client data, for use by competitors. Stealing an organisation's intellectual property or illegally distributing private client information constitutes corporate espionage. This is why it can be helpful to require mandatory nondisclosure agreements.

Addressing Ethical Dilemmas

The ethical dilemma consideration takes us into the grey zone of business and professional life, where things are no longer black or white and where ethics has its vital role today. A dilemma is a situation that requires a choice between equally balanced arguments or a predicament that seemingly defies a satisfactory solution.

An ethical dilemma is a moral situation in which a choice has to be made between two equally undesirable alternatives. Dilemmas may arise out of various sources of behaviour or attitude, as for instance, it may arise out of failure of personal character, conflict of personal values and organizational goals, organizational goals versus social values, etc. A business dilemma exists when an organizational decision maker faces a choice between two or more options that will have various impacts on (i) the organization's profitability and competitiveness; and (ii) its stakeholders. 'In situations of this kind, one must act out of prudence to take a better decision.

CASE STUDY

CASE STUDIES ON ETHICAL DILEMMA

Example 1 Peeps into Mythology (From Mahabharata)¹

Let's have a read of this episode from the Mahabharata.

At the end of imparting training in archery and other martial skill to all the *Pandavas* and *Kauravas*, Dronacharya, their mentor, called up *Arjuna* and conferred on him the Supreme *brahmastra*.

Ashwatthama, *Drona's* own son and a *Kauravite*, was incensed at this and argued with his father:

'What disparity it is to deny the *brahmastra* to your own son, and bestow it upon *Arjuna*? I simply cannot take this lying down. You must give one to me too...'

Drona refused to yield. But the obstinate pressure tactics used by *Ashwatthama* aroused the sentimental father in *Drona*, and he gave away another piece of *brahmastra* to his son.

Why was *Drona* so reluctant for long to equip *Ashwatthama* with this deadliest of weapons?

We have to wait for an answer to this question in the climactic phase of the Mahabharata war, when the leading *Kauravites* had fallen in *Kurukshetra*, and *Ashwatthama* was at the helm. Violating the strictest injunction of *Drona* against the use of the *brahmastra*, to both *Arjuna* and *Ashwatthama*, the latter hurled it to annihilate the *Pandavas* in a fit of impetuous anger. The whole earth was in peril because of the impending collision of the two weapons, for *Arjuna* too had released his weapon in self-defense. Sensing the imminent catastrophe, the Sage *Vyasa* tried to mediate and prevail on them both. *Arjuna* responded, and could withdraw the weapon he had shot, but *Ashwatthama* lacked such capacity. *Vyasa* did devise a poignant compromise to avert the total devastation which the unretracted weapon of *Ashwatthama* could have wrought.

What are the insights embedded in this two-stage drama?

- *Drona* discriminated in favour of *Arjuna* and against *Ashwatthama* on the ground of values alone. He knew, as a guru, that his son may be no less than *Arjuna* in skill, but his value- system was in a mess.

1. Ref: *Foundations of Managerial Work: Contributions from Indian Thought* by S. K. Chakraborty

- *Drona* was conscious of the reality that powerful instruments in the hands of ‘value-weak’, ‘skill-strong’ individuals are apt to be used destructively. Before and since *Drona*’s time the world has witnessed countless such events.
- The *acharya* in *Drona* could initially snub and bridle the father in him. Yet later on, even a man of his willpower and wisdom succumbed to familial emotions. How much more demanding then is the task of cultivating and retaining objectivity in managerial roles donned by much lesser mortals! Unaware, the values of much-hyped objectivity in decision-making are caught in the quick-sands of subjectivity.
- Individuals with a strong sense of values can rise above temporary provocations, can contain their small egos without nursing a feeling of humiliation or loss of face, even when required to dispense with a legitimate retaliatory move. This magnanimity is what *Arjuna* demonstrated when *Vyasa* pleaded with him. Is this weakness or strength?

Example 2²

In a large public sector undertaking the corporate chief of finance was long engaged in a duel with one of the profit centre heads for establishing supremacy in financial decisions. Tragically, the profit centre accountant became the shuttlecock in this game. For observing corporate financial norms he was answerable to the corporate finance chief. But when he would report financial irregularities, after repeated prior information to the profit centre head, to the corporate boss, his life would be made difficult by the former. If he did not report, the CFO would be at his throat.

The sensible solution would seem to be that the two bosses met and resolved their conflicts. But that would never happen – each party continuing to use the junior accountant to fight out their egoistic battles through proxy. Both the bosses were pursuing a contingency approach – each waiting for the other to make the first move. One of the ultimate outcomes of these egoistic tussles was the quitting of the demoralized junior accountant after a few months.

Example 3

The Managing Director-designate of a pharmaceutical company had presented the General Manager – Finance with an entertainment bill of Rs.15,000/- for reimbursement. But there were no vouchers. The GM was in a moral fix, for, even LTC allowances to junior officers were being denied unless accompanied by proper papers. So the GM mustered enough courage to talk about the matter with the MD.

It transpired that apparently this sum was spent by him in Delhi to entertain certain senior officials who held the key to his confirmation as the MD (he happened to be an MBA from a leading management institute). The entire accounts department was in a stir with this episode. It was a culture-shock for them because the recently-retired MD had for years shown impeccable integrity in such matters. But the new MD seemed to grab his pound of flesh – at any cost.

Example 4³

First-hand experience of Mr. A.K.Chattopadhyay, Sr. Vice President of ACC Ltd., Refractories Divisions, Nagpur, India. Formerly he was Executive Director, Tata Refractories Ltd. And Deputy Chairman of IRMA.

‘One incident happened sometime back when a man who had previously worked for ACC supplied and installed some refractory material to one of our customers. He represented himself to his customer as an ACC employee and claimed that the material had come from ACC, which was not true. So the client agreed to let him do the work because he used the ACC name. It so happens that the work that he did failed after two months.

2. Ref: *Foundations of Managerial Work: Contributions from Indian Thought* by S. K. Chakraborty, p.32,36

3. *Leading with Wisdom* by Peter Pruzen

'The customer came to Mr.Chattopadhyay and talked with him about what had happened. He went through all the purchase orders, but could not find one for that specific job. Then he mentioned the name of the man who did the work. I told him that that man had not worked for us for over six months. The customer assured me that this man told him that he worked for ACC and that he was using ACC materials.

'In this situation, we had no legal obligation. The work was not done by our people or with our materials. But I felt it was our moral responsibility to stand behind this job because this customer gave the job to this man based on the ACC name. I replaced the material and sent my engineer out to install it. We lost heavily as there was no income whatsoever on this job. Even though I faced a lot of audit queries about this, I had the support of ACC management behind me.

'People who want to be spiritual-based leaders sometimes face conflict when they try to listen to their inner self. They are sometimes afraid to follow their conscience because they do not want to lose money. When I gave the approval to have our people install new material for this job, that we had not originally done, losing a lot of money on it, I clearly told our people, "I am willing to take this loss, because I know there is a much bigger gain." This is the dilemma that we must face sometimes, when we listen to our inner voice. We will face opposition and difficulties. However, the more the aspiring spiritual-based leaders do this, the more they will be successful. As a leader I must also help them to achieve the same successes. As there are successes, then they will grow in their courage to continue on this path to being a spiritual-based leader.'

Example 5

Surya meets his best childhood buddy Arnav after a decade. Surya had settled down in a different country after completing higher studies and has just returned to the country with a new job at a very senior position in a multi-national company.

Surya discovers that the warmth, camaraderie, openness and joy that they had felt years before had matured instead of fading out.

When Surya asks Arnav about his work, Arnav initially avoids but on coaxing reveals that he is having serious issues at his office where his colleagues are taking undue advantage of his simplicity and sincerity. He knows that Arnav has this innate goodness in him and is aware that this can be taken advantage of by others. On further probing Surya comes to know that Arnav works in the same organization that he will be joining but at several levels lower in hierarchy. But he abstains from revealing this to Arnav.

Surya joins the organization on the scheduled date and as expected, after a few days, Arnav comes to know of this. Arnav visits Surya in his personal chamber and congratulates him. He seems to be genuinely happy that both the friends share the same workplace.

Concerned that Arnav may make a habit of visiting him often in office as a friend sending wrong signals to others, Surya gently but expressly tells Arnav to maintain the hierarchical decorum in office. Arnav does not return to his chamber after that day but the office grapevine finds out about their childhood friendship.

After a few days, Arnav's appraisal report comes to Surya for his approval. He is shocked to find below average grades in almost all the parameters of performance. He knows this cannot be a correct assessment but hesitates to probe into this. He is concerned that his thoughts may be prejudiced or may be considered prejudiced by the others. So he signs the report. Consequently, Arnav, who is truly honest, sincere and dedicated to his work, is denied once more of his due appreciation from the organization.

Example 6

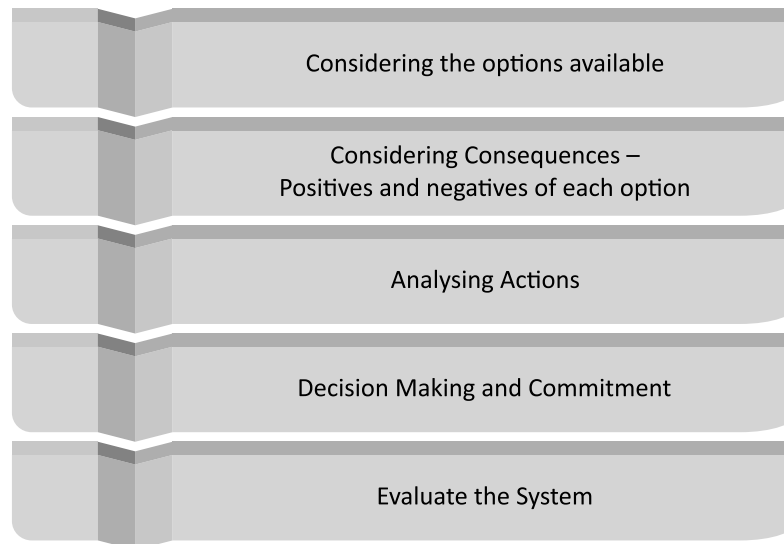
Ramesh is in charge of the stationary department of a large software organization. Employees who need notepads, pens, scissors, and such stationary items enter their employee id, department name, project name and the items that they take in a register that he maintains. The organization has about a 10,000

employees and there are hundreds of entries in the register. At the end of the day, he enters these entries into the computer and updates stock. No one crosschecks the manual entry with the data entered in the system.

At home, he is the only bread-earner of a relatively large family with 3-4 school-going children. One of the children needed a special marker pen for a project in his school. It is quite an expensive pen and would make Ramesh go beyond his monthly budget.

Suddenly Ramesh realizes that the inventory that he maintains has these pens and various projects frequently uses these. There is an initial hesitation rising in him which he dismisses with the reason that the loss is less than negligible to the organization while it will be an enormous financial relief to him. Thinking thus, he makes an additional entry in the system for the pen against a project and picks it up for the child at home. When his wife asks him about the price, he mumbles a random value to her.

Steps to Resolving an Ethical Dilemma



1. What are the options?

List the alternative courses of action available.

2. Consider the consequences

Think carefully about the range of positive and negative consequences associated with each of the different paths of action available.

Who/what will be helped by what is done? Who/what will be hurt?

What kinds of benefits and harms are involved and what are their relative values? What are the short-term and long-term implications?

3. Analyse the actions

Actions should be analysed in a different perspective i.e. viewing the action per se disregard the consequences, concentrating instead on the actions and looking for that option which seems problematic. How do the options measure up against moral principles like honesty, fairness, equality, and recognition of social and environmental vulnerability? In the case you are considering, is there a way to see one principle as more important than the others?

4. Make decision and act with commitment

Now, both parts of analysis should be brought together and a conscious and informed decision should be made. Once the decision is made, act on the decision assuming responsibility for it.

5. Evaluate the system

Think about the circumstances which led to the dilemma with the intention of identifying and removing the conditions that allowed it to arise. Suggest change in the system in consultation with the concerned person.

CASE STUDY

RESOLVING ETHICAL DILEMMA – A CASE STUDY

You are a senior manager in a major firm of investment managers.

Your employer is an international firm with a publicly stated commitment to the highest standards of ethical behaviour. The company is making losses and is due to make a very important presentation to a major corporate client, and if the deal falls through it would turn around the company. Management feels that this activity will provide a lucrative return to the successful bidder for the business and a number of major investment managers have been asked to make presentations.

Your firm is keen to win the mandate for the business and has committed considerable resources to its bid, for which initial presentations were held last week. Following the initial presentation, you learn that the proposal was well received and you are on the shortlist against only one other major firm. You realize that there is a substantial variation in the bid from the original presentation but you leave it to the judgement of the team. It is soon discovered by you that your team had got hold of the bid book of the competitor which was inadvertently left by them in the waiting room.

In business, however highly competitive, there are rules and principles to ensure that certain ethical standards are maintained.

The ethical dilemma projected in this case should be resolved. Applying the steps to resolving an ethical dilemma:

STEP I — List the alternative courses of action available.

What are the Options?

- i) Keep quiet and let things take their own course.
- ii) Inform the company seeking the bid about the incident and let them decide whether to have a re-bid or not.
- iii) Inform your competitor about the incident and let them decide whether to seek for a re-bid or any other corrective measures at their end.
- iv) Withdraw the tender/bid and let the competitor get the deal.

STEP II—What are the consequences and evaluation of action?

Think carefully about the range of positive and negative consequences associated with each of the different paths of action available.

- Who/what will be helped by what is done?
- Who/what will be hurt?

- What kinds of benefits and harms are involved and what are their relative values?
- What are the short-term and long-term implications?

Option 1

- In all probability the deal would be awarded to my company. The competitor was careless in leaving the bid-book, and therefore there is nothing wrong if my team took advantage of the situation. In any case, it is in the best interest of the company.
- There is however a risk that the competitor would discover his mistakes and approach the company seeking the bid company for a re-bid. In that eventuality, the reputation of my company “as being committed to the highest ethical standards” will get affected. In addition, my company would not get the deal.

Option 2

- The company seeking the bid, in spite of knowing about the incident, may award the deal to my company and not take any cognizance of the incident keeping in view the cost of the tendering process, the time involved, etc. or may decide to seek bids again.
- May award the deal to the competitor by disqualifying my company.
- May seek a re-bid.

Option 3

- The competitor, in spite of being aware of the incident, may decide not to take up the matter with the company seeking bids, which may get me the deal.
- The competitor may approach the company seeking the bid. I inform them about the incident and tell them that they were informed by my company about the same, and may: (a) either seek the company making the bid to seek bids again or; (b) let them decide whether or not to seek the bid again.

Option 4

The deal would rightfully have been awarded to the competitor but for the incident, and hence it is most appropriate that my company should withdraw.

STEP III – Make decision and act with commitment

Both the parts of the analysis should be complied and conscious decision should be made. Once the decision is made, it has to be followed through with commitment irrespective of the consequences.

STEP IV – Evaluate the system.

What my team did was ethically wrong. Even if the bid book was carelessly left by the competitor, my team had no right to capitalize on the same. They should have returned it to the competitor. In any case, the competitors would have discovered their mistake. This would put the reputation of my company at stake.

The employees of the company need to be sensitized about the ethical practices and the culture of the company through appropriate training.

CODE OF ETHICS

Managers at all levels and in all functional areas face ethical issues. In fact, there is seldom a decision wherein an ethical dimension is not involved. Matters of right and wrong, just and unjust, and fairness and unfair arise frequently. In order to deal with these issues, managers need some guidelines. Organisations, formulate both business and non-business guidelines in the form of a code of conduct or code of ethics. The need for a

corporate code of conduct has increased due to frequent corporate scandals, inside trading and misuse of funds. With globalisation of business, more and more companies are developing a code of ethics to be observed. Moreover, every profession has a code of conduct for its members. The Institute of Company Secretaries of India, Medical Council of India, Bar Council, All India Management Association (AIMA) and other professional bodies have their own professional codes.

A corporate code of conduct may be defined as a document containing the core values and moral principles which all those working in the company are expected to follow in the course of their duties as well as in their daily activities. It reflects commitment of the company to ensure ethical behaviour on the part of its members. It also indicates how an employee should act in general or in specific situations. A code of conduct lays down 'do's' and 'don'ts'. It describes socially acceptable and responsible behaviour. Hence, a code of ethics is a tangible guide to ethically desirable behaviour.

It is a corporate code of conduct that helps its members to promote high standards of ethics and practice. It makes them aware of ethical dilemmas; and by adhering to these codes of conduct, business people can observe elevated standards of conduct and personal integrity so as to win the trust and confidence of the stakeholders.

A code of ethics should reflect top managements' desire for compliance with the values, rules, and policies that support an ethical climate. The development of a code of ethics should involve the President, Board of Directors, and Chief Executive Officers who should be implementing the code. Legal staff should also ensure that the code has assessed key areas of risk correctly, and that it provides buffers for potential legal problems.

Corporate code of ethics often contains six core values or principles in addition to more detailed descriptions and examples of appropriate conduct. The six values that are desirable for codes of ethics include: (1) trustworthiness, (2) respect, (3) responsibility, (4) fairness, (5) caring, and (6) citizenship.

In the United States of America, Section 406 of the Sarbanes Oxley Act, 2002 requires public companies to disclose whether they have codes of ethics, and also to disclose any waivers of those codes for certain members of senior management. Section 406(a) of the Regulation requires companies to disclose:

- whether they have a written code of ethics that applies to their principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions;
- any waivers of the code of ethics for these individuals; and
- any changes to the code of ethics.

If companies do not have a code of ethics, they must explain why they have not adopted one. A company may file its codes as an exhibit in the annual report, post the codes on the company's website, or agree to provide a copy of the codes upon request and without charge.

To create a code of ethics, an organization must define its most important guiding values, formulate behavioural standards, review the existing procedures for guidance and direction and establish the systems and processes to ensure that the code of conduct is implemented and effective. Codes of ethics are not easily created from boilerplate. Ideally, the development of a code is a process in whereby Boards and senior management actively debate and decide core values, roles, responsibilities, expectations, and behavioural standards

Thus, the code of ethics outlines a set of fundamental principles which could be used as the basis for operational requirements (things one must do), operational prohibitions (things one must not do). It is based on a set of core principles and values and is by no means designed for convenience. The employees subjected to the code are required to understand, internalize, and apply it to situations which the code does not specifically address. Organizations expect that the principles, once communicated and illustrated, will be applied in every case, and that failure to do so may lead to disciplinary action.

Code of conduct has now been mandated for the directors and senior officers in listed companies and Central Public Sector Enterprises (CPSEs) and therefore, also falls under forced and regulatory ethics.

Ideal Ethical Organization

There can be various measures and initiative which may be taken by an organization. Some of them are discussed below.

- a) Have reasonable ethical code of conduct, which can reasonably be complied with;
- b) Top management should always follow ethical practices;
- c) Should not discriminate amongst its stakeholders without solid reasons;
- d) Reward employees with track record of ethical standards like integrity, honesty, loyalty etc.;
- e) Handle stakeholders, mainly employees' grievances properly and quickly (many a times employee grievance leads to unethical practices);
- f) Conduct ethics workshop;
- g) Have ethics counsellors/ethics committees: for advising on employees with unethical issues or going through ethical dilemma;
- h) Have vigil mechanism, whistle blowing policies etc.

CODE OF CONDUCT

The Code of conduct or what is popularly known as the Code of Business Conduct contains standards of business conduct that must guide actions of the Board of Directors and senior management of the company. The Code of Conduct outlines specific behaviours that are required or prohibited as a condition of ongoing employment. The code of conduct for a group or organization is an agreement on rules of behavior for the members of that group or organization. Commonly generated by corporations themselves, corporate codes of conduct vary extensively in design and objective. Crucially, they are not directly subject to legal enforcement. In an era acutely aware of the dramatic social and environmental effects of corporate activity across the world, such codes of conduct have become the focus of considerable attention.

A well-written code of conduct clarifies an organization's mission, values and principles, linking them with standards of professional conduct. The code articulates the values the organization wishes to foster in leaders and employees and, in doing so, defines desired behavior. As a result, written codes of conduct or ethics can become benchmarks against which individual and organizational performance can be measured.

Additionally, a code is a central guide and reference for employees to support day-to-day decision making. A code encourages discussions of ethics and compliance, empowering employees to handle ethical dilemmas they encounter in everyday work. It can also serve as a valuable reference, helping employees locate relevant documents, services and other resources related to ethics within the organization.

The code of conduct may include the following:

- a) Company Values
- b) Avoidance of conflict of interests
- c) Accurate and timely disclosure in reports and documents that the company files before Government agencies, as well as in the company's other communications
- d) Compliance of applicable laws, rules and regulations including Insider Trading Regulations
- e) Maintaining confidentiality of the company affairs

- f) Standards of business conduct for the company's customers, communities, suppliers, shareholders, competitors, employees
- g) Prohibition for the Directors and senior management from taking corporate opportunities for themselves or their families
- h) Review of the adequacy of the Code annually by the Board
- i) No authority to waive off the Code should be given to anyone in any circumstances. The Code of Conduct for each Company summarises its philosophy of doing business.

Although the exact details of this code are a matter of discretion, the following principles have been found to occur in most of the companies:

- Use of company's assets;
- Avoidance of actions involving conflict of interests;
- Avoidance of compromising on commercial relationship;
- Avoidance of unlawful agreements;
- Avoidance of offering or receiving monetary or other inducements;
- Maintaining confidentiality;
- Collection of information from legitimate sources only;
- Safety at workplace;
- Maintaining and Managing Records;
- Free and Fair competition;
- Disciplinary actions against the erring person.

Difference between a Code of ethics and Code of conduct

The terms "Code of Ethics" and "Code of Conduct" are often mistakenly used interchangeably. They are, in fact, two unique documents. Codes of ethics, which govern decision-making, and codes of conduct, which govern actions, represent two common ways that companies self-regulate.

Both are used in an attempt to regulate behavior in very different ways. Ethical standards generally are wide-ranging and non-specific, designed to provide a set of values or decision-making approaches that enable employees to make independent judgments about the most appropriate course of action. Conduct standards generally require little judgment; you obey or incur a penalty, and the code provides a fairly clear set of expectations about which actions are required, acceptable or prohibited.

Violation of code of ethics may not lead to action against the employee but violation of code of conduct may lead to disciplinary action.

Similarities

Both a Code of Ethics and a Code of Conduct are similar as they are used in an attempt to encourage specific forms of behaviour by employees. Ethics guidelines attempt to provide guidance about values and choices to influence decision making. Conduct regulations assert that some specific actions are appropriate, others in appropriate. In both cases, the organization's desire is to obtain a narrow range of acceptable behaviors from employees.

ADVANTAGES OF BUSINESS ETHICS

More and more companies have begun to recognize the relation between business ethics and financial performance. Companies displaying a “clear commitment to ethical conduct” consistently outperform those companies that do not display an ethical conduct.

A company that adheres to ethical values and dedicatedly takes care of its employees is rewarded with equally loyal and dedicated employees.

1. Attracting and retaining talent

People aspire to join organizations that have high ethical values. Such companies are able to attract the best talent. The ethical climate matters a lot to the employees. Ethical organizations create an environment that is trustworthy, making employees willing to rely on company’s policies, ability to take decisions and act on those decisions. In such a work environment, employees can expect to be treated with respect, and will have consideration for their colleagues and superiors as well. Thus, company’s policies cultivate teamwork, promote productivity and support employee-growth.

Retaining talented people is as big a challenge for the company as getting them in the first place. Work is a mean to an end for the employees and not an end in itself. The relationship with their employer must be a win-win situation in which their loyalty should not be taken for granted. Talented people will invest their energy and talent only in organizations with values and beliefs that matches their own. In order to achieve this equation, managers need to build culture, compensation and benefit packages, and career paths that reflect and foster certain shared values and beliefs.

2. Investor Loyalty

Investors are concerned about ethics, social responsibility and reputation of the company in which they invest. Investors are becoming more and more aware that an ethical climate provides a foundation for efficiency, productivity and profits. Relationship with any stakeholder, including investors, based on dependability, trust and commitment results in sustained loyalty.

3. Customer satisfaction

Customer satisfaction is a vital factor of a successful business strategy. Repeated purchases/orders and an enduring relationship with mutual respect is essential for the success of the company. The name of a company should evoke trust and respect among customers for enduring success. This is achieved by a company only when it adopts ethical practices. When a company with a belief in high ethical values is perceived as such, the crisis or mishaps along the way is tolerated by the customers as minor aberrations. Such companies are also guided by their ethics to survive a critical situation. Preferred values are identified and it is ensured that organizational behavior is aligned to those values. An organization with a strong ethical environment places its customers’ interests as foremost. Ethical conduct towards customers builds a strong competitive position for the company. It promotes a strong public image too.

4. Regulators

Regulators eye companies functioning ethically as responsible citizens. The regulator need not always monitor the functioning of the ethically sound company. Any organisation that acts within the confines of business ethics not only earns profit but also gains reputation publicly.

To summarise, companies that are responsive to employees’ needs have lower turnover in staff.

- Shareholders invest their money into a company and expect a certain level of return from that money in the form of dividends and/or capital growth.

- Customers pay for goods, give their loyalty and enhance a company's reputation in return for goods or services that meet their needs.
- Employees provide their time, skills and energy in return for salary, bonus, career progression and experience.

SOME MORE CASE STUDIES ON BUSINESS ETHICS

1. Apple Suppliers & Labour Practices

With its highly coveted line of consumer electronics, Apple has a cult following among loyal consumers. During the 2014 holiday season, 74.5 million iPhones were sold. Demand like this meant that Apple was in line to make over \$52 billion in profits in 2015, the largest annual profit ever generated from a company's operations.

Despite its consistent financial performance year over year, Apple's robust profit margin hides a more complicated set of business ethics. Similar to many products sold in the U.S., Apple does not manufacture most its goods domestically. Most of the component sourcing and factory production is done overseas in conditions that critics have argued are dangerous to workers and harmful to the environment.

For example, tin is a major component in Apple's products and much of it is sourced in Indonesia. Although there are mines that source tin ethically, there are also many that do not. One study found workers—many of them children—working in unsafe conditions, digging tin out by hand in mines prone to landslides that could bury workers alive.

About 70% of the tin used in electronic devices such as smartphones and tablets comes from these more dangerous, small-scale mines. An investigation by the BBC revealed how perilous these working conditions can be. In interviews with miners, a 12-year-old working at the bottom of a 70-foot cliff of sand said: ***"I worry about landslides. The earth slipping from up there to the bottom. It could happen."***

Apple defends its practices by saying it only has so much control over monitoring and regulating its component sources. The company justifies its sourcing practices by saying that it is a complex process, with tens of thousands of miners selling tin, many of them through middle-men. In a statement to the BBC, Apple said "the simplest course of action would be for Apple to unilaterally refuse any tin from Indonesian mines.

According to the company's management the mentioned approach would have been easy for them and would certainly shield them from criticism. But at the same time it would have been a lazy and cowardly path also, as it would have done nothing to improve the situation. The company chose to stay engaged and attempted to drive changes on the ground.

In an effort for greater transparency, Apple released annual reports detailing their work with suppliers and labor practices. While more recent investigations have shown some improvements to suppliers' working conditions, Apple continues to face criticism as consumer demand for iPhones and other products continues to grow.

2. Artic Offshore Drilling

Offshore oil and gas reserves, primarily along coastlines in Alaska, California, Louisiana, and Texas, account for a large proportion of the oil and gas supply in the United States. In August 2015, President Obama authorized Royal Dutch Shell to expand drilling off Alaska's northwest coast. His decision brought into sharp relief the different, oftentimes competing views on the expansion of offshore drilling.

Many proponents of offshore drilling argue that tapping into the vast amount of oil and gas reserves in

the Arctic will help shore up national security interests for the United States, bolster its economy and workforce, and offer Americans a reliable, safe supply of oil.

According to Robert Bryce, senior fellow at the Manhattan Institute for Policy Research, there are “enormous amounts of recoverable energy resources in the Arctic. The Department of Energy estimates them at something on the order of 400 billion barrels of oil equivalent in natural gas and oil. That’s four times the crude oil reserves of Kuwait.” Framed this way, drilling in the Arctic presents a way for Americans to mitigate risks from dependence on foreign oil and build the local and national economies by creating jobs and supplying cheap oil.

A competing point of view charges that offshore oil drilling poses immense risk to the environment while reinforcing a reliance on dirty, environmentally unfriendly sources of energy. Critics claim that industrial activity associated with offshore drilling in the Arctic could harm native animals, including polar bears, walruses, seals, and whales already jeopardized by climate warming and declining levels of sea ice.

Environmentalists argue that oil companies have not demonstrated the capability to clean up an oil spill in water obstructed by ice. Furthermore, they contend, extracting oil only perpetuates a fossil-fuel economy and will contribute dangerously to rising global temperature thereby exacerbating climate change.

“Granting Shell the permit to drill in the Arctic was the wrong decision, and this fight is far from over,” said Michael Brune, executive director of the Sierra Club. “The people will continue to call on President Obama to protect the Arctic and our environment.”

3. Buying Green- Consumer Behaviour

Green consumer products, such as organic food, fair trade coffee, or electric cars, represent a fast-growing segment of the consumer market. In the area of organic food alone, data from the Organic Trade Association reveals that consumer demand in the United States has seen double-digit growth every year since 1990.

In 2014, the organic food market reached almost \$40 billion in sales. Consumers of these products tend to be seen in a more positive light—they are deemed more ethical, more altruistic, and kinder than people who do not buy green products. But is there another side to this kind of consumer behavior?

In a series of experiments comparing consumption of green and “conventional” products, psychologists Nina Mazar and Chen-Bo Zhong demonstrated that those people who bought green products—like eco-friendly laundry detergent or organic yogurt—were less likely to share money with a stranger, more likely to cheat on a task in which they could earn money, and more likely to steal money when they thought they would not get caught. As the psychologists stated, “purchasing green products may license indulgence in self-interested and unethical behaviors.”

Mazar and Zhong, whose study received considerable media attention in their native Canada, as well as in American and British publications, said the results surprised them. Initially, they expected green products to provide a halo effect, whereby the positive impressions associated with green consumption would lead to positive outcomes in other areas. “Given that green products are manifestations of high ethical standards and humanitarian considerations, mere exposure [to them would] activate norms of social responsibility and ethical conduct,” said Mazar and Zhong in an interview.

But as the results indicate, the opposite can be true. “The message of this research is that actions which produce a sense of self content and moral glow can sometimes backfire,” Mazar stated in another interview.

These patterns have been shown to extend to other shopping scenarios. For example, one study tracked scanner data and shopper receipts at a California grocery store. Those shoppers who brought reusable grocery bags with them were more likely to buy environmentally friendly products, like organic food. But they were also more likely to buy indulgent products, like ice cream, cookies, candy, and cake.

The researchers followed up this study with a series of experiments that showed these moral licensing effects only happened when the decision to bring the reusable bags was at the shopper's discretion. When shoppers were told that the store required customers to use cloth bags, licensing effects disappeared and customers chose not to buy indulgent products. Only when consumers felt like using cloth bags was their own idea did the moral licensing effects hold.

4. Negotiating Bankruptcy

John Gellene, a bankruptcy lawyer at the law firm Milbank Tweed, worked directly under Wall Street attorney Larry Lederman. In 1994, Lederman asked Gellene to represent mining equipment company Bucyrus-Erie (BE) in a reorganization bankruptcy that became increasingly complicated.

In an attempt to initially ward off bankruptcy, BE had, pursuant to the legal advice of Milbank Tweed and the financial advice of Goldman Sachs, accepted a \$35 million infusion of cash from an investment fund called South Street. In exchange, BE gave South Street a lien on all of the company's manufacturing equipment, putting it ahead of other BE creditors, including Jackson National Life (JNL).

JNL was BE's largest single creditor, but was unsecured. BE had posted no collateral in return for JNL's loan, so JNL was in line in bankruptcy court behind all of BE's creditors that had demanded collateral. South Street was controlled by Mikael Salovaara, a former Goldman Sachs banker who had previously provided financial advice to BE and was advised by Lederman.

When Gellene filed a Chapter 11 bankruptcy petition on behalf of BE, he was required to ask the court to appoint him and Milbank Tweed as BE's counsel for purposes of the proceedings. At that time, he filed documents under oath that were supposed to disclose any potential conflicts of interest that Milbank Tweed had in the proceedings. For reasons unknown, Gellene did not disclose to the bankruptcy judge (who would appoint counsel) the fact that Milbank Tweed was representing both South Street and Salovaara regarding various matters.

Legal scholars and attorneys reflecting on this case years later have speculated as to why Gellene did not disclose what might seem to be obvious connections that could be potential conflicts of interest for Milbank Tweed. Lawyer Steve Sather suggests that the lack of disclosure may have been inadvertent, or that Gellene did not see the connections as inherent conflicts, among other possible reasons.

Regardless, Gellene did successfully guide BE through the reorganization process. The failure to disclose was not discovered until years later by JNL, which then sued Milbank Tweed. Criminal charges were filed against Gellene for three felony counts of making false statements under oath in regard to Milbank Tweed's ability to serve as bankruptcy counsel. Gellene was convicted and sent to prison for 15 months.

5. Selling ENRON

In the late 1990s, the state of California deregulated many of its electricity markets, opening them up to private sector energy companies. Enron Corporation had long lobbied for deregulation of such markets and would likely have profited greatly had California's experiment succeeded and become a model for other states.

Enron CEO Ken Lay wrote a public statement saying that Enron "believes in conducting business affairs in accordance with the highest ethical standards... your recognition of our ethical standards allows

Enron employees to work with you via arm's length transactions and avoids potentially embarrassing and unethical situations." At the same time, Tim Belden, a key Enron employee in its energy trading group, noticed that California's "complex set of rules...are prone to gaming."

According to Bethany McLean and Peter Elkind, authors of *The Smartest Guys in the Room: The Amazing Rise and Scandalous Fall of Enron*:

"In one scheme, Enron submitted a schedule reflecting demand that wasn't there... Another was a variation of the Silverpeak experiment: Enron filed imaginary transmission schedules in order to get paid to alleviate congestion that didn't really exist... Get Shorty was a strategy that involved selling power and other services that Enron did not have for use as reserves..."

Some Enron employees admitted that their schemes were "kind of squirrely," but used them because they were profitable. The impact on customers was clear: electricity prices rose and rolling blackouts occurred. Enron's profits, however, quadrupled. An Enron lawyer later wrote that the Enron traders did not think "they did anything wrong." Another employee admitted, "The attitude was, 'play by your own rules.' ...The energy markets were new, immature, unsupervised. We took pride in getting around the rules."

In October 2001, Enron's unethical and illegal business practices became public knowledge. Enron's stock prices plummeted, and the company filed for bankruptcy in December 2001.

6. The Collapse of Barings Bank

Founded in 1762, Barings Bank was a United Kingdom institution with worldwide reach. Even the Queen of England had an account there. In 1989, Nick Leeson was hired at Barings, where he prospered. He was quickly promoted to the trading floor and appointed manager in Singapore where he traded on the Singapore International Monetary Exchange (SIMEX). Leeson was an aggressive trader, making large profits in speculative trading. In 1993, his profits constituted almost 10% of Barings' total profits. He had developed a reputation for expertise, for near-infallibility, and his superiors in London gave him little supervision.

In July 1992, a new Barings employee suffered a small loss on Leeson's watch. Leeson did not wish to lose his reputation for infallibility, or his job, so he hid the loss in an error account. Leeson attempted to make back the loss through speculative trading, but this led to even bigger losses, which again were hidden in this account. He kept doubling up his bets in an attempt to get out from under the losses. Leeson later said:

"I wanted to shout from the rooftops...this is what the situation is, there are massive losses, I want to stop. But for some reason you're unable to do it. ... I had this catastrophic secret which was burning up inside me—yet...I simply couldn't open my mouth and say, 'I've lost millions and millions of pounds.'"

Leeson took out a short-term, highly leveraged bet on the Nikkei index in Japan. At the same time, a severe earthquake in Kobe, Japan sent the index plummeting, and his loss was so huge that he could no longer hide it. Barings, a 233-year old bank, collapsed overnight and was bought by ING for £1.

Leeson fled to Malaysia, Thailand, and finally to Germany, where he was arrested and extradited to Singapore. He plead guilty to two counts of deceiving bank auditors (including forging documents) and cheating the SIMEX. Leeson was sentenced to six and a half years of prison in Singapore, but only served four years due a diagnosis of colon cancer, which he ultimately survived.

7. Wells Fargo and Moral Emotions

On September 8, 2016, Wells Fargo, one of the nation's oldest and largest banks, admitted in a settlement with regulators that it had created as many as two million accounts for customers without

their permission. This was fraud, pure and simple. It seems to have been caused by a culture in the bank that made unreasonable demands upon employees. Wells Fargo agreed to pay \$185 million in fines and penalties.

Employees had been urged to “cross-sell.” If a customer had one type of account with Wells Fargo, then top brass reasoned, they should have several. Employees were strongly incentivized, through both positive and negative means, to sell as many different types of accounts to customers as possible.

“Eight is great” was a motto. But does the average person need eight financial products from a single bank? As things developed, when employees were unable to make such sales, they just made the accounts up and charged customers whether they had approved the accounts or not. The employees used customers’ personal identification numbers without their knowledge to enroll them in various products without their knowledge. Victims were frequently elderly or Spanish speakers.

Matthew Castro, whose father was born in Colombia, felt so bad about pushing sham accounts onto Latino customers than he tried to lessen his guilt by doing volunteer work. Other employees were quoted as saying “it’s beyond embarrassing to admit I am a current employee these days.”

Still other employees were moved to call company hotlines or otherwise blow the whistle, but they were simply ignored or oftentimes punished, frequently by being fired. One employee who sued to challenge retaliation against him was “uncomfortable” and “unsettled” by the practices he saw around him, which prompted him to speak out. “This is a fraud, I cannot be a part of that,” the whistleblower said.

Early predictions were that CEO John Stumpf would not lose his job over the fiasco. However, as time went on and investigations continued, the forms and amount of wrongdoing seemed to grow and grow. Evidence surfaced that the bank improperly changed the terms of mortgage loans, signed customers up for unauthorized life insurance policies, overcharged small businesses for credit-card processing, and on and on.

In September of 2016, CEO Stumpf appeared before Congress and was savaged by Senators and Representatives of both parties, notwithstanding his agreement to forfeit \$41 million in pay. The members of Congress denounced Wells Fargo’s actions as “theft,” “a criminal enterprise,” and an “outrage.” Stumpf simultaneously took “full responsibility,” yet blamed the fraud on ethical lapses of low-level bankers and tellers. He had, he said, led the company with courage. Nonetheless, by October of 2016 Stumpf had been forced into retirement and replaced by Tim Sloan.

Over the next several months, more and more allegations of wrongdoing arose. The bank had illegally repossessed cars from military veterans. It had modified mortgages without customer authorization. It had charged 570,000 customers for auto insurance they did not need. It had ripped off small businesses by charging excessive credit card fees. The total number of fake accounts rose from two million to 3.5 million. The bank also wrongly fined 110,000 mortgage clients for missing a deadline even though the party at fault for the delay was Wells Fargo itself.

At its April 2017 annual shareholders meeting, the firm faced levels of dissent that a Georgetown business school professor, Sandeep Dahiya, called “highly unusual.”

By September, 2017, Wells Fargo had paid \$414 million in refunds and settlements and incurred hundreds of millions more in attorneys’ and other fees. This included \$108 million paid to the Department of Veterans Affairs for having overcharged military veterans on mortgage refinancing.

In October 2017, new Wells Fargo CEO Tim Sloan was told by Massachusetts Senator Elizabeth Warren, a Democrat, that he should be fired: “You enabled this fake-account scandal. You got rich off it, and then

you tried to cover it up.” Republicans were equally harsh. Senator John Kennedy Texas said: “I’m not against big. With all due respect, I’m against dumb.”

Sloan was still CEO when the company had its annual shareholders meeting in April 2018. Shareholder and protestors were both extremely angry with Wells Fargo. By then, the bank had paid an additional \$1 billion fine for abuses in mortgage and auto lending. And, in an unprecedented move, the Federal Reserve Board had ordered the bank to cap its asset growth. Disgust with Wells Fargo’s practices caused the American Federation of Teachers, to cut ties with the bank. Some whistleblowers resisted early attempts at quiet settlements with the bank, holding out for a public admission of wrongdoing.

In May 2018, yet another shoe dropped. Wells Fargo’s share price dropped on news that the bank’s employees improperly altered documents of its corporate customers in an attempt to comply with regulatory directions related to money laundering rules.

Ultimately, Wells Fargo removed its cross-selling sales incentives. CEO Sloan, having been informed that lower level employees were suffering stress, panic attacks, and other symptoms apologized for the fact that management initially blamed them for the results of the toxic corporate culture, admitting that cultural weaknesses had caused a major morale problem.

8. The COSTCO Model

Costco is often cited as one of the world’s most ethical companies. It has been called a “testimony to ethical capitalism” in large part due to its company practices and treatment of employees. Costco maintains a company code of ethics which states:

“The continued success of our company depends on how well each of Costco’s employees adheres to the high standards mandated by our Code of Ethics... By always choosing to do the right thing, you will build your own self-esteem, increase your chances for success and make Costco more successful, too.”

In debates over minimum wage in the United States, many commentators see Costco as an example of how higher wages can yield greater company success, often pointing to competitors such as Walmart and Target as examples that fall short in providing for their employees. Other commentators do not see Costco’s model as being easily replicable for different types of businesses, citing wages as only one of many factors to consider in companies’ best practices.

Costco tends to pay around 40% more and provides more comprehensive health and retirement benefits than Walmart and Target, saving large amounts in employee turnover costs. The company resists layoffs, invests in training its employees, and grants them substantial autonomy to solve problems. U.S. Secretary of Labor Thomas Perez stated:

“And the remarkable loyalty that [employees] have to [Costco cofounder Jim Sinegal] is a function of the fact that he categorically rejects the notion that, ‘I either take care of my shareholders or my workers.’ That is a false choice.”

While few disagree with the benefits of fair treatment of employees, some commentators credit the success of Costco to its broader business model that favors higher productivity, not employee satisfaction. Columnist and economist Megan McArdle explains:

“A typical Costco store has around 4,000 SKUs [stock keeping units], most of which are stacked on pallets so that you can be your own stockboy. A Walmart has 140,000 SKUs, which have to be tediously sorted, replaced on shelves, reordered, delivered, and so forth. People tend to radically underestimate the costs imposed by complexity, because the management problems do not simply add up; they multiply.”

Furthermore, McArdle notes that Costco mainly serves as a grocer rather than department store and caters to a generally affluent customer base in suburban areas.

9. Bhopal Gas Tragedy

Introduction

Union Carbide India Limited (UCIL):

In 1970, in the North adjacent to the slums and railway station, a pesticide plant was set up by Union Carbide India Limited (UCIL). From late 1977, the plant started manufacturing Sevin (Carbaryl) by importing primary raw materials, viz. alpha-naphthol and methyl isocyanate (MIC) in stainless steel drums from the Union Carbide's MIC plant in USA.

However, from early 1980, the Bhopal plant itself started manufacturing MIC using the know-how and basic designs supplied by Union Carbide Corporation, USA (UCC). The Bhopal UCIL facility housed three underground 68,000 liters liquid MIC storage tanks: E610, E611, and E619 and were claimed to ensure all safety from leakage.

Chronology of Occupational Hazards of the Union Carbide India Limited Plant Leading Before the Disaster

- 1976: Local trade unions complained of pollution within the plant.
- 1980: A worker was reported to have accidentally been splashed with phosgene while carrying out a regular maintenance job of the plant's pipes.
- 1982 (January): A phosgene leak exposed 24 workers, all of whom were admitted to a hospital. Investigation revealed that none of the workers had been ordered to wear protective masks.
- 1982 (February): An MIC leak affected 18 workers.
- 1982 (August): A chemical engineer came into contact with liquid MIC, resulting in burns over 30 percent of his body.
- 1982 (October): In attempting to stop the leak, the MIC supervisor suffered severe chemical burns and two other workers were severely exposed to the gases.
- 1983-1984: There were leaks of MIC, chlorine, monomethylamine, phosgene, and carbon tetrachloride, sometimes in combination.

In early December 1984, most of the Bhopal plant's MIC related safety systems were not functioning and many valves and lines were in poor condition. In addition, several vent gas scrubbers had been out of service as well as the steam boiler, intended to clean the pipes. For the major maintenance work, the MIC production and Sevin were stalled in Bhopal plant since Oct. 22, 1984 and major regular maintenance was ordered to be done during the weekdays' day shifts.

The Sevin plant, after having been shut down for some time, had been started up again during November but was still running at far below normal capacity. To make the pesticide, carbon tetrachloride is mixed with methyl isocyanate (MIC) and alpha-naphthol, a coffee-colored powder that smells like mothballs. The methyl isocyanate, or MIC, was stored in the three partly buried tanks, each with a 15,000-gallon capacity.

During the late evening hours of December 2, 1984, whilst trying to unclog, water was believed to have entered a side pipe and into Tank E610 containing 42 tons of MIC that had been there since late October. Introduction of water into the tank began a runaway exothermic reaction, which was accelerated by contaminants, high ambient temperatures and other factors, such as the presence of iron from corroding non-stainless steel pipelines.

Sequence of events on the day of Catastrophe – December 3rd, 1984

December 3, 1984 12:40 am: A worker, while investigating a leak, stood on a concrete slab above three large, partly buried storage tanks holding the chemical MIC. The slab suddenly began to vibrate beneath him and he witnessed at least a 6 inch thick crack on the slab and heard a loud hissing sound. As he prepared to escape from the leaking gas, he saw gas shoot out of a tall stack connected to the tank, forming a white cloud that drifted over the plant and toward nearby neighborhoods where thousands of residents were sleeping. In short span of time, the leak went out of control.

December 3, 1984 12:45 am: The workers were aware of the enormity of the accident. They began to panic both because of the choking fumes, they said, and because of their realization that things were out of control; the concrete over the tanks cracked as MIC turned from liquid to gas and shot out the stack, forming a white cloud. Part of it hung over the factory, the rest began to drift toward the sleeping neighborhoods nearby.

December 3, 1984 12:50 am: The public siren briefly sounded and was quickly turned off, as per company procedure meant to avoid alarming the public around the factory over tiny leaks. Workers, meanwhile, evacuated the UCIL plant. The control room operator then turned on the vent gas scrubber, a device designed to neutralize escaping toxic gas.

The scrubber had been under maintenance; the flow meter indicated there was no caustic soda flowing into the device. It was not clear to him whether there was actually no caustic soda in the system or whether the meter was broken. Broken gauges were not unusual at the factory. In fact, the gas was not being neutralized but was shooting out the vent scrubber stack and settling over the plant.

December 3, 1984 1: 15- 1:30 am: At Bhopal's 1,200-bed Hamidia Hospital, the first patient with eye trouble reported. Within five minutes, there were a thousand patients. Calls to the UCIL plant by police were twice assured that "everything is OK", and on the last attempt made, "we don't know what has happened, sir". In the plant, meanwhile, MIC began to engulf the control room and the adjoining offices.

December 3, 1984 3:00 am: The factory manager, arrived at the plant and sent a man to tell the police about the accident because the phones were out of order. The police were not told earlier because the company management had an informal policy of not involving the local authorities in gas leaks. Meanwhile, people were dying by the hundreds outside the factory. Some died in their sleep. Others ran into the cloud, breathing in more and more gas and dropping dead in their tracks.

Immediate Impacts

With the lack of timely information exchange between Union Carbide India Limited (UCIL) and Bhopal authorities, the city's Hamidia Hospital was first told that the gas leak was suspected to be ammonia, then phosgene. They were then told that it was methyl isocyanate (MIC), which hospital staff had never heard of, had no antidote for, and received no immediate information about.

The gas cloud, composed mainly of materials denser than air, stayed close to the ground and spread in the south-easterly direction affecting the nearby communities. Most city residents who were exposed to the MIC gas were first made aware of the leak by exposure to the gas itself.

Actions Initiated

Formal statements were issued that air, water, vegetation and foodstuffs were safe, but warned not to consume fish. The number of children exposed to the gases was at least 200,000. Within weeks, the State Government established a number of hospitals, clinics and mobile units in the gas-affected area to treat the victims.

Legal proceedings involving UCC, the United States and Indian governments, local Bhopal authorities,

and the disaster victims started immediately after the catastrophe. The Indian Government passed the Bhopal Gas Leak Act in March 1985, allowing the Government of India to act as the legal representative for victims of the disaster, leading to the beginning of legal proceedings.

Initial lawsuits were generated in the United States federal court system in April 1985. Eventually, in an out-of-court settlement reached in February 1989, Union Carbide agreed to pay US\$470 million for damages caused in the Bhopal disaster. The amount was immediately paid.

UCC chairman and CEO Warren Anderson was arrested and released on bail by the Madhya Pradesh Police in Bhopal on 7 December 1984. Anderson was taken to UCC's house after which he was released six hours later on \$2,100 bail and flown out on a government plane. Anderson, eight other executives and two company affiliates with homicide charges were required to appear in Indian court.

In response, Union Carbide said the company is not under Indian jurisdiction. In 1991, the local Bhopal authorities charged Anderson, who had retired in 1986, with manslaughter, a crime that carries a maximum penalty of 10 years in prison.

He was declared a absconder from justice by the Chief Judicial Magistrate of Bhopal on 1 February 1992 for failing to appear at the court hearings in a culpable homicide case in which he was named the chief defendant. Orders were passed to the Government of India to press for an extradition from the United States. From 2014, Dow is a named respondent in a number of ongoing cases arising from Union Carbide's business in Bhopal.

A US Federal class action litigation, Sahu v. Union Carbide and Warren Anderson, had been filed in 1999 under the U.S. Alien Torts Claims Act (ATCA), which provides for civil remedies for "crimes against humanity." It sought damages for personal injury, medical monitoring and injunctive relief in the form of clean-up of the drinking water supplies for residential areas near the Bhopal plant. The lawsuit was dismissed in 2012 and subsequent appeal denied. Anderson died in 2014.

Ethical Negligence

- i) *The Corporate Negligence:* This point of view argues that management (and to some extent, local government) underinvested in safety, which allowed for a dangerous working environment to develop.
- ii) *Safety audits:* In September 1984, an internal UCC report on the West Virginia plant in the USA revealed a number of defects and malfunctions. It warned that "a runaway reaction could occur in the MIC unit storage tanks, and that the planned response would not be timely or effective enough to prevent catastrophic failure of the tanks". This report was never forwarded to the Bhopal plant, although the main design was the same.
- iii) *The Disgruntled Employee Sabotage Argument:* Now owned by Dow Chemical Company, Union Carbide maintains a website dedicated to the tragedy and claims that the incident was the result of sabotage, stating that sufficient safety systems were in place and operative to prevent the intrusion of water.

10. Cadbury: An Ethical Company Struggles to Insure the Integrity of its Supply Chain

Chocolate had always been considered an affordable little luxury, associated with romance and celebrations. Therefore in 2000 and 2001, revelations that the production of cocoa in the Côte d'Ivoire involved child slave labor set chocolate companies, consumers, and governments reeling.

In the United States, the House of Representatives passed legislation mandating that the FDA create standards to permit companies who could prove that their chocolate was produced without forced labour to label their chocolate "slave-labour free." To forestall such labelling, the chocolate industry

agreed to an international protocol that would give chocolate producers, governments, and local farmers four years to curb abusive practices and put together a process of certification.

The stories of child slave labour on Côte d'Ivoire cocoa farms hit Cadbury especially hard. While the company sourced most of its beans from Ghana, the association of chocolate with slavery represented a challenge for the company, since many consumers in the UK associated all chocolate with Cadbury.

Furthermore, Cadbury's culture had been deeply rooted in the religious traditions of the company's founders, and the organization had paid close attention to the welfare of its workers and its sourcing practices. In 1908, the company had ended a sourcing relationship that depended on slave labour. Now for the first time in nearly 100 years, Cadbury had to take up the question of slavery again.

By the 2005 deadline, the chocolate industry was not ready to implement the protocols and asked for two years more to prepare. Privately, many industry officials believed that the kind of certification sought by the protocols was unrealistic.

Because cocoa was produced on over a million small farms in western Africa, insuring that all of these farms, most located deep in the bush, complied with child labour laws seemed impossible. Furthermore because beans from numerous small farms were intermingled before shipment, it was difficult to track those produced by farms in compliance with labour standards and those that were not.

In 2008, a confrontation between U.S. government officials and the industry seemed imminent. Observers argued that this left Cadbury, a company that had done much to improve its supply chain, in a difficult position.

ANTI CORRUPTION

Bribery and Corruption – Global Scenarios

US: The deterrence of bribery and corruption is one of the primary issues for governments worldwide. The US Foreign Corrupt Practices Act, 1977 (FCPA), which prohibits businesses from bribing foreign officials and political figures, remains the most robustly enforced anti-bribery and anti-corruption (ABAC) legislation globally. The US Department of Justice and the Securities and Exchange Commission take the lead in its enforcement.

The core aim of the Foreign Corrupt Practices Act (FCPA) is to prohibit companies and their individual officers from influencing foreign officials with any personal payments or rewards. The FCPA applies to any person who has a certain degree of connection to the United States and engages in corrupt practices abroad, as well as to U.S. businesses, foreign corporations trading securities in the U.S., American nationals, citizens, and residents acting in furtherance of a foreign corrupt practice, whether or not they are physically present in the U.S.

This is considered the nationality principle of the Act. Any individuals involved in these activities may face prison time. In the case of foreign natural and legal persons, the Act covers their deeds if they are in the U.S. at the time of the corrupt conduct. This is considered the protective principle of the Act.

UK: The Bribery Act 2010 is an Act of the Parliament of the United Kingdom that covers the criminal law relating to bribery. Introduced to Parliament in the Queen's Speech in 2009 after several decades of reports and draft bills, the Act received the Royal Assent on 8 April 2010 following cross-party support. Initially scheduled to enter into force in April 2010, this was changed to 1 July 2011.

The Act repeals all previous statutory and common law provisions in relation to bribery, instead replacing them with the crimes of bribery, being bribed, the bribery of foreign public officials, and the failure of a commercial organisation to prevent bribery on its behalf.

The penalties for committing a crime under the Act are a maximum of 10 years' imprisonment, along with an

unlimited fine, and the potential for the confiscation of property under the Proceeds of Crime Act 2002, as well as the disqualification of directors under the Company Directors Disqualification Act 1986.

The Act has a near-universal jurisdiction, allowing for the prosecution of an individual or company with links to the United Kingdom, regardless of where the crime occurred. Described as “the toughest anti-corruption legislation in the world”, concerns have been raised that the Act’s provisions criminalize behaviour that is acceptable in the global market, and puts British business at a competitive disadvantage.

ANTI BRIBERY LAWS

The following Anti-Bribery laws have been discussed in this section:

1. Prevention of Corruption Act, 1988 (The PCA)
2. Lokpal and Lokayukta Act, 2013 (LLA)
3. ICSI Anti-Bribery Code.

1. PREVENTION OF CORRUPTION ACT, 1988 (THE PCA)

The PCA criminalises the acceptance of gratification (pecuniary or otherwise) other than the acceptance of legal remuneration by public servants which is paid by their employers in connection with the performance of their duties. Aiding and abetting the commission of bribery is also an offence, such that any person, who bribes or attempts to bribe a public servant or acts as a middleman for such bribing may also be held liable.

Further, the PCA creates an adverse presumption if a public servant’s assets are disproportionate in value to his or her income and cannot be satisfactorily accounted for. The provisions of the PCA apply regardless of the location or jurisdiction of the commission of an offence, as long as the same is committed by a ‘public servant’ as defined under it. Judicial decisions have also interpreted the term ‘public servant’ in the PCA to include a wide variety of persons, such as bank employees in both private and government owned banks.

The Prevention of Corruption Act, 1988 (No. 49 of 1988) is an Act of the Parliament of India enacted to combat corruption in government agencies and public sector businesses in India. This law defines who a public servant is and punishes public servants involved in corruption or bribery. It also punishes anyone who helps him or her commit the crime corruption or bribery. It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

The Act is divided into five chapters:

- Chapter I (Sections 1 and 2): Preliminary
- Chapter II (Sections 3 to 6): Appointment of Special Judges
- Chapter III (Sections 7 to 16): Offences and Penalties
- Chapter IV (Section 17 to 18): Investigation into cases under the Act
- Chapter IVA (Section 18 A): Attachment and Forfeiture of Property
- Chapter V (Sections 19 to 30): Sanction for Prosecution and Other Miscellaneous Provisions

The PCA deals only with bribery of public servants. It does not extend to bribery or corruption in the private sector, i.e. where a public servant is not involved. That said, a private person/entity will be liable for inducing a public servant to commit an act that is prohibited by the PCA, by corrupt or illegal means or by exercising personal influence.

Who is Public Servant [Section 2(c)]:

“Public servant” means –

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) Public Duty has been defined by Section 2(b) of the Act, which means a duty in the discharge of which the State, the public or the community at large has an interest;
- (iii) any person in the service or pay of a local authority;
- (iv) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (v) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (vi) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;
- (vii) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
- (viii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- (ix) any person who holds an office by virtue of which he is authorised or required to perform any public duty;
- (x) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (xi) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
- (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Undue advantage – Section 2(1)(d)

It means any gratification whatever, other legal remuneration.

Explanation: For the purposes of this clause-

- (a) the word ‘gratification’ is not limited to pecuniary gratifications or to gratifications estimable in money.

- (b) the word ' legal remuneration is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.

Explanation 1: Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or nor.

Explanation 2: Wherever the words' public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

Offence relating to Public Servant being bribed [Section 7]

Any public servant who, –

- (a) obtains or accepts or attempts to obtain from any person, an **undue advantage**, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or
- (b) obtains or accepts or attempts to obtain, an **undue advantage** from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or
- (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1. – For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration. – A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2. – For the purpose of this section, –

- (i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

Taking undue advantage to influence public servant by corrupt or illegal means or any exercise of personal influence [Section 7A]:

7A. Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Offence relating to bribing of a Public Servant [Section 8]

- (1) Any person who gives or promises to give an undue advantage to another person or persons, with intention –
- (i) to induce a public servant to perform improperly a public duty; or
 - (ii) to reward such public servant for the improper performance of public duty; shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

- (2) Nothing in section 8(1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the latter.

Illustration. – A person, ‘P’ gives a public servant, ‘S’ an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. ‘P’ is guilty of an offence under this sub-section.

Explanation. – It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

Offence relating to bribing a public servant by a commercial organisation [Section 9]

- (1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending –
- (a) to obtain or retain business for such commercial organisation; or
 - (b) to obtain or retain an advantage in the conduct of business for such commercial organisation.

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

- (2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under section 8, whether or not such person has been prosecuted for such offence.
- (3) For the purposes of section 8 and this section, –
- (a) “commercial organisation” means –
 - (i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

- (ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;
 - (iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or
 - (iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;
- (b) “business” includes a trade or profession or providing service;
- (c) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (1).

Explanation 1. – The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2. – Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3. – If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who has performed services for or on behalf of the commercial organisation.

- (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under sections 7A, 8 and this section shall be cognizable.
- (5) The Central Government shall, in consultation with the concerned stakeholders including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations.

Person in charge of commercial organization to be guilty of offence [Section 10]

Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation – For the purposes of this section, “director”, in relation to a firm means a partner in the firm.”

Public servant obtaining undue Advantage without consideration from person concerned in proceeding or business transacted by such public servant [Section 11]

Whoever, being a public servant, accepts or obtains or attempts for himself, or for any other person, any undue Advantage without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the official functions or public

duty of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Punishment for abetment of offences [Section 12]

Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

Criminal Misconduct by a Public Servant [Section 13]

- (1) A public servant is said to commit the offence of criminal misconduct –
- (a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or
 - (b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1. – A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2. – The expression “known sources of income” means income received from any lawful sources.

- (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine.

Punishment for habitual Offender [Section 14]

Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to ten years and shall also be liable to fine.

Punishment for attempt [Section 15]

Whoever attempts to commit an offence referred to in clause (a) of sub-section (1) of section 13 shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and with fine.

Matters to be taken into consideration for fixing fine [Section 16]

Where a sentence of fine is imposed under section 7 or section 8 or section 9 or section 10 or section 11 or sub-section (2) of section 13 or section 14 or section 15, the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (b) of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

CHAPTER IV INVESTIGATION INTO CASES UNDER THE ACT**Persons authorised to investigate [Section 17]**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
- (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
- (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (b) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties [Section 17A]

No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval —

- (a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;
- (b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;
- (c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person.

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

Power to inspect bankers' books [Section 18]

If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to

the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section:

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation. – In this section, the expressions “bank” and “bankers’ books” shall have the meanings respectively assigned to them in the Bankers’ Books Evidence Act, 1891 (18 of 1891).

CHAPTER IVA ATTACHMENT AND FORFEITURE OF PROPERTY

Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act (Section 18A)

- (1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002 (15 of 2003), the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.
- (2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall have effect, subject to the modification that the references to “District Judge” shall be construed as references to “Special Judge”.

CHAPTER V SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

Previous sanction necessary for prosecution [Section 19]

- (1) No court shall take cognizance of an offence punishable under 2 [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction 3 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)] –
 - (a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
 - (b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
 - (c) in the case of any other person, of the authority competent to remove him from his office:

Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless –

- (i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and
- (ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation. – For the purposes of sub-section (1), the expression “public servant” includes such person –

- (a) who has ceased to hold the office during which the offence is alleged to have been committed; or
 - (b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.
- (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.
- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
- (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
 - (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
 - (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.
- (4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. – For the purposes of this section,—

- (a) error includes competency of the authority to grant sanction;
- (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

Presumption where public servant accepts any undue advantage [Section 20]

Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11.

Accused person to be a competent witness [Section 21]

Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that –

- (a) he shall not be called as a witness except at his own request;
- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;
- (c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless –
 - (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
 - (ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
 - (iii) he has given evidence against any other person charged with the same offence.

The Code of Criminal Procedure, 1973 to apply subject to certain modifications [Section 22]

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if, –

- (a) in sub-section (1) of section 243, for the words “The accused shall then be called upon”, the words “The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon” had been substituted;
- (b) in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely:– “Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.”;
- (c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:– “(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.”;

- (d) in sub-section (1) of section 397, before the Explanation, the following proviso had been inserted, namely :-

“Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:-

- (a) without giving the other party an opportunity of showing cause why the record should not be called for; or
- (b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.”

Particulars in a charge in relation to an offence under Section 13(1)(a) – [Section 23]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when an accused is charged with an offence under clause (a) of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 of the said Code:

Provided that the time included between the first and last of such dates shall not exceed one year.

Section 24[Omitted]

Military, Naval and Air Force or other law not to be affected [Section 25]

- (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986).
- (2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the court of a special Judge shall be deemed to be a court of ordinary criminal justice.

Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act [Section 26]

Every special Judge appointed under the Criminal Law Amendment Act, 1952, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

Appeal and Revision [Section 27]

Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the court of the special Judge were a court of Session trying cases within the local limits of the High Court.

Act to be in addition to any other law [Section 28]

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

Amendment of the Ordinance 38 of 1944 [Section 29]

In the Criminal Law Amendment Ordinance, 1944,—

- (a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, sub-section (1) of section 11 and sub-section (1) of section 13, for the words “State Government”, wherever they occur, the words “State Government or, as the case may be, the Central Government” shall be substituted;
- (b) in section 10, in clause (a), for the words “three months”, the words “one year” shall be substituted;
- (c) in the Schedule,—
 - (i) paragraph 1 shall be omitted;
 - (ii) in paragraphs 2 and 4, —
 - (a) after the words “a local authority”, the words and figures “or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a society aided by such corporation, authority, body or Government company” shall be inserted;
 - (b) after the words “or authority”, the words “or corporation or body or Government company or society” shall be inserted;
 - (iii) for paragraph 4A, the following paragraph shall be substituted, namely:— “4A. An offence punishable under the Prevention of Corruption Act, 1988.”;
 - (iv) in paragraph 5, for the words and figures “items 2, 3 and 4”, the words, figures and letter “items 2, 3, 4 and 4A” shall be substituted.

2. LOKPAL AND LOKAYUKTA ACT, 2013 (LLA)

The preamble of the Act states that it is an Act for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

The preamble further provides that whereas the Constitution of India established a Democratic Republic to ensure justice for all; and whereas India has ratified the United Nations Convention Against Corruption; and whereas the Government’s commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption; it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of Corruption.

The LLA requires each State to establish a Lokayukta by law under the state legislature. The Lokpal has the jurisdiction to inquire into all complaints arising from the Prevention of Corruption Act against certain public functionaries, including an incumbent or past Prime Minister, an incumbent or past Union Minister and any person who is or has been a Member of Parliament.

The LLA provides that after the completion of investigation with respect to a complaint under the PCA, the Lokpal can itself initiate prosecution against the accused and/or impose penalties via its prosecution wing or initiate prosecution in the special court proposed to be established to try offences under the PCA.

The Act consists of 15 Chapters, details of which are as under:

<i>Part</i>	<i>Chapter</i>	<i>Section</i>	<i>Particulars</i>
I		1	Preliminary
II	I	2	Definitions

<i>Part</i>	<i>Chapter</i>	<i>Section</i>	<i>Particulars</i>
	II	3 to 10	Establishment of Lokpal
	III	11	Inquiry Wing
	IV	12	Prosecution Wing
	V	13	Expenses of Lokpal to be charged on Consolidated Fund of India
	VI	14 to 19	Jurisdiction in respect of Inquiry
	VII	20 to 24	Procedure in respect of Preliminary Inquiry and Investigation
	VIII	25 to 34	Power of Lokpal
	IX	35 & 36	Special Courts
	X	37 & 38	Complaints against Chairperson, Members and Official of Lokpal
	XI	39	Assessment of Loss and Recovery thereof by Special Court
	XII	40 to 43	Finance, Account and Audit
	XIII	44 to 45	Declaration of Assets
	XIV	46 & 47	Offences and Penalties
	XV	48 to 62	Miscellaneous
Part III		63	Establishment of the Lokayukta

Here, we shall discuss the important provisions of the LLA:

Establishment of Lokpal (Section 3):

- (1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the "Lokpal".
- (2) The Lokpal shall consist of—
 - (a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfills the eligibility specified in clause (b) of sub-section (3); and
 - (b) such number of Members, not exceeding eight out of whom fifty per cent. shall be Judicial Members:

Provided that not less than fifty per cent. of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

- (3) A person shall be eligible to be appointed,—
 - (a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;
 - (b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

- (4) The Chairperson or a Member shall not be—
- (i) a member of Parliament or a member of the Legislature of any State or Union territory;
 - (ii) a person convicted of any offence involving moral turpitude;
 - (iii) a person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;
 - (iv) a member of any Panchayat or Municipality;
 - (v) a person who has been removed or dismissed from the service of the Union or a State, and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be affiliated with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—
 - a. he holds any office of trust or profit, resign from such office; or
 - b. he is carrying on any business, sever his connection with the conduct and management of such business; or
 - c. he is practising any profession, cease to practise such profession.

Appointment of Chairperson and Members on recommendations of Selection Committee (Section 4):

- (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—
 - (a) the Prime Minister—Chairperson;
 - (b) the Speaker of the House of the People—Member;
 - (c) the Leader of Opposition in the House of the People—Member; 7
 - (d) the Chief Justice of India or a Judge of the Supreme Court nominated by him—Member;
 - (e) one eminent jurist, as recommended by the Chairperson and Members referred to in clauses (a) to (d) above, to be nominated by the President—Member.
- (2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.
- (3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:

Provided that not less than fifty per cent. of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women:

Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.
- (4) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

- (5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

Inquiry Wing (Section 11):

- (1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988 (49 of 1988):

Provided that till such time the Inquiry Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act.

For the purposes of assisting the Lokpal in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to the Government of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under section 27.

Prosecution Wing (Section 12):

- (1) The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act:

Provided that till such time the Prosecution Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting prosecution under this Act.

- (2) The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988 (49 of 1988).
- (3) The case under sub-section (2), shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973 (2 of 1974).

Jurisdiction of Lokpal to include Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government (Section 14):

- (1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—
- (a) any person who is or has been a Prime Minister: Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister,—
- (i) in so far as it relates to international relations, external and internal security, public order, atomic energy and space;
- (ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least two-thirds of its Members approves of such inquiry:

Provided further that any such inquiry shall be held in camera and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone;

- (b) any person who is or has been a Minister of the Union;
- (c) any person who is or has been a member of either House of Parliament;
- (d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) when serving or who has served, in connection with the affairs of the Union;
- (e) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of section 20;
- (f) any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it:

Provided that in respect of such officers referred to in clause (d) who have served in connection with the affairs of the Union or in any body or Board or corporation or authority or company or society or trust or autonomous body referred to in clause (e) but are working in connection with the affairs of the State or in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of the State Legislature or wholly or partly financed by the State Government or controlled by it, the Lokpal and the officers of its Inquiry Wing or Prosecution Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the concerned State Government;

- (g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify;
- (h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from any foreign source under the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify.

Explanation: For the purpose of clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 (49 of 1988) and the provisions of that Act shall apply accordingly.

- (2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in clause (2) of article 105 of the Constitution.
- (3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-

section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 (49 of 1988) against a person referred to in sub-section (1):

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

- (2) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952 (60 of 1952).

Explanation: For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

Matters pending before any court or committee or authority for inquiry not to be affected (Section 15):

In case any matter or proceeding related to allegation of corruption under the Prevention of Corruptions Act, 1988 has been pending before any court or committee of either House of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

Constitution of benches of Lokpal (Section 16):

- (1) Subject to the provisions of this Act,—
- (a) the jurisdiction of the Lokpal may be exercised by benches thereof;
 - (b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;
 - (c) every bench shall ordinarily consist of at least one Judicial Member;
 - (d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;
 - (e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;
 - (f) the benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.
- (2) The Lokpal shall notify the areas in relation to which each bench of the Lokpal may exercise jurisdiction.
- (3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.
- (4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

Distribution of business amongst benches (Section 17)

Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokpal amongst the benches and also provide for the matters which may be dealt with by each bench.

Power of Chairperson to transfer cases (Section 18)

On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

Decision to be by majority (Section 19)

If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokpal and such point or points shall be decided according to the opinion of the majority of the Members of the Lokpal who have heard the case, including those who first heard it.

Provisions relating to complaints and preliminary inquiry and investigation (Section 20):

- (1) The Lokpal on receipt of a complaint, if it decides to proceed further, may order–
 - (a) preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a prima facie case for proceeding in the matter; or
 - (b) investigation by any agency (including the Delhi Special Police Establishment) when there exists a prima facie case:

Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003 (45 of 2003):

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003 (45 of 2003):

Provided also that before ordering an investigation under clause (b), the Lokpal shall call for the explanation of the public servant so as to determine whether there exists a prima facie case for investigation:

Provided also that the seeking of explanation from the public servant before an investigation shall not interfere with the search and seizure, if any, required to be undertaken by any agency (including the Delhi Special Police Establishment) under this Act.

- (2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.
- (3) A bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a prima facie case, and proceed with one or more of the following actions, namely:–
 - (a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;
 - (b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

- (c) closure of the proceedings against the public servant and to proceed against the complainant under section 46.
- (4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.
- (5) In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order:
- Provided that the Lokpal may extend the said period by a further period not exceeding of six months at a time for the reasons to be recorded in writing.
- (6) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report under that section to the court having jurisdiction and forward a copy thereof to the Lokpal.
- (7) A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and after obtaining the comments of the competent authority and the public servant may—
- (a) grant sanction to its Prosecution Wing or investigating agency to file charge-sheet or direct the closure of report before the Special Court against the public servant;
- (b) direct the competent authority to initiate the departmental proceedings or any other appropriate action against the concerned public servant.
- (8) The Lokpal may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct its Prosecution Wing or any investigating agency (including the Delhi Special Police Establishment) to initiate prosecution in the Special Court in respect of the cases investigated by the agency.
- (9) The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.
- (10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.
- (11) The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.
- (12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

Persons likely to be prejudicially affected to be heard (Section 21):

If, at any stage of the proceeding, the Lokpal—

- (a) considers it necessary to inquire into the conduct of any person other than the accused; or
- (b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry, the Lokpal shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

Lokpal may require any public servant or any other person to furnish information, etc (Section 22):

Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokpal or the investigating agency, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

Power of Lokpal to grant sanction for initiating prosecution (Section 23);

- (1) Notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 (2 of 1974) or section 6A of the Delhi Special Police Establishment Act, 1946 (25 of 1946) or section 19 of the Prevention of Corruption Act, 1988 (49 of 1988), the Lokpal shall have the power to grant sanction for prosecution under clause (a) of sub-section (7) of section 20.
- (2) No prosecution under sub-section (1) shall be initiated against any public servant accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, and no court shall take cognizance of such offence except with the previous sanction of the Lokpal.
- (3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.
- (4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in article 311 and sub-clause (c) of clause (3) of article 320 of the Constitution.

Action on investigation against public servant being Prime Minister, Ministers or members of Parliament (Section 24):

Where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 (49 of 1988) by a public servant referred to in clause (a) or clause (b) or clause (c) of sub-section (1) of section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

Powers of Lokpal (Chapter VIII)**Supervisory powers of Lokpal (Section 25):**

- (1) The Lokpal shall, notwithstanding anything contained in section 4 of the Delhi Special Police Establishment Act, 1946 (25 of 1946) and section 8 of the Central Vigilance Commission Act, 2003 (45 of 2003), have the powers of superintendence over, and to give direction to the Delhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act:

Provided that while exercising powers of superintendence or giving direction under this sub-section, the Lokpal shall not exercise powers in such a manner so as to require any agency (including the Delhi Special Police Establishment) to whom the investigation has been given, to investigate and dispose of any case in a particular manner.

- (2) The Central Vigilance Commission shall send a statement, at such interval as the Lokpal may direct, to the Lokpal in respect of action taken on complaints referred to it under the second proviso to sub-section (1) of section 20 and on receipt of such statement, the Lokpal may issue guidelines for effective and expeditious disposal of such cases.
- (3) Any officer of the Delhi Special Police Establishment investigating a case referred to it by the Lokpal, shall not be transferred without the approval of the Lokpal.

- (4) The Delhi Special Police Establishment may, with the consent of the Lokpal, appoint a panel of Advocates, other than the Government Advocates, for conducting the cases referred to it by the Lokpal.
- (5) The Central Government may from time to time make available such funds as may be required by the Director of the Delhi Special Police Establishment for conducting effective investigation into the matters referred to it by the Lokpal and the Director shall be responsible for the expenditure incurred in conducting such investigation.

Search and seizure (Section 26):

- (1) If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency (including the Delhi Special Police Establishment) to whom the investigation has been given to search for and to seize such documents.
- (2) If the Lokpal is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such investigation:

Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document duly authenticated.

Lokpal to have powers of civil court in certain cases (Section 27):

- (1) Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokpal shall have all the powers of a civil court, under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—
 - (i) summoning and enforcing the attendance of any person and examining him on oath;
 - (ii) requiring the discovery and production of any document;
 - (iii) receiving evidence on affidavits;
 - (iv) requisitioning any public record or copy thereof from any court or office;
 - (v) issuing commissions for the examination of witnesses or documents: Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and
 - (vi) such other matters as may be prescribed.
- (2) Any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code (45 of 1860).

Power of Lokpal to utilise services of officers of Central or State Government (Section 28):

- (1) The Lokpal may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigating agency of the Central Government or any State Government, as the case may be.
- (2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under sub-section (1) may, subject to the superintendence and direction of the Lokpal,—
 - (a) summon and enforce the attendance of any person and examine him;

- (b) require the discovery and production of any document; and
 - (c) requisition any public record or copy thereof from any office.
- (3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokpal within such period as may be specified by it in this behalf.

Provisional attachment of assets (Section 29):

- (1) Where the Lokpal or any officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—
- (a) any person is in possession of any proceeds of corruption;
 - (b) such person is accused of having committed an offence relating to corruption; and
 - (c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence, the Lokpal or the authorised officer may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Lokpal and the officer shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.
- (2) The Lokpal or the officer authorised in this behalf shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.
- (3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).
- (4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

Explanation:—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

Confirmation of attachment of assets (Section 30):

- (1) The Lokpal, when it provisionally attaches any property under sub-section (1) of section 29 shall, within a period of thirty days of such attachment, direct its Prosecution Wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.
- (2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.
- (3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.
- (4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 (49 of 1988) shall be confiscated and vest in

the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

Explanation: For the purposes of this sub-section, the expressions “bank”, “debt” and “financial institution” shall have the meanings respectively assigned to them in clauses (d), (g) and (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).

Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances (Section 31):

- (1) Without prejudice to the provisions of sections 29 and 30, where the Special Court, on the basis of prima facie evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.
- (2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with interest at the rate of five per cent. per annum thereon calculated from the date of confiscation.

Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption (Section 32):

- (1) Where the Lokpal, while making a preliminary inquiry into allegations of corruption, is prima facie satisfied, on the basis of evidence available,—
 - (i) that the continuance of the public servant referred to in clause (d) or clause (e) or clause (f) of sub-section (1) of section 14 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or
 - (ii) such public servant is likely to destroy or in any way tamper with the evidence or influence witnesses, then, the Lokpal may recommend to the Central Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.
- (2) The Central Government shall ordinarily accept the recommendation of the Lokpal made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible to do so for administrative reasons.

Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry (Section 33):

The Lokpal may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

- (a) to protect such document or record from destruction or damage; or
- (b) to prevent the public servant from altering or secreting such document or record; or (c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Power to delegate (Section 34):

The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Complaints against Chairperson, Members and Officials of Lokpal (Chapter X)

Removal and suspension of Chairperson and Members of Lokpal (Section 37):

- (1) The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.
- (2) Subject to the provisions of sub-section (4), the Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it by the President on a petition signed by at least one hundred Members of Parliament has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.
- (3) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (2), on receipt of the recommendation or interim order made by the Supreme Court in this regard until the President has passed orders on receipt of the final report of the Supreme Court on such reference.
- (4) Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member, as the case may be,—
 - (a) is adjudged an insolvent; or
 - (b) engages, during his term of office, in any paid employment outside the duties of his office; or
 - (c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.
- (5) If the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

Complaints against officials of Lokpal (Section 38):

- (1) Every complaint of allegation or wrongdoing made against any officer or employee or agency (including the Delhi Special Police Establishment), under or associated with the Lokpal for an offence punishable under the Prevention of Corruption Act, 1988 (49 of 1988) shall be dealt with in accordance with the provisions of this section.
- (2) The Lokpal shall complete the inquiry into the complaint or allegation made within a period of thirty days from the date of its receipt.
- (3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if it is prima facie satisfied on the basis of evidence available, that—
 - (a) continuance of such officer or employee of the Lokpal or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or
 - (b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses, then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it.
- (4) On the completion of the inquiry, if the Lokpal is satisfied that there is prima facie evidence of the commission of an offence under the Prevention of Corruption Act, 1988 (49 of 1988) or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer

or employee of the Lokpal or such officer, employee, agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokpal, such officer, employee, agency engaged or associated, a reasonable opportunity of being heard.

Assessment of Loss and Recovery thereof by Special Court (Chapter XI)

Assessment of loss and recovery thereof by Special Court (Section 39):

If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 (49 of 1988) by the special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted: Provided that if the Special Court, for reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

Offences and Penalties (Chapter XIV)

Prosecution for false complaint and payment of compensation, etc., to public servant (Section 46):

- (1) Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.
- (2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1).
- (3) No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorised by the Lokpal.
- (4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the Central Government.
- (5) In case of conviction of a person being an individual or society or association of persons or trust (whether registered or not), for having made a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.
- (6) Nothing contained in this section shall apply in case of complaints made in good faith.

Explanation: For the purpose of this sub-section, the expression "good faith" means any act believed or done by a person in good faith with due care, caution and sense of responsibility or by mistake of fact believing himself justified by law under section 79 of the Indian Penal Code (45 of 1860).

False complaint made by society or association of persons or trust (Section 47):

- (1) Where any offence under sub-section (1) of section 46 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a society or association of persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director manager, secretary or other officer of such society or association of persons or trust, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER XV MISCELLANEOUS

Reports of Lokpal (Section 48)

It shall be the duty of the Lokpal to present annually to the President a report on the work done by the Lokpal and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, in respect of the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force (Section 49)

The Lokpal shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988 (49 of 1988).

Protection of action taken in good faith by any public servant (Section 50)

No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.

Protection of action taken in good faith by others (Section 51)

No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder.

Members, officers and employees of Lokpal to be public servants (Section 52)

The Chairperson, Members, officers and other employees of the Lokpal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Limitation to apply in certain cases (Section 53)

The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

Bar of jurisdiction (Section 54)

No civil court shall have jurisdiction in respect of any matter which the Lokpal is empowered by or under this Act to determine.

Legal assistance (Section 55)

The Lokpal shall provide to every person against whom a complaint has been made, before it, under this Act, legal assistance to defend his case before the Lokpal, if such assistance is requested for.

Act to have overriding effect (Section 56)

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Provisions of this Act to be in addition of other laws (Section 57)

The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

Amendment of certain enactments (Section 58)

The enactments specified in the Schedule shall be amended in the manner specified therein.

Power to make rules (Section 59)

- (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) the form of complaint referred to in clause (e) of sub-section (1) of section 2;
 - (b) the term of the Search Committee, the fee and allowances payable to its members and the manner of selection of panel of names under sub-section (5) of section 4;
 - (c) the post or posts in respect of which the appointment shall be made after consultation with the Union Public Service Commission under the proviso to sub-section (3) of section 10;
 - (d) other matters for which the Lokpal shall have the powers of a civil court under clause (vi) of sub-section (1) of section 27;
 - (e) the manner of sending the order of attachment along with the material to the Special Court under sub-section (2) of section 29;
 - (f) the manner of transmitting the letter of request under sub-section (2) of section 36;
 - (g) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal under section 40;
 - (h) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of section 42;
 - (i) the form and manner and the time for preparing the returns and statements along with particulars under section 43;
 - (j) the form and the time for preparing an annual return giving a summary of its activities during the previous year under sub-section (5) of section 44;
 - (k) the form and manner of declaration of assets and liabilities by public servants under section 44: Provided that the rules may be made under this clause retrospectively from the date on which that provisions of this Act came into force;
 - (l) the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to section 45;
 - (m) any other matter which is to be or may be prescribed.

Power of Lokpal to make regulations (Section 60)

- (1) Subject to the provisions of this Act and the rules made thereunder, the Lokpal may, by notification in the Official Gazette, make regulations to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—
 - (a) the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the President under sub-section (4) of section 10;
 - (b) the place of sittings of benches of the Lokpal under clause (f) of sub-section (1) of section 16;
 - (c) the manner for displaying on the website of the Lokpal, the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (10) of section 20;
 - (d) the manner and procedure of conducting preliminary inquiry or investigation under sub-section (11) of section 20;
 - (e) any other matter which is required to be, or may be, specified under this Act.

Laying of rules and regulations (Section 61)

Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to remove difficulties (Section 62)

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to be necessary for removing the difficulty: Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Establishment of the Lokayukta (Part III)**Establishment of Lokayukta (Section 63):**

Every State shall establish a body to be known as the Lokayukta for the State, if not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption again.

ICSI ANTI BRIBERY CODE**Objective**

To ensure that neither the company nor any of its employees, directors or authorised representatives indulge in bribery in any of their actions taken for and on behalf of the company in the course of economic, financial or commercial activities of any kind.

Scope

The Code shall be applicable to the company and its

- (i) Board of Directors,
- (ii) Employees (full time or part-time or employed through any third party contract),
- (iii) Agents, Associates, Consultants, Advisors, Representatives and Intermediaries, and
- (iv) Contractors, Sub-contractors and Suppliers of goods and/or services.

Definitions

For the purpose of The Code, unless the context otherwise requires,

'Bribery' includes giving or receiving bribe and third party gratification. The act of giving bribe is when committed intentionally in the course of economic, financial or commercial activities and when it is established that there is a promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a commercial entity, for the person himself or for another person, in order that he in breach of his duties, act or refrain from acting.

'Facilitation payment' means a payment made to government or private official that acts as an incentive for the official to complete some action or process expeditiously to the benefit of the party making the payment.

'Foreign public official' means any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected, whether permanent or temporary, whether paid or unpaid and includes a person who performs a public function or provides service for a foreign country.

Words and expressions used and not defined in this Code shall have the meaning assigned to them in their respective Acts.

Clause 1: Adherence to Anti-Corruption Laws

The company shall follow all anti-corruption laws applicable in India.

Clause 2: Bribery in Private Sector

The company or its employees, directors, agents, associates, consultants, advisors, representatives or intermediaries shall not involve in bribery.

Clause 3: Facilitation Payments

No facilitation payment shall be made by the company either directly or through its employees, directors, agents, associates, consultants, advisors, representatives or intermediaries.

Clause 4: Bribery to Foreign Public Officials

The company, either directly or through its employees, directors, agents, associates, consultants, advisors, representatives or intermediaries in the conduct of international business shall not offer, promise or give any undue pecuniary or other advantage, to a foreign public official, for that official or for a third party, in order that the official acts or refrains from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage.

Clause 5: Policy for Gifts, Hospitality & Expenses

The company shall follow a policy for gifts, hospitality and expenses as approved by its Board.

Clause 6: Whistle Blower Mechanism

The company shall set up a Whistle Blower Mechanism as approved by its Board to enable its employees or others to raise concerns and report violation(s) of the Code.

Clause 7: Anti- Bribery Training and Awareness Programmes

The company shall put in place an annual Corporate Anti-Bribery Code awareness-cum-training program as approved by its Board for all its employees, agent, associates, advisors, representatives, intermediaries, consultants, contractors, sub-contractors and suppliers.

Clause 8: Monitoring Mechanism for Anti-Bribery Code

The company shall set up mechanism as approved by its Board for regular monitoring of its Anti- Bribery Code.

Clause 9: Sanctions for Non-compliance

Any non-compliance of the Code is subject to disciplinary mechanism. The company shall set up disciplinary mechanism as approved by its Board, for non-compliance of any part of the Corporate Anti- Bribery Code.

The disciplinary mechanism shall include:

- Nature of offence
- Penalty of the office
- Competent Authority

Guiding Instructions for Implementation of the Code:

1. Corporate Anti-Bribery Code is to be adopted voluntarily.
2. The Code shall be approved by the Board of Directors of the company. Any change in the Code shall be made with the approval of the Board of the Company.
3. The Code shall be communicated to all existing employees, management and Board members.
4. All the existing employees, management and Board members shall confirm in writing that they shall unconditionally follow the Code in its entirety throughout their employment/association with the company.
5. All the new appointees shall be required to confirm in writing, at the time of their induction in the company that they shall be bound by the Code.
6. All agents, associates, consultants, advisors, all the contractors, sub-contracts and suppliers of goods and/or services, representatives and intermediaries engaged by the company shall also be required to follow the Code while carrying on their assignments for and on behalf of the company at any time during their association with the company. It shall also be made a mandatory condition while confirming their appointment.
7. Anti-Bribery Code of the company shall be put on company's website. Any change in the Code shall be immediately updated.
8. The Annual Report of the Board shall contain an assertion that the company has an Anti-Bribery Code and the same is being followed by all employees, agents, associates, consultants, advisors, all the contractors, sub-contracts and suppliers of goods and/or services, representatives and intermediaries as well as members of the Board of the company. Any incident of bribery noticed or reported and action taken by the Board shall also be reported.
9. With a view to facilitate the companies, the following model suggested policies which may be adopted by the Board of Directors of the company are annexed to the Code:
 - a. Model Policy on Gifts, Hospitality & Expenses
 - b. Model Policy on Purchase through Supplier and other Service Provider
 - c. Guidelines for Whistle Blower Policy

10. Disclaimer: Due care and diligence is taken in developing the Corporate Anti-Bribery Code. This Code does not substitute or supplant any existing laws. If any of the parameter of this Code are or become inconsistent with the applicable laws, provisions of the related laws shall prevail.

[for more details the students may refer to the ICSI publication on the Corporate Anti-Bribery Code]

CASE STUDY

The following case studies of renowned companies regarding adherence to the Principle 1 of Business Responsibility and Sustainability Reporting (BRSR), i.e., '**Businesses should conduct and govern themselves with integrity, and in a manner that is Ethical, Transparent and Accountable**' will assist in comprehending the scenario prevailing in the corporate sector pertaining to business ethics, assimilation of the Code of Conduct and Anti-Bribery practices.

The case studies of the following companies have been covered based on their latest Annual / Integrated Reports.

1. Tata Steel
2. ACC Cement
3. NTPC Limited.

1. Tata Steel

The essential indicators covered under the mentioned principle of BRSR for Tata Steel are:

- i) Percentage coverage by training and awareness programmes on any of the principles of BRSR conducted during the financial year.
- ii) Details of fines/ penalties/ punishment/ award/ compounding fees/ settlement amount paid in proceedings (by the entity or by directors/ KMPs with regulators/ law enforcement agencies/ judicial institutions, in the financial year. *(Note: the entity shall make disclosures on the basis of materiality as specified in Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and as disclosed on the entity's website.)*
- iii) Of the instances disclosed in point ii above, details of the Appeal/ Revision preferred in cases where monetary or non-monetary action has been appealed.
- iv) Prevalence of Anti-Corruption or Anti-Bribery Policy in the company. If the company has so, then its brief details and if available, the web-link of the policy.

i) Percentage coverage by training and awareness programmes on any of the principles of BRSR conducted during the financial year.

The company have conducted training and awareness programmes for various personnel, i.e., Board of Directors, Key Managerial Personnel (KMPs) and Employees and Workers to sensitize them about the Principles of BRSR. The topics covered under the training and awareness programmes are- Safety, Health and Environment, Strategy / Industry Trends, Ethics & Governance and Legal & Regulatory matters, Code of Conduct, Anti-Bribery and Anti-Corruption Policies, Conflict of Interest, Prevention of Sexual Harassment Policies etc. Thus, the topics focused in the training and awareness programmes exemplifies the company's philosophy of creating a legion of personnel who will be law abiding and ethical in approach.

Moreover, the attendance in the training and awareness programmes have been hundred percent which elucidate an inclusive approach on the part of the management of the company and eagerness to learn on the part of the human capital.

- ii) Details of fines/ penalties/ punishment/ award/ compounding fees/ settlement amount paid in proceedings (by the entity or by directors/ KMPs with regulators/ law enforcement agencies/ judicial institutions, in the financial year. (Note: the entity shall make disclosures on the basis of materiality as specified in Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and as disclosed on the entity's website.)**

On perusing the Integrated Report of the company, it is observed that no penalty have been levied on the company, thereby indicating a law compliant company.

- iii) Of the instances disclosed in point ii above, details of the Appeal/ Revision preferred in cases where monetary or non-monetary action has been appealed.**

As per the Integrated Report, the mentioned criterion is not applicable to the company, since the company has not committed any infringement of law.

- iv) Prevalence of Anti-Corruption or Anti-Bribery Policy in the company. If the company has so, then its brief details and if available, the web-link of the policy.**

Yes, Tata Steel has an Anti-Bribery and Anti-Corruption (ABAC) Policy and all Tata Steel companies have adopted the ABAC Policy. In some cases, depending upon local laws and regulations, Tata Steel's overseas subsidiaries may modify the ABAC Policy to align with local requirements.

The purpose of the ABAC Policy is to ensure all Tata Steel Group Companies, in any part of the world, conduct their operations and business activities in consonance with applicable laws and with the highest ethical standards and ensure the prevention and detection of fraud, bribery and corruption. Tata Steel's ABAC Policy is applicable to all individuals working at all levels and grades, including Directors, Senior Executives, Senior Managers, Officers, Employees, Consultants, Contractors, Trainees, Interns, Seconded Staff, Casual Workers & Agency Staff, Agents, Business Partners, Service Providers, Professional Associates, and other relevant persons, third parties or companies associated with Tata Steel, including those acting on behalf of Tata Steel.

The Company also communicates, creates awareness, and disseminates the ABAC Policy to all its employees, vendors and supply chain partners through e-modules. Furthermore, Tata Steel, from time to time, designates an employee of sufficient seniority, competence, and independence as the Compliance Officer/Chief Ethics Counsellor to ensure compliance with the provisions of this ABAC Policy.

The weblink of the Policy is as follows: https://www.tatasteel.com/media/11802/1-abac-policy_final.pdf

Reference: <https://www.tatasteel.com/media/18370/tata-steel-ir-2022-23.pdf>

2. ACC Cement

The essential conditions covered under Principle 1 of BRSR for Ambuja Cement are as under:

- i) Does the policy relating to ethics, bribery and corruption cover only the Company? Yes/No. Does it extend to the Group/Joint Ventures/Suppliers/Contractors/ NGOs/Others?**

The Company considers Corporate Governance as an integral part of responsible management. The Company has a Code of Business Conduct (along with Anti -Bribery and Corruption Directive) and a vigil mechanism named as EthicalView Reporting Policy ('EVRP') that has been approved by the Board of Directors. These are applicable to all Directors and employees of the Company and all its subsidiaries, and an annual affirmation is taken from the designated employees.

The Anti -Bribery and Corruption Directive and the EthicalView Reporting Policy also extend to the Company's business partners, including vendors/ service providers/ customers. The Company as part of JV compliance framework of the Holcim Group, has encouraged JV partners to adopt the best practices with respect to ethics, transparency and governance. The Code is available on the Company's website at: www.acclimited.com/assets/new/pdf/ACC -Code -ofConduct-Final-signed-18-04-2017.pdf

Thus, the aforesaid approach of the company is an exemplar of good corporate governance. Further, the above mentioned approach encompasses personnel of all levels as well as business partners, thereby indicating company's strong commitment towards adherence to the relevant laws and regulations.

ii) Resolution of stakeholder complaints in the past financial year.

The Company received 128 complaints under the EthicalView Reporting Policy, out of which 88 complaints were addressed and the balance 40 complaints are under various stages of investigation and completion. The update on EthicalView is presented to the Audit Committee, who in turn briefs to the Board.

Thus, it may be opined that the management of the company is agile towards resolving stakeholders complaints, thereby exhibiting its care towards its stakeholders.

Reference: https://www.acclimited.com/AnnualReport-2021-22/pdf/ACC%20limited%20IR_2021_final.pdf

3. NTPC Limited

With reference to the Principle 1 of BRSR (*Businesses should conduct and govern themselves with integrity, and in a manner that is Ethical, Transparent and Accountable*), it is to be noted that the company has the following policies in the company-

1. Code of Conduct*
2. Core Values.
3. Fraud Prevention Policy.
4. CDA Rules.
5. Whistle Blower Policy.
6. Internal code of conduct for prevention of insider trading.
7. Code of Corporate Fair Disclosure Practices for prevention of insider trading.
8. Related Party Transaction Policy.
9. Policy for determination of materiality of events or information for disclosure.
10. Policy on maintenance & preservation of documents.
11. Policy for Determining Material Subsidiaries.
12. Training Policy for Directors of NTPC.

*Code of Conduct for Board Members & Senior Management Personnel

For compliance of the above mentioned policies, all the Directors & Chief Vigilance Officer is responsible. Thus, the company has incorporated all the policies that goes a long way in ensuring fair business practices and ensuring good corporate governance.

Reference: <https://www.ntpc.co.in/sites/default/files/annual-report/complete-reports/Annual-Report-2021-22.pdf>

CONCLUSION

In making ethics work in an organization it is important that there is synergy in vision statement, mission statement, core values, general business principles and the code of ethics. A commitment by corporate management to follow an ethical code of conduct confers a variety of benefits. An effective ethics programme requires continual reinforcement of strong values. Organisations are challenged with the task to make their employees live and imbibe their ethical codes and values. To ensure a right ethical climate, a right combination of spirit and structure is required.

Corporate Ethics is much needed to stress the importance of sustainability, social development, stakeholders and consumers satisfaction. It is an orientation to provide a valuable service instead of displaying more orientation for profits. Ethics, point out what is good and what is bad and also what is right or wrong.

It brings to the notice of the business community the importance of honesty, sincerity and fairness which makes them alert and socially conscious. It reconciles conflicting interest of various sections of the society such as workers, shareholders, consumers, distributors, suppliers, competitors and government and thus, expedite a better relation between business and the society.

LESSON ROUND-UP

- Business ethics is a form of applied ethics. In broad sense ethics in business is simply the application of moral or ethical norms to business.
- The Board shall lay down a code of conduct for all Board members and senior management of the company. The code of conduct shall be posted on the website of the company.
- To create a code of ethics, an organization must define its most important guiding values, formulate behavioral standards to illustrate the application of those values to the roles and responsibilities of the persons affected, review the existing procedures for guidance and direction as to how those values and standards are typically applied, and establish the systems and processes to ensure that the code is implemented and is effective.
- An ethical dilemma involves a situation that makes a person question what is the 'right' or 'wrong' thing to do. Ethical dilemmas make individuals think about their obligations, duties and responsibilities. These dilemmas can be highly complex and difficult to resolve. Easier dilemmas involve a 'right' versus 'wrong' choice; whereas, complex ethical dilemmas involve a decision between a right and a right choice.
- Advantages of business ethics - attracting and retaining talent, investor loyalty, customer satisfaction and regulators.
- In making ethics work in an organization it is important that there is synergy between vision statement, mission statement, core values, general business principles and code of ethics.
- The PCA criminalizes the acceptance of gratification (pecuniary or otherwise) other than the acceptance of legal remuneration by public servants which is paid by their employers in connection with the performance of their duties.
- The LLA requires each State to establish a Lokayukta by law under the state legislature.

GLOSSARY

Business Ethics: Business ethics (also known as corporate ethics) is a form of applied ethics or professional ethics, that examines ethical principles and moral or ethical problems that can arise in a business environment.

Indian Ethos: Indian Ethos in Management refers to the values and practices that can contribute to service, leadership and management. These values and practices are rooted in Sanathana Dharma (the eternal essence), and have been influenced by various strands of Indian philosophy.

Ethical Dilemma: 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.

Bribery: ‘Bribery’ includes giving or receiving bribe and third party gratification. The act of giving bribe is when committed intentionally in the course of economic, financial or commercial activities and when it is established that there is a promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a commercial entity, for the person himself or for another person, in order that he in breach of his duties, act or refrain from acting.

Facilitaion payment: Facilitation payment’ means a payments made to government or private official that acts as an incentive for the official to complete some action or process expeditiously to the benefit of the party making the payment.

PCA: The Prevention of Corruption Act, 1988 is an Act of the Parliament of India enacted to combat corruption in government agencies and public sector businesses in India.

TEST YOURSELF

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

1. Is there any advantages of Business Ethics for an organization? Explain some of the advantages?
2. Explain the concept of ‘Ethical Dilemma’ with suitable examples.
3. Enumerate the laws and enforcement regimes behind Anti-Corruption and Anti-Bribery Laws in India.
4. What is the composition of the Lokpal?
5. How ICSI Anti-Bribery Code have been playing a pivotal role in curbing corrupting practices?

LIST OF FURTHER READINGS

- Business Ethics and Corporate Governance by A.C. Fernando, Publisher: Pearson
- Conscious Leadership: Elevating Humanity Through Business by John Mackey, Steve Mcintosh, and Carter Phipps
- Speed of Trust: The One Thing That Changes Everything by Stephen M .R. Covey
- Ethics 101: What Every Leader Needs To Know by John C. Maxwell
- Grow the Pie: How Great Companies Deliver Both Purpose and Profit by Alex Edmans
- The Business Ethics Field Guide: The Essential Companion to Leading Your Career and Your Company to Greatness by by Bill O’Rourke, Brad Agle, and Aaron Miller

- Intentional Integrity: How Smart Companies Can Lead an Ethical Revolution by Robert Chesnut
- Net Positive: How Courageous Companies Thrive by Giving More Than They Take by Andrew S. Winston
- Defining Moments: When Managers Must Choose Between Right and Right by Joseph L. Badaracco Jr.
- Business Ethics by Stephen M. Byars and Kurt Stanberry
- Business Ethics: Best Practices for Designing and Managing Ethical Organizations by Denis Collins

OTHER REFERENCES

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 - <https://www.wallstreetmojo.com/business-ethics/>
 - <https://corporatefinanceinstitute.com/resources/esg/business-ethics/>
 - <https://smallbusiness.chron.com/business-ethics-improves-bottom-line-41036.html>
 - <https://corporatefinanceinstitute.com/resources/esg/ethical-dilemma/>
 - <https://www.floridatechonline.com/blog/business/the-5-biggest-ethical-issues-facing-businesses/>
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 - <https://ethicalengineer.ttu.edu/studies/case-study-bhopal-gas-tragedy>
 - <https://cases.som.yale.edu/cadbury>
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